



NEED FOR FORMATION OF SPECIAL COURTS IN RAPE TRIAL

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INTRODUCTION

Problem of Rape in India

We all know that the problem of rape is quite prevalent in India and is on an increasing run. Lack of education, distrust in the society, the excessive use of social media and the ever changing mentality of people towards females and others are some of the major causes of this shameful situation. While the murderer tarnishes the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. It can be said that rape is rather becoming another form of terrorism. The shock that a person undergoes due to this heinous crime is tremendous and the victim suffers a tremendous amount of pain over many years. Time has come to stand against this horrible situation and take strict action against the culprits behind it. In India, it has been said that rape is the fourth most common crime against women. According to the annual report of National Crime Records Bureau (NCRB), 2013, 24,923 rape cases were reported across India in 2012¹ out of which 24,470² were committed by someone know to the victim. You must be wondering that isn't the number low to categorise rape as the fourth most common crime? The

answer is that a large number of rape cases go unreported and unrecognised. This may be due to reluctance on part of the victim to report such fearing that some may take undue advantage of it or could be because the victim is in such a shock and such a weak state that she cannot report the matter. Regardless of this, reporting of rape cases has increased in the recent years due to increased media attention and also the public protesting against it.

According to the data collected by the National Crime Records Bureau, as many as 3,37,922 cases of crimes against women were registered in 2014. This is an increase of 9.2% from the registered crimes against women in 2013. Crimes committed under the Indian Penal Code (IPC) against women, as proportion of total crimes, have increased to 11.4% in 2014.³

HISTORY OF SPECIAL COURTS IN INDIA

A number of special courts were at first set up by the Central Government to solve a long number of pending cases, particularly instances of special courts, over an assortment of topics utilizing a concede from the eleventh Finance Commission (2000-2005). According to the plan for which the grant was endorsed, a sum of 1,734 such exceptional courts were built up all over the nation⁴. The term of this grant reached an end in 2005, and was reestablished by the twelfth Finance Commission for the support of 1,562

¹ Table 5.1", Crime in India 2012 Statistics National Crime Records Bureau (NCRB), Ministry of Home Affairs, Government of India, p. 385, archived from the original on 20 June 2014

² Sirnate, Vasundhara (1 February 2014). "Good laws, bad implementation". The Hindu. Chennai, India.

³ Bill No. 318 of 2016 p.no 4 *available at* <http://164.100.47.4/billtexts/lsbilltexts/AsIntroduced/3450.pdf>

⁴ "Brief note on the scheme of Fast Track Courts", The Department of Justice, Ministry of Law and Justice *available at* <http://doj.gov.in/?q=node/108>



existing fast track courts for an additional 5 years, up to 2010⁵.

Amid the 2000s, the possibility of these courts appreciated much fame, with the Law Commission of India making suggestions for the foundation of various types of fast track courts. For instance, the 188th report of the Law Commission issued in 2003, suggested setting up a most optimized plan of a speedy track business division at each High Court as a changeless speedy track system to manage high esteem business question⁶.

In 2008, the Law Commission of India prescribed the setting up of special courts and other fast track courts, which it saw as the best way to address the excess of check ricocheting cases – this time, however, they were suggested as a specially appointed measure just for the freedom of accumulations of cases and not as a perpetual element⁷.

The finish of that decade saw a move in the view of special courts, which started to be viewed as simply impromptu systems for managing case pendency. In April 2011, the Central Government quit financing extraordinary courts, after which the vast majority of them were twisted up⁸. Essential thing to note here is that the unique courts were set up by the Government in an

impromptu way with no administrative arrangement backing it which neglected to emphasise what the reason for the courts would be or if they somehow happened to take after any exceptional systems and compliances.

Over a year later, the December 2012 'Nirbhaya' rape case prompted across the country contemplation on the subject of the standardization of brutality against women and the issues that survivors of rape experienced while crossing the criminal equity framework. One such exercise was the investigation of our lawful framework did under the authority of (Retd.) Justice J.S.Verma. The Verma Committee distributed its 'Report Amendments to Criminal Law' on January 23, 2013, which noticed that fast equity and justice was basic to securing the authenticity and adequacy of the lawful structure, and in addition to fill in as a successful hindrance to wrongdoing⁹.

It likewise noticed that basic to this allotment of justice was the way the courts treated complainants and proof, including therapeutic discoveries, and focused on the significance of having judges and prosecutors who were sharpened to the issues included. Following the suggestions of the Verma Committee Report and open notion favoring expedient justice, States were asked for to set up special track courts for admitting

⁵ "Particulars of Organisation, Functions and Duties of the Department of Justice" The Department of Justice, Ministry of Law and Justice, July, 2011, *available at* <http://doj.gov.in/?q=node/141&page=show>

⁶ "Proposals for Constitution of Hi-Tech Fast – Track Commercial Divisions in High Courts", The Law Commission of India, December 2003, *available at* <http://lawcommissionofindia.nic.in/reports/188th%20report.pdf>.

⁷ "Fast Track Magisterial Courts for Dishonoured Cheque Cases", The Law Commission of India, November (2008), p. no. 39 *available at* <http://lawcommissionofindia.nic.in/reports/report213.pdf>.

⁸ Brij Mohan Lal v. Union Of India & Ors.[2012] 5 S.C.R. 305.

⁹ Report *available at* http://www.thehindu.com/multimedia/archive/01340/Justice_Verma_Comm_1340438a.pdf



instances of rape, by using the extra judges named in accordance with the Supreme Court choice on fast track courts in Brij Mohan Lal's case¹⁰.

SPECIAL COURTS

What is a Special Court?

Bodies which are within the judicial branch of government that generally address only one area of law or have specifically defined powers are referred to as Special Courts.¹¹ These courts exist for both civil and criminal disputes. These kinds of courts do not include the many administrative law courts that exist at both the federal and state government. These courts do not have a very wide jurisdiction to entertain cases, hence their jurisdiction is limited to a certain number of cases. The judges who are serving in such courts are as varied as the special courts themselves. They do not obtain their positions through merit, rather they obtain it via elections. In addition to this, the majority of special court judges are not lawyers. Examples of such courts could be Probate Courts, Juvenile Courts, Family Courts, Small Cause Courts and many more.

Need for establishment of Special Courts

Time has come to ask the Government when the fast track courts will be established in rape cases. Inadequacy of the existing procedural laws which prolong the trial

resulting in a very low conviction rate defeats the fundamental right of the victim to live with integrity and dignity. Speedy trial can result in reduction of rape cases against the women and would meet ends in justice. Some statistics reveal that criminal and civil cases pending before District and Subordinate courts regarding rape is about 190 lakhs and 82 1/4 lakhs respectively, hence criminal being about two and a half times more than civil¹². The largest number of cases are from Uttar Pradesh, Maharashtra, Orissa, Bihar, West Bengal and Rajasthan. Rape trial run is a gimmick and even after a prolonged trial there are situations when the accused is acquitted for some reason or the other. The long rape trial and the humiliating questions asked by the defense counsel destroys the victim completely both in court and in the eyes of the society, ruining her whole life. Thus there is an urgent need for the speedy trial in rape cases with formation of Special Courts which can give due attention and resolve the matter and deliver justice to the sufferers promptly and adequately.

Causes for Delay¹³

Certain causes for delay before the cases reaches the court for trial are-

- Inaction and apathy on part of the police authorities in registering the FIRs and taking up the investigation in earnestness.
- Police are hesitant to proceed with the investigation against important and influential persons.

¹⁰ Lok Sabha unanswred question number 572, answered on 07.08.2013.

¹¹ Definition of Special Court, available at <https://legal-dictionary.thefreedictionary.com/Special+Courts>

¹² Law Commission of India, 239th Report on Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities(March 2012)

¹³ Supra note 4, (Law Commission of India)



- Corrupt police officials with a casual attitude is affecting the timely and qualitative investigation.
- When the FIR is not registered within a reasonable time, there is no internal mechanism to check this problem effectively.
- Lack of periodical exercise to upgrade the skills of personnel as well as of investigation.
- Sufficient priority is not given to investigate the crimes.
- Sanctions for prosecution are unduly delayed by the Governments.
- Inadequate judges strength.
- Lack of physical infrastructure.
- Large influx of cases into courts.

available by the government through the local bodies.

- A relief fund should be set up by the government to help the victims.
- A special counselling and medico-legal service should be set up to offer assistance to the victims.
- A doctor, advocate, police officer, psychologist, and a social worker should be in the team being set up to offer assistance.

PROVISIONS IN THE INDIAN PENAL CODE, 1860 REGARDING RAPE

Chapter 96 of the Indian Penal Code, 1860 deals with the Offences affecting the Human Body under which Rape is covered. The following are the provisions regarding rape-

Women’s Commission Recommendation¹⁴

Some of the recommendations to avoid delay in taking legal action and for timely completion of the trial and for counselling of victims have been made by the Kerala State Women’s Commission to the Government. These are as follows-

- In case of the services of reputed lawyers provided by the Government to handle the case of the victim, if possible, the person being appointed as the prosecutor for the victim should be one the basis of those suggested by the victim.
- The Government must take up rehabilitation of the victim and, if needed, that of the child.
- House and other assistance like self-employment should be made

Rape¹⁵.—A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:

(To start with) — Against her will.

(Besides) — Without her assent.

(Thirdly) — With her assent, when her assent has been acquired by putting her or any individual in whom she is keen on dread of death or of hurt.

(Fourthly) — With her assent, when the man realizes that he isn't her better half, and that her assent is given since she trusts that he is

¹⁴ Recommendations of National Commission of Women, available at

<http://ncw.nic.in/AnnualReports/200910/Eng/Recommendations.pdf>

¹⁵ Section 375 available at <https://indiankanoon.org>



another man to whom she is or trusts herself to be lawfully hitched.

(Fifthly) — With her assent, when, at the time of giving such assent, by reason of unsoundness of psyche or inebriation or the administration by him by and by or through another of any stupefying or unwholesome substance, she can't comprehend the nature and outcomes of that to which she gives assent.

(Sixthly) — With or without her assent, when she is under sixteen years old.

Clarification.— Penetration is adequate to constitute the sex important to the offense of assault.

(Special case) — Sexual intercourse by a man with his own better half, the spouse not being under fifteen years old, isn't rape.

Punishment for rape¹⁶

(1) Whoever, aside from in the cases) accommodated by sub-segment (2), commits assault of rape should be rebuffed with detainment of either portrayal for a term which might not be under seven years but rather which might be forever or for a term which may stretch out to ten years and should likewise be at risk to fine unless the women assaulted is his own particular spouse and isn't under twelve years old, in which cases, he should be rebuffed with detainment of either depiction for a term which may reach out to two years or with fine or with both: Provided that the court may, for sufficient and unique motivations to be specified in the judgment, force a sentence of detainment for a term of under seven years.

(2) Whoever,—

(a) being a cop confers assault—

(I) inside the cutoff points of the police headquarters to which he is appointed; or

(ii) in the premises of any station house regardless of whether arranged in the police headquarters to which he is selected; or

(iii) on a woman in his authority or in the care of a cop subordinate to him; or

(b) being an open worker, exploits his official position and submits assault on a woman in his guardianship all things considered open hireling or in the care of an open worker subordinate to him; or

(c) being on the administration or on the staff of a prison, remand home or other place of authority set up by or under any law for now in constrain or of a woman's or youngsters' institution exploits his official position and submits assault on any prisoner of such correctional facility, remand home, place or organization; or

(d) being on the administration or on the staff of a healing facility, exploits his official position and confers assault on a woman in that doctor's facility; or

(e) confers assault on a woman knowing her to be pregnant; or

(f) confers assault on a woman when she is under twelve years old; or

¹⁶ Section 376 available at <https://indiankanoon.org>



(g) confers pack assault, should be rebuffed with thorough detainment for a term which might not be under ten years but rather which might be forever and might likewise be obligated to fine: Provided that the Court may, for sufficient and extraordinary motivations to be said in the judgment, force a sentence of detainment of either portrayal for a term of under ten years.

Clarification 1.— Where a woman is assaulted by at least one of every a gathering of people acting in advancement of their basic aim, every one of the people should be regarded to have conferred posse assault inside the importance of this sub-segment.

Clarification 2.— "Women' or children foundation" implies an organization, regardless of whether called a shelter or a home for disregarded woman or childs or a dowagers' home or by whatever other name, which is built up and kept up for the gathering and care of woman or childs.

Clarification 3.— "Healing center" means the regions of the doctor's facility and incorporates the areas of any establishment for the gathering and treatment of people amid recovery or of people requiring medicinal consideration or restoration.

Punishment for repeat offenders¹⁷

Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376D and is subsequently convicted of an offence punishable under any of the said sections

¹⁷ Section 376 available at <https://indiankanoon.org>

¹⁸ Ins. by Criminal Law (Amendment) Act, 2013, sec 9 (w.r.e.f. 3-2-2013)

shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.¹⁸

THE SPECIAL COURTS ACT, 1979

The Special Courts Act, 1979(22 of 1979) was enacted by the Parliament in the 13th year of Republic of India. The main objective of this Act is to provide speedy trial of certain class of offences. Certain provisions of the Act are as follows-

Name/Title and Extent¹⁹- This Act is to be called The Special Courts Act, 1979 and it is applicable to the all parts of India except the state of Jammu & Kashmir.

Definitions²⁰- "Code" in this Act is referred to as the Criminal Procedure Code-1973 (2 of 1974). " Declaration", with meaning attached to an offence, means a declaration given under section 5 of this Act with respect to such offence. " Special Court" means a Special Court formed under Section 3 of the Act. Any words and other expressions used but not clearly stated or defined in this Act but stated in the Code will have the same meaning(s) as in the Code.

Establishment²¹- Special Courts are to be established by the Central Government on giving notification to the Official Gazette and establish such number of courts as it may.

¹⁹ Section 1 available at <https://indiankanoon.org/doc/701797/>

²⁰ Ibid. Section 2

²¹ Ibid. Section 3



Composition²²- The Special Court shall have a sitting judge of High Court who is nominated by the Chief Justice of High Court with the concurrence of the Chief Justice of India.

Cognizance²³- A Special Court will take cognizance of or allow any cases that are laid before it or given to it.

Jurisdiction of Special Courts as to joint trials²⁴- A Special Court has purview to try any individual concerned in the offence in regard of which a declaration has been made, either as main, backstabber or abettor and every single other offense and blamed people can be mutually attempted at one trial as per the Code.

Powers and Procedures²⁵-

- The Court will in line of such cases follow the procedure as laid down by the Criminal Procedure Code. Sections of the Code shall apply as long as they are uniform with the provisions of the Act.
- The Court with a view to obtain evidence of any person who has been suspected of any offence may grant a pardon to the person on the exception that he fully discloses the entire incidents that are to his knowledge true and correct. Any pardon so tendered shall for the purposes of section 308 of the Code be deemed to have been tendered under section 307 thereof.
- The Court will likewise have the ability to go upon any individual indicted by it, any sentence approved by law for the punishment of the offence.

Power given to Supreme Court to transfer cases²⁶- The Supreme Court may transfer cases starting with one Special Court then onto the next in the event that it appears to the apex court that a request or a pronouncement under this area is convenient for the ends of justice.

Appeal²⁷- An appeal to the Supreme Court may be filed on any order(not being interlocutory), sentence or judgement of the Special Court on both facts and on law.

Power to make rules²⁸. The Supreme Court can by notification in the Official Gazette make any such guidelines as it might consider fundamental for completing the purposes of this Act.

Notifications falling under section 3 and declarations made under section 5²⁹-Such notifications are to be laid before the Parliament. Likewise every notification made under sub-area (1) of segment 3 and each notification made under sub-segment (1) of segment 5 should be laid, when made, after it is made, before each House of Parliament.

FORMATION OF SPECIAL COURTS UNDER THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

The Protection of Children from Sexual Offences Act 2012(32 of 2012) was passed June 2012 by the Parliament in order to protect children from offences of sexual assault, sexual harassment and pornography

²² Ibid.

²³ Supra note 11, Section 4

²⁴ Ibid. Section 8

²⁵ Ibid. Section 9

²⁶ Ibid. Section 10

²⁷ Ibid. Section 11

²⁸ Ibid. Section 12

²⁹ Ibid. Section 13



and to provide establishment of Special Courts for trial of such offences. Chapter 7 of this act deals with provisions regarding Special Courts. These are as follows-

Establishment³⁰- Such Court shall be established by the State Government in consultation with the Chief Justice of High Court and by notification in the Official Gazette designate for each district such court.

Application of Code of Criminal Procedure³¹- While trying an offence under this Act, a Special Court might likewise entertain entry of an offence other than the offence alluded to in 5.1, with which the denounced may, under the Code of Criminal Procedure, 1973, be charged at a similar trial.

Procedures, Powers and Duties³²-

- The Court may take cognizance of any offence without the accused being committed to it for trial, upon receiving complaint of facts which constitute such offence.
- The Court will make a younger neighbourly climate by permitting a relative, a watchman, a companion or a relative in whom the child has trust or certainty, to be available in the court.
- The Court will guarantee that the child won't be called for rehashed addressing and irritated from that point.
- The Court will not allow forceful addressing or character death of the child.
- The Court will guarantee that the poise of the child is kept up.

- The Court will guarantee that the character of the child isn't revealed whenever over the span of examination or trial.

Recording of Evidence³³

- The proof of the child shall be recorded within a time of 30 days of the Court taking cognizance of the offence and if there are any reasons for delay, the proof of the statement shall be recorded by the Special Court.
- The Court will have to finish the trial within 1 year form the date of taking cognizance of the offence.

Punishment³⁴

- Penetrative Sexual Assault on a child — Not under seven years which may stretch out to detainment forever, and fine.
- Disturbed Penetrative Sexual Assault — Not under ten years which may stretch out to detainment forever, and fine.
- Rape i.e. sexual contact without infiltration under three years which may reach out to five years, and fine.
- Disturbed Sexual Assault by a man in authority — Not under five years which may reach out to seven years, and fine.
- Sexual Harassment of of the Child—Three years plus fine.
- Utilization of Child for Pornographic Purposes — Five years and fine and in case of ensuing conviction, seven years and fine.

MEGHALAYA SPECIAL COURTS ACT, 2014³⁵

³⁰ Section 28(1) available at <http://arpan.org.in/wp-content/uploads/2014/07/POSCO-Act-English.pdf>

³¹ Ibid. sub clause(2)

³² Supra note 22 at 11 Section 33

³³ Supra note 22 at 12 (Section 35)

³⁴ Supra note 22 pg 3-7(Section 4-15)

³⁵ No.7 of 2014 available at <http://www.lawsfindia.org/pdf/meghalaya/2014/2014Meghalaya7.pdf>



Due to the increasing number of criminal cases against women and the delay in the disposal of cases of critical and sensitive nature, the State government has a special law, the Meghalaya Special Courts Act, 2014 which enables a provision for the formation of special courts for expeditious trial of wrongs. The above mentioned Act was passed by the Meghalaya Legislative Assembly on 24th June, 2014. Some important provisions of this act are as follows-

Operation and extent- It will extend to the State of Meghalaya.

Definitions- "Code" under this act refers to the Indian Penal Code, 1860 and the Code of Criminal Procedure Code, 1908.

Charge Sheet- Charge sheet of any offence to be tried by a Special Court must be completed within 60-90 days.

Power to make rules- The State Government will have the power to make rules in order to fulfil the purposes of this Act.

THE SPECIAL COURTS FOR TRIAL OF OFFENCES AGAINST WOMEN BILL, 2016³⁶

The above bill has been drafted by Shrimati Supriya Sule, M.P and has been introduced in the Lok Sabha for approval. The bills seeks to provide for constitution of special courts in order to take up cases of sexual offences against females. The bill aims to ensure speedy disposal of such cases and matters

connected therewith. Some important provisions of the bill are as follows-

Operation and Extent- This bill will extend to the whole of India except the State of Jammu and Kashmir.

Definitions- Sexual Violence covers the following sections of The Indian Penal Code- 292, 354, 354A, 5 354B, 354C, 354D, 375, 376, 376A, 376B, 376C, 376D, 376E and 509. (Hence rape is covered)

Constitution of Special Courts- Upon the enactment of this bill, the Government shall constitute a special court in each district exclusively to try any case regarding sexual violence.

Selection criteria for judges- Judges will be appointed by the Government in consultation with the High Court of the State.

Number of Judges- Considering the backlog of cases, the High Court in consideration with the Government appoint as many judges as it may seem necessary for effective disposal of cases.

Assistance of law students- The Government shall allow final year law students from recognised Law Colleges to intern at special courts.

Time limit for deciding cases- The cases will be decided within 120 days from the date of filing of chargesheet.(This is to ensure speedy redressal and to avoid accumulation of cases)

³⁶ Bill No. 318 of 2016 p.no 1-3 available at <http://164.100.47.4/billstexts/1sbilltexts/AsIntroduced/3450.pdf>



Increasing Awareness- The Government will take such measures to increase awareness amongst women about the legal safeguards against, and the legal provisions relating to eve-teasing and sexual violence.

RECENT FORMATION OF/PROPOSALS TO FORM SPECIAL COURTS IN INDIA

There are quite a number of special courts in India although an exact number is difficult to obtain. These include Juvenile Courts, Probate Courts, Small Claims Courts, Family Courts and many more.

Recently in keeping with the Supreme Court's guidelines, the Gauhati high court on has formed five special single-bench courts to deal dedicatedly with pending rape cases in the High Court. At present, there are at least 196 rape cases pending at various stages in the HC. Gauhati high court judges Hrishikesh Roy, N Kotiswar Singh, Ujjal Bhuyan, Biplab Kumar Sharma and Indira Shah are to headed these five special courts.³⁷

Also in an affidavit to the Supreme Court , the Centre proposed setting up 12 special courts to try "1,581 criminal cases" pending against legislators across the country. The government, however, has said that it does not have data on how many of these cases have been decided and whether any new case has been filed against an MP or MLA between 2014 and 2017. The Centre

submitted that Rs 65 lakh would be required for setting up each court, adding up to a total of Rs 7.8 crore.³⁸

The Delhi High Court on 19th December, 2012 decided to establish 5 special courts to handle sexual assault cases against woman. Maharashtra also has similar number of courts and Orissa opened its special court in 2012 in Cuttack to try cases of sexual assault. The first state to establish such a special court was Rajasthan which established it in Jodhpur in 2005.³⁹

The Karnataka High Court has issued a notification regarding creation of special courts in 10 places (including Mangalore) for speedy trial of rape cases. According to the notification dated 26th November 2013, the High Court has designated the new 6th Additional District and Sessions Court as the special court for trying cases of rape registered in the name of *Dakshina Kannada*. The notification states that the charge of the 6th Additional District and Sessions Court judge will be held by the 4th Additional District judge till the time a new judge is appointed. The notification was not clear on whether the special court will try all pending cases of rape or those registered afresh.

Two special courts were proposed to be set up in Bangalore City and one each in Bangalore Rural, Belgaum, Gulbarga, Madikeri, Mandya, Mysore and Ramanagaram. In September 2013, the State Government proposed setting up 10 special

³⁷ The Times of India, available at <https://timesofindia.indiatimes.com/city/guwahati/Gauhati-HC-forms-5-special-courts-for-rape-cases/articleshow/18265331.cms>

³⁸ Ananthakrishnan G, The Indian Express, available at [http://indianexpress.com/article/india/12-special-](http://indianexpress.com/article/india/12-special-courts-for-cases-against-mps-mlas-centre-to-supreme-court-4980257/)

[courts-for-cases-against-mps-mlas-centre-to-supreme-court-4980257/](http://indianexpress.com/article/india/12-special-courts-for-cases-against-mps-mlas-centre-to-supreme-court-4980257/)

³⁹ Wendy Zeldin, "Crime and Law Enforcement" available at <http://www.loc.gov/law/foreign-news/article/india-crime-of-sexual-assault-penalized/> (February 11, 2013)



courts in the State. Law Minister T.B. Jayachandra had said that stringent laws and speedy disposal of cases could act as a deterrent and bring down the number of crimes against women. Every special court would be provided with a District Judge and 36 other personnel. The proposal was formed following activists's demand for speedy trial of rape cases as done by a Special Court in Delhi. The Delhi Court on September 13 sentenced four persons to death for raping a girl on December 16, 2012.

Criminal Law (Amendment) Ordinance 2013⁴⁰

On February 3, 2013, the President of India (Pranab Mukherjee) signed an ordinance adopted by the cabinet which sought to impose harsher penalties for the offence of rape, which is replaced with the crime of sexual assault. This ordinance was prompted by the gang rape and assault of a twenty three year old student who was travelling in a bus. Her male friend was also beaten quite severely in the attack. On the student's subsequent death on 29th December 2012 led to mass nationwide demonstrations which resulted in the formation of a three member commission by the Central Government. The commission was headed by a former Supreme Court Chief Justice of India, J.S Verma. The commission aimed to review the present laws so as to provide quick and speedy redressal of rape cases and to provide enhanced punishment in cases of aggravated sexual assault.

The Code, the Ordinance, and the 2012 bill all provide a minimum punishment of seven

years, a maximum punishment of life imprisonment, and a fine for the offence of rape (in the Code) or sexual assault (in the newer documents). However, the Code allows the court to impose a lower sentence while the bill removes this power of the court. Neither the Code nor the amendment bill contain a provision that specifically addresses sexual assault resulting in the victim's death or persistent vegetative state.⁴¹

The Verma Report⁴²

This vast and detailed report consisting of 631 pages cover not only specific recommendations but also include suggestions on judicial, political and cultural reforms. The report argued that the government needed to increase police accountability and also to impose harsher penalties for persons found guilty of sexual assault, though it did not advocate death penalty for those convicted of rape. The report also gave recommendations regarding formation of special courts to handle rape cases, increased enforcement of laws against human trafficking and also allocation of judicial resources to further speedier trials and appeals regarding rape cases.

Does creation of Special courts violate Article 14 of the Indian Constitution?

Article 14 of the Indian Constitution states that each and every person is equal before the law and there shall be no discrimination on the basis of caste, creed, gender, religion. It has been said that special courts interfere with the flow of law in terms of the evolution of jurisprudential aspect of law. The question is- why does a certain subject matter deserve

⁴⁰ Ibid.

⁴¹ Harsimran Kalra, *Crimes Against Women: How the State Changed Its Position: A Comparison of Criminal Law Amendment Bill, Justice Verma Report and the*

Ordinance available at <http://www.loc.gov/law/foreign-news/article/india-crime-of-sexual-assault-penalized/>

⁴² Ibid.



a different kind of treatment? It seems on the face of it that creation of special courts is violative of Article 14 since creation of special courts mean giving special treatment to those covered under the law to avail benefits of these courts. However, Supreme Court has laid down that laws can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience⁴³. Hence formation of special courts is not violative of Article 14 of the Constitution of India.

CONCLUSION

With the increase in the number of rape cases there is an urgent need to establish special courts for their speedy trial. We all know that courts are facing a huge backlog of cases and are unable to cope up with it. This is because people resolve to court for trifle matters which can be resolved via arbitration and mediation and also because the strength of judiciary with respect to the judges is limited in number. The formation of these special courts will deal only with rape cases and hence deliver justice timely and adequately. All citizens completely depend on judiciary with the hope that they will get justice but their trust on it is reducing gradually because our judiciary is losing its strength each passing day. Special courts can reduce the mental suffering, pain of the victim by awarding an accused the maximum punishment at the earliest so that victim can have a sigh of relief and can start rehabilitating, as during a prolong trial the victim cannot rehabilitate because she has to come to the court to answer humiliating

questions asked by the defence counsel not only once but multiple times. Post the “Damini Gang Rape Case” which has shocked the whole nation, a new amendment came into force but in reality no statutory provision has been formed yet for formation of special courts. With the formation of the special courts in the form of day to day hearing can give sigh of relief to the rape victims and justice can be better served and the people will not lose the faith in the criminal justice system. In India we have no separate speedy trial act and there is no limitation when the trial can be finished, so its high time for a government to look in the plight of victims of rape cases and there is urgent need for more number special courts in cases of rape.

SUGGESTIONS

In highlighting the above topic and problems we discussed how fast decisions and appropriate steps can be taken to improve the trial regarding rape victims in India. For criminal justice a speedy recovery is very important. It is a crime which is very terrible that harms the victim internally and externally and also somehow degrades her status in the society which. Rape cases are on the rise in today’s era which is why there is need for urgent formation of special courts for the speedy adjudication of rape cases. It is the victim’s fundamental right under Article 21 of the Constitution of India which gives every individual “Right to Life and Personal Liberty” from which every citizen hopes to live with dignity. There are already so many cases pending in our courts due to which

⁴³ RSTV- The Big Picture : Special Courts to Deal with Tainted Lawmakers, *available at*

<https://iasbaba.com/2018/01/rstv-big-picture-special-courts-deal-tainted-lawmakers/>



citizens are losing trust in their own judicial system to get justice in a specific time period. It is of paramount importance that urgent relief is given to a rape victim who has already suffered tremendous physical and mental pain and that is why special courts must be established to give serious punishment to man who is violating the law. Although various laws provide for establishment of special courts these laws have not specified the minimum number of special court in each District or State. We believe that there must be at least 5 special courts in every State and they must adjudicate in a time bound. These courts must have special procedures and powers and must not be bound by the rigid procedure followed in civil courts. These courts must operate independently and flexibly in order to ensure that justice is not denied. The Government is also trying to establish 1000 fast track special courts to deal with the rape cases across the country.

