

JUSTICE DELAYED, JUSTICE DENIED

Shraddha Shrivastava

Abstract

Swami Vivekananda had said, "That country and that nation that does not respect women have never become great, nor even be in future".

Indian constitution provides a gateway to the Human Rights but women are victims of crimes such as Rape, Murder, cheating, sexual assault, insult to Modesty, kidnapping, abduction, trafficking, persecution for dowry, dowry deaths, indecency, and all the other crimes listed in Indian Penal Code. It is only recently that the issue of crime against women has been transformed from a private issue into a Public Problem like cheating, cruelty by intimate partner or relatives.

In India, rape is undeniably a heinous crime and a very troubling problem. Rape is the fourth most common female crime in India, according to the 2013 national crime records bureau report. Madhya Pradesh has the maximum number of rape complaints among Indian states, whereas, Jodhpur has the maximum number of rape reports per capita followed by Delhi. In the cases of "rare of rarest case" there should be a "rare of rarest punishment", the law states that, if you break the law you pay, it doesn't matter if you're an adult or a juveniles.

Most of the people say that don't teach to the girls how they work but to teach the boys also how to work. This fight is not only BOY v/s GIRL or GIRL v/s BOY; this fight is only for ACCUSED v/s VICTIM. How we treat victim that is important. The main objective is to provide a relief to victim or punishment to the accused.

My article is on "Justice to victim and fair trail", if we discussed about the present scenario, the main victim is the "women" and they not get fair trial. Indian constitution provides a gateway to the Human Rights but women are victims of crimes such as Rape, Murder, cheating, sexual assault, insult to Modesty, kidnapping, abduction, trafficking, persecution for dowry, dowry deaths, indecency, and all the other crimes listed in Indian Penal Code. It is only recently that the issue of crime against women has been transformed from a private issue into a Public Problem like cheating, cruelty by intimate partner or relatives.

Rape

Every other day, youth under the age of 18 commit murder, rape, and other heinous crimes. Why should special treatment be granted?

Cases such as murder, rape and all without proper planning can't be succeed, and age doesn't determine whether you are adult or not. The one who is preparing with all hate and ego in mind in such a way is definitely not a child. "Children are innocent".

The terrifying incident of the "Nirbhaya Delhi Gang Rape Case" on 16 Dec 2012, the entire country was stunned, & there were many disputes between the legal profession and the socialists. The main topic and reason for the discussion was the victim's presence, which was short of 6 months to reach eighteen years old, the involvement of the accused in such a horrific Rape crime.

The law states: - if you break the law you pay

It's not a matter of **juveniles**, been given a same sentence for an adult's same crime, the law says: if you break the law you pay, it doesn't matter if you're an adult or a juveniles.

Nirbhaya case

The Frightful Incident Of "Nirbhaya Delhi Gang Rape Case" On Dec 16, 2012, The 23 Year Old Student Of Physiotherapy Was Gang-Raped On A Moving Bus. She Was Also Savagely Raped And Thrown On The Road With An Iron Rod. Her Friend's Been Badly Beaten Up.

The Disturbing Event Set The Stage For Nationwide Demonstrations, Calling For More Stringent Standards Against Harassment And Prompt Disposal Of Such Cases. Nirbhaya (The Title Given To The Survivor By The Media) Passed Away On December 29, 2012, Despite Best Efforts To Revive Her.

Overall, In 2107, Five People Were Convicted In The Trial, Including Akshay Kumar Singh, Pawan Gupta, Vinay Sharma, Ram Singh, Mukesh Singh And A Juvenile. The Other Three Convicts, Pawan Gupta , Vinay Sharma, Mukesh Singh Review Petition Had Been Denied Earlier. In 2015, The Fifth Offender, In Tihar Prison, Ram Singh Committed Suicide, And The Sixth Convict, The Juveniles Was Released In 2015 After Three Year Of Imprisonment In A Rehabilitation Home.

Nothing, And Trust Me Nothing Will Happen. A Mother Has Been Struggling And Still Seeking Justice Since Seven Years. Everything Is Evident, But Indian Judiciary Still Believes On Human Rights, Wanted To Show Mercy Still Following Gandhiji Views. Nirbhaya's Mother Broke into Tears When She Heard That SheDoesn't Get Justice This Year. A Juvenile Who Was The Main Culprit, Who Was A Real Animal, Who Was A Sunny (Mardaani 2 Villain) And A Monster Is Already Outside, Walk Freely In Our Country Because He Was Under The Age

Of 18 When He Committed The Crime. Rest Four Get Shelter, Food, Clothes and Everything That's Been in Jail for 7 Years, They'll Get O Lot More Years Too. And Out Of Four, One Even Uses His Right Of Judicial Review And Our Judiciary Is So Unemployment That Punishment Is Reviewed. Section 375 Passed Overnight, Cab Passed Overnight But The Punishment Of Evident Crime Is Taking 7 Years. We Are Aware About The Working Of Our Media We All Know That Media Is So Powerful; Pen Has Such Power To Put Energy On Dead Man. 2 Month Child-Raped, 7 Year Child-Raped, 10 Year Child –Raped, 22 Year Girl- Raped .When In All Age Girls Are Raped, Why At The Time Of Punishment Court Consider The Age Of Rapist. And If Any Man Is Enough Mature That He Commits The Rape. Then At Time Of Punishments Court Never Should Commute His Sentence Less Due To His Age, At The Time Of Punishment, Court Should Not Treat A Juvenile As A Juvenile If He Attains The Majority In Few Months.

Marital Rape

A customarily language of marriage-

“A formal union and social and legal contract between two individuals that unites their lives legally, economically and emotionally”

The vow we take on the marriage day that, we will live together, love each other till death. Now marriage will be just a symbolic one with no understanding and bonding.

Now, In India there is a big problem, the problem is marital Rape. It is laborious to collect the statistics on the happening of marital rape of the women's sexually assaulted by their husband.

172 law commissions not accepted the marital rape is a crime. we are living in 21 century most of the thing changed now, if we are talking about past yes ,the women are not educated, family not allowed for that, apart from this problems so many problem faced by the women like, poverty, myriad social custom and values, religious belief, mindset of the society to treat the marriage as a sacrament. But the thing is changed now, each and every women is literate now, and they know about their rights, women are empower that they can live or survive alone because they are enough capable, she never wants to live with that type of guys who is not give respect to her or assaulted to her.

Patriarchal society is the main cause of Marital Rape. Patriarchal is a social system in which men hold primary power, predominate in the roles of political leadership, moral authority, special privilege and control of the property. Women are considered as a property of a husband or chattel of a husband, it is time to say that a husband is not the master, equality is the governing parameter.

The famous writer **Jay Shankar Prasad** said the very beautiful lines-

“Tum bhul gye purushtav moh me kuch satta hai nari ki samsarsatta hai samband bani adhikar aur adhikaro ki”

It means that the person who are surrounded by the mentality of men superior (purushwadi). There is a one group that is half, if you are not accepted that, and then you are nothing.

said that the ”marriage is a certificate of sex ”.when you are go to court for the marriage , the stamp paper which is signed by both husband and wife , this paper is a evidence of marriage, on that paper there is no written words like “husband you are able to do unlimited sex with you wife”.

Sexual Harassment

- **Work Is Worship And Work Place Is A Holy Place**

We still assume that job is worship. The place of worship is considered a sacred place like the temple, and I hope that everyone will agree with me if I suggest that our place of worship is the “Shram Mandir”. But I would like to ask you all a question whether our office is treated as a place of worship? I’m sure the answer is big NO.

As a human being we live in life with double standards. We believe our home will look like Neat & clean, because we like clean home climate. But when there’s the clean environment issue at work or in our culture, we don’t care about cleanliness. We are aware of maintaining clean environment at home, but the scenario in the workplace is quite the opposite. We assume that the housekeeping function/department is responsible for the maintenance of a clean environment. Is it fair that somebody spoils the place of work and somebody else cleans it? That is not the way to deliver success in the workplace.

“Sexual harassment, refers to a type of employment discrimination consisting in verbal or physical abuse of sexual nature”¹

Sexual harassment is a type of sexual discrimination on the basis on unwanted sexual advances, sexual gratification, and other physical or verbal activity with sexual overtones, whether overtly or implied, especially when the acceptance or refusal of such actions by the female colleague was able to be used to perform the work of the female employee and to interfere unreasonably with her work performance and had the effect of creating an unpleasant or hostile working environment for her, Apparel Export promotion Council v. A.K. Chopra²

¹ Black’s Law Dictionary, 7th Edn, p.1379

² AIR 1999 SC 625(633): (1999) 1 SCC 759

Example of Sexual Harassment in the Workplace

- Who makes the offence does not matter. It might be a co-worker, a boss, or even a non-employee like a contractor, client, or a salesman. If the behavior of the individual generates a hostile working environment, makes it difficult for the employee to work, or disrupts the performance of the employee, it is called unlawful sexual harassment.
- Sharing inappropriate sexual images or videos with colleagues, such as pornography or salacious gifts
- Sending suggestive notes, letters, or emails
- Displaying inappropriate sexual posters or images in the workplace
- To tell lewd jokes, or to share sexual anecdotes
- Making sexual offensive movements
- Staring, or whistling in a sexually suggestive or offensive way
- Making sexual comments about clothing, appearance or body parts
- Inappropriate touching, including patting, pinching, rubbing or purposefully brushing up against another person
- Asking personal questions, such as questions regarding someone's sexual history or sexual orientation
- Commenting negatively on one's gender or sexual orientation

Bottom line: - sexual harassment is defined to be any acts or words with a sexual connotation which interfere with such an employee's ability to perform or build an unpleasant environment.

Domestic Violence

In India, domestic abuse and violence are not just a lower- and middle-class problem. Even among common and famous people this is very prevalent.

The symptoms of domestic violence are not always evident and many women don't report being raped.

In such times, even women's own families are not always helpful; because of the shame and guilt that accompanies these issues. Another problem faced by women is how India can prove domestic violence

But, there are strong laws against domestic violence and abuse in India, there is hope for women. Indian Kanoon gives women a lot of power over domestic violence

And indeed, there are always incentives for women to attempt misuse of the legal system by abusing domestic violence in India

And just because people misuse the law sometimes does which mean we shouldn't have laws? After all the statistical data of domestic violence by husband in India are horrific

According to the national family health (NHFS-4) survey released by the union Ministry of health, every third woman, as of the age of fifteen, has encountered domestic violence of different forms in the country. Many of the time husbands were the victims of this abuse.

The study also found that 31% of married women witnesses spousal emotional, sexual or physical abuse. Physical violence (27%) percent has been the most common type of spousal violence followed by emotional violence (13%)

Economics abuse was not even listed in the survey as domestic violence in India, although that is a major type of violence among domestic violence victims in India

Human Trafficking

Trafficking in person is a growing problem involving both sexual exploitation and the exploitation of their victims by labor. Trafficking affects all regions of the world, and most countries. Both males and females may be victims of human trafficking, but women and girls are the primary victims worldwide, the large numbers of whom are trafficked for sexual exploitation. Traffickers target women mainly because they are directly impacted by deprivation and sexism, factors that obstruct their access to employment, opportunities for education and other services.

Trafficking leaves both visible and invisible Scars

- Trafficked high and women face high levels of sexual and physical assault, including torture and murder, psychological abuse, horrific living and working conditions and extreme poverty during transit.
- Severe mental health issue arise from trafficking like anxiety, self-injurious behavior, depression, suicidal ideation and suicide, addiction to drugs and liquor, post-traumatic stress disorder (PTSD), dissociative disorders and complex PTSD.
- Physical symptoms between victims of trafficking include gastrointestinal disorders, neurological Problems, chronic pain, respiratory distress, urogenital disorders, sexually transmitted diseases (including HIV), traumatic brain injuries, fracture and dental problem.

“there is no typical case of human trafficking , which often overlaps with other closely related crime, such as human smuggling, prostitution, intimate partner violence , and child abuse.”³

³ Report of the Task Force on Trafficking Women and girls

CONCLUSION

Nonetheless, the statistics of domestic violence in India are shocking and require serious discussion in the minds of the Indian victim, the learned helplessness of the abused woman, and how to provide protection for domestic violence and legal assistance to survivors of domestic violence. On 4 September 2015, the Indian news report noted that, without a court order, the Bombay high court set aside the part of a circular state government banning mediation and counseling in cases of domestic violence.

What this means is that cases of domestic violence can now be settled out of court, with the help of counselors, NGOs and police who can support a woman “with regard to the course of action which she can take including joint counseling/ Mediation with her spouse/husband or her family members/in-laws.”

Additionally, the guidelines state that an abused woman must be advised of her right to choose her future course of action, and that she must be directed on her legal rights under the protection of women from domestic violence.

Work place is a temple, in temple definitely goddess presence over there, we should responsible to maintain the discipline and decorum of the workplace and cleanliness does not mean that to neat & clean, it should be cleanliness of mind, cleanliness of intention, cleanliness of negativity and as well cleanliness of sexual harassment ,

Therefore, according to Indian culture women consider as a Goddess (Devi), we should give respect to our goddess. Whether, they are in home or working place.

Every morning when I was reading newspaper and what I encountered is that every second news in about the girls are getting raped and harassed. I don't understand whom to blame is it the government or the people? We are falling as a society. In India, some group fought for the movie “padmavat” as their culture were getting affected, what happened to those people now, I haven't seen them taking a stand on these issues. They can influence the makers to change the movie name padmavati to padmavat but they can't stand for these heinous crime against the women or is it they don't consider rape as a crime? I am from Banasthali(Rajasthan) where some group of people were burning Salman khan posters and Bigg Boss posters just because they think their cultures were getting affected, still, I have not heard or saw them taking any stand on these crimes. I would say these are not issue in India ,it became a habit now, instead of Mandir, technology or pollution or anything for that matter, we should consider these issues a priority.

I feel teenagers must be held accountable and tried as adults for their acts. Just don't commit the crime if you're thinking about the penalty. After these types of cases the society is divided into two parts and very

shameful part of the society is that most of the people playing on social media that BOY v/s GIRL.

Most of the people say that don't teach to the girls how they work but to teach the boys also how to work. This fight is not only BOY v/s GIRL or GIRL v/s BOY; this fight is only for ACCUSED v/s VICTIM. How we treat victim that is important.

This case is not committed in any village, district, forest that is committed in Hyderabad, this is a big city, Hyderabad is a big city of India, all areas of the city are covered by CCTV camera. Ever think that how much courage to these accused they work under CCTV camera.

Why these accused don't have fear of law? the reason behind this the loopholes of law. After the Nirbhaya case how many accused hanged? I think no one, due to the loopholes of law, accused get motivated for that. N is implemented.

Rahat Shab Said That

*“kabutro ko khuli chat bigad deti hai
Suna hai hwao ko sobat bigad deti hai
Or jurm karne wale log itne bure nhi hote
saza na dekar Adalat Bigad deti hai ”*
“Justice delayed, justice denied”

Justice delayed motivated to the accused and converted into violence. Section 376 of Indian Penal Code, punishment decided according to the situation, circumstance, age, Person etc. As per the citizens or public view that, the punishment should be stated in one line that,

**“Whoever commits rape, shall be guilty of the offence
Under section 376 of IPC shall be a death penalty”**

Death penalty is less for this type of cruelty or violence, when we talk justice, criminal justice system, then we talk about corrective justice, accused should be given a chance to improve, and there is a question, being part of the Judicial System; why we give a chance to accused for improve especially in rape case.

Bacchan singh v/s State of Punjab, 1980⁴

In this case, first time SC laid down the doctrine “rare of rarest case”.

⁴ AIR 1980 SC 898

In India, it was very clear that capital punishments can only be enforced in rare of rare cases.

Machhi singh v/s State of Punjab, 1983

In this case, SC laid down the rule that rules decided that which case is under the doctrine of “rare of rarest case”.

So, as per these case laws, in which case this doctrine “rare of rarest case” laid down, there should be a “**rare of rarest punishment**”.

It is not mandatory that everyone must be under the improvement period.

Yagvalaya said in his book:-
“Jaghntam Apradh ke liye krurtam dhand kaPravdhan hona chahiye”

⁵ 1983 AIR 957