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ABUSE OF RAPE LAWS: A MENACE OUGHT TO BE CONTROLLED- Anushka Singh¹**ABSTRACT**

The upsurge seen in filing of false rape case accentuates upon the abuse of the very law at the hands of few people who perceive it as a weapon against the vulnerable section of men. The very law for the protection of women has become a weapon to surrender. After the analysis of few cases, the crux of filing of false rape case has come out to be a medium to force those men to surrender to defeat.

This submission highlights the growing abuse of rape laws and the various reasons attached. The paper, perceived as a whole, is a suggestion to bring a new law under the Indian Penal Code, 1860 to make filing of a false rape case a separate offence. Under this submission are detailed suggested grounds upon which charges can be levied, reasons why this law is important, certain remarks by eminent judges, advocates and journalists who daily experience such cases.

Though the new law is a suggested remedy against this atrocities of rape law abuse but it in no way is to subvert the laws made for the protection of women under this code.

Keywords- Rape, Laws, Fake, Case, Man, Indian Penal Code, Woman.

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INTRODUCTION

Considerable media coverage after the brutal "Delhi Gang Rape Case" made adult citizens more cognizant of the rape laws. This was followed by many amendments which increased the spectrum of punishment for an accused in consideration to ensure protection of women. The awareness that spread like a wildfire amongst public in general but women in particular of the amended rape laws and the leverage it gave to people unfortunately lead to increase in its abuse. Between 2013-14, 53.2 % of the rape cases filed was found to be false at the tertiary level in the capital Delhi². Another statistics of Jaipur shows that in 2016, out of 330 rape cases filed and 276 solved, 43% was fake³. If such high is the data of one city, the fake rape charges put on men across nation would be alarming. This has sparked another debate in the country with men right activists taking the forefront.

People are immensely aware of the rape laws and punishment that men have to undergo but are less conscious of the fact that filing a false charge can lead to punishment and attract various sections of IPC like section 182, section 500, section 193, section 200 owing to which they are less hesitant before taking such drastic step, intentionally knowing that a false rape charge can ruin a man's entire life in an instant. Here, a woman is often encouraged by her parents, relatives and even strangers to file a rape case on breach of promise to marry or when they know that the girl was engaged in pre-marital sex so as to avoid the shame even when it was consensual on her part, occasionally women are also bribed by another person merely to file a false rape case to defame the man⁴.

As result of this, the total rape cases filed in India has marked up alarmingly. These fake cases in a way subdue the true one's taking up precious judicial time. On the other hand the society fails to differentiate the false and the true ones, as of which, a man has to suffer even when acquitted. They fail to understand that women are not the only victims of rape. In a documentary titled 'India son's' directed by Deepika Narayan Bhardwaj and Neeraj Kumar, a false rape case victim aptly summed up his experience "it's like a gunshot, you are hit and you're gone".

IMPORTANT SUGGESTIONS THAT THE NEW LAW SHOULD CONSIST

² Joanna Jolly, 'Does India have a problem with fake rape claims?' (BBC News, 8 February 2017) <<https://www.bbc.com/news/amp/magazine-38796457>> accessed 26 June, 2020.

³ Poorvi Gupta, How true is the "menace" of false rape cases in India?' (She the people, 2018) <<https://www.shethepeople.tv/home-top-video/case-false-rape-cases-india/>> accessed 26 June, 2020

⁴ ibid

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1. The new law should criminalize filing of false rape case under the Indian Penal Code, 1860. People committing this offence forthwith shall be charged as per the provisions of the new section so inserted.
2. The law should be gender neutral reason being that a woman is often encouraged/coerced to file false rape case by her parents or relatives or other person.
3. The new law should in no way signify that the prosecutrix having lost the case has necessarily filed a false rape case. Upon further investigation and conclusive evidence produced the conclusion drawn should be beyond reasonable doubt to lay charges against a person on the following grounds suggested:-
 - a. When there has been pre-marital consensual relationship between a man and a woman and the woman is being encouraged or coerced by her parents or relative or any other person to file a false rape charge against the man, then such parents, relatives or other person is to be punished under the section.

Explanation-(i). It is to be noted here that if a woman instantly agrees to file false rape charge without there being an actual process of encouragement or persuasion on part of her parents or relatives or such other person, shall not be barred from punishment under the section.

(ii). For understanding process of encouragement or persuasion there has to be a series of talk between the woman and the person persuading or encouraging her so as to change the mindset of the woman from that of not filing the case to agreeing to file it.

(iii) The woman will be exempted if she was coerced or force was inflicted on her so as to make her agree upon filing the false rape case.

Illustration- A (girl) and B (boy) were involved in pre-marital consensual relationship. When A's father came to know of this he encouraged her to file a false rape case against B. A agreed instantly upon her father just persuading her once and went on to file the case. Here, both A and her father will be punished under the section.

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- b. When there has been a breach of promise to marry on part of the man after consensual relationship between the couples.

Explanation-(i). Consensual here is to be understood in the concept of 'consent' defined under section 90 of IPC.

(ii). Promise here should be a true promise to marry. Consent of the women obtained solely for the purpose of sexual intercourse with no intention as such to marry her from the beginning would not be considered a false rape charge.

Example- A, a woman in consensual relationship with B, a man, charged him of rape after he broke his promise to marry out of revenge to ruin his life. A will be punished under the section.

It is to be noted that a woman can be encouraged/coerced as well and accordingly the punishment will be as per 3(a).

- c. When a false rape charge has been put upon a man, with reasons other than those mentioned above including with the intention of money extortion, revenge, personal gain, or to avoid public humiliation, the concerned women or the person who encouraged or coerced her or both has to undergo the punishment under the section.

Example- A, husband to B, encouraged her to file false rape case against C, a man with whom B was involved in a consensual relationship outside her marriage so as to avoid public humiliation to their family were one partner was involved in adultery. As a result of encouragement, B filed the case. Here, A is to be punished as per this section, if B agreed instantly [as explained in point (a) explanation 1 and 2] then she too will undergo the punishment.

- d. The provisions of (a), (b) and (c) shall mutatis mutandis apply to cases where the man falsely accused of rape is a public servant. Though the punishment should be of a higher degree than where a non-public servant is concerned.

Explanation- Public servant here is to be understood as 'public servant' defined under section 21 of the IPC.

4. The offence should be non-cognizable, bailable and non-compoundable. Punishment should consist of simple imprisonment or fine or both.

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REASONS WHY THIS NEW LAW IS IMPORTANT

The women either on her own part or after being encouraged/coerced goes on to file the false rape case with little or no consideration of how severe the impact will be on that man's life. With rape being a cognizable offence, arrest can take place even without preliminary investigation⁵ landing the man behind bars for several days. Further, they end up with their names and pictures on different social media platforms while that of the woman is kept confidential. The description often highlights the man as an accuse already. Here, is where the main problem lies. The man is already considered guilty of rape by the society, he is despised along with his family and since then they have to face continuous scornful comments. What is more surprising is that even after being acquitted his position in society barely changes. Many such false rape case victims have lost their jobs during the proceeding, many admitted to their children being bullied and being treated unequally in school, if married, their wives had to face loathful comments, many have been victims of suicide or had to undergo rigorous imprisonment because of fabricated documents or false evidence produced as of which the case could not be proven in his favour and such other permanent damages to his life which cannot be replaced^{6 7}.

SOME REMARKS BY ADVOCATES, JOURNALISTS, AND JUDGES THAT SHOWS HOW GRAVE THE ISSUE IS

- Tanveer Ahmed Mir [New Delhi based criminal lawyer, defence counsel in Aarushi Talwar murder case]- remarked that 99% of rape charge accused are acquitted by the fast track courts in Delhi. Two out of ten are genuine rape cases heard per day in these courts, acquittals are based mostly on fabrication of evidence produced. He said that most fake rape charges come out of broken relationships where the boy left the girl or broke his promise to marry or chose someone else over her.⁸
- Rukhmini Shrinivasan [journalist and researcher]- after her study of rape cases in Delhi District Court, she found that out of 460 cases filed, 109 were "promise to marry" and

⁵ Lalita Kumari vs. Government of Uttar Pradesh AIR 2012 SC 1515.

⁶ Amrit Dhillon, 'Spare innocent men anguish: India ruling aims to end false rape claims' (The Guardian, 11 February 2019) <<https://www.theguardian.com/global-development/2019/feb/11/spare-innocent-men-anguish-india-ruling-aims-to-end-false-claims>> accessed 1 July, 2020.

⁷ Joanna Jolly, 'Does India have a problem with fake rape claims?' (BBC News, 8 February 2017) <<https://www.bbc.com/news/amp/magazine-38796457>> accessed 1 July, 2020

⁸ Poorvi Gupta, How true is the "menace" of false rape cases in India?' (She the people, 2018) <<https://www.shethepeople.tv/home-top-video/case-false-rape-cases-india/>> accessed 2 July, 2020.

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out of these only 12 resulted in conviction while the rest 97 were acquitted. Her study also showed that nearly one-third of the cases filed were of young couples involved in pre-marital consensual relationship but were later caught by their parents⁹.

- Chaitali [Project officer of Jagori]- highlights upon the persuasion that women often receive from police or relatives even lawyers in filing fake cases. She emphasizes upon the patriarchal society that makes a woman accept that her entering into a sexual relationship with a man is to lose her respect and dignity if she is not marrying him. This often leads to filing fake cases to force the man into marriage.¹⁰
- Vinay Sharma [New Delhi based lawyer who handles fake rape_charges against men]- remarks upon women turning consensual sex into fake rape allegations after the relationship ends, out of vengeance and vendetta to force the man to marry her or to extort money upon promise to withdraw the charges. He quoted one case where a woman's family was ready to take down charges in consideration of Rs.5 lakhs, commenting on the irony of how would parents settle for money than providing justice to their daughter if it's really a true rape case.¹¹
- Justice A.K. Sikri and Justice S Abdul Nazeer- in a recent judgement, the two judges laid down that consensual sexual relationship between live-in partners will not amount to rape if later the man breaks his promise to marry. Though if the man entered into sexual relationship with the sole purpose of having sex and had no intention of marrying from the beginning will thus amount to rape.¹²
- Justice Pratibha Rani- observed a growing trend when women label consensual sex as rape after a sour relationship and misuse the rape laws out of anger and frustration. She remarked upon the importance of distinguishing between the two acts i.e. a rape and

⁹ Joanna Jolly, 'Does India have a problem with fake rape claims?' (BBC News, 8 February 2017) <<https://www.bbc.com/news/amp/magazine-38796457>> accessed 2 July, 2020

¹⁰ Poorvi Gupta, How true is the "menace" of false rape cases in India? (She the people, 2018) <<https://www.shethepeople.tv/home-top-video/case-false-rape-cases-india/>> accessed 1 July, 2020.

¹¹ Amrit Dhillon, ' Spare innocent men anguish: India ruling aims to end false rape claims' (The Guardian, 11 February 2019) <<https://www.theguardian.com/global-development/2019/feb/11/spare-innocent-men-anguish-india-ruling-aims-to-end-false-claims>> accessed 1 July, 2020.

¹² Dr.Dhruvaram Murlidhar Sonar vs. The State of Maharashtra and ors [2018] Criminal Appeal No.1443 (arising out of S.L.P Criminal No. 6532 of 2018).

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consensual relationship with the promise to marry as there is a very fine line difference between the two.¹³

Thus, in many instances courts have refused to accept such cases any further were there was a consensual physical relationship between a man and a woman and the same ended bitterly.¹⁴

CONCLUSION

Rukhmini Shrinivasan's report published in The Hindu of the 460 rape cases that went through complete trial process in Delhi's District Court in the year 2013 is alarming. Just 12 out of this heavy number accounted to 'rape by strangers' while the top strata was occupied by 'parents turning consensual sex into rape' by coercing or persuading their daughters to file a fake rape case if they came to know about her pre-marital consensual relationship with a man and this observation was more prevalent in inter-caste or inter-religion marriage. Third in line to this came fake charges on breach of promise to marry even when the man had real intentions of marrying but broke his promise out of genuine reasons.

Though abuse of rape laws is gaining pace but what is most surprising is the how quick the society is to label a man a sexual predator even before the verdict. Moreover, the acquittal of that man hardly changes his social status and is of little to no use to make amends.

People usually tend to judge from what they are presented i.e. the language used in the newspapers and other social media cites tend to frame their mind for the man to always be guilty of rape. With the man's pictures in different social platforms it becomes easier for the public to rage over and target him and his family, which is what makes the whole judicial proceeding and its aftermath extremely challenging. Thus, it is suggested that along with that of a girl, a man's face should also be blurred and name changed before publishing the news on any medium and till the final verdict of the court is announced. It is also suggested to allow preliminary investigation in rape cases seeing its current abuse.

Thus, this new law is in no way highlighting a woman as a sole criminal in the fake rape cases but every such individual who coerces or persuades her to file such case. This law is suggested

¹³ Manish Raj, 'When relationship ends women use law for revenge: Delhi HC' (The Indian Express, 5 August, 2017) <<https://indianexpress.com/article/india/when-relationships-break-some-women-use-law-for-vengeance-4783138/>> accessed 1 July, 2020.

¹⁴ Poorvi Gupta, How true is the "menace" of false rape cases in India?' (She the people, 2018) <<https://www.shethepeople.tv/home-top-video/case-false-rape-cases-india/>> accessed 1 July, 2020.

so as to protect men who would have to go through endless mental-physical torture and to bear the stigma of a rapist.



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