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**Rape; Whose Fault**

**Sakshi Goyal**

## ABSTRACT

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यत्र नार्यस्तु पूज्यन्ते रमन्ते तत्र देवताः ।

यत्रैतास्तु न पूज्यन्ते सर्वास्तत्राफलाः क्रियाः ॥ (Manu Smriti 3.56)

The divine are extremely happy where women are respected ;  
where they are not, all actions are fruitless .

“This work from manu smriti is evident of the fact that India and Indians have always believed in karma and divine powers. Since ages women has been respected as abode of gods. With the passage of time the increasing rate of heinous crime strike the sanctity and dignity of women. Let’s protect the credibility of Indian culture from vanishing.”

## PROLOGUE

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The term 'RAPE' connotes sexual assault or we can say it basically means, someone forcefully having sexual intercourse with another i.e., without consent. If we talk about Indian society it is an patriarchal society and sex education is not imparted to children at right age and it remains a Taboo till today.

Sex education is defined as a broad program that aims to build a strong foundation for lifelong sexual health by acquiring information and attitudes, beliefs and values about one's identity, relationships, and intimacy. Sexual health is considered to be a state of physical, emotional, mental, and social well-being in relation to sexuality and not merely the absence of disease or infirmity as defined by the WHO.<sup>1</sup>

If we talk about imparting sex education it is considered to be shameful and it should not be discussed in public and in schools also health hygiene is discussed on the name of sex education.

This is the obstacle which is troubling and not letting Indian society to shoot up.

## CAUSES OF RAPE

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Rape is an heinous crime involving forceful sexual intercourse and there are innumerable opinion or views on what are the causes; In this patriarchal and gendered world, rape is a stigmatized crime wherein aspersions are cast on the victim instead of the accused. Accused have reasons to justify themselves a sometimes it is contended that it is because of the size of the dress and even makeup but here the question arise is that the women who clad themselves in 'sarees' or wear 'burkhas' and even who are of unsound mind and minor girls and infants are they not raped? Hence, rapists have all sorts of justifications to justify their acts but the reasons are;

- Lack of sex education
- Rape myths
- One gender considering themselves dominant over the other
- Sluggish court systems
- Considering low status of women.

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<sup>1</sup> Geneva: WHO; 2006. WHO. Defining sexual health.



## LEGAL POSITION ON RAPE

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Sec. 375 I.P.C. defines Rape as;

A man is said to commit “rape” if he —

1. penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
2. inserts, to any extent, any object or a 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
3. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
4. applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:
  1. Against her will.
  2. Without her consent.
  3. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.
  4. 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 believes herself to be lawfully married.
  5. With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.
  6. With or without her consent, when she is under eighteen years of age.
  7. When she is unable to communicate consent.

Exceptions

1. A medical procedure or intervention shall not constitute rape.
2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.<sup>2</sup>

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<sup>2</sup>Sec. 375 INDIAN PENAL CODE, 1860.

## SECTION 376 (PUNISHMENT FOR RAPE)

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(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,—

(a) being a police officer commits rape—

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

; and if any person violates Sec. 375 I.P.C. then he is said to have committed rape and punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.<sup>3</sup>

## CASE LAWS

Despite of the law and its punishment Rape is the fourth most common crime against women in India. 24,923 rape cases were reported across India in 2012. Out of these, 24,470 were committed by someone known to the victim (98% of the cases)<sup>4</sup> and this ratio is increasing on each successive day.

There are plethora of Rape cases out of which some gained public attention and some remained unnoticed, unheard and unreported and some of them are :

In *Tukaram V. State Of Maharashtra*, In March 1972, a 16-year-old tribal girl was raped by two policemen in the compound of Desai Ganj police chowky in Chandrapur district of Maharashtra. Her relatives, who had come to register a complaint, were patiently waiting outside even as this heinous act was being perpetrated in the police station. When her relatives and the crowd threatened to burn the police chowky down, the two guilty policemen, Ganpat and Tukaram, reluctantly agreed to file a panchnama. At the Sessions Court, Mathura was accused of being a “liar” and that since she was “habituated to sexual intercourse”, her consent was given. The Nagpur bench of the Bombay High Court set aside the judgment holding that that passive submission due to fear induced by serious threats could not be construed as willing sexual intercourse. However, the decision of the Supreme Court remains a blot on its record to this day. The rationale for acquittal was that Mathura had not raised an alarm and there were no visible marks of injury on her body. The judgment did not distinguish between consent and forcible submission and led to criminal law second amendment in the year 1983, where it was said that “if victims says that she did not consent to sexual intercourse, the Court shall presume that she did not consented as a rebuttle presumption.”<sup>5</sup>

In *Mohd.Habib Vs State, the Delhi* High Court allowed a rapist to go scot-free merely because there were no marks of injury on his penis- which the High Court presumed was a indication of no resistance. The most important facts such as the age of the victim (being seven years) and that she had suffered a ruptured hymen and the bite marks on her body were not considered by the High

<sup>3</sup>Sec. 376 Indian Penal Code, 1860.

<sup>4</sup>National Crime Records Bureau (NCRB) 2013 annual report.

<sup>5</sup>Tukaram V. State Of Maharashtra, 1979 AIR 185.

Court. Even the eye- witnesses who witnessed this ghastly act, could not sway the High Court's judgment.

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In *State Of Punjab V. Gurmit Singh*, the Supreme Court has advised the lower judiciary, that even if the victim girl is shown to be habituated to sex, the Court should not describe her to be of loose character.<sup>6</sup>

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In *Bhanwari Devi V. State Of Rajasthan*, in this case the basic definition of sexual harassment at workplace and provide guidelines to deal with it. It is seen as significant legal victory for women's groups in India.<sup>7</sup>

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In *State V. Ram Singh And Ors.*, In this an 23 year old girl was raped in a bus by 6 people on 16 december 2012 and it was one the heinous act done with a women which shook up the whole country and this case finally reached its conclusion after seven years in which 4 convicts were awarded death penalty and one was a juvenile who was released after 3 years and one committed suicide during the trial of the case.<sup>8</sup>

## **LAWS AND THERE IMPLEMENTATION**

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Various amendments in the laws have been brought up and anti rape laws have been formulated. As, in the Delhi gang rape case, 2012 a law was formulated that if a juvenile does a heinous crime than he will be liable as a major is. Not only bringing the laws will bring a change in the society but their implementation plays a vital role which can be achieved through incorporating values, morals and respect for women.

## **STATISTICS**

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These are a few instances where this heinous crime of rape came into public notice but hundreds of rape cases takes place each successive day and this ratio is increasing at an alarming rate stated in NCRB reports.

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<sup>6</sup> State Of Punjab V. Gurmit Singh,1996 AIR 1393

<sup>7</sup> Bhanwari Devi V. State Of Rajasthan, 1970 WLN

<sup>8</sup> State V. Ram Singh And Ors., SC 114/2013.

Despite of the anti rape laws and change in the law the rate of rape is not decreasing and around 100 sexual assaults are reported to police in the country every day, with nearly 39,000 alleged attacks reported in 2016, an increase of 12% from the previous year.<sup>9</sup>

The total number of convicts of rape in India during 2013 (at the end of the year) was 8188. The number of male convicts of rape was 8104 while the number of female convicts of rape was 84.

The top 10 States/UTs with the highest number of convicts of rape in 2013 were: Uttar Pradesh, Madhya Pradesh, Haryana, Chhattisgarh, Delhi, Rajasthan, West Bengal, Punjab, Gujarat and Assam.

The top 5 States accounted for 56.63% of total number of convicts of rape in India during 2013 (at the end of the year).Uttar Pradesh had 1621 convicts of rape in 2013, which was 19.8% of total convicts of rape in India. The number of male convicts of rape was 1606 while the number of female convicts of rape was 15. Madhya Pradesh had 1157 convicts of rape in 2013, which was 14.13% of total convicts of rape in India. The number of male convicts of rape was 1145 while the number of female convicts of rape was 12. Haryana had 805 convicts of rape in 2013, which was 9.83% of total convicts of rape in India. The number of male convicts of rape was 799 while the number of female convicts of rape was 6. Chhattisgarh had 582 convicts of rape in 2013, which was 7.11% of total convicts of rape in India. The number of male convicts of rape was 581 while the number of female convicts of rape was 1. Delhi had 472 convicts of rape in 2013, which was 5.76% of total convicts of rape in India. The number of male convicts of rape was 466 while the number of female convicts of rape was 6.<sup>10</sup>

## **HOW DOES RAPE SABOTAGE SANCTITY OF WOMEN?**

Rape means a sexual assault by man to a woman without her will or consent and it not only ravish her physically but also emotionally as she is seen as outcast for rest of her life and it becomes almost impossible for her to live a normal life again altogether. Rape effects the sanctity, dignity and pride of women which are essential ingredients to live a dignified life, also recognized by Supreme Court in its rulings.

This heinous and brutal crime of rape effects the life of victim as well as of perpetrator because sometimes they commit suicide when they face the realities of world. So, to protect both we need to

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<sup>9</sup> National Crime Records Bureau

<sup>10</sup> Community.data.gov.in, NCRB

make world a safer place it is significant that proper sex education is given and children are grown up with the values to respect the women.

Besides, having the impact on the victim and perpetrator, this heinous crime effects and ruin the life of their families too.

## **INFERENCE**

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This heinous crime of rape is increasing at an alarming rate making India a country which is not safe for women and this ratio cannot be bought down by creating deterrence in society but this issue could be solved to a greater extent by reformation in the society;

By bringing up children in a way so that they know how to respect women and behave accordingly. As in contemporary society, women are told to behave a certain way if the same thing will be taught to both the male as well as female child then only it will bring difference.

This heinous crime of rape effects the victim and shook up the soul and sanctity of women which remains with her for the whole life and it effects the accused as it ruins his life and sometimes they do not know, and when they realize the reality than they commit suicide, etc. so, to make the world a safe place it is significant that the rate of crime against women depreciate as to make society a better place to live and the same thing was upheld by the Supreme Court and held that “there are incidents where a child in the age group of 16-18 may have developed criminal propensities which would make it virtually impossible for him/her to be reintegrated into mainstream society but such examples are not of such proportion as to warrant any change in thinking, since it is probably better to try and reintegrate children with criminal propensities into mainstream societies rather than to allow them to develop it to hardened criminals which does not occur well for the future.”<sup>11</sup>

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<sup>11</sup> State V. Ram Singh And Ors., SC 114/2013.