



JUDICIAL RESPONSE TOWARDS THE OFFENCES AGAINST THE WOMEN

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RESEARCH OBJECTIVES

- To analyze the existing laws protecting women against the offences.
- To interpret the attempts of judiciary to confront the crimes against women.
- To evaluate the judicial role in resolving the problems of women.
- To study if there is incompetency of laws for offences committed against women.
- To examine if there ineffectiveness of judiciary in rendering justice to women.
- To study regarding the need of changes in laws.

RESEARCH METHODOLOGY

Doctrinal research methodology was obtained to carry out the research but not empirical. The doctrinal research methodology involves a detailed analysis of the statutes, legislations and legal concepts. This research methodology mainly involves legal prepositions and doctrines. During the research, the precedents have been studied and interpreted for a better understanding. The authoritative secondary sources including articles, journals by eminent lawyers have been referred. The primary sources were not used during the research.

The evolution of judicial provisions has been studied. During the research process, the laws relating to the offences of women were analyzed. For the better understanding of the

application of laws, the landmark judgments were thoroughly interpreted. The main focus was on the legal reasoning and rational deduction involved in the judgments. The existing statutory provisions were scrutinized. The doctrinal research methodology is normative in nature. It means that it focuses on the development of legal doctrines.

RESEARCH QUESTIONS

- What role does the judiciary play in regulating the offences against women?
- What are the laws protecting women against the offences committed against them in the Indian Penal Code?
- How does the judiciary help in safeguarding the rights of women?
- What are the provisions in law to regulate the obscenity and indecent representation of women?
- What is the status of women in India?
- What is the judicial approach to the crimes against women?
- Are there any changes made in the legal provisions for better protection of women?

REVIEW OF LITERATURE

To carry out research various books, journals and commentaries were referred. The book **K.D Gaur, Indian Penal Code (5th edn., 2016)** was exhaustive in nature that included properly analyzed case laws. All the diverse topics were appropriately dealt and characterized. The criticisms for the amendments helped in comprehending the legal provisions and coming up with certain solutions for it. The book also consisted of plethora of judgments along with the primary Law Reports. The commentary **Ratanlal & Dhirajlal, The Indian Penal Code (Lexis Nexis, 32nd Enlarged edn.,)** also encompasses 18,000 references which was useful for an



extensive method of research. The commentaries by the authors shed light on various unexplored topics of the criminal law. The commentaries were beneficial for interpreting the present laws with the changes that can be brought in by the Government. The commentary by eminent lawyers was informative and the opinions mentioned in the book assisted in the research project.

INTRODUCTION

As said by Mahatma Gandhi, “To call a woman the weaker sex is libel, it is man’s injustice to woman. If by strength is meant moral power, then woman is immeasurably man’s superior”. Women are usually considered to be weaker and inferior to men. Women are victims to many offences. The Indian Penal Code protects the dignity of women and also from the offences committed against them. Women are being affected mentally and physically due to these crimes. One of the most heinous crimes includes rape. The sexual assault against women has been continuously increasing.

These days, women are being exploited both mentally and physically. A crime is a social wrong. The people committing offences against women have been drastically increasing. The plight of women has become worse compared to the past years. The Constitution of India also provides that special provisions can be made to protect women and children. Despite the culture in India, violence against women has continued. On the darker side, there is more dominance of men in the society. From the birth of women, they are exposed to violence.

Government has been trying to make changes in the legislation in order to safeguard the

rights of women. Few of the offences committed against women are rape, dowry death, abduction, acid attack, outraging modesty, sexual harassment at work place, stalking, cruelty by husband or his relatives etc., Atrocities subject to women are being analyzed by the Courts and accordingly amendments and rules have been laid down to determine the accused. The concept of feminism has also deepened into the roots of society.

In India, the majority of the population is women. The exploitation of women in various manners has to be stopped. There are various sections mentioned in the Indian Penal Code to secure women from various crimes committed. Most of the offences committed against women are very terrible and odious. Women generally reach out to the Courts for justice while their rights have been violated. People contend that the laws are discriminating men and women.

In this paper an attempt has been made to study few offences like rape, outraging modesty and acid attack. The plight of the women and the judicial response towards them has been scrutinized. Women have not only been victim to sexual assault, but also face humiliation in the society. Society has changed in various aspects and with that people’s mindset has also changed. The Government is definitely trying to minimize the crime rate by bringing in many amendments and legislations.

LAW GOVERNING OUTRAGING MODESTY OF WOMEN

The offence of outraging modesty of women was subject to conflicting interpretations in the Court of law. Section 354 of the Indian Penal Code provides for the assault or criminal force to woman with intent to



outrage her modesty. When this offence is committed, police has an authority to arrest the criminal without any warrant. It is purely circumstantial. This makes it clear that this offence is very serious in nature. Section 354 of the Indian Penal Code does not specifically define the term 'outraging modesty'. It is upon the discretion of the Court to determine if the offence can be considered under outraging modesty. The main ingredients constituting the crime of outraging modesty is that the woman must be assaulted or criminal force should be used against her and the accused has an intention or knowledge of woman being outraged by the acts of accused.

The punishment awarded to the criminal is imprisonment for one to five years along with fine. The person is not accused only by outraging the modesty of women but also should have an intention or should have the knowledge that the act would outrage the women's modesty. For an offence to fall under the category of 'outraging modesty' the person committing the offence should have an intention or knowledge that the women's modesty will be outraged. It was argued that the law did not make provisions for outraging a man's modesty and this in turn violated Article 14 of the Indian Constitution.

Modesty of a woman can be outraged either by a man or woman. This offence constitutes indecent assault upon woman. However, it has less gravity when compared to rape. Only when all the essentials are satisfied, a person can be punished. In *S.P Mallik v. State of Orissa*¹, it was held that an essential ingredient of Section 354 of the Indian Penal

Code is that criminal force or assault should be used against the women. Mere putting of hands on the belly cannot be construed as criminal intent. In such cases, culpable intention must be proved or else the Court does not consider it as outraging modesty of women.

Intention cannot be considered as the only criteria for an offence to fall under Section 354 of the Indian Penal Code, it can also be done through criminal force. In *Sailendra Nath Hati v. Aswini Mukherjee*², a lady told the daughter of the accused not to discharge water from the road side tube making the road inaccessible for the citizens. Then, the accused slapped the lady and also kicked on her waist. The Court held the accused under Section 354 as it comes under outraging modesty of woman.

In *Gajanan B. Mehetre v. State*³, a woman voluntarily accompanied a driver, the accused in his vehicle. The accused her to allow for illicit relationship on payment of money. When the woman refused, he asked her to alight the vehicle. There was no used of force by the accused. In this case, the Court acquitted the driver and also held that mere verbal threat would not amount to criminal force.

This section safeguards public morality and from indecent behavior of men. The Hon'ble Supreme Court in *Pandurang Mahale v. State of Maharashtra*⁴ held that sex is an essential for woman's modesty. The culpable intention is required while determining the liability of the accused. Females are considered as a class of people. Outraging modesty can be committed against woman of any particular age. Literally, the term 'modesty' with

¹ 1982 CrLJ 19 (Pat)

² 1988 CrLJ 362 (AP)

³ 2006 (4) AIR Bom. 18

⁴ AIR 2004 SC 1677



regards to woman means a decent behavior and conduct. In the case of Ramkripal⁵, when the accused was charged with rape. He took the defense that he only committed the offence of outraging woman but not rape. The Court was of the opinion that pulling a woman's saree with an intention for having sexual intercourse is sufficient for the offence to fall under the offence of outraging modesty. Therefore, the accused was charged with the offence of murder.

In Ram Das v. State of West Bengal⁶, the accused boarded the railway compartment and was seated with two female passengers. He suddenly removed his trousers. Thereby, the accused and the female passengers got into a quarrel. In this case, the accused was charged of outraging modesty under Section 354 of the Indian Penal Code. The act of the accused was indecent in nature. The evidence also proved that the act of the accused was intended to outrage the female passenger's modesty.

In India, there are laws for protecting only woman from the offence of outraging woman but not men. Whereas in the English Law, a woman can also be held liable for an indecent act or assault against both men and women. The indecent assault includes battery as well as the mental torture. In Faulkner v. Talbot⁷, a lady was convicted for an indecent assault on a boy aged 14 years. This incident took place when the boy's parents left him at the accused home. She also made an attempt of sexual intercourse with the boy. Hence, she was convicted for the offence of outraging women under the English Law.

The comprehensive test for modesty is not fixed by the Court of law. The Court not only

takes into account the reaction of the woman as the reaction also depends on the sensitivity of the victim.

JUDICIAL APPROACH TO THE OFFENCE OF RAPE

Rape is one of the most heinous crimes. This crime depicts women as a sex object. They treat women as sexual property of men. It is an unlawful sexual activity. This type of offence is committed by force, violence and a threatening behavior. Rape is a social evil. It not only affects the woman but also the entire society.

The offence is said to be rape if it falls under any of the following seven description: against her will, without her consent, when her consent has been obtained by putting her in fear of death or injury, The punishment for rape will be decided based on the gravity of the offence. Rape leaves a scar and also has a serious psychological impact on the victim. The woman undergoes torture. Rape is of different types like gang rape, custodial rape, marital rape etc.. In Vishwanathan & ors. V. State of Tamil Nadu⁸, when a women is raped by a group of people (gang rape) with a common intention, then each person is liable under Section 376 (2)(g).

The Criminal Law Amendment Act, 1983 widened the scope of the term 'rape'. After the Mathura case, many changes have been brought under the Criminal Procedure Code and in the Indian Penal Code regarding the enhancement of punishments, absence of consent of the victim and elements of custodial rape in 1983. An amendment was

⁵ Times of India, March 21, 2007

⁶ AIR 1954 SC 711

⁷ (1981) 3 All ER 468

⁸ AIR 2008 SC 2222



also brought in the Indian Evidence Act. In cases of gang rape, custodial rape etc., if it proved that the sexual intercourse took place between the accused and the victim, and the victim states that she has not given any consent for such act then the Court shall presume the absence of consent. The Government made an attempt to remove the gender inequality in the society through these amendments.

The crux of the offence u/s 376 in IPC is rape and it postulates sexual intercourse. The term sexual intercourse means sexual connection. Sexual intercourse involves penetration of penis or any object into the vagina, mouth, urethra or anus of a woman. In *Rajendra Datta Jarekar v. State*⁹, it was held that rupturing of hymen is not necessary for constitution of crime and chances of false implications are too remote as nobody would like to do it by placing family reputation at stake. So, rupturing of hymen would not amount to rape. In *Bhundanlal Sharma v. State of Orissa*¹⁰, it was held that partial penetration of the penis within labia majora of the vulva or pudendum with or without emission of semen is an adequate ground for rape. In *R. v. Hill*¹¹, the Court said that penetration is required for the offence to constitute crime.

In the English law, a section provides that there must be unlawful sexual intercourse with a woman who has not given consent to the act. A wife is presumed to give consent to have sexual intercourse with the husband unless they are separated by the Court's order. The Indian law has identical provisions as to the English law. There are four clauses

under Section 375. The initial two clauses describes about a woman who is in a position to give her consent or has enough knowledge to express about her willingness. The next clause outlines the circumstances in which the consent has been obtained by putting the woman in fear of injury or death. If the consent is obtained by undue influence, it is not considered to be a valid consent.

Rape depicts the civilization of the person. In spite of making provisions in IPC and Cr.P.C to protect woman from the cruel rapists, the number of cases reported of rape has always been increasing. It proves the inadequacy of laws. The Government has terribly failed to safeguard the woman from the horrible atrocities. There is a lack of uniform punishment to persons committing rape due to their age.

In *State of Punjab v. Gurmit Singh*¹², the Supreme Court directed the lower Court that even in cases where the victim is habituated to sex, the Court cannot comment or make statements about the character of the victim.

In *Rafiq v. State of U.P.*, a middle aged girl was raped by the accused while she was sleeping in the girls hostel. In this case, the accused was held liable even when there were no injuries on the girl. In *Prem Narayan v. State of Madhya Pradesh*¹³, the accused dragged a 9 year old into the bushes and attempted to have a sexual intercourse. The girl has been severely injured. The doctors could not carry out an internal examination due to severe pain of the victim. So, there was a benefit of doubt to the accused that he took it as a good ground of defense. Hence, the trial Court only convicted him for attempt of

⁹ 2008 CrLJ 710 (SC)

¹⁰ (1961) 1 CrLJ 689

¹¹ (1986) 1 SCR 313

¹² 1996 SCC (2) 384

¹³ 1989 Cri. L.J. 70734



rape. On an appeal to the High Court, it was held that every indecent assault cannot be called as an attempt of rape. When there was only preparation done for the act, the accused can only be charged for outraging the modesty of women under Section 354 of the Indian Penal Code.

The Hon'ble Supreme Court in *State of Punjab v. Gurmit Singh*¹⁴ held the accused liable under Section 375 and punished under section 376 in a case where the prosecutrix was abducted by three people and forced her into sexual intercourse. In cases where the consent of the women is obtained by misrepresentation or fraud is not a valid consent. In *R. v. Williams*¹⁵, the accused has a sexual intercourse with prosecutrix. He made her believe that he is going to perform a surgery to improve her voice. It is clear that the consent is obtained by fraud. Hence, the accused was convicted for the offence of rape.

If the sexual intercourse takes place with a man promising to marry when he had no intention of keeping up the promise, then in such cases the accused will be convicted for the offence of rape. The consent is obtained from the women with a malafide intention and also constitutes fraud. This was held in *Deepak Gulati v. State of Haryana*¹⁶.

In *Prithi Chand v. State of Himachal Pradesh*¹⁷, it was held that the absence of spermatozoa cannot bring in a doubt on the correctness of the prosecution. The accused in *State of Uttar Pradesh v. Chottey Lal* caught hold of the victim, gagged her mouth.

The terms 'against her will' and 'without consent' have different dimensions.

The Supreme Court declared rape as a crime against basic human rights. The Courts must also deal with such cases of women very sternly. Hence, the testimony of the victim can be acted upon without corroboration in material products¹⁸.

Under the English law, it is considered that a boy below the age of 14 years cannot commit rape. Whereas in Indian law there is no such presumption. It is an accepted proposition that the accused cannot be convicted only on the basis of the evidence, but there were many incidents where the judgment was given on the basis of the evidence if the Court believes it to be worthy. In *State of Chattisgarh v. Derha*¹⁹, the conviction on the basis testimony of the victim was permitted by the Court as the evidence seemed satisfied to the Court.

If only the evidence of the victim is reliable, it is sufficient for the conviction of the accused under Section 375 of the Indian Penal Code during the timely filing of FIR and any other corroborative material evidence of the offence that is being alleged against the accused. In *Bisheshwar Mumu v. State of Bihar*²⁰, it was held that mere holding the hands of woman does not come under the offence of attempt to rape.

ATTEMPT OF JUDICIARY TO REGULATE ACID ATTACK

¹⁴ AIR 1996 SC 1393

¹⁵ (1923) 1KB 240 (CCA)

¹⁶ AIR 2013 SC 2071

¹⁷ AIR 1989 SC 702

¹⁸ *Aman Kumar v. State of Haryana*, (2004) 4 SCC 379

¹⁹ (2009) 1 SCC (Cri.) 1012

²⁰ 2004 Cr LJ 326



Acid attack is one of the violent form of aggression on the woman. The menace of acid attack violates the human rights and fundamental rights of woman. The Criminal Law (Amendment) Act, 2013 addresses the evil of acid attacks making it a separate provision in the Indian Penal Code. The physical and psychological pain suffered by the woman due to the acid attack is unimaginable. Previously there was no specific provisions as such for punishing the offenders committing acid attacks.

The Government took various steps to curb the acid attacks India and has also taken measures to treat and compensate the victims of acid attack. By the Criminal Law (Amendment) Act, 2013, Section 326A and 326B were inserted for an effective protection. After this amendment, acid attack or an attempt have been made cognizable and non - bailable offence. The Section made first aid for the victims compulsory along with the compensation amount given by the State Government. Section 357A of the Code of Criminal Procedure, 1973 provides for the compensation.

Section 326 provides for the voluntary causing grievous hurt by dangerous weapons or means. The major difference between Section 324 and 326 is that the hurt caused under Section 326 is grievous hurt. The essentials for an offence to fall under Section 326 are – the accused must cause the grievous hurt voluntarily and the an instrument must be used for the cause of stabbing, shooting, cutting etc.,. This offence is non – compoundable and is tried by the first class Magistrate Court. In State of Punjab v. Suraj Singh²¹, during the fight the accused brought

an axe and inflicted a blow on the head. As hitting with an axe is an injurious act and can cause grievous hurt, the accused was held under Section 326 of IPC. “In Laxmi v. Union of India²², the Hon’ble Supreme Court of India the guidelines has laid down guidelines on the regulation of acid along with compensation for the victim. The Court held that minimum of Rs. 3 lakhs must be given to the victim by the State Government as part of the victim’s rehabilitation cost.” In Pratap Kumar v. State of Punjab²³, the accused continuously hit the deceased with a hot iron rod in the name of taking out the evil spirit from the body. There were many inflictions of injury on body of the deceased. The accused was held liable under Section 326 of the Indian Penal Code.

The Section 326A provides specifically for the hurt caused by acid. It states that a permanent or partial damage, burns or disfigures must be caused by throwing acid with an intention or knowledge of causing hurt to the person. Then, the person will be imprisoned for not less than 10 years or imprisonment for life along with fine. The term ‘acid’ includes all substances with acidic or corrosive or burning nature that can cause bodily injury. The attempt of acid attack will lead to the imprisonment of seven years along with fine.

In Sachin Jana v. State of West Bengal²⁴, due to the gravity of the offence committed the Court also charged the accused with attempt to murder under Section 307 of IPC. The grievous hurt can also lead to the death of the person. As in this case in ordinary circumstances, it can lead to death of the victim the Apex Court applied the attempt to

²¹ 1976 Cr LJ 239 (All).

²² (2014) 4 SCC 427

²³ 1964 SCR (4) 733

²⁴ (2008) 3 SCC 390



murder along with acid attack. The Court takes into consideration the intention or knowledge while committing the act irrespective of the result of the offence committed.

In *Parivartan Kendra v. Union of India*²⁵, a PIL was to make clear provisions regarding the plight of acid attack victims like free medical care, rehabilitation, compensation under Survivor Compensation Schemes. The Court held that more than Rs. 3 lakhs can be given to the victim based on the gravity of the offence. In this landmark judgment Supreme Court issued a direction that the State Governments/ UT should seriously discuss and take up the matter with all the private hospitals in their respective State/ UT to the effect that the private hospitals should not refuse treatment to victims of acid attack and that full treatment should be provided to such victims including medicines, food, bedding and reconstructive surgeries.

In *State of Maharashtra v. Ankur Panwar*²⁶, the accused threw acid on a woman named Preeti Rathi at Bandra Station in 2013 because she refused the proposal of marriage as she wanted to pursue her graduation. The accused was convicted for acid attack and was sentenced to death. The Special Judge Anju S. Shende opined that due to the aggravating circumstances in this case, the accused was sentenced to death.

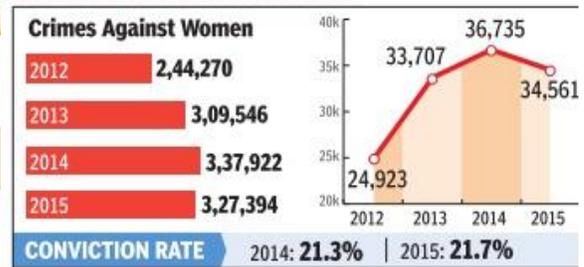
Acid attack is an offence that is committed against a man or woman. But in India, it is more woman centric. Most of the acid attacks were committed against woman. This offence has a specific gender dimension when compared to other nations. This way of violence is chosen by men in the process of

taking revenge or showing aggression or disapproval to the actions of women. This offence showcases the cruel nature of the accused. Not protecting women from these offences shows the incompetence of the State in fulfilling their rights.

CONCLUSION

We observe that the exploitation of women is still not stopped. Even though the punishment for the offences committed against women is very stringent, there is an increase in the crime rate. According to the National Crime Records Bureau, in 2013 there were more than 20,000 rape cases were recorded. The changes in the Section related to rape were made in 2013 after the Nirbhaya incident. In 2015, more than 34,000 rape cases were recorded. The increase in the crime rate is shocking even where there is high quantum of punishment.

CRIME & PUNISHMENT



From 2011 to 2015, the number of cases registered under outraging modesty of women are 42,968; 45,351; 70,739; 82,235; 82,422 respectively. A total of 84,746 cases of outraging modesty of woman by assaulting them were reported in the year 2016. There is

²⁵ 2015 (13) SCALE 325

²⁶ 2019 SCC OnLine Bom 968



a drastic increase in the percentage of crime registered every year.

As per the Data provided by NCRB, in 2014 a total of 137 cases were reported for offence of acid attack under Section 326A and 154 arrests were made on the basis of the reported cases. Of all the cases reported, only 135 were charge-sheeted of which finally there were only 08 convicts. For attempt of acid attack under Section 326B, 40 cases were reported in respect of which 39 arrests were made. Only 23 cases were charge-sheeted out of which only 3 accused persons were convicted. In 2014, total number of victims was 146 in cases registered for acid attack and 41 for attempt.

In the year 2015, there were a total of 123 reported cases of acid attacks in respect of which 192 arrests were made. In 2015, total number of victims was 147 for acid attack in cases registered and 30 for attempt. It is clear that though a number of cases were reported and charge sheets are filed, the rate of conviction of the accused is very low. In 2016, 167 incidents of acid attack were reported. After every year, there is only an increase in the number of victims. The total number of victims rose to 182 for acid attacks. The statistics is steadily increasing for the offences against women. The punishment for both attempt of acid attack and acid attack should be made same.

After the amendment, a decline in the crime rate was expected. But as the days passed, we only observe that the cruel nature is continuously increasing and the plight of women is deteriorating. Even though the amount of punishment is quite high, the offences against women are not being curbed. The quantum of punishment should be

enhanced to decrease the crime rate as it does not seem to be sufficient to curb the menace against women.

There is a need to analyze the existing provisions for protecting women so as to tackle the growing crime incidents. The laws can further be amended by increasing the quantum of punishment for the offences. There is a pressing need for a social change.

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