

## Judicial Remarks in Favour of Rape Victims

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### **Abstract**

*Role-playing is a kind of gender-based violence against women and girls that has the potential to be as torturous as other forms of abuse against males, according to the human rights framework and human rights law. Role is also recognised as a form of gender-based abuse against women and girls under the human rights framework and human rights law. During the course of the trial, victims of the crime of rape were provided with various forms of legal protection. Despite this, police officers often treat rape victims as objects rather than subjects whose voices should be heard and whose rights should be protected.*

**Keywords:** framework, manifestation, violence, torture.

### **Introduction :**

The Indian Constitution provides a framework for the country's criminal justice system, which may be examined here. Rules for establishing whether or not an accused person is guilty were the primary emphasis of the Criminal Procedure Code and the Indian Evidence Act.

It is only recently took note that the interest of victims shall acquire a center place in that scheme with the amendment of criminal procedure code, and the enactment of legal services authority Act.

### **Research Methodology :**

In approaching the topic at hand, the researcher adopted a combination of descriptive and analytical method. Evaluation of existing law relating to rape victims, and judiciary view has been examined meticulously and keenly. The doctrinal legal research has been employed to do by arranging, analyzing and systematizing the law.

### **Object of the study :**

The study shall be focusing on the violent crimes where the victim's rights to restitution and reparation is more badly felt than in other offences. Main focus to analyse present position of victims of crime and their rehabilitation procedure under National Law and identify the hurdles faced by the victims in the process of criminal justice administration in India.

### **Role of judiciary:**

The American judicial system is often regarded as the most impartial branch of government. There are two functions of this autonomous judiciary:

- 1) the traditional role i.e. to interpret the laws, and another is
- 2) Going beyond the bounds of the law in order to administer justice (also known as "judicial activism")

A creative judiciary may be said to exist in India. The integrity of the judicial system rests on the way in which justice is carried out.

**Justice K. Subba Rao** explains the function of the judiciary as thus:

- It's the federation's balance wheel, for one thing.
- Maintains a framework within which all authorities may operate while protecting individual liberties and promoting social fairness
- It controls the Administrative Tribunals.

Judicial rulings may help move society closer to a more fair system. The creation of binding precedents in the public interest is yet another critical role for the legal system to play. The rule of law requires protection against corrupt officials if it is to endure. A law's efficacy is directly proportional to the efficiency with which it is enforced. In recent years, the concept of "judicial activism" has gained prominence. One way to look at it is as the legal system adapting to the changing needs of a dynamic society.

### **Legislative Blunders:**

Despite the Supreme Court's severe condemnation, acquittals nevertheless occur when courts stigmatise the victim's reputation. An earlier Supreme Court judgement from 1996 reversed an acquittal where the judge had used the victim's consent to sexual intercourse as proof of her "loose character." The trial court ruled that the victim was a sexually promiscuous free spirit since the speculum the doctor used easily inserted into her vagina. These remarks lack the gravity that one would expect from a judge. A sexual assault victim must be given the same consideration as any other witness in court. Cases involving rape are notoriously difficult to resolve because of the courts' inconsistent definitions of victim consent. Any act of sexual penetration that does not have the victim's consent is included in both the old and modern definitions of sexual assault. Since the courts' understanding of consent often requires judging the behaviour of women, fairness may be undermined. After hearing that the minor victim was "such a loose girl" who would have accepted to the intercourse since her pubic hair had been shaved, the judge found the accused not guilty of rape. The core of sexual assault is sexual contact that occurs without the victim's consent. The meaning of "consent" in this setting has, in fact, been hotly contested. After the incident, "no evidence of injury were seen on the person of the girl, and their absence goes a long way to infer that the supposed intercourse was a peaceful event," the Supreme Court declared in one of its most infamous rulings. To date, the Supreme Court has never expressly reversed Tuka Ram, and it continues to reject damage marks as proof of agreement. In Mohd.Habib v. State, the victim's lack of penile injuries led the Delhi High Court to conclude that he had not resisted his attacker. The victim was just seven years old, she had a ruptured hymen, and she had bite scars all over her body, however all of this evidence was overlooked by the High Court. No amount of evidence, including witness testimony, could convince the High Court to reverse its verdict on this heinous act.

### **Landmark Judgments:**

With the changing socioeconomic climate, judges are using their discretion to enhance the quality of justice for female litigants. Judicial officials have played a crucial role in upholding and expanding laws that safeguard women's rights in the United States. The Indian judicial system has attempted to provide an interpretation of domestic law that is consistent with applicable international treaties. Here are just a few of the more notable examples: Legislation based on colonial laws required the consideration of a woman's moral past in rape investigations from 1860 to 2002. As a result, a woman's sexual history was considered while deciding on a suitable penalty. Sadly, even if this

phrase were abolished, nothing would change in how things are done in courtrooms. Although the Mathura case received a lot of media attention and a change was made to the Evidence Act in 1983 (114-A) to allow a woman's word to be accepted for her non-consent, no subsequent judgments have been monitored. This remains the case even if the new legislation is strictly enforced. Two police officers have been accused of sexually abusing 16-year-old Mathure after her family went to the Desai Ganj Police Station in the city of Chandrapur, Maharashtra to report a theft. People close to her were supposedly waiting patiently outside the station for anything to happen. Both the High Court and the Supreme Court ruled that no police wrongdoing occurred since Mathura's sexual behaviour did not raise any suspicions. That "even if a rape victim has been promiscuous in the past, she has the option to refuse to submit herself for just a sexual intercourse to everyone and everyone as she is not an object," a principle established in Supreme Court case law in 1983, requires more exploration. A woman who has been the victim of rape has the right to decline any further sexual contact, regardless of her prior sexual history. After a revision to the Evidence Act in 1983, the court is required to conclude that a rape victim did not consent to sexual intercourse if she testifies to that effect. Additionally, "Custodial Rape" was added to the International Criminal Code, and victims of rape were given the opportunity to have their trials conducted in secret. In 1992, the Supreme Court issued the Vishakha Judgement, which defined "Sexual harassment at work place" in response to the case's unusually high profile. The Supreme Court also set some landmark precedents. The Supreme Court's decision in State of Punjab v. Gurmit Singh held that learning a victim was a woman and had a history of sex addiction did not raise reasonable suspicions about her honesty or integrity. According to the Supreme Court's decision in State of Maharashtra v. Madhukar N. Mardikar, "the unchastity of a woman does not render her open to each and every person to violate her person as and when he wishes." According to the decision, women do not need to provide any justification for their need for safety since they have the legal right to be protected from any kind of physical attack that does not have their permission. This protection extends to any kind of attack, including sexual assault. The law affords her the same degree of protection as it does to everyone else in the same situation. You should give the advice that she provides you substantial consideration since she carries a large amount of moral weight and because she is giving it to you. As an interim form of compensation for the only rape victim in Case B, it was agreed that she should receive a sum equivalent to one thousand rupees (Rs.) every month. Take for example the circumstance between Gautam and Chakraborty. In the case Chairman, Railway Board v. Chandrima Das, the Supreme Court of Bangladesh came to the conclusion that the remedy would have been avoidable under public law due to the involvement of public functionaries and the fact that the matter concerned the violation of fundamental rights or the enforcement of public duties. The decision was made in the context of the case Chairman, Railway Board v. Chandrima Das. In light of the circumstances surrounding the case Chairman, Railway Board v. Chandrima Das, a judgement was reached. At a railway station in Bangladesh, members of the security crew were responsible for the sexual assault of a Bangladeshi lady. Both domestic law, which is based on the provisions of the Constitution, and human rights legislation, which is based on the Universal Declaration of Human Rights from 1948, which is recognised all over the world as the "Moral Code of Conduct" embraced by the General Assembly of the United Nations; both of these factors led to the Supreme Court ruling in favour of the victim. First, domestic law, which is based on the provisions of the Constitution; second, human rights legislation, which is based on the Universal Declaration of Human Rights from 1948; In 1948, the General Assembly of the United Nations unanimously agreed to establish what is now known as the Universal Declaration of Human Rights.

**Suo Motto v. State of Rajasthan** popularly known as German Lady rape case.

This decision was seen as a turning point by many in the fight for equal rights for women. After taking suomoto notice of a case involving a foreign visitor who was raped in Rajasthan in May 2005, the Honorable Mr. Justice N.N. Mathur penned the verdict. The media gave the matter a lot of attention. The decision in this case will establish a new standard for the investigation and prosecution of rape and other crimes against women. According to the court's ruling, "the criminal justice system must be handled from the basis of comprehensive victim care service" in order to minimise crimes against women and ensure the protection of their human rights. The trial courts and the police need to take a more assertive attitude. Existence of Birju Ram in his State An Indian court presided over by Hon'ble Justice Mathur decided that preventing crime was more important than punishing offenders. The court ordered the State to take action to stop the manipulation of people based on their religion, race, or other personal traits, since social problems disproportionately affect women and children. The court also ordered harsh penalties for any public or private sector workers who exhibit partiality to or protection of the defendant, thereby impeding the fair administration of justice.

**In State Of Punjab v. Gurmit Singh & Ors**

Rape investigations and trials "shall be performed in camera" under subsection (2) of Section 327 Cr. P.C., which is not only pertinent but also very vital. In the event of a trial for rape or similar offences, it requires that the proceedings take place "in camera" (behind closed doors). In pursuit of the goal established by the Legislature, courts are always compelled to apply the requirements of Section 327 (2) and (3) Cr. P.C. to trial rape cases in private. Cases like Sakshi v. Union of India (UOI) and others like it have issued further directives that must be carried out. There are a number of factors to keep in mind while considering instances involving the sexual abuse or rape of kids.

- (i) the victim and/or witnesses (who may be just as susceptible as the victim) may be shielded from seeing the accused's body or face by means of a screen or similar device; The accused party's written cross-examination questions,
- (ii) questions, to the extent they pertain directly to the occurrence, should be sent to the Presiding Officer of the Court so that they may be posed to the victim or witnesses in a straightforward and not humiliating fashion; For legal proceedings involving a child abuse or rape victim,
- (iii) she or he should be allowed regular breaks. The Supreme Court has issued an order mandating that lower courts protect the rights of rape victims during trials, including protecting them from hostile cross-examination by defence attorneys. In the words of A.S. Anand, the former chief justice of India, "a murderer smashes the very soul of a victim, while a rapist destroys the physical body of a victim."

**Tuka Ram And Anr Vs State of Maharashtra (Mathura rape case )**

**Facts :-**

On March 26, 1972, two police officers are accused of sexually abusing a young girl who was in their care. The incident is said to have occurred in their custody. The incident took place in the Indian state of Maharashtra, specifically at the Desai Gunj Police Station, which is situated in that state. Within the framework of the Indian Rape Act, this case came to light two difficulties related to the burden of proof as well as the concept of consent.

## **Judgement**

The Sessions court found the accused not guilty since the victim gave their permission voluntarily and knowingly. Since Mathura was used to having her permission sought for, she was not coerced into giving it. According to the court in the Sessions case, sexual assault and sexual encounter are two distinct offences that cannot be equated. The defendant filed an appeal with the Bombay High Court, which reviewed the facts and testimony from the sessions court hearing before reaching its verdict. The High Court praised a Sessions Judge for distinguishing between rape and sexual encounters. On the other hand, they failed to stress the distinction between consent and outright resistance to another's authority. The court then noted that the defendant's agreement had not been freely offered, but rather had been obtained via the use of coercion (i.e., the threat of arrest). As the case progressed, the Supreme Court was brought in and ultimately decided to clear the defendants of any wrongdoing. The lack of resistance and harm, as well as the voluntariness of the young woman's assent, were taken into account by the court. The fact that the child is already used to having sexual encounters increases the likelihood that she may have told the authorities. In a case that was brought before it, the Supreme Court of India found that the alleged sexual misbehaviour did not rise to the level of rape. Large protests and public outcry followed this case, leading to changes in the legislation. India's rape statute was revised in 1986 as a direct response to these instances. At the time of the Mathura case, the rape laws in India were extremely biased in favour of the accused. The desire for acceptance was cited more than any other single problem. It used to be quite difficult to show that a lady had not given her permission to sexual behaviour. Since this case was settled in 1983, the Criminal Legislation (Amendment) Act has been enacted, drastically changing India's rape statute. In 1983, the Criminal Law Act included Section 114(A) of the Indian Evidence Act, which states that if a victim claims she was assaulted and subsequently refuses to give her consent for a sexual intercourse, the court must determine that she did not consent to the intercourse. With this provision, the law may determine whether or not the victim consented to the sexual interaction. Section 376 of the Indian Penal Code has been updated to reflect a number of amendments made by the Criminal Law Amendment Act of 2013. Because of these changes, subsections a, b, c, and d have been revised. For crimes committed against a victim while they are in police custody, the term "custodial rape" has been added to the Indian Penal Code 1860 thanks to this Act. This includes sexual assaults against prison prisoners. The penalties for violating Section 376 (2) range from a minimum of 10 years to a maximum of life in prison, in addition to a fine. As a result of this law, the traditional notion that victims should always have the burden of evidence was overturned. Assuming that sexual contact has taken place, the onus of evidence will next fall on the accuser. If a rape victim's identity is revealed in any way, this is a criminal offence under section 228A of the Indian Penal Code. With the Criminal Law Amendments Act of 2013 in mind. Mass protests and public indignation in response to the Mathura rape case significantly impacted India's social and legal structures. The event prompted the development of many laws against sexual harassment.

## **Mukesh&Anr. Vs State for NCT of Delhi &Ors. ( Nirbhaya Rape case )**

On the night of December 16, 2012, a young female physiotherapist was brutally raped on a moving bus in Delhi. There were five perpetrators, including a youngster. The attackers used an iron rod to tear the victim's organs from his body. Despite everyone's best efforts, she died shortly after arriving at the hospital. It has come to light that one of the detainees committed suicide behind jail. The death penalty was handed down to four individuals, while a child was sentenced to three years in a juvenile prison centre. A juvenile offender who sexually assaulted his victim was given a three-year term in

juvenile hall. This occurrence shook the public's moral compass, leading to a debate over how to react to crimes of this kind. As a result, the legal system underwent extensive revisions to address the problem.

#### **Aftermath and Amendments made:**

After this happened, a commission was formed, with former Chief Justice of India JS Verma at its helm, to look at India's criminal laws and provide suggestions for changes, such as tougher penalties for sexual assault and Indian Rape Laws. To implement the changes recommended by the committee, the Criminal Law Amendment Legislation of 2013 was passed. This act amended a number of statutes pertaining to sexual offences. The Indian Evidence Act was enacted in 1872, the Indian Penal Code in 1861, and the Child Victims Act was passed in 2012 to protect minors from sexual exploitation. Several pieces of legislation dealing with sexual offences were updated thanks to the Criminal Law Amendment Legislation of 2013. The statute paved the way for these modifications. One of the changes that was made was the inclusion of the death sentence. This provision applies when a rape victim dies or is left in a vegetative state.

#### **Independent Thought Vs Union of India and Anr. (Marital case )**

##### **Facts:**

Independent Thought, a human rights organisation created in 2009, puts forward this school of thinking. Specifically, the group contested the constitutionality of Exception 2 to Section 375 of the Indian Penal Code, which permits discrimination on the basis of gender. The petitioners presented their case on their behalf. The Criminal Law Amendment Act of 2013 caused the minimum age of consent to rise from 16 to 18. As a result of these changes, the minimum age of consent is now 18. However, according to Exception 2, sexual activity between a married woman and her husband is permitted if the lady is older than 15 years of age. This exception is only applicable in situations when the marriage was not of the parties' own free will. In accordance with the POSCO Act of 2012, the minimum age of consent is set at 18. Possession of obscene materials is illegal under Section 3 of the Act, which is at odds with the aforementioned Exception 2.

##### **Judgement and Changes:**

After deliberating on the various aspects of the case, the Division Bench came to a decision, which stated that the Exception 2 violates equal protection principles because it discriminates between married and unmarried women in the absence of a justifiable relationship. This decision was reached after the Division Bench considered the many facets of the case. It undermines the dignity of the female child as well as her freedom to choose her own path when it comes to reproduction. The former minimum age of consent, which was 15, has been raised to the current minimum age of 18, which is 18. As a result, Exception 2 was deemed immoral and illegal since it violated the rights of young girls. The proponents of exception 2 were then changed so that it now states that sexual intercourse or sex between a man and his spouse is not regarded to constitute rape if the woman is more than 18 years old. This was done in order to reflect the following change made to the exception. This was carried out in order to make it possible to carry out the exception. Sexual Misconduct in the Workplace, Including Sexual Assault and Sexual Exploitation

#### **Vishaka Vs State of Rajasthan and Ors. (Bhanwari Devi Case)**

In this case, the plaintiffs sought to enforce women's legal protections against sexual harassment in the workplace. The alleged gang rape of a social worker in 1992 occurred while she worked to stop a

child marriage. Even though she reported the event to the police, her claim was not given the attention it deserved. To seek redress, she took her case to trial, where it was ultimately ruled that there wasn't enough evidence to convict the defendant. Therefore, several women's groups resolved to challenge the decision. As a result, the issue of sexual harassment in the workplace was brought before India's highest court as part of a public interest case. The hearings in this case are usually considered to be among the most pivotal in American history. The court ruled that sexual harassment in the workplace is a violation of a woman's rights under Articles 14, 15, 19, and 21 of the Indian Constitution.

### **Legal Changes brought after the case:**

As a solution to the pervasive issue of sexual harassment in the workplace, comprehensive legislation was established to outline the numerous tasks that employers and other responsible parties must undertake to implement the requirements of the case. Managers have a responsibility to prevent sexual harassment in the workplace. In addition, they should poll staff members for input on possible remedies. In order to properly resolve employee complaints, every company has to establish a complaints committee. At least half of the members must be female, and a non-governmental organisation or third party must be represented. The committee would be the sole party in charge of looking into and reacting to claims of sexual harassment made by female employees, with the committee's conclusions binding on employers. This committee would then provide the victim recommendations and advice on how to proceed. To ensure that women in the private and public sectors are afforded the appropriate safeguards against harassment in the workplace, these rules and procedures were drafted. As a direct result of the Supreme Court's ruling in 2013, the Indian government passed the Prevention of Sexual Misconduct at Work Act. The effective date of this law is December 9, 2013.

### **Conclusion**

According to the National Crime Records Bureau of India, around 88 rapes occur every day. We've reached the last chapter. Indicative of a nationwide rise in sexual offences, this number is reason for grave worry. Rape is a crime in India whenever a man makes sexual contact with a woman without her consent or if the lady is underage. According to this definition, rape is obviously a severe crime in India. If taken to its logical extreme, this rule would make a single penetration sufficient to establish the crime of rape. Many rapes are never reported and hence never brought to justice. The total number of cases has risen after this occurred. Many women who have survived sexual assault do not report the incident because they are not aware of their rights or have never received an education on the subject. It's vital for the public to realise that victims are innocent and should be given help rather than shunned. When public opinion about rape cases changes, the law can be enforced as it should be.

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