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Is Marriage with Rapist, a Solution to Lost Honour?

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ABSTRACT

Rape and sexual violence exist in almost all the societies and culture. These offences are not limited to a particular country or a society, it is prevalent around the world and these incidents are increasing globally. Rape and sexual assault are heinous crimes and, offences such as that cannot be overlooked. The criminal's conduct can't be pardoned or absolved without punishment and the victim's marriage with the rapist is definitely not a solution to the issue. This research paper throws light on the concept, is marriage with rapist a solution or punishment to the victim. Laws related to rape around the world has been discussed along with the evolution of rape laws. In furtherance of the research paper transformation in the social perspective has also been studied. Finally, the research paper ends with the concluding remarks.

Keywords – Rape, Sexual Violence, Rape Victims, Compromise, Marriage, Victim psychology, POCSO.

I. INTRODUCTION

A heinous crime like rape is very much prevailing in our society. Rape can be vocalized as the manifestation of sexual violence predominantly against women which is deeply rooted by and large in all the countries. Aftermath the ghastly Delhi Gang Rape case a lot of amends were drawn up regarding the law governing rape. It is grief-stricken to mention that there are no significant changes in the situation. Recently, the Chief Justice of India has made a comment asking rapist whether he will marry the victim². He also obliquely insisted the man to marry the girl so that he wouldn't end up behind the bars and lose his job³. Later he also clarified that he didn't ask the accused to marry the victim and it was misinterpreted. A proposal, such as that coming from the highest court of the land defeats the purpose of criminal justice system. It is high time to address this pressing issue.

Marriage is considered to be a sacred tie between two people. It is considered to be most crucial and significant sacrament. It is a pious bond between the groom and bride which is for

¹ Author is a student at Symbiosis Law School, Pune, India.

² See <https://www.barandbench.com/news/litigation/will-you-marry-her-supreme-court-asks-man-charged-rape-minor-girl> (accessed on Mar 25th, 2021).

³ Mohit Subhash Chavan v. State of Maharashtra, SLP(Crl) No. 1573/2021 II-A.

lifetime and even after their death they remain together. According to Hindu Marriage Act, 1995 a marriage is performed with religious rites and ceremonies so that the two individuals follow the dharma, artha and kama. The very sanctity of the marriage is being mocked by such proposal set by the apex court.

A proposal such as marriage with the rapist doesn't serve the purpose of criminal justice system. The objectives and the purpose of the justice system are retribution, deterrence, incarceration, rehabilitation and restoration. In any which way the proposal doesn't contribute for the purpose of severing justice, in fact it paves the path to take the victims of a hideous crime like rape lightly. It is going to cause fallacious impact on the society in the modern era and set an erroneous precedent for the upcoming times. The paper further touches on the social, legal, moral and psychological aspects of the crime in a detailed and strategic manner.

Literature Review

Rape and sexual violence have become pressing issue in today's society. For instance, the statistics show that on an average India recorded 87 cases daily in 2019 and there has been a rise of over 7% in 2020 according to latest report of NCRB (National Crime Records Bureau, 2020)⁴.

Moreover, the conviction rate is below 30% which is exceptionally poor and therefore only a few perpetrators are convicted. It is suggested by the early researchers that the concept of rape is ineluctable occurrence specially in patriarchal societies where males are considered as the predominant figures in the society and hold authority over women (Brut, 1980)⁵.

Rape myths are usually believed to be the yardstick to determine the extent to which a victim is blamed, and the perpetrator is absolved for the rape (Ward, 1995; Kley, Greger & Bohner, 2007)⁶. Primarily women are vulnerable to several kinds of violent treatment, mostly based on gender. Women are subjected to abominable crimes such as sexual violence, female infanticide and rape. The reason behind such violent treatment to women is because of the female's role in the social hierarchy and the female sexuality constructed by the society (Radhika Coomaraswamy, 1992)⁷.

⁴ See <https://www.newindianexpress.com/nation/2020/oct/03/under-30-per-centconviction-rate-in-rape-cases-in-india-says-ncrb-data-2205090.html> (accessed on Mar 21st, 2021).

⁵ Burt, M. (1980). Cultural myths and support for rape. *Journal of Personality and Social Psychology*, 38, 217-230.

⁶ Gerger, H., Kley, H., Bohner, G., & Siebler, F. (2007). The acceptance of modern myths about sexual aggression scale: Development and validation in German and English. *Aggressive Behaviour*, 33, 422-440.

⁷ Radhika Coomaraswamy, (1992). The United Nations Special Rapporteur on Violence Against Women, its causes and consequences.

Speaking of reactions to stress of a rape victim, (Hilberman, 1976)⁸ she cited the work of (Payson & Weiss, 1967)⁹ while discussing reaction to stress and analyzed it in four clinical stages. These stages are named as following anticipatory phase, impact point phase, recoil phase and post – traumatic phase. These stages explain the long-term effects on mental health of a rape victim.

Research Gap

This research paper has looked through and analyzed various other research articles and journals related to the topic. The above-mentioned literature review aids the research paper by providing necessary information on different aspects of the topic. The work reviewed above talks about the statistics and conviction rate of the crimes against women and psychological impact. The gap in these literature reviews is that these works have failed to mention any information related to marriage with rapist as solution to the lost honor. This arrangement has been followed since very long time and is continued even today. According to studies, families of rape victims and survivors under societal pressure agree to marry the victim to the rapist because of various reasons. The current research paper intends to bridge the gap and throw light on these important aspects.

Objectives

The central objective of the research paper is to discuss how victims of rape end up marrying the perpetrator who committed the crime. With the evolution of time there has been significant changes in laws related to rape yet, it is unfortunate that victims of such an abdominal crime are not being served justice. The paper highlights different aspects of the topic and changes that are to be brought.

Statement of Problem

Time and again have witnessed rape cases that shook the entire country and undoubtedly there have been improvements and developments in the law. But even after such efforts there has been no significant changes in the situation. It is questionable whether these anti – rape laws are strong enough to deter the rapist. It is unimaginable that the supreme law authorities of the country are offering the rapist an option to marry the victim. The justice system can be held as an object of ridicule due to such decisions.

Introduction: An abominable crime like rape has a lasting impact on the victim's life and

⁸ Hilberman, Elaine, M.D. *The Rape Victim*. New York: Basic Books, Inc., 1976.

⁹ Weiss, R. J . , and Payson, H. E. "Gross Stress Reaction I . 11 In *Comprehensive Testbook of Psychiatry*, pp. 1027-31. Edited by A. M. Freedman and H. L. Kaplan. Baltimore, Md.: Williams and Wilkins, 1967.

leaves an unalterable scar on the victim. In almost all the cases of rape or sexual assault the kith and kin of victim also has to undergo the sufferings and the consequences of such sexual violence. It is undoubtedly true that the victims of such grave crime have to experience broad spectrum of social trauma and issues. In a country like India which is substantially patriarchal, the perception of morality and chastity are predominantly gender specific notions integrated with women. Women have to undergo these tests over and over again while on the contrary men are immune from such checks and can live their lives scot-free.

To all intents and purposes, virginity and chastity of a woman is of paramount importance and a precondition required for her marriage¹⁰. Whereas it is not imperative for men to perceive those yardsticks. It is of the opinion that the crime of rape destroys the very chastity of women and also is accompanied with dishonor to the family. Therefore, a victim of rape is precluded from social life or marriage. There are situations where the rape victims have gone so far as ending their own lives due to utmost distress and maltreatment.

Rape can also be seen as an offence against basic human rights of a woman that ruins the self-identity, furthermore the woman is impelled into mental and physical trauma along with shame, anxiety and stigma. A hideous offence like rape is a transgression of the dignity of a woman reckoned with ignominy, trepidation and is a terror-stricken event in a woman's life which might lead to an existential fear and a position of vulnerability¹¹.

A victim has to go through so much more than that could possibly be expressed. The rapist who ruined the precious life of a girl who was minor and has entitled her to everlasting pain and disgrace is given an opportunity to marry her, in turn he is absolved of the crime committed without any punishment. It is clear from the above explanation that the plight of the rape victim is ineffable. If this is the decision of the court, then supposedly the way of punishing the rapists is transformed in an unpropitious manner.

II. EVOLUTION OF LAWS RELATING TO RAPE

In the primeval Vedic period, a crime such as rape was discerned as a breach of bodily integrity of a woman, contravention of a woman's dignity and self-esteem. In those times the chastity of a woman was considered as the principal virtue. The Vedic script placed a duty and a responsibility upon the males to shield women from all the external evils and the woman was anticipated to remain pure and chaste throughout her life. If at all a woman had

¹⁰ Kanad Sinha, "Be it Manu, be it Macaulay: Indian Law and the 'Problem' of the Female Body", *Journal of Indian Law and Society*, 2014, vol. 5, p. 74.

¹¹ Vimala Veeraraghavan, *Rape and Victims of Rape: A Socio-Psychological Analysis*, Northern Book Centre, New Delhi, 1987, p. 1.

lost her purity due to a forceful sexual violence, in spite of such protection and safety, society didn't repudiate her instead she was treated with affection and kindness. The chastity of a woman was regarded to be of great value yet didn't refute the significance of woman as a whole¹².

In the contemporary times the law related to anti-rape has been delineated in the Indian penal code. Section 375 of IPC defines rape and Section 376 of IPC deals with punishment for rape. Time and again the laws relating to rape has been challenged. There has been social transformation in the laws as per the requirements of time. One such infamous case worth mentioning is *Tukaram v. State of Maharashtra*¹³ which is famously known as "*The Mathura Rape Case*". This is the first and foremost case that led to public outrage and reforms were formulated in the existing law as a result of protests. Mathura, a 16-year-old young girl who belongs to tribal community was raped in a police station and later a criminal complaint had been filed against two police officers. In furtherance, the Supreme Court of India turned down the case saying that Mathura's body bore no outward signs of rape. As a repercussion to this judgement a massive movement was begun by women groups. Aftermath these incidents an amendment was made in the criminal law in 1983.

Highlights of the criminal law amendment, 1983 –

- a) The concept of custodial rape was recognized.
- b) Publication of victim identifications was prohibited.
- c) The proceedings for rape trials to be conducted in closed court.

Another ghastly incident that jolted the entire nation is the very famous Delhi gang rape case also know as Nirbhaya rape case in 2012¹⁴. People all over the country started to protest against the horrific incident. The government of India constituted a committee in 2013 in light of need to amend the existing criminal laws. The recommendations of the committee were accepted, and Section 375 of Indian penal code was amended. The modified definition has extended the scope and broaden the meaning of rape. Thus, it is evident that there have been notable changes and modifications in criminal law over the time. Yet, the implementation of laws is dissatisfied.

Undoubtedly there has been a social transformation in the laws related to rape and sexual violence as per the requirements in time. Yet, in the era of 21st century where we have

¹² See <https://indusscrolls.com/ Crimes-against-women-and-the-vedic-society/> (accessed on Apr 1st, 2021) See S.K. Dogra, *Criminal Justice Administration in India*, Deep & Deep Publications, New Delhi, 2009, Chapter 2.

¹³ *Tukaram v. State of Maharashtra* 1979 AIR 185, 1979 SCR (1) 810.

¹⁴ *Mukesh v. State (NCT of Delhi)* [(2017) 6 SCC 1].

criminal justice system in order to serve justice to the victims of an offence, it is disillusioned to mention that the rape victims are pressurized to marry the very person who entitled the victim to an eternity of misery.

III. MARRY YOUR RAPIST LAWS

If we look at the laws related to rape around the world, it comes into light that marry-your-rapist-law did exist at a point in time, precisely in ancient times until 1900. Advocates for marry-your-rapist laws contended that rape marriage would protect the victim as well as victim's family from ignominy caused due to rape. Conventionally in ancient times a woman was reckoned to be a property of her father. If in any case, she was raped then she was regarded as damaged property. Therefore, the perpetrator was left with two options – a) he must pay compensation or b) marry the victim as a symbol of accepting the damaged property. The rapist chose to marry the victim in order to avoid paying compensation to the family and the victim for obvious reasons had utterly no option but to marry the rapist and spend the rest of her lifetime with the rapist. It can be said that marry-your-rapist laws were mostly prevalent in antiquity. Since late 20th century these types of laws are being questioned and challenged. As a result, a number of countries did repeal the law.

Around 15 Latin American countries had marry-you-rapist laws in 1997, if the offender proposed to marry the victim and if she accepts it then the offender is absolved of the crime. By 2017 almost all these countries had definitively annulled the laws. But there few countries such as Bahrain, Iraq, Angola, Jordan, Eritrea and Equatorial Guinea that repealed the laws in August 2017. Although Lebanon repealed the law in July 2017 there are few loopholes¹⁵.

There has been social and legal transformation of laws around the world with the passage of time. The marry-your-rapist laws has been repealed with the evolution of time. It is worthwhile to comprehend the rationale behind repealing such laws. First and foremost, reason being denial of justice to the victims or survivors. A hideous offence like rape or sexual violence is taken very lightly and the thought that it can be bargained away makes it easy for the perpetrator to commit the offence without much or any fear. A mindset is perpetuated in the society, wherein the humiliation and stigma are placed on the rape victim rather than the perpetrator. An offence like this creates a situation where a woman is traded as possession between the families. No doubt it also paves a path to take the victims of such heinous crime easily. To conclude, it can be said that laws like marry-your-rapist shields the

15 See https://www.equalitynow.org/not_backing_down_against_marry_your_rapist_laws?locale=fr (accessed on Apr 4th, 2021).

criminals and punishes the victim with imprisonment of rape marriage¹⁶.

IV. RAPE CULTURE IN INDIA

If we narrow down the discussion to our country India, there are several instances wherein the victims are married to the perpetrator and the marriage is used as a ploy to elude the punishment after committing such odious crime. For instance, in a *Madras High Court Judgement*¹⁷ the accused impregnated a girl who was minor and later he was granted bail since he agreed to marry the girl once she met the age requirements (attains majority). The accused was booked under sec. 5(j)(ii), 5(l), 5(n), and 6 of the POCSO Act. The judgement also mentioned that the petitioner had to register the marriage and if he failed to do so the respondent police was given right to proceed against him as per the law.

In an almost identical yet distinct judgement given by Gujarat High Court¹⁸, an FIR was registered under s.4, s.5(1) and s.6(1) of POCSO Act as well as s.363, s.366 and s.376(2)(n) of the IPC was quashed. While it is a known fact that FIRs are not quashed by the courts in serious and grave offence such as rape, it was observed by the court that there was a “*settlement*” in a way of marriage because of the intercession by the relatives. Another case worth mentioning is about a 14-year-old young rape survivor who was impregnated by the rapist ended up marrying the rapist himself due to the intervention by village elders. She gave birth to the child. This incident took place in a village called Bareilly, Uttar Pradesh¹⁹. It is grief stricken to even imagine the plight of that young girl. It was unfortunate that the girl’s parents could not afford to take care of the girl and her child due to financial issues as they were daily wage workers. It is woeful to say that their requests for financial help were ignored by the local administration.

An accused was granted an interim bail for period of 30 days by Orrisa High Court who was arrested under POCSO Act for raping a minor girl and when she met the legal age to marry, she was married to the rapist. In June 2020, a convicted rapist sought a bail for two months from Kerala High Court to marry the girl who he had raped and impregnated when she was a minor. Reportedly the girl’s parents agreed to get her married to the rapist²⁰.

In 2015 the apex court in a case²¹ iterated that, in a rape case or attempt to rape case under no

¹⁶ See https://www.equalitynow.org/repealing_marry_your_rapist_laws (accessed on Apr 4th, 2021).

¹⁷ Arunkumar v. State Represented By the inspector of police CRL.A.(MD)No.152 of 2015.

¹⁸ Mitesh Ashokbhai Chunavala v. State Of Gujarat ICL 2020 (9) Guj. 684.

¹⁹ See <https://www.article-14.com/post/how-india-s-rape-survivors-end-up-marrying-their-rapists> (accessed on Apr 5th, 2021).

²⁰ Ibid.

²¹ State of M.P. v. Madanlal (2015) 7 SCC 68.

circumstances the concept of compromise will be taken into consideration since it is a crime against a woman's body is which her temple. It is paradox that the list of cases where the rape victims are married to the rapists keeps increasing and yet there has been no significant modifications or amendments in law and its implementation. It is tactless that often the rape survivors are coerced to marry their rapist across the country, and this happens with aid and support of the parents, panchayats and law enforcement agencies.

V. CONCLUSION

Therefore, with above elucidation regarding the topic it is very much transpicuous that all kinds of violence against women is highly widespread across the world in all the socio – economic contexts. Undoubtedly, we have enough laws to protect women from these types of crimes but, without proper implementation, these laws are impotent. We have criminal justice system in order to maintain law and order in the society and punish the criminals. But the question is how efficiently it is being executed. Violence against women is a pressing issue worldwide and it is something that cannot be overlooked. It should also be noted that crimes such as rape can cause momentous health issues. Injuries caused due to these crimes against women can result in a long-term health issue.

As discussed above in the paper, marriage with rapist is absolutely not a remedy to the crime committed and absolving the perpetrator of the crime committed if he agrees to marry the victim because indirectly the justice system is punishing the victim and setting the criminal free. After viewing the issue in multiple perspectives, the marriage is still not an answer to the problem. In 21st century after evolution of centuries and development in laws regarding rape and sexual violence it is repugnant to suggest a rapist to marry the victim specially coming from the highest authority of law. There has to be proper implementation of law as prescribed and should be strictly adhered to it rather than coming up with a solution such as marriage with rapist.
