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RAPE - IS THE COUNTRY ACTUALLY INDEPENDENT

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ABSTRACT

A woman is considered as a goddess in a country like India, she is seen as the epitome of knowledge, goodness and piety. When we talk about India as an independent country what do we see as independence? Is it geographical independence, political independence or financial independence. Although this country is celebrating its 78th independence from the British rule, the independence is enjoyed only by half of its population because the rest of the population is always petrified of their safety and still has to go for a candle march for a getting justice. The independence of India unfortunately lacks social and gender independence. According to official statistics 1 girl is raped every 15 minutes in India and in general 72.2% of rape victims are over 18 while 27.8% are under 18.[2]

Despite major judgments like the Nirbhaya rape case, Mathura rape case, Aruna Shanbaug case and Vishaka case rapes continue to occur in the same manner. What is the root cause of such crime against women? Is it the social media or is it the dressing of women or the unfulfilled sexual aspirations of men?

This paper focuses on highlighting the issue of rape and how it affects not only the victim but the society in large. It also examines the situation of other countries and compare with the Indian context. The literature review consists of a study of the recent case of the Kolkata murder and also highlight major comparisons of rape in India and other countries.

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[2] [Maitrisutariya][Research on rape][legal services India]https://www.legalserviceindia.com/legal/article-8731-research-on rape.html#:~:text=According%20to%20the%20NCRB%20(National,committed%20by%20a%20known%20individual.&text=In%20general.,while%2027.8%25%20are%20under%2018 (18/8/24)

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KEYWORDS

Rape, Independence, Society, Victim, Goddess

INTRODUCTION

Rape, sexual assault and verbal abuses of females of all ages and socio-economic strata have been common incidents in India. Such crimes distress countless women and challenge their wellbeing.

A country which is known for its diversity in languages, culture, traditions, handicrafts, food etc. is ranked 128 out of 177 for women safety according to the Georgetown institute for women peace and security as of 2023.[3]

A timeline for rape

The concept of rape is far from novel; it has been a part of human history for millennia. Rape can be described as a profoundly barbaric and horrific act that not only infringes upon a woman's bodily autonomy and dignity but also represents an assault on the very essence of humanity itself. Historical records reveal that rape was a troubling and pervasive issue across many ancient civilizations, including Roman, Greek, and Indian cultures.

While these societies often recognized rape as a serious crime, it remained a recurring theme in their myths and legends, reflecting a deep-seated issue in their social fabric. During these times, there were also evolving notions of justice and retribution for perpetrators of rape. The medieval period continued to grapple with the concept of rape, with varying degrees of legal and social responses aimed at addressing and punishing the crime.

In the modern era, legal systems have developed more structured penal norms to address and penalize offenders of rape. However, the issue of rape and sexual harassment is not a recent phenomenon; it has been a significant and sensitive issue throughout history. The treatment of women as property and their susceptibility to abuse and mistreatment have been longstanding issues, revealing a troubling continuity of gender-based violence and discrimination across ages.

Different kinds of rape

[3] (Georgetown institute for women, peace and security) https://giwps.georgetown.edu/country/india/ (18/8/24)

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There are different kinds of rape which have come up in the recent years namely *incest* which involves rape between close family members which include parents and child uncle and niece. *Partner rape or marital rape* which is sexual intercourse without consent between married couple. *Acquaintance rape*, done by people who are in social relationships, who are known to each other. Aggravated rape which includes forced sex which may lead to death and grievous injury.[4]

When a case of rape comes up, the society is very quick to blame the victim with statements like

"She must have asked for it" while in Jharkhand a 3.5-year-old nursery student was raped by a school van driver in Jamshedpur.[5]

"Girls should not go out at night" whereas a drunk man raped a vizag woman in broad daylight.[6]

"She would have worn a revealing dress" but a catholic bishop was acquitted of raping a nun in India.[7]

Causes for rape

Psychologists generally agree that rape is a crime rooted in non-sexual motivations; tied to hostility, anger and the need to exert power and control. Most rapists feel powerless, have low self esteem and view women as manipulative and exploitative in 1991.[8] But now the reasons have widened including drug abuse, family honor, weak legal sanctions for women abuse.

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[4] (Healthy place)https://www.healthyplace.com/abuse/rape/types-of-rape-the-different-forms-of-rape (18/8/24)
[5](Hindustan times) https://www.hindustantimes.com/india-news/jharkhand-3-5-year-old-nursery-student-raped-by-school-van-driver-in-jamshedpur-101723421945761.html#:~:text=East%20Singhbhum%20district-,A%2030%2Dyear%2Dold%20school%20van%20driver%20was%20arrested%20for,in%20Jharkhand's%20East%20Singhbhum%20district.&text=The%20incident%20took%20place%20on,hours%20an%20arrest%20was%20made. (20/8/24)
[6](India today) https://www.indiatoday.in/india/video/drunk-man-rapes-mentally-challenged-woman-visakhapatnam-1070024-2017-10-23#:~:text=A%20drunk%2020%2Dyear%2Dold,arrested%20by%204th%20Town%20police. (20/8/24)
[7] (India today)https://www.indiatoday.in/india-today-insight/story/why-bishop-mulakkal-was-acquitted-of-rape-1901324-2022-01-18 (20/8/24)
[8] [L Norment];[what's behind the dramatic rise in rapes][137632][NCJRS](1991) https://www.ojp.gov/ncjrs/virtual-library/abstracts/whats-behind-dramatic-rise-rapes#:~:text=Psychologists%20generally%20agree%20that%20rape,women%20as%20manipulative%20and%20exploitative. (20/8/24)

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The major causes of rapes are the urge for men to exert control and pressure on women, in the kind of patriarchal society in which we live in, most of the men do not like the opportunities which are enjoyed by the women. Imperialist patriarchy objectifies women's body, beauty and labour as saleable commodities in the market. It commodifies women as sex objects, as objects of enjoyment. This feeling of inequality which is instilled within men must be curbed from the childhood. Men must be taught to see and respect women right for their childhood. Often we give a list of instructions to women to follow certain type of sitting, standing, laughing etc. Such kind of restrictions must be imposed on boys during their upbringing.

Media beyond doubt plays a remarkable role in the minds of the public in India. In most of the Bollywood and Tollywood cinema women are seen as an item and the film is considered to be a hit if there is a good "item song" in it. In spite of that media also plays a crucial role in the awareness of a sexual offence. In most of the cases the unrest in the media is the reason for courts to take suo moto cases. Hence the major reason or root cause of rape cannot be blamed on the media though media significantly contributes for the same.

Various instances of rape over time

The concern and sensitivity of rape has increased in India due to the major rape cases which captured the nation-wide attention namely the Nirbhaya rape case[9] in 2012,

where a 23-year-old physiotherapist student was gang raped brutally and beaten in a bus while she was travelling back home. 6 rapists have raped her for an hour by travelling all over Delhi, inserted an iron rod into her private parts and tore almost 95% of her intestines. The victim did not know the rapists they were complete strangers to her, what harm did the victim do to those convicts or the society for her to be treated like that.[10]

The next case includes a case of sexual harassment in the workplace that is the Vishaka case[11].

Bhanwaridevi a social activist had been gang raped by Ramkarangujjan as she tried to stop the child marriage of the latter's daughter who was not even a year old. She was gang raped

[9] MUKESH & ANR V STATE FOR NCT OF DELHI & ORS (2017) 6 SCC 1

[10] (The week) https://www.theweek.in/news/india/2020/03/02/nirbhaya-case-as-hanging-nears-tracing-backgrounds-of-the-6-convicts.html (20/8/24)

[11] VISHAKA & ORS V STATE OF RAJASTHAN 1997 AIR SCW 3043

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in front of her husband and was denied medical assistance by the Jaipur hospital. In the police station she was asked to leave her lehenga as a matter of evidence and she had to leave the station with a blood-stained dhoti of her husband. As a result of this case a long list of guidelines was framed by the honorable Supreme Court of India in 1997.

Despite all these cases and precedents, the hands which was trained to save the lives of people was not protected, a postgraduate trainee doctor was raped and murdered within the college premises in the seminar hall of RG Kar Medical college, Kolkata on August 9th 2024 at 3 am after she had finished a 36-hour shift.

This is unfortunately the position of India even after 78 years of independence.

RESEARCH METHODOLOGY

This paper is of descriptive nature and the research is based on secondary sources for the deep analysis of the offence of rape in India. The methodology used here is that of a doctrinal research methodology, which includes analyzing legal principles and legal precedents. Here the recent famous case of RG Karuniversity was analyzed. This method was used to answer the legal problems and find better solutions.

REVIEW OF LITERATURE

The literature review includes a case study and the comparison between India and other countries as to how the issues of rape and sexual harassment is handled.

Recent case

RG Kar Medical college rape and murder of a postgraduate trainee doctor.

A 31 year old postgraduate trainee doctor was raped and murdered in the seminar hall of a state run medical college in Kolkata by a civic volunteer after she had finished a 36 hour shift and gone to the seminar hall for taking some rest at 3 am in the morning. In the morning the other interns found her body and reported, her parents had to wait for 3 hours to see her body and later filed an FIR at 11.45pm.

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Section 73 of the Bharatiya Nyaya sanhitha mentions that it is illegal to publish or print anything that may reveal the identity of the victim.[12] Yet the photos and identitiy of the victim had been published.

The principal of the college had resigned due to alleged defamation and within 4 hours of resignation he was posted in another college as the principal. The college had a history of such mishaps for example, a female student, PoulamiSaha, was found dead on the ground of the emergency building in 2020. Though no suicide was recovered, the police and hospital officials claimed the woman suffering from depression and killed herself by jumping from the sixth floor, alleged the doctor. In 2003, Suvrojyoti Das, 23, an MBBS intern, died after he fell from the hostel building. Police claimed the student injected antidepressants and sliced his veins before jumping off the roof, reported HT. According to police, no suicide note was recovered in this case either. Another student, Soumitra Biswas, found hanging inside his hostel room in 2001 and his death was declared a suicide, reported the outlet. A doctor, who wished to remain unidentified, alleged that Biswas was murdered for protesting against a racket of students and hospital staff who were involved in hiring sex workers to shoot porn videos in hostel rooms. The racket was even allegedly involved in necrophilia as a NewsX report claimed that corpses were exploited by the porn video racket.[13]

While they have arrested only one Sanjay roy, the postmortem report of the victim shows the presence of 150mg of semen where one male can have only 10mg of semen. There were 16 external injuries and 9 internal injuries, The post-mortem examination was done from 6:10 pm to 7:10 pm on August 9. It states that “death was due to effects of manual strangulation associated with smothering” and the “manner of death” is “homicidal”. “There is medical evidence of forceful penetration/insertion in her genitalia — possibility of sexual assault,” it states.

The report was signed by Apurba Biswas, professor, department of forensic medicine and toxicology, R G Kar medical college; Rina Das, associate professor, department of forensic

[12]Bharatiya Nyaya Sanhita, 2023,No 73, Acts of Parliament ,2023(India)
[13] (The week)https://www.theweek.in/news/india/2024/08/20/the-ugly-past-of-rg-kar-medical-college-suicides-porn-video-racket-and-necrophilia-allegations.html (20/8/2024)

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medicine and toxicology, R G Kar medical college; and Molly Banerjee, assistant professor, department of forensic medicine, NRS medical college and hospital.[14]

A medical room of the college had been vandalized by unidentified miscreants amid the protests and candle march rally by the saffron party's womens wing on the midnight of 14th august 2024.[15]The vandalization is seen as a political stunt to hide the evidence after the case had been transferred to the central bureau of investigation (CBI).

The case detailed above is nothing less than a political issue, in all the previous cases of rape which India has seen those reasons were different but this particular case shows how low a politician can go to cover the mistakes. A mob had vandalized the crime spot and the police did nothing but just filed 37 FIR's as stated by the advocate in the hearing on 20th August 2024 in the supreme court. The postmortem report and the identity of the victim was published and very well misused by the public. A taskforce committee has been set up by the order of the supreme court to regulate the harassment and assaults of medical practitioners in the latest hearing. There is no purpose of setting up committees, India already has a lot of committees and despite those regulations a lot of crimes have been occurring. What needs to be changed is the mindset of people and bringing up of boys to see women in a clear and pure perspective.

Comparison of rape in India with the other countries

Title*: Is India the rape capital of the world? Think again*

Author*: DhruvChahal*

In the article written by DhruvChahal named Is India the rape capital of the world? think again[16],the author has detailed many excerpts regarding rape in India.

Women's rights lawyer Flavia Agnes had mentioned that the foreign media always describes India has the maximum number of rapes, but it isn't true which is used by the author in

[14] (The Indian express)https://indianexpress.com/article/cities/kolkata/kolkata-r-g-kar-doctor-rape-murder-case-post-mortem-strangulation-injuries-9522095/ (20/8/2024)

[15] (The Hindu)https://www.thehindu.com/news/national/kolkata-doctor-rape-and-murder-live-updates-rg-kar-medical-hospital-protests-west-bengal/article68526665.ece (20/8/2024)

[16] [DhruvChahal],[Is India the rape capital of the world],[the medium]https://medium.com/@dhruvchahal2002/is-india-the-rape-capital-of-the-world-think-again-7e477a9e8d2c (20/8/2024)

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support of his statement stating the rate of rape in India is very low and so is the conviction rate.

The rape rates are unfortunately alarming in India as according to the official reports of the government it is stated that 1 girl is rapes in every 15 minutes in India. The annual number of rapes have always been above 30,000 and peaked to 39,000 in 2016.[17]

One statement which is mentioned by the author, accurate statistics regarding rape is notoriously difficult to obtain is completely true. The major reasons are the family pressure to not file a complaint due to the embarrassment they may have to face later, which has reduced recently as in the most famous cases the parents stood up for their deceased daughter and fought long battles of justice which is the second reason as to why rapes aren't files that is long battles of justice, in India a candle march and wide strikes is often required to grab attention and make the process of justice faster. Sometimes the rapes are committed or assisted by the government officials which makes it very easy for them to wash off their hands and becomes very difficult for the rape victim to attain justice due to the political cover which is availed by the rapist.

Norway, Finland, Iceland and Denmark are considered the safest countries for woman all over the world, they are ranked the lowest for rape according to Georgetown institute for women, peace and security.[18]

NORWAY – the ratification of the council of Europe convention on preventing and combating violence against women and domestic violence came into force on November 2017 and an action plan against rape was called for all over the country starting with the review of the penal provisions (section 291 of the penal code). The action plan also consisted pf victim support and assistance, revie of homicide cases and free legal aid and also the creation of a web portal[19] for easy access to information about rights and assistance.[20]

INDIA – A lot of measures have been taken by the Indian government to curb rape such as The Criminal Law Amendment Act (2018) which seeks the trial investigation to be

[17] (reuters)https://www.reuters.com/world/india/indias-struggles-with-high-rape-cases-low-conviction-rates-2024-08-15/ (20/8/2024)
[18] (Georgetown institute for women, peace and security)https://giwps.georgetown.edu/ (20/8/2024)
[19] (dinutvei)https://dinutvei.no/ (21/8/2024)
[20](UNWomen)https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/A-75-274-Submission-Norway-en.pdf (21/8/2024)

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completed within two months but in reality, it takes 8 months to get a statement from the victim or the accused.[21] And after the investigation is done it takes years for the judgement to be announced. All the acts and legislations in force are way too old to suit the new conditions of the offences in recent times.

Death penalty is said to be given in the rarest of rare case. In order to make rape a rarest of rare case death penalty should be awarded. 31 countries have adopted death penalty for rape.[22] India must also adopt such kind of mechanism to execute rape convicts.

Comparison between countries for rape is unquestionably difficult reasons being countries have divergent methods and definitions of rape. Nevertheless, inspirations can be taken from other countries in maneuver of rapes and assaults against women.

SUGGESTIONS

In order to reduce the rape cases in India proper sex education must be provided to young girls and boys right from their childhood. Good touch and bad touch must not be administered only to the girls but also to the boys. Children should be brought up to respect the opposite gender and not feel any sense of inequality but a mature sense of equality and friendliness. Boys should be taught to respect every girl the same way they respect their own mother and sister.

Eve teasing should be strictly banned and offenders should be punished severally, the general public who are present while eve teasing must also condemn such action. The normalization of passing and posting of sexual comments must be reprimanded and punished.

In India, in major cases the victim is often blamed for the mishap and measures are suggested for the victim or women to not fall for such offences. For example, a film maker Daniel Shravan had commented stating women must carry condoms and cooperate with the rapists in order to prevent rapists from murdering. Instead of carrying condoms women should carry safety tools from saving themselves from rape. Unfortunately, this is how we have to ensure our safety by claiming to be in an independent country.

[21] (The news 18)https://www.news18.com/news/india/law-gives-60-days-for-rape-trial-delhi-court-take-240-for-survivor-statement-1442305.html (21/8/2024)
[22] (TBS news)https://www.tbsnews.net/world/punishment-rapists-different-countries-144115 (21/8/2024)

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The legal mechanism must be strengthened and a tribunal must be formed purely for crimes against women, this will help in accelerating the process of justice. A committee must be formed to monitor sexual offences all over India with their branches in most of the districts by appointing a person in that particular district. The committee must include the rape survivors and their parents suggestions and opinions to combat rape rather than appointing the same set of people who know nothing about the subject and sit just for power.

CONCLUSION

We come from a country where battles were fought when the women were humiliated and now, we are going for a candle march to gain justice. Its high time things change. Rape doesn't affect the particular victim or the victim's family it affects the entire society and country. The recent rape case has shocked the entire medical association in India. Its not fair that only half of the population enjoys the independence this country has gained while the whole population fought for the struggle, neither it is fair to keep the families having daughters in a state of worry till their daughter reaches home or is safe. Hence a proper statute governing all the issues of sexual harassment and strengthen our legal system to include capital punishment and make the offence a rare case may be introduced.

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