



CRIES FOR HELP- RAPES IN INDIA (NIRBHAYA CASE STUDY)

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INTRODUCTION

On this land, where the earth is considered to be the mother of all living beings, where goddesses are worshipped for prosperity, well-being and safety, where our own mothers, sisters and daughters are worshipped, on the same land, we also find an innocent girl, lying in a bloodbath, eyes still with fear, body cold as ice, mouth dry from all the screaming and crying for help, who fell into the monstrous capture of our society's very own evil- Rape. It is nothing but an ironical and disgusting fact that we are made aware of every other day, with one of the other stories of rape, covered in the headlines of newspapers and news channels in big and bold letters.

The problem of Rape is a major social menace in India which is reflective of the inferior and derogatory treatment meted out to women. It is also somehow reflective of the system of patriarchy in our Indian society. Rape is considered to be a very grievous offense which is constituted against all the women disregarding their age. A four-year-old girl can also be a victim of rape and a 90 year-old woman can also be a victim of rape. Such a crime not only causes serious pain, but the trauma which leaves a severe impression on the minds of the victims makes it hard for the victims to cope up with life and the fact

that the accused is not being properly punished due to delayed justice system of our country. The Supreme Court of India while showing concern for rape which is considered to be the most heinous crime observed,

“Rape is a crime not against the person of a woman; it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into a deep emotional crisis. Rape is therefore the most hated crime. It is a crime against basic human rights and is a violation of the victims’ most cherished rights, namely the right of life which includes the right to live with human dignity contained in Article 14. Rape for a woman is a deathless shame and must be dealt with as a gravest against human dignity; it is a violation of violence on the private person of a woman.”

Instances of brutal rape and sexual violence that have been reported by women, has definitely created a blot on India's reputation so much so that this country is among the worst countries to be in for a female. The first case of this heinous crime was that of Aruna Shanbaug, a 26-year old nurse, in November 1973. The victim was sodomised and strangled with a dog chain, leaving her in a vegetative state for 40 years until her death in 2015. Another case of murder and rape of a 14-year old girl named Hetal Parekh took place in 1990. The accused was hanged to death, which was the first hanging in India in 13 years. A gang-rape case of Bhanwari Devi was registered in Jaipur in 1995. However, the accused five men were acquitted by the court. This further led to a petition being filed and the Vishakha guidelines to protect women from sexual harassment at workplace were formed. Another shameless act was the raping and strangling of a law student,



Priyadarshini Mattoo in Delhi, by her fellow law student and son of a former senior police officer, who was given a death sentence.

According to government data, more than 32,500 cases of rape were registered with the police in 2017, i.e. about 90 cases per day, leaving around 127,800 cases pending to be heard by the Indian courts at the end of the year 2017. The last year, more than 145,000 cases were pending in trial by end 2019, of which most victims of rape were children. In a recent report it was observed that our country was known as one of the most dangerous countries for women in the world, where it is estimated that a woman is raped every fifteen minutes, out of which 99% of the rapes go unreported. We may be developing or achieving developmental landmarks, but much is desired in the spheres of law and order, so to speak.

The list of cases could go on and on, as it is sadly never-ending, but the one case which gave an international shock of horror was that which took place on 16th December 2012, i.e. the infamous Nirbhaya rape case. Even though this incident had forever tarnished India's image in the entire world, had brought about a few very important changes in the penalties for sexual crimes against women. Protests, rallies, marches, institutions, women organisations, etc. not only in India but all over the world came into picture in order to display their agitation, demand justice and stand with Nirbhaya.

But, in order to understand the consequences and effect of this case on the Indian Legal System and the laws contained in it, we need to first clearly understand the facts of this case and the gravity of the this heinous crime which are discussed further in this paper.

THE NIRBHAYA RAPE CASE

A landmark case which happened on 16th December, 2012, shook not only the entire nation but also created a wave of despair internationally was that of a rape victim, Jyothi Singh which was known under the pseudonym- Nirbhaya. Unlike previous rape victims, whose conduct had been questioned in the Indian media, Jyothi Singh largely avoided being seen as responsible for her own rape. Because of this, she became a victim who could be celebrated as a heroine without judgement– a “Brave-heart” (Nirbhaya)

FACTS OF THE CASE-

The rape victim (Jyothi Singh aka Nirbhaya) was a 23-year old physiotherapy student. She was heading home after watching a movie at Select City Walk, located in Saket, South Delhi, with her male friend. As they were waiting for a commute at the Munirka bus stop in Delhi, one of the accused (a minor) called for passengers saying that the bus was headed to Dwarka. Suspicion arose when the bus deviated from the normal route and the doors of the bus were also shut. The bus already had a group of 6 men who started misbehaving with the couple when the male friend objected as to the direction of the route. As a result of their argument, these men started beating the male friend, gagged him knocked him down unconscious with an iron rod. Seeking the opportunity, the accused men forced Nirbhaya onto the backseat of the bus as the driver continued to drive the bus. They mercilessly beat her with the iron rod and raped her for about an hour as she kept fighting back. The men inserted the same iron rod, which was rusted and like that of an L-shaped implement used as a



wheel jack handle (as described by the police on investigation) into her private parts, badly rupturing her insides and ripping her intestines apart, as if they were ropes, but of flesh and blood. The victim, Jyothi bit the attackers while fighting back, which left marks on them. After taking out all their aggression on the victim and fearing her to be dead, the accused men threw the couple out of the moving bus, abandoning them of their clothes and all other belongings. At around 11 pm, both the victims, in a critical state, were found on the road by a passer-by who immediately informed the Delhi police who then took the couple to Safdarjung Hospital. As per the doctors in the emergency ward, Jyothi was found to be in an extremely critical condition, incurring extreme blood loss, injury marks and also multiple bite marks on her face which made it all swollen and unrecognizable. Various surgeries were conducted and the medical report confirmed gang rape. It was observed in the report that the assault inflicted serious abdominal damage and it was mainly the penetration (by the iron rod) which caused massive damage to her genitals, intestines and uterus. Nirbhaya wasn't just sexually violated and abused; her body was mutilated beyond human imagination.

REPERCUSSIONS-

As a result of this gruesome assault inflicted upon her, Nirbhaya died of multiple organ failure, cardiac arrest and internal bleeding on 29th December 2012 at Mount Elizabeth Hospital in Singapore, where she was transported for better treatment and organ transplant.

This caused a lot of public outrage in the form of candle light marches, solidarity

movements and protests all over the country. Public protests took place on 21st December 2012 at India Gate. Thousands of protesters clashed with the police as they were beaten with sticks and thrown tear bomb shells at in order to suppress the uprisings. Silent marches were organised in Kolkata to mark the disappointment regarding the incident. People from all sections of the society indulged in protests to show their agitation towards such a shameful act. On 24th December, an activist, Rajesh Gangwar initiated a hunger strike and said that he was dedicated to fight for this cause of demanding a stricter law for rape. Baba Ramdev, a yoga guru also indulged in the protests at Jantar Mantar. Not only physical protests, but online campaigns were also part of the outbreak resulting from this shocking incident. People started sharing their words of disappointment on social networking sites like WhatsApp and Facebook. Users showed their support by changing their profile pictures to a black dot symbol. Hundreds of online petitions were also signed by users protesting the incident. The culprits were made an example of and highly condemned for their inhumane act.

After the victim, i.e. Jyothi's death on 29th December, 2012, several protests took place throughout India. Mourners carried out candle marches, wearing black clothes and even put black cloth around their mouth to resemble silence. These Indian protests also sparked protests in countries like Paris, Nepal, Sri Lanka, Pakistan, Bangladesh and other South-Asian countries. The regional programme director for U.N. Women South Asia said, "There are rape cases in almost all cities and rural areas, where the victim dies immediately because of the brutality of the crime ... This time, it was like, 'Wake up.'"



There were not only social but legal repercussions too. The UPA government was pressurized to make stricter laws regarding rape and other sexual crimes. The tourism industry also suffered as it saw a decline in the female tourists by 35 per cent. The gruesome case shocked the entire nation's conscience, made international headlines and exposed the scope of sexual violence against women in India.

REFORMS IN LAW POST NIRBHAYA CASE

In accordance with the horrific Nirbhaya incident, many important issues came to light with reference to sexual violence against women. Unlike other rape cases before this case, people were not really aware of the height of monstrosity that a person could reach as regards to violence against women. Many changes in the criminal laws took place after the outpour of anger and grief following this brutal rape and murder incident, which gave some hope for justice in India.

- Many states undertook various steps to ensure safety of women in their area. The government of Tamil Nadu announced a 13 point action plan to ensure safety of women in Tamil Nadu and also said that incidents of sexual assault would be treated as a grave crime. The government of Karnataka also took steps and set up a 24x7 helpline dedicated towards the registration of complaints regarding sexual assault against women.
- Several new laws relating to sexual assault were amended as well as created in response to this incident. A mandatory sentence for a minimum of 20 years in case of gang rape was proposed. The government also sanctioned six new fast track courts solely for

the purpose of rape prosecutions so that speedy justice to the aggrieved person could be provided.

- A judicial committee headed by Justice Verma was appointed by the central government to submit a report in 30 days regarding the amendments and suggestions relating to reforms in laws concerning sexual violence against women. Justice Verma Committee's report was submitted after 29 days. It asked for review of the Armed Forces (Special Powers) Act, 1958, and to set the maximum punishment of death penalty instead of life imprisonment. The committee also refused the idea of lowering the age of juvenile from 18 to 16. It also recommended that marriage should not be considered as a way or license to perform sexual offences just because the other person is their spouse. The committee also counselled that even gestures which are sexually offensive, or even non-consensual and non-penetrative touching of sexual nature should be considered as a sexual offence against women and the offenders should be punished for the same.
- Earlier, the definition of rape under section 375 of the Indian Penal Code (IPC) was only restricted to sexual intercourse. But, after this incident, the scope of section 375 of the IPC was widened to include acts in addition to forceful sexual intercourse. Section 375 of the IPC, after the amendment, defines rape as *any involuntary and forceful penetration without the woman's consent into the woman's body parts like the vagina, urethra, mouth or anus*. Two developments—the Nirbhaya incident and the Justice Verma Committee report, had a major impact on this amendment.
- On 1st February, 2013, the Cabinet Ministers approved for bringing the suggestions made by Justice Verma committee by way of amendments in the Criminal laws of the



country. As a result, the Criminal Law (Amendment) Bill was passed by the Lok Sabha on 19th March, 2013 and by Rajya Sabha on 21st March 2013. The Criminal Law (Amendment) Act also called the Nirbhaya Act came into force on 3rd April 2013. It provided for the amendment of the IPC, the Indian Evidence Act and the Code of Criminal Procedure, 1973, regarding laws relating to sexual offences.

- Changes made to the CrPC included the addition of section 164 (5A) which made it mandatory for the judicial magistrate to record the statement of the victim as soon as the commission of the crime was reported by the victim to the police.
- Section 53 was added to the Indian Evidence Act, which dealt with the irrelevance of previous sexual acts of the victim, and the character of the accused as well as the victim when the consent or quality of consent is in question in a criminal proceeding, concerning the offences under sections 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E of the IPC and an attempt to commit such offences.
- In December 2013, Jyoti's parents, looking at the gravity of the incident, filed a petition demanding for the minor to be tried in a criminal court instead of a Juvenile Justice court. However, as the accused was just short of 18 years, so the petition was quashed and the minor was sentenced to 3 years of youth detention and then released in 2015. In March 2015, however, Maneka Gandhi, who was the Women and Child Development minister, observed in an interview that the government would be looking into the laws treating juveniles as adults in grave crimes. Thus, on 22nd December, 2015, the Juvenile Justice Bill was passed by the Rajya Sabha, lowering the age of a juvenile offender in the eyes of law to 16 years rather than 18 years. This

means that any person above 16 years of age would be treated as an adult in the court of law.

- After the horrific incident, the government had also set up the Nirbhaya Fund, administered by the Department of Economic Affairs, to support initiatives by various NGOs and government institutions working towards the safety and protection of women against such heinous crimes. In 2013, the finance minister had announced a contribution of a sum of Rupees 1000 crore for empowerment and security of the women and girl child. The family of the victim along with the help of a social entrepreneur also established a trust in her name, i.e. the Nirbhaya Trust in December 2013. This trust aimed at providing to the women who suffered from sexual violence, assistance, shelter and legal aid in order to help them receive justice for themselves.

CONCLUSION

"Justice will not be served until those who are unaffected are as outraged as those who are"

-Benjamin Franklin.

The above mentioned quote rightly stands true with respect to the actions that the people and governments around different countries undertook, enraged by the horrendous incident of the Nirbhaya rape and murder case. This incident is the one which will never forever mark the height of monstrosity prevailing in our society and the level to which a man, not particularly entailed by lust, but by anger and male ego, can stoop to actually 'mutilate' a woman beyond human imagination. Sexual violence should not be reported in the crime pages, but also



examined in depth as a major gender issue threatening the human race.

Laws and reforms can always be made, keeping in mind the welfare of the women in our society, but the successful implementation of these laws to the best possible ways, is what proposes the main challenge, which is still to be attained. Progressive reforms in paper and ink are of little or no use to the survivors or victims if they are not practically applied, enabling a just and secure environment for the survivors or sexual assault. Stringent preventive actions need to be taken to stop the occurrence of such offenses which would also eliminate the crimes committed by those psychopaths and determined criminals who have no respect for law and the rules of the society.

"All history attests that man has subjected women to his will, used her as a means to promote his gratification, to minister his sexual pleasures, to be instrumental in promoting his comfort; but never has he desired to elevate her to that rank she was created to fill."

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