



## CASE COMMENT ON MUKESH & ANR vs STATE FOR NCT DELHI & ORS “NIRBHAYA CASE”

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### INTRODUCTION

In the history of human, race, and mankind, rape is considered as one of the most heinous crime. In the 21<sup>st</sup> century where both woman and man should treated and respected equally , herein we are standing in such a position from where we can witness the unfortunate growth of crimes against woman rather witnessing the growth of economy and mankind. It's quite ironical, strange and disappointing at the same time that the fact, a country which worships women as goddess and believe in the ideology of women empowerment stands fourth with rape being the most common type of crime happening on the streets of India.

The case of MUKESH & Anr vs STATE FOR NCT DELHI & Ors famously known as the “NIRBHAYA CASE” is one of the most landmark case with a landmark judgment which showed the road ahead that somewhere the laws related to sexual assault, sexual abuse and rape have to be more strict and it showcased the scenario of woman not being safe in our society, they need to be protected.

After this case, there was a massive jump in the no. of cases filed in India and the main reason behind the no. of cases to be filed was the outrage created by the Nirbhaya Case. Still, there have been cases about sexual

abuse , assault, rape which have been filed but then there are cases which are not filed , however, it is quite unfavourable for the unregistered cases related to sexual assault, abuse, rape are double in numbers than the cases which are getting registered. This case not only gave power to woman to come in front and fight for themselves but also the judiciary in administering justice for Nirbhaya played an important role.

*MUKESH & Anr vs STATE FOR NCT DELHI & Ors ,(2017) 6 SCC 1*

### FACTS

On just any other chilly night in the month of December in the year 2012, the prosecutrix and her friend were returning from the movie theatre in Delhi, and were waiting for the bus to come. One of the culprits was calling for the commuters and was successful in convincing the prosecutrix and her friend that they are going to side of the prosecutrix and her friend's destination , as they entered the bus they already saw there were only six people in total including the bus driver and the bus had tinted windows.

Slowly the feeling lonely suffocation and danger began to barge in as they did not allow anyone else to board the bus and they even let the darkness rule the bus. The prosecutrix and her friend was been robbed and beaten up by the other five people as the 6<sup>th</sup> one was driving among them there was child aged 17 years of age, i.e. the child was a minor, then they injured her friend and assaulted and gang raped the prosecutrix one by one , they even inserted an iron rod into her vaginal parts and mutilated her body which is par human imagination. The prosecutrix



intestines were pulled out and private parts were mutilated.

Later, after lot of treatments and medical help, she died of multiple organ failure, internal bleeding and cardiac arrest on 29<sup>th</sup> of December, 2012.

### **JUDGEMENTS**

After, reviewing and going through the facts of the case the Trial Court said that it comes under “rarest of rare cases” where the culprits have used their power and in aggression and kept the humanity aside and murdered, raped her as if she isn’t a human being and treated her as an object and much more worse than that. The Trial Court and the High Court of Delhi, had the same judgement as well as punishment that was the death penalty for all the four culprits and a fine of Rs 10000/- to be paid by each convict and in default of payment fine the convict shall undergo simple imprisonment for a period of one month.

The culprits even appealed to Supreme Court where it upheld the High Court and Trial Court’s judgement. All the three courts Trial Court, High Court even the Supreme Court termed this as the “RAREST OF RARE CASES”.

The 5<sup>th</sup> culprit who was a minor was treated as a minor even though he committed a heinous crime and it was held that he will be imprisoned for three years and the Juvenile Justice tried him and the punishment was given by them. The 6<sup>th</sup> died during the trial session, where he committed suicide.

After, the judgement of the Supreme Court was passed, they then appealed for Review Petition in the Supreme Court which was also

dismissed by the Court as it had no substantial question of law and no further merits to review to the same. Review Petition getting rejected then Curative Petition getting rejected even then they went on to file a Mercy Petition, every single culprit filed for Mercy Petition as well, where the Mercy Petition got rejected i.e. is the President after consultation with the central cabinet rejected the petition and upheld the death penalty of all the four culprits.

After delaying the judgement and punishment thrice, they were finally hanged on 20<sup>th</sup> March, 2020.

### **ANALYSIS**

Famous known as the Nirbhaya Case, a landmark case which shook not only the whole nation but also the legal system of India. No one would have ever imagined that a crime like rape could go so far, where the humanity took a seat back somewhere in the bus, maybe.

Everyday, in every house a woman comes or goes out late, hoping and praying that she returns home safely and sanely.

This case bought a lot of outrage in people not only in India but worldwide, whereas the politician blaming the girl that they do not know how to behave or they do not how to dress and someone making a political move by making this case their agenda for next election.

Nirbhaya case brought a lot of woman to come up and take stand for themselves and even fight for oneself. The outrage was so much that it led to candle march and justice for nirbhaya march, putting a lot of pressure on the government and on the legal system.



This case actually brought a lot of change in the legal system with Nirbhaya Act, The Juvenile Act, Evidence Act, every part of the legal system was amended, looking into the matter and case.

As days kept on passing by, one by one then more cases were added to the list of rapes, even after the outrage of the people and legal system being strict the people did not stop, reportedly from the year 2013, there have a drastic increase in the no. of rapes cases.

Before, this incident, hardly people took the whole rape crime seriously, this case urged people to think about it. Even in the department of the police, they do not take few rape cases seriously or for that marital rape is one such example, it is not a crime in India, it is assumed that when a woman is getting married to a man she is giving the consent for cohabitation, where is it written no one knows except the old adage of people and society, this case i.e. Nirbhaya case did put some light on the marital rape as well, but still no one really discusses about it because marriage is sacred, the society does not permit. The society's perception to some extent has destroyed the humanity, too, few men still think that they live a patriarchal society, whereas, we have passed that phase long back, hardly the male section of the society wants to accept it, so when they want to show some power and rage they end up doing crimes like rape, sexual assault, beating up the woman, touching or looking inappropriately, this isn't done by the outsiders only somewhere in some part of the country, maybe a family member like father or uncle must be doing this to their daughter or daughter like girl, these kinds of cases are not taken seriously, because obviously our society can never accept that a father or a

uncle can do this, the Government sometimes fail to take these crimes seriously and take it into consideration. Nirbhaya case gave light to these kinds of issues, sexual assault, sexual abuse, rape, voyeurism, stalking, sexual harassment issues to be tackled and to be handled with care.

Somewhere the case helped women and somewhere the inhuman nature of the people of the society increased these kinds of crime like sexual assault, sexual abuse, rape, voyeurism, stalking, sexual harassment more because the legal side was standing for woman.

The Nirbhaya case is more about the men anger and rage, how a woman can argue or say no to a man. This case has such kinds of fact which are disturbing as well as it makes us contemplate as to what exactly are we doing for the safety of woman, and why is that people specifically the male section think that women are weak, how? Women are the most strongest because they carry a human inside them for nine months and work outside and inside of home, they run the family. Wasn't the society should be like all are equal both, men and women. It's a case which is rare, a case like this seen after years or ages, maybe. No one even came to help the victim and her friend, because it was a matter of police and legality. People should stop being so selfish. Half of the people back out or take a step back because of the police involvement, the society and people need to understand they are there to help, it's not always about putting someone behind the bars or calling them to court for years, sometimes they do create trouble, but they are the ones who can actually help us, the victim specially, in getting justice.



Justice a word which means having a quality of righteousness. In India it is always seen that the trails , the walk to the court has no end and often people forget about justice, it takes years to give a judgement or a punishment, many die waiting for the judgment. Same happened with the victim of the case she was hurt so much and was so much in pain that she succumbed to her injuries, she must be brave as she fought till her last breath, but couldn't survive to see the justice being served. It took 7 years and some months to serve the justice still its half, because the minor who was not so minor in doing the crime he did, was treated like a juvenile, and was released after three years of imprisonment, the minor should have been tried like an adult, but the Indian legal system didn't permit that. The convicts should be tried the way of the crime they do.

Some say they should have been hanged or given to the public, but our legal system believes in "to be heard" irrespective of howsoever the crime is bad or heinous. In that "to be heard" scenario the victim die with a hope that she would not be denied justice. Trials then High Court then Supreme Court then Review Petition then Curative Petition then Mercy Petition, this wasn't some steps which were being followed this was the waste of time which is exactly what the not so innocent convicts were doing. In the history of Indian Legal System , four convicts i.e. the four rapists were hanged, they were hanged, justice was served , but the questions lies in the fact is that will girl child, girls or woman still be blame for the rape or are they safe. Even though the justice was served ,what about the ugly rebuttals and words and sentence utter for the innocent woman, who is not even alive, does she or the whole woman community deserves it? No. As time

passes, the whole case becomes a personal attack and same story again the opposite side of the party makes it uglier day by day. It's the lawyer who speaks irrespective of taking into consideration how heinous the crime is, the case does gets ugly and disturbing.

Still, in the rural parts of the country, girl child or maybe woman suffer this and are unaware of it or maybe they are aware of it but they do not know who to complain or who will take them seriously or their complain seriously, it is necessary for a woman to get knowledge about this, but then they have to be strong enough to face the blame and not to be blame game with the society or a relative maybe.

The whole agenda of the punishment is imprisonment, still, still the punishment for rape, sexual assault or sexual offences is imprisonment why not it can be death penalty , it is not necessary to make all the crime look same when it comes to punishment. Then comes the socio- political agendas, taking this kind of a sensitive topic for election and making it a political move. We can grow the economy, but the old perspective will never go away, no matter how hard we try.

This crime does not only happen to girl child or woman, this type of case has happened with some months old child , sometimes really difficult to understand as to what these kind of man or men want, aren't they sacred of the law. There are cases where the relative, father or friend has done such a crime, slowly or may be it's already done , that a woman can trust no one, because it's happening in one of the purest relations. In the acid attack side, few cases have woman who have had helped a man to throw acid on another woman, don't they feeling anything, don't



these man or woman have woman or daughter or girl at home. It is true that when it happens with oneself then only one can understand the pain otherwise one cannot.

This case saw a lot of ups and downs, mostly down, maybe, because the appellant side being so ugly and harsh and too patriarchal in the thoughts and words they spelt in the court, where the appellant even went to question the medical evidence, the semen samples, the DNA tests, the identification, the rod used, the injuries on the victims, inner thighs, the private parts, the bite marks, the whole contention was changed to these culprits did not rape to these culprits did not rape in same amount or density, who is deciding the density of the rape, the victim, the judge or the lawyer or the rapists themselves?, wasn't rape supposed to be rape. The appellant side went on to say that as the rape wasn't done by all in the same amount of density then the punishment shouldn't be the same, the rod was inserted by one, the punishment of which wouldn't be for all, they did not have the meeting of minds, it was just the course of action that happened, there was no intention for rape or assault or murder. Then, there must be meeting of minds for clearing out the evidence, switching of the phone, running away or throwing them out of the moving bus in such a way that they are no more alive.

The appellant was cross questioned by the Judge about the Joint Liability, even if one person among the group is doing a wrongful activity or crime, each and every one will be equally liable, and here in this case, it is rape, if the intention or meeting of minds wasn't same then anyone from the group could have stopped the other for committing such an heinous crime, but there it was inserting rod in her private parts taking out the intestine,

mutilating her whole body. The words "bacho, bacho" uttered by her and the pain she suffered can never be felt or understood by anyone except for herself. Because of the joint liability in our legal system all of them where given same punishment, the punishment they deserved i.e. death penalty. When there is a sensitive issue like rape or something which involves national security or esteem of a person irrespective of the gender, the whole case trials gets conducted in a camera and the issues, facts, evidence, nothing wasn't released to the media or to any official site because of so much anger and outrage see in the public, was seen for the first in India.

Death penalty is an exception which used when the life imprisonment does not equalizes the crime, it is the last option. In this case it was said by the judge that with respect to the aggravating circumstances, outweighing the mitigating circumstances there is no way to justify the conversion of whole death sentence imposed by the courts to 'life imprisonment'. The gruesome offences and crime committed were with highest viciousness. Human lust was allowed to take such a demonic form in the rapists. The accused maybe not be the hardened criminals but the cruel manner in which the gang raped the victim in a moving bus; iron rods were inserted in the private parts of the victim and with the coldness the both the victims were thrown out of the moving bus naked in a cold night of December, shocks the whole conscience of the society. The case is tagged with the 'rarest of rare case' where the question of any other punishment rather than death sentence is unquestionably foreclosed. The death sentence to be rewarded in any case is, this case, if the dreadfulness displayed by the culprits in gang



rape , unnatural sex, insertion of rod in the private parts of the victim does not fall under the ‘rarest of rare case’ then one may wonder what falls in such a category of crime. The evidence did prove the convicts guilty but they weren’t guilty because they did what they had to, and they did so much that they took the life of the victim, out of rage and demonic actions they performed, they won somewhere. Now, the only option left was death sentence for the convicts, the case which was referred here was Bacha Singh Vs. State Of Punjab, where the death sentence was questioned brought in as a topic to look into.

Giving deadline of 7 days to file a Mercy Petition, in these cases all the legal advantage should be taken away like Reviewing Petition, Curative Petition or Mercy Petition for that matter. The whole long due process of hanging was finally executed which was to be done long before was finally done, one of the reasons for the punishment getting delayed was the fact if anyone of the culprit in a group of death penalty uses the legal option then all of the culprits have to exhaust theirs and going by the books and rules it took time, and the culprits did seek for mercy besides they also wasted a lot of time of the legal system, Government, society, public, and everyone.

Finally, justice was delayed but not denied, the victim isn’t alive but if she was she must have been a lot happy and better because the pain she went through could not be felt or understood by anyone except her but her mother and her family finally did it and made it happen, a history, a landmark judgment, a landmark punishment of death sentence of four rapists which was executed on 20<sup>st</sup> March, 2020.

The incident did led to the protest not only in the capital city of India but nation-wide. We live in a civilized society where the law is supreme and where the citizens enjoy the fundamental human rights. But when it comes to incident like this it causes ripples and serious questions of living in a civilized society, where both man and woman should feel the same sense of liberty and freedom which they should have felt in the ordinary course of the society which is supposedly to be assumed civilized and driven by law.

Certainly whenever these kinds of grave violations of human dignity comes to fore, an unknown sense of helplessness and insecurity grabs the entire society , specifically woman in particular and succour people , the society look for is where the State should take command of the critical situation and remedy it effectively.

The whole battle for gender equality and justice can only be won when the strict implementation of whole legislative provisions, sensitivity of emotions of public, taking of pro-active steps at all the levels for extreme and combating violence against women and ensuring the widespread attitudinal changes and comprehensive change in the current existing mind set. It’s a hope that this incident will pave the way for the same.

*BACHAN SINGH VS STATE OF PUNJAB, 1980 (2 SCC 684)*

### CONCLUSION

Certainly or Un-certainly, it showed us, the loop holes we were carrying out with us these years in our legal system. With taking into consideration of 80,000 suggestions and petitions, a bill was passed during the trials of the convicts, this incident opened the eyes to



look into a wider concept of rape and other sexual crimes happening on the dark side of the day.

After the Nirbhaya Case , the women protests were at its peak, but with due course of time, it lost its spark and at last faded away. But this case is counted in the horrific cases of crime against the woman in the history of India, had a lasting impact on the Indian populace, and even though the steps taken to improve the condition, has not helped the woman much.

The bill was an amendment to the Criminal law, and named The Criminal Amendment Act, 2013 also known as the Nirbhaya Act, 2013. The bill was passed and now the act i.e. the Nirbhaya Act, 2013, amended the punishment for such kind of crime and gave a way to punish the acid attackers as well as to the exception of rape i.e. marital rape, and to talk about marital rape. The amendment gave a broader meaning to the term rape. It amended the definition under section 375 of Indian Penal Code. Section 375 of Indian Penal Code after amendment defines rape as involuntarily and forceful penetration without the consent of the woman into woman's body parts like the vagina, urethra, mouth or anus.

There were two development which had major impacts on the amendment .These were the Nirbhaya incident and the Justice Verma Committee report , the report which stood up for woman's rights , to provide quicker trial and enhance the punishment and criminal provisions to commit sexual offences against women. It also said that it should not only be limited to private body parts but also any consensual penetration whose nature is sexual should be included in

the definition of rape. It was also recommended in the report that a marriage should not be considered as a license to perform any sexual offences and any gesture that creates threat of sexual nature should be termed as sexual assault and should be punishable for the same.

Sometimes, the whole rape gets deviated to some other topic of the case , and itself becomes an issue. The demonic character of the civilized people of the civilized society needs to understand that when a woman says NO, it means NO, "you cannot force yourself and commit rape or any other sexual offence."

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