

RAPE: WOMEN ARE NOT TOYS TO PLAY WITH

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Abstract

The most tempestuous thing happening in India is Rape. Rape is such a heinous crime which happens across the whole nation as it violates the fundamental right of the victim provided under Article 21 of the Indian constitution. Why there is always the rate of rape cases are increasing day by day? Why brutal gang rapes are still happening in our society? What is the real reason behind these rapid rape rates and why the graphs of rape case are moving upward? Everyone is determined and mould by our circumstances. The rapist is not born as the rapist, they get influenced by circumstances. The circumstances that lead him to do immoral acts such as unemployment, uneducated, worst peer group, depression, watching porn videos at a very young age, more adult content movies. The serials in television are made for family entertainment, but nowadays even serial shows highly romantic scenes like movies. These programs spoil the young generation. These are the circumstances that determine the man's wrongful act. But we don't say only because of these circumstances he has done this crime or all these circumstances made him an offender. Because we are determined by the way we are, what we think. The young generation doesn't get influenced by bad circumstances. To decrease the rape rate, I have suggested the government to ban porn videos on internet, watch out all the mobile application contents (The advertisement in some applications are showing unwanted content), increasing literacy rate, increasing employment opportunities and set up free mental health centre at each district of the state. The government should make a law that the self-defence should be taught to students in the school itself. A person is charged with murder, Section 100 of IPC provides an exception in case the act is committed in self-defence i.e death during self-defence is justified. We all know India's bandit Queen Phoolan Devi, she killed 22 men for being gang-raped her. This is a revengeful action. But we should encourage her courageous action. This courage is the need of the present time. Every girl child should be self-confident and brave. Rape is still happening in society because of money influence and political influence. Delayed justice is denied justice, so the case proceedings did not delay for many years like the Nirbhaya case. The government and judiciary should cover the loopholes of judiciary and law. Sexual harassment

occurs in all public places such as school, college, police station, railway station, temple etc. All moral values should be taught in school. All this crime will come to an end only when severe punishment is given. Both gender people are affected by this heinous crime. The ashamed news of our country was a dog being raped by a labourer in Mumbai. Such incidents should be reduced. We hope that India becomes a safe nation for women soon.

Introduction

In this context, we have to discuss the cruellest and intolerable event happening in every nook of society. One of the most brutal things exists not only in India, but also exists in the world countries. Yes, here we discuss the most turbulent issue against women i.e RAPE. Rape is a heinous crime against the entire society as well it also violates the fundamental rights of victim's provided under Article 21 of the Indian Constitution. Rape simply means forcible sexual intercourse with a woman without her consent or against her will. According to the statistics report, the rape rate of India is comparatively lower than the other foreign countries. It's not the reality. Because most of the rape victims and their family conceal the fact due to their family norms, values, culture and they fear about the mindset of the society. If all the rape victims file the complaint against her sexual harassment, India ranks at the top position in rape cases across the world. India protects its sovereignty and national security as well. But it fails to protect its women and the girl child. India is a developing country even in brutal rape cases. But we didn't blame the Indian government and judicial system. Because it took all the necessary steps to control the sexual harassment against women, the government amended the Criminal Procedure Code, Indian Evidence Act, Indian Penal Code for more than four times and also introduced POSCO Act. The Supreme Court also formed the committee to analyze the crime against women and also it gave a notable judgment for brutal rape cases. Anyhow cruel and unforgettable rape cases are happening in India because of the loopholes of the judicial system.

The brutality of rape still exist

The report says women in India are raped every 21 minutes. According to the National Crime Records Bureau (94.6% of rape cases were reported in 2016 in such cases the accused is known to the victim; it may be uncle, relatives, friends etc). This was the real reason they didn't file the case and they face the family pressure to keep the matter themselves. In India, the certainty of

punishment is low and trials in the court of the victim are harder when compared to the accused (often it leads to withdrawing the case) and most of the cases are dismissed due to lack of evidence. In 2017, there were 33,658 cases registered by the police¹. When the death penalty is given to the rapists, it may cause the serious impact that is instead of deterrence, they kill the victim or in no state to recognize the perpetrators or in no state to the complaint. Moreover, the tough criminal laws can target the weaker sections because high-class people are easily relieved from the criminal laws using the money and loopholes of the judiciary. In the year 2000-2015, 30% of death penalties awarded by trial courts ended in acquittal when appealed in higher courts. Other 65% of the death penalty being commuted, this clearly shows that rapists didn't have any fear upon the death penalty. A person's behaviour is determined by his circumstances. A normal person changes into rapist because of his worst peer groups, sex videos on the internet. Indian government should ban porn videos on the internet. Many youths said that rape is the consequences of the adoption of western culture. But it's not a fact. For example, a 9-month-old girl was raped in Telangana, a 3-year-old girl was raped at Dehradun. What is the issue with her dress? Is her western culture instigating him to rape her? I am not here to support western culture. But I try to find the reality behind the rape cases.

Rape definition and its ingredients

Rape is defined under section 375 of Indian Penal Code states that a man forcibly commits sexual intercourse with a woman without her consent or against her will. A man is said to commit rape if

- (1) He penetrates his penis into the vagina, urethra, mouth, anus of women or makes her do so.
- (2) Inserts any object or part of the body, not being the penis into the vagina, urethra, anus of women or make her do so.
- (3) Manipulates any part of the body of women to cause penetration into vagina, urethra, anus or any part of the body of such women or make her do so.

¹ Reuters Staff, *Statistics on rape in India and some well-known cases*, Reuters, <https://www.reuters.com/article/us-india-rape-factbox-idUSKBN1YA0UV>

(4) Applies his mouth to the vagina, urethra, and anus of women or makes her do so.

Moreover, there are seven circumstances to constitute the event as rape. They are

(i) Without her consent

(ii) Against her will

(iii) With her consent when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt

(iv) With her consent, when the man knows that he is not her husband and she gives consent because she believes that she is lawfully married

(v) With her consent when, at the time of consent because of unsound mind, intoxication she is unable to understand the nature and consequences of that to which she gives consent

(vi) With or without her consent when she is under eighteen years of age,(7)when she is unable to communicate the consent.

Rape victims are suffered a lot rather than Rapists

Rape victims lose their fundamental right under Article 21 (right to life with dignity). The additional solicitor general of India, Indira Jai Singh says that the current rape laws are far from the adequate and the process of the judicial system is too slow and the conviction rate is also too slow. She says many cases do not even get to court due to their family often discouraging her daughter from complaining. At present, most of the rape cases the rapist would be making sure that the victims are left dead, or not to recognize him (damaged her eyes and damage her internal organ). Death penalty offered to Rapists did not stop them from the crime. Usually, punishment is given to create fear, or to stop the offender, and reform the offender. In India, we follow the reformatory theory of punishment. This doesn't create any fear and actually, it increases the heinous crime as well. Because the offender uses the loopholes of the judiciary and misuses the

law, the offender didn't change a small thing even though he spent more than 10 years in prison. A person poisoned for a petty offence and they return from the prison-like a repeated offender (he gains the worst advice from the other repeated offender). Most of the victims are still waiting for justice and even sometimes they wait a year after the crime has been committed. This slow trials and commutation of the death penalty were challenged in society. Hence, it instigates the legislature to amend the laws such as custodial rape, speedy trial, voyeurism etc.

Kind of rape which is still legal in India: Marital Rape

If a man imposes sexual intercourse on his wife with force or with the threat of force or without consent, India is one of the 35 countries in the world where marital rape is legal. The Indian government does not want to criminalize marital rape and that is problematic. Because the government says criminalizing marital rape may destabilize the institution of marriage and easy tool for harassing the husband. The government in affidavit also said criminalizing marital rape lead is also to misuse just like section 498A of IPC. Marital rape is the exception of section 375. The union minister for women and child development Menaka Gandhi said that the concept of marital rape as understood internationally cannot be suitably applied to the Indian context because of the social customs, values, religious beliefs, level of education, illiteracy, poverty, and mindset of the society to treat the marriage as a sacrament. Even the Justice Verma Committee formed after the Nirbhaya case had also recommended removing the exception to section 375. But the recommendation was rejected. Rape is Rape even he is her husband and do not let marriages turn into a state-sanctioned license to rape women.

Notable Rape cases in India²

(1) In 1973, Aruna Shanbaug (26 years old) nurse was attacked by a ward attendant at KEM hospital, Mumbai during her night shift. He sodomized and strangled her with a dog chain. It cuts off the oxygen supply to her brain and it leads to coma. She was in a vegetative state for nearly 42 years

(2) In 1972, Mathura young tribal girl raped by two policemen (custody rape), Bombay High

² Meenu Katariya, *30 Horrific Rape cases that have happened in 2019 proving that nothing has changed*, Scoopwhoop, https://www.scoopwhoop.com/amp/news/most-horrific-rape-cases-happened-in-2019/#aoh=15989732406852&referrer=https%3A%2F%2Fwww.google.com&_tf=From%20%251%24s

court found the accused guilty and they appealed in the supreme court in 1979, the court says the accused is not found guilty.(many law professors protested on the usage of term consent. They said consent can have a submission, but submission needs not to be with consent)

(3) In 1990, Hetal Parekh, a 14-year-old girl was raped and murdered in Kolkata.

(4) In 1992, Bhanwari Devi was gang-raped by five members in the workplace (it lead to Vishaka guidelines being put into place, to protect women against sexual harassment in the workplace)

(5) In 1996, Priyadarshini Mattoo (Law Student) was found raped and strangled in a Delhi flat.

(6) In 2012, Jyoti Singh, physiotherapy student was raped by 5 adults and 1 minor. This incident sparked a large scale of protest and let thousands of women breaks their silence over sexual violence they often go unreported.

(7) In 2018, Muslim girl (8 years) drugged, held captive in a temple and raped continuously by six men. They killed her brutally.

(8) In 2018, a girl (12 years old) was raped continuously for seven months in a different apartment by using a sedative drug. There are 18 men charged in Chennai.

(9) In 2019, vet doctor (27-year-old) was raped in the southern city of Hyderabad and set on fire. Police shot all the four accused in alleged extra-judicial killing. Many people support and celebrate killing.

(10) The 16-years-old girl was gang-raped by six (including 3 minors) for five days in Andhra Pradesh.

(11) The 19-year-old girl was gang-raped by six men in Bihar in front of her father.

- (12) The 4-years-old girl was raped in Uttar Pradesh.
- (13) The 3-year-old girl was allegedly raped by an 11 years old neighbour.
- (14) The 9-month-old girl was raped in Telangana.
- (15) The 4-year-old girl was raped in a private school in Punjab.
- (16) The 43-year-old mentally challenged woman was raped in Mumbai.
- (17) The 15-year-old girl was raped by her father in Odisha.
- (18) In Indore, a 4-year-old girl was kidnapped and rapped, her body thrown into the well.
- (19) The 5-year-old girl was raped and murdered after being abducted while sleeping with her family in a pavement shack.
- (20) In 2003, a 28-year-old Swiss diplomat was raped. The country is ashamed of this incident.
- (21) The 14 years Sonam was raped and killed inside the police station in Uttar Pradesh³.

Need for deterrent and retributive punishment

The Indian country follows the Reformatory theory of punishment. It means "abort the crime, not the criminal". It is denoted as the purification process, the evildoer would wash their sins. In India, acquittal due to lack of evidence and commutation of the death penalty made future rapist carefree and less law dreading, nowadays, the offender didn't worry about their sins and they are ready to do other serious heinous crimes by using the loopholes of the judiciary, so that the answer lies in the deterrent and retributive theory of punishment. The sole principle is "reap what you sow". This theory strongly says that punishment is a necessary consequence of his wrongful

³ *The rapist that India forgot*, BBC news, <https://www.bbc.com/news/world-asia-india-20907755> (2013)

act. When we hang the accused of Shanbaug Case or Mattoo Case in front of the public following the deterrent theory of punishment, the six convicts of Nirbhaya would have not dared to touch her body.

Conclusion

The Indian judiciary and the Indian government took necessary steps to control sexual violence against women. Introduction of POSCO Act, Criminal Amendment Act 1983, 2005, 2013, 2018, 2019 are the examples of the legislative body took step towards the control of sexual violence. India should adopt a tough punishment for rapists like Saudi Arabia, China, Afghanistan, North Korea etc. Many world countries adopted a tougher punishment for heinous crimes. India should adopt a deterrent punishment and it is the time for India to move its leg from Reformatory theory to deterrent and retributive theory of punishment. Because those rapists are not a child to reform them, moreover they have full consciousness of his actions and have a wrongful intention against women. Rapist deserves more than a death penalty; we should offer them what they deserve.



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