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THE SIGNIFICANCE OF JUDICIARY DURING RAPE CASE VERDICTS- Tisha Pattnaik¹**ABSTRACT**

In India, a slew of horrific rape cases has shaken the country to its very foundations. What efforts have been taken or laws have been created in our nation, where nearly hundreds of rape offences are committed every day, to curb these atrocities and how seriously are the laws passed put into effect? In this paper, the researcher primarily discuss the function of the legal system in cases involving such victims. The commission of horrific crimes like rape, the independence of the judiciary, which frequently goes beyond its authority to provide justice to rape victims, how forensic science or forensic evidence helps or helps in favour of the surviving victims or victims of the rape, and how the judiciary has changed over time will all be covered in this research paper. Finally, we'll discuss how the judiciary has changed and what its role is and what distinctions can be drawn between its past judgments and the decisions made in the current situation. Since the court is the third pillar of the Constitution, it has been crucial in rape cases to reach the right resolution.

Keyword- Rape, Victims, Judiciary, Forensic Science, Constitution.

INTRODUCTION

The standard definition of rape is a sexual encounter that takes place without the victim's permission. It is sexual contact or it could be another type of sexual insertion. This type of action may be carried out coercively, against the victim's will, or without the victim's express, informed consent in cases where the victim is unable to give such consent. Consent-giving in capabilities might range from unconsciousness to mental instability, among other things.

According to "Section 375 of the Indian Penal Code, 1860", rape is a crime. It both defines rape and lays out its punishment. Anytime a male approaches or engages in sexual activity with a woman against her choice or consent, it constitutes rape. The term "penetration" here refers to

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the idea that even the slightest contact between the penis and the vagina constitutes rape; a woman's intact hymen is not conclusive evidence against rape. There are exemptions to it as well, such as when a man engages in sexual activity with his wife who is older than 15 years old. The Indian Penal Code's rape law has undergone numerous revisions. Amendments were introduced in 1983, adding "Sections 376(2), which refers to Custodial Rape, Sections 376(A), which refers to Marital Rape, and Sections 376(B) to Section 376(D)", which refers to Sexual Activity Not Amounting to Rape.

The judiciary is regarded as the separate branch of government in our nation. The conventional job of this independent judiciary is to interpret the laws, and another is judicial activism, which means to operate outside the bounds of the law and make independent decisions to uphold the rule of law. Our Indian judicial system can be characterised as inventive. The way justice is administered ultimately determines how credible the judicial process is. The judiciary's decisions can advance social justice. Setting precedents in the public good or for the well-being of society is another crucial function of the judiciary. Law is helpless and needs a powerful agency to continue to exist. The success of law depends on the extent of execution and the capacity of the executor. The phrase "judicial activism" has gained significant prominence in recent years. It might be described as a dynamic judicial view process in a society that is changing.

RESEARCH OBJECTIVES:

The research objectives are as under:

- To understand the functioning of judiciary in rape cases.
- To find the impact of judicial decisions in cases of rape.
- To demonstrate how the judiciary, has been vital in rape cases in determining the right outcome.

RESEARCH METHODOLOGY

The doctrinal technique of study is appropriate for the research that was conducted. Doctrinal study is a type of research in which the researcher examines precedent-setting decisions, doctrines, and cases in addition to reading and evaluating numerous articles, papers, and other research projects to learn more about the subject.

The researcher will investigate numerous existing judgements, articles, and papers in order to

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develop an analysis for the topic, which necessitates a doctrinal study. Non-doctrinal study is not possible because of all the obstacles in the way. The study will aid readers in understanding both the drawbacks of the death penalty and its advantages for society. The focus of the essay will be on current legislation pertaining to the death penalty and their importance in legal proceedings.

Thus, it may be concluded that the doctrinal study technique is most appropriate in this case.

RESEARCH QUESTIONS

The following questions will be addressed in the due course of research:

1. How does judiciary interpret law in matter of rape cases?
2. What is the role of judicial activism in providing justice to rape victims?
3. What are the judicial provisions provided to the victim in rape cases?

LITERATURE REVIEW

The research involves taking down facts from various cases, legal databases and articles. The paper has been framed after a comparative analysis of the pre-established reports, articles and judgements. Certain sections of the bare acts of the IPC which give details about rape have been reviewed and studied by the author.

The news article in The Indian Express titled “**The broken promise of justice in rape cases**”² by Pratiksha Baxi is an understanding of the structure and process of courts typically include victims and plaintiffs, and judicial doctrine is based on their accounts of societal suffering. It is a true statement that the criminal justice system frequently does nothing more than reorganise an illegality system. Rape survivors, for instance, are frequently pressured to “compromise” illegally and become hostile in court; if they refuse, they risk being harmed or even killed.

An article titled “**Judiciary’s response to rape cases suffers from colonial hangover**”³ on The Leaflet. Written by Revanta Solanki and Shivkrit Rai makes us understand the judiciary’s stance to rape cases, and in particular, rape survivors, appears to swing from callous and careless to prejudiced and patriarchal. Also to render justice in rape situations, the judiciary must overcome a number of judicial rulings.

² PRATIKSHA BAXI, “The broken promise of justice in rape cases”, The Indian Express, 2021

³ REVANTA SOLANKI, SHIVKRIT RAI, “Judiciary’s response to rape cases suffers from colonial hangover”, The Leaflet, 2020

A JSTOR Article “**Gender Notions in judgments of rape cases: facing the disturbing reality**”⁴ by G.S. Bajpai and Raghav Mendiratta it clearly explained how These harsh prejudices and rape myths permeate our justice system, and the concepts of gender that underpin them support sexism throughout society. This article will examine several conclusions and observations that scream sexism and gender bias, like the usage of stereotypical imagery.

Another JSTOR Article “**Sentencing in rape cases: A critical appraisal of judicial decisions in India**”⁵ by Ved Kumari and Ravinder Barn helps us to investigate the accounts and viewpoints of Indian high court judges regarding rape and punishment. The study, which is part of a mixed-methods strategy, intends to advance theoretical and empirical knowledge of gender, sexual assault, patriarchy, and the criminal justice system. As rape laws continue to receive attention and the legislature increases the penalties for rapists and severe rape.

An Article titled “**Rape Cases and Judiciary: The Need for a Survivor-Centric Approach**”⁶ by Anamika Mishra explains that it was evidently deficient in how the police and political leaders handled the Hathras rape case, the judiciary urgently requires a survivor-centric strategy when handling rape cases. The survivor-centric strategy, which includes police reforms, a rise in the number of convictions, and a clean political scene, is important for society. The system of many laws cannot put an end to rape cases, but adding burdens to the laws to ensure swift and impartial convictions, a welfare strategy, and education could be a respectable start.

WHAT IS RAPE?

Rape, as used in modern law, is typically defined as an unwelcome sexual encounter involving the usage of force and the absence of permission. Among the most horrible acts somebody can commit is rape. Not only is it a horrendous crime, but it is also a great shame for humanity as a whole. It is a form of sexual assault that typically entails having sexual contact with another person against that person's will. This article will explain what rape is according to Indian law, the significance of explicit approval, and who is subject to rape. The three key terms in this legal definition—“penetration, force, and consent”—are, however, subject to much debate. State-by-state legal definitions of rape are different and are frequently contested. There is disagreement

⁴ Bajpai, G. S., and Raghav Mendiratta. “GENDER NOTIONS IN JUDGMENTS OF RAPE CASES: FACING THE DISTURBING REALITY.” *Journal of the Indian Law Institute*, vol. 60, no. 3, 2018, pp. 298–311. JSTOR, <https://www.jstor.org/stable/26826643>. Accessed 6 Oct. 2022.

⁵ Kumari, Ved, and Ravinder Barn. “SENTENCING IN RAPE CASES: A CRITICAL APPRAISAL OF JUDICIAL DECISIONS IN INDIA.” *Journal of the Indian Law Institute*, vol. 59, no. 1, 2017, pp. 1–25. JSTOR, <https://www.jstor.org/stable/26826588>. Accessed 6 Oct. 2022.

⁶ Anamika Mishra, “Rape Cases and Judiciary: The Need for a Survivor-Centric Approach”, *Feminism in India*, 2020.

on the exact definition of rape, despite the fact that it is a serious crime that is penalised by law. Contradictory definitions of what makes "rape" show the challenges that any attempt to regulate sexual relations would inevitably face. The legal concept of rape is required modified by a number of unique circumstances and conditions. For instance, because a kid underneath the 18 years of age is deemed legally incapable of giving consent, sexual activity with a child is viewed as forcible rape. Rape can also be shown when a person is engaged in sexual activity with a person who is declared incapable of consenting by law because of a mental disease, a disability, or intoxication. Other sorts of rape include gang rape, child abuse, marital rape and intimate rape i.e., with known persons closely related to us, rape in imprisonment, rape during conflict, and rape in a public place. Although rape is officially classified as a criminal act, many incidents that appear to fit this legal description are either not seen as such by their victims or are not pursued by the authorities. The Latin verb rapere, which means to take or possess by force, is the root of the word rape. Instead of a logical succession of definitions, the legal history of rape produces a complex and fluid mishmash of meanings. Rape was considered an assault offence under Roman law. Rape was instead seen as a crime against male possessions by earlier centuries. Rape became seen as a crime that undervalued women by presuming they had lost their virginity and as an assault on the victim's husband or father as a result of this gradual shift in meaning. Rape is frequently justified or brushed aside as an act of racist, regional, or social prejudice, or as the result of a patriarchal culture wherein women are treated as men's property. Many psychologists describe rape as a kind of torture since it permanently mutilates a person's life and causes tremendous psychological trauma. In some communities, rape victims face the risk of ostracisation or even death as a result of relatives attempting to uphold their family's reputation in addition to these psychological implications.

The case of **Sakshi v. UOI**⁷, the Supreme Court clarified the definition of rape and decided that only sexual intimacy, such as penial and vaginal penetration, would be regarded as rape for purposes of Section 375 of the IPC⁸. According to the court's justification for its decision, although all forms of sexual assault are horrifying, not all of them may be classified as rape. As a result, penetration is required for rape to be considered a crime.

In another case of **Smt. Sudesh Jhaku v. K.C.J. & Ors**⁹, the Supreme Court held that while inserting foreign things like bottles into a woman's vagina may create stress and long-term

⁷ Sakshi vs Union of India AIR 2004 SC 3566, 2004 (2) ALD Cri 504

⁸ Indian Penal Code. § 375

⁹ Sudesh Jhaku vs. K.C.J. & Ors. [62 (1996) dlt563 : 1998 cri]j 2428]

mental trauma to the victim, such an act would not meet Section 375¹⁰'s definition of rape. The court held that inserting foreign items would be punishable under Section 354 of the IPC¹¹, which stipulates that assaulting a woman or using unlawful force against her in an effort to offend her modesty will result in a sentence of up to two years in jail.

PROVISIONS FOR RAPE

Every year, The National Crime Records Bureau (NCRB) ¹²publishes a report with statistics on crimes against women committed in India. It is heart-breaking to learn from the research that one of the most frequent crimes against women in India is rape. The definition of consent under Section 375 ¹³is the woman's explicit, voluntary communication for a specific sexual conduct. Given that marital rape is not a criminal offence in India as long as the victim is over the age of 18, this rule does not apply to it. The exceptions include that sexual assault does not occur when a man engages in sexual activity with his own spouse who is older than 18. Section 376 of the IPC ¹⁴specifies the punishment for rape. According to this clause, the penalty for rape is a prison sentence of not less than 7 years, which, depending on the events and circumstances of the case, may go as high as life imprisonment. In more serious cases, the penalty is strict incarceration for at least 10 years, with the possibility of life in prison. Along with being sentenced to prison, the offender may also have to pay a fine. The "Nirbhaya Act", also known as "the Criminal Law (Amendment) Act of 2013", was approved by Parliament to alter Section 375¹⁵. The laws was expanded to describe acts like penetration of the penis into the vagina, urethra, anus, or mouth, or any object or any part of the body to any extent into the aforesaid women body parts (or forcing another person to do so), as constituting a crime of sexual assault. This was done to remove uncertainty in the former law and provide for strong punishment in situations of the rarest incidents of sexual violence. Other sexual assault offences included applying mouth or touching intimate areas.

ROLE OF JUDICIAL ACTIVISM IN PROVIDING JUSTICE TO RAPE VICTIMS

Numerous victims of crime have physical, social, financial, or emotional pain or injury, which must be swiftly remedied by granting them access to justice. In spite of the fact that most crime victims have received support and help from their family, tribe, or community, they have largely been ignored by the criminological management framework. "Public Interest Litigation

¹⁰Supra note 7

¹¹ Indian Penal Code. § 354

¹²<https://ncrb.gov.in/>

¹³Supra Note 7

¹⁴ Indian Penal Code. § 376

¹⁵Supra Note 7

(PIL) or Social Action Litigation (SAL)” is the primary mechanism via which judicial activism has grown in India. The judiciary, which has hitherto been limited to handling matters that are presented before it, started taking many cases into consideration based only on newspaper reports and mail complaints the court received. As a result, the phrase "judicial activism" has gained increased currency in describing the judiciary's function. The political system has been greatly impacted by judicial activism. By allowing access to the courts for both individuals and groups, it has modernised the legal system. The concept of a proactive judiciary and the abundance of PILs, however, are not without drawbacks. First off, it has overworked the legal system. Second, the boundary separating the judiciary from the executive and legislative branches of government has become hazier as a result of judicial activism. Questions that belong to the executive branch of government have been resolved by the court. Thus, the judiciary is not technically responsible for things like lowering noise or air pollution, looking into corruption charges, or implementing electoral reform. These are issues that the administration will manage under the direction of the legislatures. Because of this, some people believe that the balance between the three branches of government has become extremely precarious due to judicial activism. Each arm of government must respect the authority and domain of the others in order for democracy to exist. This principle of democracy may be under stress due to judicial activism.

ANALYSIS OF LANDMARK JUDGEMENTS

The Indian Penal Code's Section 375¹⁶ addresses rape and the consequences that a man who commits a rape may face. In the past, inserting the penis into a woman's mouth, anus, or vagina was seen as rape. However, it is currently still regarded as rape even if the object is thrust into the vagina or other areas of the body. According to “Justice Krishna Iyer” in the case of **Rafiq vs. State of U.P.**¹⁷, the intent of “Section 375 of the Indian Penal Code”¹⁸ is to distinguish between murder and rape as acts that destroy the soul rather than the body. Consequently, rape is viewed as a more serious crime than murder. This legal provision seeks to hold accountable those who would wilfully and maliciously take a woman's soul.

The important landmark judgements which showcases the importance of judiciary in the rape cases are as follows:

¹⁶ *Supra Note 7*

¹⁷ *Rafiq Vs. State of U.P 1981 AIR 559, 1981 SCR (1) 402*

¹⁸ *Supra Note 7*

In the case of **Tuka Ram And Anr Vs State of Maharashtra**¹⁹ a young girl was allegedly raped by two police officers on March 26, 1972, while they were holding her. In Maharashtra's Desai Gunj Police Station, this occurrence occurred. This case brought up a number of concerns related to Indian rape laws, including the consent issue and the burden of evidence. Due to the victim's informed agreement, the Sessions court determined that the offenders were not guilty. According to the argument, Mathura freely consented to the sexual activity because she was accustomed to it. Rape and sexual activity are distinct phrases that cannot be used in the same context, according to Sessions Judge. Following an appeal, the matter was heard by the Bombay High Court, which took notice of all the judgments made during the sessions court hearing. The Sessions Judge's comment that there is a distinction between rape and sexual contact was well received by the High Court. They neglected to mention, however, the distinction between passive surrender and consent. The court then observed that the accused's permission was not freely granted and was instead obtained as a result of the fear of arrest by the police. The accused were exonerated after the matter was later sent to the Supreme Court. The youngster did not exhibit any evidence of damage or resistance, and the court recognised that her permission was freely given. The girl may have also provoked the cops since she was sex-dependent. The Indian Supreme Court has concluded that the alleged sexual encounter was not a rape.

The "Criminal Law (Amendment) Act" was passed in 1983 following the decision in this case, and it made numerous changes to the rape laws in India. A new "Section 114(A) of the Indian Evidence Act"²⁰ was added in the 1983 Criminal Law Act to allow courts to conclude that the victim did not give consent to the sexual activity if she had stated that she did not give consent for the intimacy after being assaulted. The Criminal Law Amendment Act of 2013 makes several changes to Sections 376(a), (b), (c), and (d) of the Indian Penal Code. The Indian Penal Code 1860 now includes the term "custodial rape" for crimes committed while a victim is in custody. Persons who violate Section 376(2)²¹ are subject to a harsh sentence of 10 years in prison or for life with a monetary penalty.

In landmark case **Mukesh & Anr. Vs State for NCT of Delhi & Ors.**²² also popularly known as the "**Nirbhaya Case**", a young female physiotherapist was severely raped on a bus in Delhi on December 16, 2012, by five people, including a juvenile. Using an iron rod, the attackers tore

¹⁹Tuka Ram And Anr Vs State of Maharashtra, AIR 1979 SC 185

²⁰ Indian Evidence Act. § 114 (A)

²¹ Indian Penal Code. § 376 (2)

²² Mukesh & Anr Vs State For Nct Of Delhi & Ors, CRIMINAL APPEAL NOS. 607-608 OF 2017

out the victim's intestines. She passed away in a hospital in spite of all attempts to save her. According to reports, one of the accused committed suicide in the jail. The court also gave one youngster a sentence of three years in a juvenile institution and sentenced four adults to death. A victim of a sexual assault committed by a minor was sentenced to spend three years in a rehab center. This act profoundly shook the public's conscience and generated discussion about how to respond to such heinous atrocities. Then, to remedy this, various legislative measures were undertaken. After this occurrence, JS Verma, a former Chief Justice of India, was appointed to lead a commission that studied the country's criminal laws and made recommendations for potential revisions to strengthen the penalties for sexual abuse and Indian Rape Laws. The "Criminal Law Amendment Act, 2013", which provided for the revisions in several laws relating to sexual offences, was passed in accordance with the committee's recommendations. "The Indian Evidence Act of 1872, the Indian Penal Code of 1973, and the Protection of Children from Sexual Exploitation Act of 2012" were a few of these. The "Criminal Law Amendment Act, 2013", was passed to make changes to a number of statutes that pertain to sexual offences. The provision for the death penalty in rape cases if the victim passes away or is left in a persistent vegetative condition was one of the modifications adopted. Another case called **Independent Thought Vs Union of India and Anr.**²³ which basically involved marital rape says that Independent Thought, a 2009-founded human rights organisation, presented the argument. The organisation filed a petition in opposition to "Indian Penal Code" Exception 2 (Section 375²⁴), which allows for the discrimination of a girl child. The "Criminal Law Amendment Act of 2013" increased from 16 to 18 the legal age of consent for sex. However, according to Exception 2, sexual activity can still take place between married couples even if their union is not voluntary, if the lady is older than 15 years old. According to the "POSCO Act of 2012", the legal age for consenting sex is 18. The Act's Section 3, which makes it illegal to possess obscene materials, conflicts with the aforementioned Exception 2. In another landmark judgement also greatly influenced the rape laws of India. The case of **Vishaka vs State of Rajasthan and Ors.**²⁵ also popularly known as "**Bhanwari Devi Case**". In this case, it was about defending women against workplace sexual harassment. In 1992, a social worker attempted to prevent a child marriage and was allegedly gang-raped in the process. Despite filing a police report, her case was not handled correctly. She filed a lawsuit in

²³ Independent Thought Vs Union of India and Anr., WRIT PETITION (CIVIL) NO. 382 OF 2013

²⁴ *Supra Note 7*

²⁵ Vishaka Vs State of Rajasthan and Ors., JT 1997 (7) SC 384

an attempt to obtain justice, and the trial court determined that there was insufficient evidence to convict the defendants. Every workplace should have a complaint committee in place to resolve complaints. It should be led by a woman employee, participate in third parties or non-governmental organisations, and only have 50% female members. Employers would be compelled to take the necessary steps in response to all allegations of sexual harassment of female employees, which would be handled solely by this committee. The victim would then get advice and recommendations from the committee regarding the next step. These rules were developed to provide women with the appropriate protection from harassment in the public and private sectors. In response to the Supreme Court's ruling, the Indian government passed the "Prevention of Sexual Misconduct at Work Act, 2013", into law. The effective date of this Act is 9th of December 2013.

CONCLUSION

The Indian judicial system as a whole received a high honour from the people of this country. And the independence, impartiality, and honesty of the judiciary's members are what have earned it the respect of the general public. This was a result of humanity's aspirations to uphold the rule of law and create an impartial, fair, or equitable society. The judiciary's greatest strength was that, from the perspective of society, judges were disinterested, unbiased, and trustworthy, and that the general public had faith in the judiciary's structure. Because of this, nowadays, the court receives greater respect and honour than the other two national institutions. The legislation needs change along with society's advancement in order for the latter to preserve its significance and relevance. Otherwise, neither the law nor the latter will benefit from society's continued growth while the former stays static. The legal system could not be slowed down or avoided. The country's citizens' fundamental rights have been significantly protected by the higher courts. As of today, the scope of "Article 21 of the Indian Constitution" has been significantly expanded, and it now states that a person's right to life also includes a right to live in dignity.

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