Seven Years of Nirbhaya What Has Been Change

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Abstract

In this study I have examine the rape trends and situation after NIRBHAYA CASE in India.

Present study used National Crime Record (NCRB) India data. Data on crimes in India are annually published by the NCRB. Crimes reported to police station all over country and refer to report and register crime. The reasons of incidents of crime are not capture by the Bureau.

NCRB gives data on the basis of police recorded crime cases are being captured. In this study I have gone through the major reason behind, effect on society and what changes can be made. Rape is the fastest growing crime in India compared to other crime incidence of women. Also I have uncovered some unknown rape crime that took place in the society on the name of reputation, to the depressed class woman (economically), of the working women either private sector or government sector.

Meaning of RAPE

From the latin word rape is define as the rapio, it means ‘to seize’. It signifies as the ravishment against her will or without her consent, or with her consent by putting her in fear, danger. Rape is the fourth highest crime committed in India. Rape has been defined under section 375 of INDIAN PENAL CODE 1860. Not less than 7 years of punishment are awarded for rape; before the Criminal Amendment Act of 2018. Prior to 2005, there was less rape in India. With the change of modern people; it increases with modern time and that can be seen in the society. Most of the Islamic country like SAUDI ARABIA punish with death penalty within 24 hours of the commission of the offence. If we go through the statics, data of the rape case we found how this offence is increasing with the increase of time. In India NGO’s are working to help rape victim at international level.

➢ LAWS RELATING TO RAPE IN INDIA
  • Under Indian Penal Code
    1. Section 375 of Indian Penal Code define “Rape” a man is said to commit “rape” if he:
      (a) Penetrates his penis, to any extent to the vagina, mouth, urethra or anus of a women or make her to do so with him or any other person;
      (b) Insert, to any extent, any object or the part of the body, not being the penis into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
      (c) Manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus, or any part of the body of such woman or makes her to do so with him or by other person; or
      (d) Applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or with other person,
  ➢ Under the circumstances falling under any of the following seven descriptions-

1 Reuters Report
2 Sec.375 of Indian Penal Code, 1860
3 Source, Bare Act, Indian Penal Code 1860, sec. 375(1)
First - against her will.

Second – without her consent.

Third - with her consent, when she has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourth - with her consent when, the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believe herself that to be lawfully married.

Fifth - with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the unwholesome substances, she is unable to understand the nature and consequences of that to which she gives consent.

Sixth - with or without her consent, when she is under eighteen years of age.

Seventh - when she is unable to communicate consent.

Explanation 1.- For the purpose of this section, “vagina” shall also include labia major.

Explanation 2.- consent means an unequivocal voluntary agreement when the women by words, gesture or any form of verbal non-verbal communication communicates, communication willingness to participate in the specific sexual act.

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as a consenting to sexual activity.

Exception 1.- A medical procedure or invention shall not constitute rape.

Exception 2.- Sexual intercourse or sexual acts by a man with his own wife, the wife being under fifteen years of age, is not rape.  

Section 376 deals with the punishment of rape.

Section 376(1) whoever except in sub-section (2) commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than 7 years, which may extent to imprisonment for life, and shall also be liable to fine. (2) Whoever -

(a) Being a police officer commits rape—

(i) Within the limits of the police station to which such police officer is appointed; or

(ii) In the premises of any station house; or

(iii) on a woman is such police officer’s custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits a rape on a woman in such public servant’s custody or in the custody of public servant subordinate to such public servant; or

(c) being a member of the arm forces deployed in an area by the central or a state government commits rape in such area; or

(d) being on the management or on the staff jail, remand home or other place of custody established by or under any law for the time being in force or of a women’s or children’s institutions, omits rape on any inmates of such jail, remand home, place or institution; or

(e) Being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) Being a relative, guardian or teacher of, or a person in a position of trust or authority, towards the woman, commits rape on such rape; or

(g) Commits rape during communal or sectarian violence; or

(h) Commits on a woman knowing her to be pregnant; or

4 Supra note 1

5 Sec 376(1) of Indian Penal Code, 1860
(i) Commits rape of a women when she is under sixteen years of age; or
(j) Commits, rape on a woman incapable of giving consent, or
(k) Being in the position of control or dominance over a woman commits rape on such women; or
(l) Commits rape on a women suffering from mental or physical disability; or
(m) While committing rape causes grievous bodily harm or maims or disfigures or endanger the life of a women; or
(n) commits rape repeatedly on the same woman, shall punished with rigorous imprisonment for a term which shall not be less than ten years, which may extent to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine.  

How NIBHAYA CASE Changes laws on RAPE

- On 21st March 2013 Nirbhaya changes the rape law in India. Before this Criminal Amendment Act 2013, punishment of rape was not more than 7 years; after this amendment it became imprisonment for life or imprisonment for 20 years.  
- But despite of this criminal amendment the thought of people hasn’t change yet. Moreover, men are becoming cruel. The biggest factor of rape can be illiteracy of men.  
- The Unnao, Case in Uttar Pradesh, where a woman set on fire by 5 men after being raped by 2 men.

As per the NATIONAL CRIME REPORTS BUREAU no major change can be seen in the society. In fact in 32,559 rape case were reported in 2017 year by NCRB, which shows that there is increase in the rape.  
Supreme Court itself stated that, ‘law has been amended against rape after Nirbhaya but haven’t work yet’. Post Nirbhaya will shock us; even after many amendments were introduced in the Criminal Law redefining the ambit of offences.

How Nirbhaya Changes The Society

- Since, by amending laws no major can be seen not in society nor the mind has been change. Society needs to change their thought against women. Following are the action which can be taken to prevent rape:
  - Men need to get educated about women.
  - They need to change their perspective of women.
  - Equal punishment must be provided to rapist; being a white collar or a professional, or other person.
  - There is no need to show mercy by reducing their punishment.
  - If we move further and look upon to the recent rape cases are as follows:
    - 2018, on every 15 minutes one rape case are reporting.
    - 2019, Kathua Rape Case- where a girl child age 8 years got raped by men, among them one of the rapist was retired government officer, other was special police officer, next was the relative of the victim.
    - Also, the head constable, the special police officer and sub-inspector got suspended for destroying the evidence of this case.

Here, we observed that the rapist is getting benefit from the government official; we also see that just because the rapist belongs to the government official they are getting privileged.

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6 Supra note 3
7 National Crime Report Bureau, 2017
8 National Crime Report Bureau, 2018
9 Reuters Report, 2018
This is one of those rape cases which are high lightening as the incident took place at temple; where no other person can doubt about such activity.

However, actions were taken against the entire rapist. But this is not the solution to reach the end.

- **2017, Unnao Rape Case**
  In this case a 17 years’ girl ganged rapped by the MLA named Kuldeep Singh Sengar, his brother Atul Singh and their accomplices. Father of victim got arrested of no guilty; also he died in the judicial custody\(^\text{10}\). Also the family members of victim threaten by the Atul Singh.

- **Types of Rape:**
  - Marital Rape
    Even after the marriage if a husband forcefully has sexual intercourse with his wife, without her consent; such type of rape is counted as marital.
  - Acquainted Rape
    Where a man is known by the woman.

- **Reasons Behind Commission of Rape**
  - Clothes of a woman that she wears, place where she is sitting and behavior toward other make an invitation to rape; as said by the renowned personality of India. But this is not the reason for being rape; a child, who born just before seven days, if she gets rape by an old man. What shall be the reason behind her rape; at this stage she cannot wear a saree, also she doesn’t know how to behave.
  - The thought of a man, the behavior of society towards woman. The old men who have not been change yet with the change of time; these types of man have their own thinking regarding woman also imposes restriction upon the woman.
  - After Nirbhaya it was stated by the renowned personality on a debate that; what the need to watch movies on night at cinema hall such kind of act invite the commission of sexual assault and rape.
  - It is to be noted here that watching movie at hall does not show that she is characterless or she does not belong to the good family. No one has right to judge a woman by the place where she is or by the time she visits a place.
  - In Delhi Gudiya Rape Case; a five-year girl was brutally rape by two men. An object was shoved near her private part. This incident really shakes the nation. Country like India where a girl is worshipped. What makes a sense if a girl got rape and after that she gets worshipped by the people?
  - Muzaffarpur Shelter Home Scandal Case –
    In this case it shows that even a home center is not safe for the woman. Where the girls are being raped by the government officials. It shows that how the government officers are powerful. Such activity sends a message to the society; if this could be happening to a home center then the girl outside the home is not safe from these people.

- **Effect of Rape on Victims**
  It is helpful to receive a counseling and treatment to overcome from. It is necessary for victims to start the healing process. According to World Report on Violence and Health, (World Health Organization 2002) in the absence of trauma council negative psychological effect persists at least one year following a rape.\(^\text{11}\)

\(^{10}\) Government Data

\(^{11}\) World report on violence and health, (WHO)
• Physical Effect

Physical effect of rape can arise from forced sexual assault. It can cause visible bleeding around vaginal area and bruises on other parts of body.\(^{12}\)

Other physical consequences are:
- STD/HIV
- Urinary Infection
- Painful intercourse
- Pregnancy
- Psychological Effect

One of the most commonly psychological effects of rape is self-blamed. In many cases self-blame stops the healing process. It does not only affect the victims but also to the victim’s family, friends and society.

Other emotional effects are:
- Depression
- Fear of trust
- Sleep disorder
- Eating disorder
- Guilt
- Anger

➢ Criminal Law Amendment Act, 2018 Relating to Rape

❖ Section 4.

In section 376 of the Penal Code, -

(a) In sub-section (1), for the word “shall not be less than seven years, but which may extent to imprisonment for life, and shall also be liable to fine”, the words “shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine” shall be substituted;

(b) In sub-section (2), clause (i) shall be omitted;

(c) After sub-section (2), the following sub-section shall be inserted, namely: -

“(3) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine.\(^{13}\)

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine impose under this sub-section shall be paid to victim.”.

❖ Section 5. After section 376A of the Penal Code, the following section shall be inserted, namely: -

\(^{12}\) Supra note 9

\(^{13}\) Sec.4 of Criminal Law (Amendment) Act, 2018 No. 22 of 2018, published by authority,
376AB. Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and with fine or with death:

Provided that such fine shall not be just and reasonable to meet the medical expenses and rehabilitation of victim:

Provided further that any fine imposed under this section shall be paid to the victim.\(^1\)

Section 6. After section 376DA of the Penal Code the following sections shall be inserted, namely:

“376DA. Where a woman under sixteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intension, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

376DB. Where a woman under twelve years of age is raped by one or more person constituting a group or acting in furtherance of a common intension, each of those person shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and with fine or with death:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.\(^2\).”

How Rape Can Be Control

- There are some ways where girls get harassed, sexual assault and then rape by the men. May be she get through some of these elements or may not. Here are some points which the parents or guardian needs to look upon their child.

- If any relative is visiting your home for example- uncle-aunt, grand-mother, grand-father or any other relative; if your child does not like to sit with them, shake hands, does not want to go near them, go around \(^3\)them. In such situation parents or guardian need to ask their child as to why she is doing this. Is there any problem with the relative; because such activity of her shows that she has problem with that particular relative. May be the relative is harassing or making sexual assault.

- Cases like rape, we found that the culprits are non-other than our family member or relatives.

CONCLUSION

In the study we suggest some of the policy to the women and society to reduce the rape crime. The first and foremost is that

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\(^1\) Sec.5 supra note

\(^2\) Sec.6 supra note

\(^3\) National Crime Report Bureau
While travelling by auto or cab if a woman feels unsafe or suspect the driver in this situation she can use her dupatta or scarf or such material to roll around the neck of the driver and threaten him to take to the safest place or in crowded place.

- Woman must explore the intention of a man.
- Woman must not trust every man either known or unknown or whosoever comes in her relation thereto.
- Not all the NGO are good or safe for woman, do not trust on these organizations.
- A woman need to have to be broad minded.
- A woman needs to be self-dependent even if she is not working.
- With education self-confidence is also required to a woman.
- Not only the uneducated but the educated women do get hit.

These are some points which help a woman to be safe from rape crime.