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Critical Analysis of the Current Criminal Procedure in Sexual Offences

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ABSTRACT

Man was not a civilized being in the beginning. He was unruly and rough. As civilisations grew, man transformed into a cultured being. The metamorphosis of human civilisations gave birth to the concept of law to regulate his activities. With the plethora of changes, differences and innovations, the world in itself transformed. With the world changing itself into the current modern-day society, countless changes in law have taken place. However, one question that poses in everybody's mind is the effectiveness of the same. The current criminal procedure system faces large criticism from a lot of people. With the number of increasing sexual offences, it is imperative to bring in a better system to correctly handle it.

Brutality of sexual offences is something that emotionally affects the society. When justice is delayed, the affected citizens become disappointed with the system and take matters into their own hands. The hope which people had on the system is being tarnished and it is destroying the law and order of the state. People have started violent methods for justice as they are getting impatient with the delay in the system. This could seriously affect the existence and functioning of the state machineries. The delay in executing law which was brought to regulate the citizens, is turning them against the system.

Through this paper, we intend to analyse the reasons behind the delay in delivering justice to the victims of sexual offences. The system by itself is great and tries to incorporate all the fundamental principles of law. But the delay in the procedure makes the victim or aggrieved who is deprived of their rights so impatient that there is a widespread support for public execution of the convicts and violent punishments. It is high time we think about the ways to improve the criminal procedure system in order to enhance speedy delivery of justice. We are trying to examine the possibility of implementing an alternative criminal procedure by analysing the effectiveness of various international systems in delivering justice.

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I. INTRODUCTION

Man has grown a lot from the unruly groups who constantly fought with each other for survival into a cultured society with knowledge and power. Our civilisations helped us frame a systematic society with law and order. In India, as we trace the history, we can see that we had multiple legal traditions within our subcontinent which have a major impact upon the present legal system. As the crime rate increased, there was a greater need to establish criminal legal system in the country and the system thus established underwent many changes according to the changing rulers, colonizers and governments.

Day by day, reported crimes are becoming more heinous and shocking. Especially, sexual crimes are so heinous that it shocks humanity and causes unrest among citizens. Rape has become a daily news and people have become more or less used to it in modern India. Rape has become a very common incident and a problem of every citizen irrespective of age or gender, to the extent that the people have started to restrict themselves from exercising their rights.

According to the government statistics, one woman reports rape in every fifteen minutes in India. According to the data collected by NCRB from States/UTs, rape cases have increased from 24206 cases in 2011 to 38947 cases in 2016 and similarly cases of criminal assault to outrage the modesty of women have increased from 42968

cases in 2011 to 84746 cases in 2016 (excluding POCSO cases).³

Our present criminal procedure is more or less in the favour of accused as it places the burden of proof on the prosecution. In our criminal cases, the petitioner is the state and the state is the one who argues on behalf of the victim for punishing the accused. Under the circumstances of rising crime rate, there is a greater need for stronger criminal procedure and punishments because of the violent effects upon the law and order of the state.

There were several political movements after the 2014 Nirbhaya case, which resulted in the 2015 Criminal Law Amendment. But, even today the scenario is more or less the same. In fact the situation is quite grave considering the fact that Unnao rape victim was set ablaze by a gang of men, as she made her way to court to attend a hearing of the case, in Unnao district of Uttar Pradesh.

Sexual violence is a reality for millions of people worldwide, and for women in particular. Research indicates that the vast majority of victims of sexual violence are female, most perpetrators are male, and that most victims know their attacker. This does not, however, change the fact that sexual violence against men and boys are also widespread.⁴

In the report by WHO, they state that there is a significant underreporting of cases in the case of sexual violence, owing to the factors such as fear

³ NCRB, NCRB Journal Volume 1 October 2018 http://ncrb.gov.in/NCRB_Journal/NCRB_Journal_October_2018.pdf

⁴ WHO, Sexual violence: prevalence, dynamics and

consequences

https://www.who.int/violence_injury_prevention/resources/publications/en/guidelines_chap2.pdf

of retribution or ridicule and the lack of confidence in the police or system. In such a circumstance, there is a greater need to improvise our systems, to facilitate conviction of offenders.

II. NEED FOR STRONGER CRIMINAL PROCEDURE

The law of criminal procedure is intended to provide for a mechanism for the enforcement of criminal law. Without proper procedural law, the substantive criminal law which defines offences and provides punishment for them, would be worthless. The inception of our criminal procedure system marked the introduction of a new concept in our nation. Until then punishments and procedures were done according to the king's word with reference to the societal norms of that place. Morals and customs played a huge role in deciding the gravity of a crime and its impact. The seriousness of a crime changed depending upon the region and their beliefs. Hence, it was realised that the need for a uniform method to create and establish a uniform code for criminal procedure was necessary.

The process and the punishment of a crime are two very different aspects of a crime. They are the principal aspects of the entire process of convicting a person in a crime. Since both are individually very vast and important, it was imperative for us to bring in different codes to put down criterion for these elements. Hence the code of criminal procedure was established. The law of criminal procedure is meant to be complementary to criminal law and has been designed to ensure the process of its

administration. It aims at providing safeguard against possible harms and violations of human rights of innocent persons in its process of sifting criminals from non-criminals. It attempts to strike a balance between the need to give functionary powers to the authorities under the code to make the investigative and adjudicatory processes stronger and effective.

One of the most heinous crimes we face in our society today is sexual offences. The number of people being sexually harassed is unimaginable. The cruelty in this crime is very high. As the legal system has been laid down, we have procedures, remedies and punishments set out for all these crimes. However, one will wonder how effective these procedures are and how fast they move on. The gravity of this crime is such that it creates a lot of mental agony for the victim and the near and dear of the victim. The impact of the crime on the person is so high that it is imperative that we bring in a faster remedy for people suffering from crimes like these. Legal trials are now considered as a matter of satirical comments because of the lackadaisical manner in which the trials happen. It is wrong to put the whole blame of that on the judiciary because there are many authorities concerned with the system. Criminal trial is based on the collection of evidence. Police look into the connecting factors and investigate on the case looking for evidences. When the trial gets delayed, the quality of evidence and the easiness in gathering evidence will also reduce. The former Chief Justice of India, Altamas Kabir in a letter to all the chief justice of high courts said that the delay in disposing cases regarding offences against women might be one of the

factors for rise in crimes against woman. This clearly shows how far we have gone regarding these issues and the need for an immediate action regarding these matters. What slows down these processes is something one ponders on. How can we tackle the issue and establish a faster and effective system? What are the requirements of getting speedy trial?

III. ISSUES FACED BY CURRENT LEGAL SYSTEM IN HANDLING SEXUAL OFFENCES

India's legal system is a system inspired from the best models around the globe and is a system which tries to inculcate the best from everyone. However, it is a system which faces a lot of issues in tackling these offences.

1. HESTATION AMONG THE VICTIMS TO APPROACH THE POLICE

In a report by Human Rights Watch, it was reported that the people do not have confidence in the police to report sexual offences. The Criminal Law Amendment of 2013, Section 166 A was inserted in the Indian Penal Code. According to clause (c) of 166 A (after the amendment of 2018), A public officer who, *fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973, in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, section 376AB,*

*section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509, shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.*⁵

However, Human Rights Watch reports that the police often refuse to initiate the proceeding by filing a First Information Report and pressurizes the victim for a compromise especially when the victim is from a marginalized community. In a case from Lalitpur in Uttar Pradesh reported by Human Rights Watch, wherein a woman from lower caste who was abducted and raped by men from dominant caste including a local leader of ruling party, the police did not take any action owing to political factors. It took them a further period of almost 8 months after the magistrate's order to register the First Information Report. By the time, the victim and family fled miles away from the village due to constant threats and harassment from the accused.⁶

In such contexts, there must be effective direction from the magistrate courts for action against those police officers who failed to register the FIR, direction for the case to be transferred to a new officer and an order to report the status quo within a stipulated time period.

2. LACK OF PROTECTION TO VICTIMS

In the Lalitpur case, the victim fled from her own village owing to threats from the accused who was from an influential and dominant section of

⁵ https://mha.gov.in/sites/default/files/CSdivTheCriminalLawAct_14082018_0.pdf

⁶ [https://www.hrw.org/report/2017/11/08/everyone-](https://www.hrw.org/report/2017/11/08/everyone-blames-me/barriers-justice-and-support-services-sexual-assault-survivors)

[blames-me/barriers-justice-and-support-services-sexual-assault-survivors](https://www.hrw.org/report/2017/11/08/everyone-blames-me/barriers-justice-and-support-services-sexual-assault-survivors)

the society. The Unnao rape case' victim's father died in judicial custody while her uncle who was the key witness was jailed. Just months before that, the victim, her two family members and the lawyer were injured in a truck accident. The victim's family wrote to the Chief Justice of India, describing the lack of protection. The victim tried to immolate herself before the residence of Chief Minister of Uttar Pradesh. A member of Legislative Assembly was also convicted in Unnao case.

This could be seen as a clear exploitation of the marginalized community by the dominant, politically influential community and the absence of a strong victim protection law. We need stronger laws to protect the victims. Sexual offences have vast psychological effects and health effects on the victim and the constant threats and murder attempts will force the victims to withdraw the complaint. Repeated incidents would make people insecure and they would refrain from approaching the system for justice. If the people do not believe in the system of law, it would lead to them taking law in their hands for acquiring justice which would result in a lawless land.

To avoid such a situation, we must enact a strong victim protection law which protects the identity of the victim and ensures her safety, but the effective implementation of such a law is dependent upon the credibility and accountability of police force. An independent police force which is free from political influences is quintessential for ensuring a safe country for women.

3. LACK OF PROACTIVENESS

There have been various instances where people have complained of the police not acting in time and taking required action regarding the matter. Every procedure, every step makes the process systematic and effective. However, there needs to be proper training given to the officials about being proactive. There was a long controversy regarding the Telangana Disha rape case that the police officials wasted a lot of time discussing which police station had the jurisdiction regarding the matter. This is one of the examples where in the police could have acted proactive and saved at least her life.

Police officials must be given the independence and power to act over a certain situation according to the necessity the situation attracts if it crosses the limits of their power. This is important because there are many instances where police have felt apprehensive about taking cognizance in a situation where it was necessary because of the fear of disciplinary actions for violating the norms that govern them.

4. DIFFICULTY IN COLLECTING EVIDENCE

India does not have the required number of forensic labs. With the number of crimes increasing in our country, forensic evaluation plays a large role in forming evidence for a case. If the evidences are not identified in time, it would affect the investigation and trial. The former chairperson of National Commission for Women herself was vocal about the lack of

adequate forensic labs in the country.⁷ In a report by Centre for Law and Policy Research on the special fast track courts for sexual assault and child sexual abuse cases in Kerala, of the 107 cases disposed, in 83.17% cases, the accused was acquitted. Of which in 81.25% cases, the accused was acquitted due to hostile witnesses and in 12.5%, the accused was acquitted due to lack of corroborative medical evidences. It is quite ironical that we face so many issues in acquiring more evidences. In the report, they allege that the courts rely on the two-finger test and prior sexual history of the victim which was held to be discriminatory by the Supreme Court. They also state that, *“There has been a failure to adhere to Supreme Court precedents on the pro-active role of the court when witnesses turn hostile, and a lack of protection provided to complainants and victims which would prevent them from turning hostile. There has also been a failure to refrain from relying upon out dated forms of medical evidence such as the two-finger test and prior sexual history of the complainant which the Supreme Court has repeatedly held to be discriminatory against women and not to be relied upon.”* These are serious allegations on the fast-track courts of one state which necessitates the need for examining the condition of other states as well.

In this situation, state should establish more educational institutions to educate more forensic professionals including experts in the field of cyber forensics. This could be beneficial in

tackling the sexual harassment issues which are reported in the cyber space.

5. INEFFICIENT FAST TRACK COURTS

After Nirbhaya case, there was a widespread demand for fast track courts all over the country. Even the former CJI Althamas Kabir mentioned in his letter about the delay in delivering justice being one of the primary factors contributing towards the increasing rate of crimes against women. However in the report by Centre for Law and Policy Research by Bangalore on the fast track courts established in Karnataka, they state without a legislative base to establish the purpose of these courts, mode of functioning and special procedure to be followed in these courts, the courts will function just like any other normal courts, thus failing the purpose for which it was established. In their report, they recommend further by stating that, *“special sexual offences courts should have a host of requirements, including training for judges, prosecutors and other court personnel, victim support services and victim/witness protection measures.”* For any system to fulfil its purpose, it needs adequate number of staff and fund. Therefore, there must be greater emphasis on the same. The ratio of judge to case is so high in India, that it would further delay the purpose of special courts and in many states, the special courts function in one day of a week wherein the judge of the nearby court would come and sit in these courts. The very purpose of its establishment fails. To avoid that, more judges must be appointed and we can

⁷ [https://www.aljazeera.com/news/2020/01/woman-reports-rape-15-minutes-india-](https://www.aljazeera.com/news/2020/01/woman-reports-rape-15-minutes-india-200110032323608.html)

[200110032323608.html](https://www.aljazeera.com/news/2020/01/woman-reports-rape-15-minutes-india-200110032323608.html)

consider privatizing trials of trivial cases which would help the courts to save time and appoint trained judicial officers in dealing with heinous crimes and grave offences.

unsafe that even home is not a safe place anymore.

IV. CONCLUSION

On the non- procedural side, we need more stringent laws, punishments and policies to fight against sexual offences. We also need awareness programmes and sexual education programmes to make the future generations aware, vigilant and conscious about the vast effects of sexual offences. Even with strong laws, a lot of money to run the administrative bodies, judicial institutions and police forces is required to enact the legislations in a proper way. The requirement of a single emergency helpline number to cover all issues ranging from sexual abuse to medical help is definitely the need of the hour. This integration of helpline numbers will make it easier for people to report their issues.

The recent hikes in the amount allocated for women and child ministry is a remarkable and admirable step by the government in the fight against sexual offences.

Recognizing sexual offences as one that could be faced by anyone, would be a great change as well. There are long debates about women safety followed by political movements wherein unfortunately we tend to ignore the other 'genders' and it is very disappointing that we do not speak about marital rape and military rape. We still have a long way to move forward in the fight against sexual offences and it is high time, we act upon it because the world has become so