



## RAPE SENTENCE NEEDS TO BE DETERRENT

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**Abstract:** Among all the crimes against women rape is the heinous and inhuman act of violence by men and women are often ostracized by society. It is also violation of woman's right to live with dignity and personal freedom. Rape is not only crime against women, it is crime against society. It destroys the entire psychology of a woman and pushes her in to a deep emotional crisis. According to recent National Crime Record Bureau Report, a rape is being reported for every 30 minutes in India, an alarming increase of nearly 700 percent since 1971 when the NCRB Started recording them. All most in every morning we find in the newspapers, there is news of rape or gang rape, besides other various offences against women. In our society rape is increasing by leap and bounds. Rape is more heinous and atrocious than offence like murder, because a rapist not only violates victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm. In many rape cases the sentence of punishment normally ranges from one to ten years, where on the average most convicts get away with three to ten years rigorous imprisonment with a very small fine and in some cases, where the accused is resourceful or influential may even expiate by paying huge amounts of money and get exculpated. The courts have to comprehend the fact that these conscienceless criminals who sometimes beaten and torture their victims. They are not going to be deterred by such small time of imprisonment. Therefore in the best interest of justice and the society the rapist should be awarded death penalty. In the light of increasing incidents of rape of women and girls, it is required to reexamine our rape laws with a view to giving better protection to women.

**Keywords:** Woman's Right, Emotional Crisis, Section 376 (2), Gang Rape, Protection.

### Introduction

Among all the crimes against women rape is the heinous and inhuman act of violence by men and women are often ostracized by society. It is also violation of woman's right to live with dignity and personal freedom. Rape is not only crime against women, it is crime against society. It destroys the entire psychology of a woman and pushes her in to a deep emotional crisis. In the modern society rape constitutes the highest percentage among all crimes against women. Socially it is considered to be the most serious crime, because the whole life of victim and family is affected. It is viewed that the rape is a

crime against the honor of not just the woman who is raped, but also of her family apart from being regarded as a dehumanizing act, it is unlawful intrusion on the right of her privacy and sanctity of female. An infringement creates sense of trauma in the mind of the victim, not only do the body suffers but also mind goes through such agony formation, she may not be in a position to forget it throughout her life. She becomes a different person in the eyes of the society for no fault of her. It is violative of the most cherished fundamental right that is Right to life contained in article 21 of the Indian constitution. Nowa day's woman is more unsafe in the society and

it appears that all laws are valid up to papers or statutes only. Women still treated as a commodity and the sex object in the domain of male ego. Women are being raped at work, on the fields, by their relatives or in-laws. Or neighbors or strangers, even in running trains and buses. Teachers rape their colleagues and students, doctors rape their patients and nurses, domestic maid servants are molested by the employers or their relatives. Factory workers are forced to have sexual intercourse with their in charge or head. Dalits or Adivasi girls are raped by the dominated castes. Gang rapes by dacoits, custodial rapes in the police custody, a rape due to family disputes or during communal rights is quite common.

According to recent National Crime Record Bureau Report, a rape is being reported for every 30 minutes in India, an alarming increase of nearly 700 percent since 1971 when the NCRB Started recording them. All most in every morning we find in the newspapers, there is news of rape or gang rape, besides other various offences against women. In a recent incident (*Deccan Chronicle*, 19<sup>th</sup> July 2013) a 20 Year old nursing student was allegedly gang raped by a group of men after they forced her to drink alcohol on the outskirts of Kurnool, in another shocking incident a 62 years old father has committed rape and sexual assault against his five daughters over several years, according to victims version, he did not spare his four years old granddaughter. A 22 Year old mentally disabled girl was raped by her neighbor who took the victim to his house and committed such heinous crime (*Deccan Chronicle* 1<sup>st</sup> May 2013).

In another incident A 28 year old woman a daily laborer, was allegedly gang raped by three persons who took her on a bike on the pretext of offering work in a function hall and then took her in an open area and raped her (*The Indian Express* 13<sup>th</sup> June 2013). In the gang rape incident on October 13<sup>th</sup> 2012, a law student was serially raped in the forest area of Bangalore University campus sent shock waves and raised serious questions on the safety of woman in the university campus. In this case the victim has traumatized after being gang raped and given up all ambitions of being lawyer, discontinued her studies in the prestigious national law school and returned to her home country Nepal. These incidents are revealed alarming increase of rape cases. In Indian context

chastity of female is prime bargain for her marital life, victim who has not participated in sex, she has been imposed sadistic pleasure and sealed in the eyes of the society, that she is raped, she lost her chastity, she is no virgin, and who shall marry her!. The stigma goes in to victims every nerve that she was raped; she lost everything worth living as Indian woman. The blame of the crime is pinned on the victim and the attitude of men, women parents and neighbors leaves her nowhere. Unnecessary delay in disposal of rape cases is also a matter of concern. Lengthy legal process also compels a victim to remain silent and not to report matter to the police. Many cases go unreported. Very few cases are reaching the courts and out of the few some cases resulted in prosecution, given the rules like benefit of doubt and difficulty of proving absence of consent in rape cases, the accused find it too easy to escape punishment. Mali math committee (2006) has recommended an amendment in law to make it mandatory for investigation agencies to complete investigation of such matters within fixed time limit; it also suggests that courts should complete the hearing of such matters within four months by taking them on the basis of priority

### **Minimum Sentence and Role of Judiciary**

Accordingly the criminal law (amendment) Act 1983 certain changes introduced both in the substantive law and procedure law. This amendment increased the punishment for rape. Section 376 (1) of Indian Penal Code provides minimum sentence of seven years imprisonment and maximum of imprisonment for life. Section 376 (2) lays down a minimum sentence of 10 years of imprisonment in case of custodial rape, rape on pregnant woman, rape on girls under 12 years of age and gang rape. However, for special reasons to be recorded in the judgment of the court in either can impose a sentence lesser than seven or ten years as the case may be. But in many cases the prescribed minimum sentences have not been awarded by the courts on the rule of 'special reasons'. If even minimum sentence is awarded in every rape case in which the accused is found guilty, the menace of rape can be curbed. In the rape case the accused is acquitted due to lack of evidence, he walks away with the head held high whereas, the victim is condemned to lead a life of shame and indignity. In

fact the real deterrent is the certainty of conviction. If the people know that they cannot go scot free after committing a particular crime, no one dare to commit to it. At least minimum sentence should therefore, be given in every rape case. The courts should show greater responsibility while trying an accused on charges of rape. They must deal such cases with utmost sensitivity, because a socially sensitized judge is a better statutory penal provisions, containing complex exceptions and provisions.

In the case of State of Madhya Pradesh v. Balu (*Cr.L.J, 2005, 335.*) a girl of thirteen years was raped by a villager. The accused was found guilty of rape under section 376 of IPC. He was given an imprisonment of ten months on the ground that the accused seventeen years old at the time of incident and was an illiterate coming from rural area. The Supreme Court held that the reasons given by the High court to reduce the mandatory period of sentence were neither 'adequate' nor 'special' as contemplated under section 376 of IPC. The Supreme Court observed that the High Court exhibited lack of sensitivity towards the victim of rape and that the sentence of 10 months imprisonment for offence of rape was ridiculously low and did not commensurate with the gravity of crime. Thus, the Supreme Court restored the minimum punishment of seven years of imprisonment. The Supreme Court asked the High Courts and the subordinate courts across the country to deal firmly with the accused in rape cases and to ensure, that the punishment awarded should proportionate to the nature of the offence. This approach of the apex court of the land is welcome. In another case The Supreme Court setting aside the judgment of an acquittal of a rapist passed by Punjab High Court rightly observed "an unmerited acquittal encourages wolves in the society being on the prowl for easy prey, more so when the victims of crime are helpless females and minor children".

The measure of punishment in a case of rape cannot depend upon social status of the victim or the accused. It must depend upon the conduct of the accused, the state and the age of the sexually assaulted female and the gravity of the criminal act. The socio economic status, religion, race, caste or creeds of the accused or the victim are irrelevant considerations in sentencing policy. Protection of

society and deterring the criminal is the avowed object of law that is achieved by imposing an appropriate sentence. In State of Karnataka v. Raju, (*A.I.R, 2007, 3225*) the Supreme Court observed, in the case of rape on a 10 years old girl child, the imposition only 3years 6months imprisonment on the ground that the accused is an illiterate and rustic boy of 18 years is improper and impermissible in the absence of any reason which would have been treated as "special and adequate reason". The legislative mandate to improve a sentence for the offence of rape on a girl less than 12 years of age for a term which shall not be less than 10years, but which may extend to life and fine reflects the intent of stringency in sentence. The courts are obliged to respect the legislative mandate in the matter of awarding in all such rape cases. Recourse to the provision can be had only for special and adequate reasons and not in causal manner. In operating the sentencing system law should adopt the corrective machinery or the deterrence based on factual matrix. Sentencing process should stern where it should be tampered with mercy. The fact and given circumstances of each case, the nature of crime, the conduct of the accused, the nature of the weapons used and all other attending circumstances are relevant facts which would enter in to the area of consideration. It is therefore the duty of every court to award proper sentence having regard to the nature of offence. False accusations by women in rape cases are very rare, because their reputation is at stake. It is absolutely desirable that court should remain conscious of the aftermath of this heinous offence and impose deterrent punishment on the culprits, and then there shall be order and discipline in a civilized society.

#### **Presumption of the Court as to Consent of the Victim**

According to the section 375 of the Indian penal code, consent is the fundamental issue in a rape case trial. This is very crucial and the law requires that sexual activity should be without consent of the woman. Thus, if the courts are satisfied that the woman failed to 'resist' at the time of the act she is deemed to have consented to sexual intercourse. The Supreme Court in Tukram case(*A.I.R, 1979, S.C, 135*) observed that the Mathura (prosecutrix) was a 'shocking liar 'for there were no marks of injury on

her body and long way to indicate that the alleged intercourse was a peaceful affair. In another case *Tripura v. Srichayan, (Cr.L.J, 2007, 2123)* the accused kidnapped the prosecutrix and committed rape on her, but the prosecutrix did not disclose to anyone about kidnapping and rape committed by the accused due to fear and threat of the accused. Her plea that she was under threat or fear is not supported by any convincing evidence, consequently the Gujarat High court acquitted the accused opening that the prosecutrix was a consenting party. This cardinal principal has been observed in all rape cases and courts fail to take notice of the situation of a rape victim that she may not be able to muster enough strength to repel the act. She can be in a state of shock and fear which may completely dampen to react violently or scream loudly. A woman is normally not expected to assault a man because of her physique and placement in society. Many a time she is rendered helpless to do anything, therefore, there may not be any injury on her body. There is little appreciation of this situation by judges, this result is that the resistance becomes an essential requirement in determining the lack of consent and where there is little resistance, there is no injury and in the absence of it, the presumption is that victim has consented sexual act. Generally in a rape case the accused sudden attack on girl makes her panic and incapable of offering serious resistance, it result that her body do not bear evidence of injuries.

In the case of *Buagwan charanmat v. State of Maharashtra (Cr.L.J, 2006, 379)*, according to testimony of prosecutrix that she was forcibly dragged and raped by the accused. But she failed to provide proper evidence and medical evidence was saying there are no injuries on her private parts, so the Mumbai High Court reversed the judgment of trial court and the judgment and order of conviction and sentence of the lower court is set aside. In another case *Jagdish v. State,(Cr.L.J,2008,408)* as per the prosecutrix Manu anima aged 11years version, Jagdish caught hold of her inside the house and locked the door and raped her. After the act, he let her go and threatened her not to disclose about the incident to anyone else otherwise, he would kill her. Prosecutrix returned home and disclosed the incident to her mother. She lodged complaint in the trial court. The learned judge observing the heinous nature of the

crime on a girl barely 11 years, sentenced jagdish to life imprisonment. But the Delhi High Court reduced the punishment for 10 years of rigorous imprisonment in the light of the absence of the prosecutrix resistance, accused age, his crime record and family back round.

### **Death Sentence for Rapist**

In our society rape is increasing by leap and bounds. Rape is more heinous and atrocious than offence like murder, because a rapist not only violates victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm. Rape is not merely a physical assault; it is often destructive of the whole personality of the victim. A murderer destroys the physical body of the victim; a rapist degrades the very soul of the helpless female. In this respect to create fear on the society to prevent this odious crime sentence of the rapist is to be reviewed. If the provision of death penalty is provided in the IPC for rape, then it will cause deterrent effect on the society and wrongdoers probably they will think twice before committing this type of crime. It is true, judges are the last denial, but if statute does not provide death penalty they cannot award such penalty. So the death sentence for rape cases is the obvious need of the day. Then we can only hope our mothers, sisters, daughters and wives who are out of home will reach home safely, otherwise they will be renamed as victims of rape. In many rape cases the sentence of punishment normally ranges from one to ten years, where on the average most convicts get away with three to ten years rigorous imprisonment with a very small fine and in some cases, where the accused is resourceful or influential may even expiate by paying huge amounts of money and get exculpated. The courts have to comprehend the fact that these conscienceless criminals who sometimes beaten and torture their victims. They are not going to be deterred by such small time of imprisonment. Therefore in the best interest of justice and the society the rapist should be awarded death penalty. In the light of increasing incidents of rape of women and girls, it is required to reexamine our rape laws with a view to giving better protection to women. So if the death sentence is given to such rapists, it deters the rest, then no doubt that the graph of rape cases will come down drastically. Hence the parliament has

to take the initiative to amend the law and provide death sentence in rape cases. In Delhi, Nirbaya gang rape case, a 22 year old medical student was beaten and gang raped in a bus in which she was travelling with her male companion. There were only six others in the bus, including the driver all of them whom raped the woman. The woman died from her injuries thirteen days later while undergoing emergency treatment in Singapore. Later public protests took place through the country against this heinous rape incident. The BJP leader Susma swaraj and other several political leaders demanded death penalty for rapists. That new anti-rape law be more stringent and provide for death penalty in cases of rape and those involving brutality and barbarity.

### Conclusion

Under the contemporary criminal justice system the rape charges are difficult to support, because in legal practice there must be force or threat of force on the part of therapist, resistance or protest by the victim, medical evidence of actual vaginal penetration or injuries. The entire judicial proceedings are humiliating the victim. She has to repeat the sordid details both to the police and at the trial, and respond to the cross examination by the defense counsel. Moreover, in court the woman is often put in the embarrassing situation of having to prove her innocence by showing that she did not provoke the man and that she resisted his advances. In some countries, the police departments have become more sensitive to the trauma of rape and now assign rape cases to specially trained police women, who obtain information and give instructions to the victim in a sympathetic and understanding way. Rape is not a private syndrome. It should be societal concern we must remove the myths and mystique surrounding rape and help all those who may be its victim. Increasing attention has also been also been focused on how women can best protect themselves from would be rapists, as well as on how the criminal justice system can best be secured against the offenders. The courts must keep in view not only the rights of the criminal, but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment. The only way to punish the rapists is to give them death penalty (capital punishment) so that

it can deter the society to commit such crimes against women in India. The Indian judiciary would in effect by acting as a counter-majoritarian force in protecting the rights of rape victim. In the light of the increasing incidence of rape and sexual assault on women, we are required to reexamine our rape laws with a view to giving better protection to women.

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