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Sentencing in Rape Cases: Balancing Justice, Public Outrage and Judicial Discretion

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ABSTRACT

In rape cases, the sentencing procedure plays a pivotal role in delivering justice and deterring the future offenders to commit the crime again. After the high-profile cases like that of Nirbhaya and Kathua, incidents such as these introduced the harsher punishments in order to make a deterrence effect. However, whether these harsh punishments was able to make any difference in the recidivism rates still remains doubtful. The public outrage and the involvement of media demands stricter punishments for the offender but the lack of structured guidelines results in the inconsistent judgments and erodes the public trust in the criminal justice administration. Judicial discretion is an important aspect that helps in giving tailored judgments but excessive reliability on this results in the unpredictable sentencing patterns. This paper critically examines the limitations of giving harsher punishments, arguing that they do not necessarily prevent reoffending. The procedural delays that can be seen in the case of Nirbhaya further weakens the impact of punishments, eroding victim's faith in the system. The research highlights the need for reforms such as the structured sentencing guidelines in order to reduce the arbitrariness in the judgments, fast-track courts for timely justice and greater participation of the victim in the sentencing process. The paper also highlights the importance of counselling and rehabilitation in order to reduce the rate of reoffending. In the end the paper argues that while strict punishments may satisfy the public opinion and media but they are not sufficient as an independent measure. Ensuring the certainty of punishments and improving the rates of convictions are essential for an effective criminal justice administration.

Keywords: *Rape sentencing, sexual offences, judicial discretion, public outrage, deterrence, recidivism, victim participation, rehabilitation program.*

I. INTRODUCTION

Rape is the abhorrent crime that not only violates the bodily integrity of the women but leaves physical as well as psychological scars. Sentencing of the offenders of rape plays a vital role in delivering justice and deterring others to commit such a heinous offence. Punishing a criminal

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harshly do builds the public trust but it is not always enough. In India there are numerous reforms introduced which increased the punishment of rape to life imprisonment and death penalty for the aggravated forms of sexual offences. But the question remains does these harsh punishments reduces the rates of recidivism. While some would argue that harsh punishments to the offenders of sexual offences creates a deterrent effect but on the other hand the issues like the low conviction rate, societal justice and social stigma which makes them ineffective.

The infamous, Nirbhaya Gang Rape case (2012)² not only came into limelight because of the brutality of the crime but also because of the massive outcry that it triggered. The case brought to the surface the growing frustration in the leniency in the sentencing of the sexual offences and the inefficiency of the criminal justice administration. This case led to the 2013 amendment which introduced stricter punishments. In the recent judgment of the case of Bilkis Bano where the rapists were given remission reignited the debate of whether the criminal justice system is able to address adequately the severity of such crimes.³

Media attention is something which has the power to decide the severity of the sentencing of an offence. When the cases are high profile it is often seen that there is a demand for harsher sentences such as capital punishments, life imprisonment or extra judicial solutions. But public demonstrations and campaigns can oversimplify complex judicial decisions, pressurizing the courts into giving the decisions that can meet the expectations of public sometimes at the expense of careful deliberation.

Judicial discretion also plays an important role when it comes to sentencing. Discretion does allow the judges to deliver a judgment according to the specific circumstances of each case but there also lies a problem that comes with excessive discretion which leads to unpredictability in the judicial decisions.

This paper will examine the effectiveness of stricter sentencing in rape cases, critically analysing whether it serves as a deterrent or merely satisfies the public outrage or if systematic reforms and preventive measures are the need of the hour.

II. LEGAL FRAMEWORK

After Indian Penal Code which came in 1860 the rape laws had not altered in over 120 years.⁴

² *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1.

³ *Bilkis Yakub Rasool v. Union of India & Ors.*, [2024] 1 S.C.R. 743.

⁴ Kiran D. Gardner, *Challenges of Criminal Justice System in Adjudicating Cases Relating to Sexual Offences*, 2 Int'l J. L. & Soc. Sci. 1 (2016), <https://heinonline.org/HOL/Page?handle=hein.journals/intljolwa2&id=7>.

Rape laws are majorly covered under sections 375⁵ and section 376⁶ of the Indian Penal code (section 63⁷ and 64⁸ of *Bhartiya Nyaya Sanhita*). These sections were amended for the first time in 1972 after the controversial judgment of the Mathura Rape case.⁹ The judgment of this case brought the inefficiency of the criminal justice system to the surface as it required the rape victim to prove that she did not consent for the sexual intercourse. There were major amendments that came into being after 10 years of this judgment and sections like 376B, 376C, 376D were added in the IPC. The amendments regarding the onus of proof which shifted to the accused and the disclosure of the identity of the victim is a punishable offence. Another major development was the advent of shall presume that came from amendment of section 114A of the Indian evidence act¹⁰ (section 120 of *Bharatiya Sakshya Adhiniyam*)¹¹ which talks about that if the rape victim says that she did not consent to the sexual intercourse than the court shall presume that she did not consent.

In the case of Priyadarshini Mattoo the accused first got acquitted by the trial court but later charged for raping and murdering law student Priyadarshini.¹² In this case the accused's death sentence was commuted to life imprisonment, emphasized the need for proportionality in the sentencing.

The case of Nirbhaya (2012), the brutal gang rape of a young women in Delhi led to the nationwide agitation for the reforms in the punishment of the sexual offences, demanding for stricter and harsher punishments.¹³ In response to this case there came Criminal Law (Amendment) act of 2013.¹⁴ This amendment expanded the definition of rape and included within its scope penile vaginal penetration, it also enhanced the minimum and maximum punishments of rape and also prescribed death penalty for the offence of leaving the victim in vegetative state. For the first time offences like voyeurism, stalking and acid attack was added in the Criminal acts.

The brutality of Kathua Rape and murder case shook the conscience of the nation. The case brought to surface the communal and political overtones and the excessive media reporting played a vital role in bringing the case to the forefront. Because of this case there were

⁵ *The Indian Penal Code*, § 375, No. 45 of 1860, India Code (1860).

⁶ *Id.* § 376.

⁷ *The Bharatiya Nyaya Sanhita*, § 63, No. 45 of 2023, India Code (2023).

⁸ *Id.* § 64.

⁹ *Tukaram v. State of Maharashtra*, (1979) 2 SCC 143.

¹⁰ *The Indian Evidence Act*, § 114A, No. 1 of 1872, India Code (1872).

¹¹ *The Bharatiya Sakshya Adhiniyam*, § 120, No. 47 of 2023, India Code (2023).

¹² *Santosh Kumar Singh v. State through CBI*, (2010) 9 SCC 747.

¹³ *Mukesh*, (2017) 6 SCC 1.

¹⁴ *The Criminal Law (Amendment) Act*, No. 13 of 2013, India Code (2013).

amendments made to address the sexual offences against the minors. The Criminal law (Amendment) Act, 2018,¹⁵ introduced the capital punishment for the rape of girls below 12 years of age and also mandated that the investigations and trails needs to be expediated and completed within a time frame.

With the increasing cases of sexual abuse of the minors and the inadequacy of the prevalent laws, there arose a need for a comprehensive legislation and POCSO (2012) came into picture.¹⁶ Before the act came into picture it was IPC which dealt with the issue of child abuse but it lacked sensitivity and specificity. The area was relatively new and therefore it faced the challenges of inadequate procedures, lack of proper definition and on several occasions insensitivity by the courts. POCSO made clear bifurcations between penetrative, aggravated penetrative, sexual assault and sexual harassment. It made the procedure of the courts child friendly to minimize the trauma to the victims.

In the sexual offence cases Indian courts have had massive backlogs, which resulted in the delayed justice. There arose an urgent need after Nirbhaya case for the faster and more efficient judicial procedures to provide speedy justice. Thousands of people moved to the streets in order to expediate the trail to provide speedy justice to the victim.

III. PUBLIC OPINION ON SENTENCING: DOES HARSH PUNISHMENTS DETER SEXUAL OFFENDERS?

The RG Kar Medical college rape and murder case was the most heinous sexual offence that reignited the debate whether by just increasing the punishment of the sexual offence is enough to provide justice to the victim or deter the criminals.¹⁷ West Bengal government not to anyone's surprise increased the punishment for sexual offence in the Aparajita Woman and Child (West Bengal Criminal Laws Amendment) Bill, 2024.¹⁸ The act increased the punishment to death penalty if the act of the accused results in death or permanent vegetative state of the victim.

Emeritus professor Dr. Brown talks about there are two aims of punishment, first being to deter the population at large and second is to deter the individual from re-offending.¹⁹ He claims that the field of deterrence is understudied and is beset by presumptions.²⁰ What can be understood

¹⁵ *The Criminal Law (Amendment) Act*, No. 22 of 2018, India Code (2018).

¹⁶ *The Protection of Children from Sexual Offences Act*, No. 32 of 2012, India Code (2012).

¹⁷ "Harsher rape laws do little to prevent sexual violence": Rukmini S., *Harsher Rape Laws Do Little to Prevent Sexual Violence*, The Indian Express (May 31, 2023).

¹⁸ *Id.*

¹⁹ "Do harsher punishments deter crime?": *Do Harsher Punishments Deter Crime?*, UNSW Newsroom (July 15, 2020), <https://www.unsw.edu.au/newsroom/news/2020/07/do-harsher-punishments-deter-crime>.

²⁰ *Id.*

is that, the harsh punishment or longer prison duration only do not prevent the crime from happening again but in reality it does the opposite, it becomes more likely that the person will commit the crime again. In the Shakti Mills gang rape case (2013) for the first time capital punishment was awarded to the accused under 376E.²¹ This case brought to limelight the issue of reoffending in the cases of sexual offences and led to strict interpretation and application of laws.

Public opinion plays a major role in determining the harsher punishments, as the courts have to give punishments that they otherwise would not have. There were significant increase in the punishments after Nirbhaya and Kathua case. In the name of addressing the issue of sexual offences it is often seen that government goes for increasing the punishment. After every incident of rape that caught the eye and emotions of the people it can be observed that punishments of the rape has increased but the question remains it is enough. The conviction rates in rape cases is very low and therefore it not the harsh punishments that will deter the person to commit the crime but it is the certainty of the punishment that will make a change.

Just giving the harsher punishment to the accused cannot be seen as delivering justice to the accused. It is wrong to assume that victim's psychological trauma will ever be compensated with stricter punishments. There is a need for long term measures to address issues such as this, ignoring and diverting the important question is not a solution. The survivors have to already face a lot, there is no witness protection scheme in place, because of which the survivors often feel threatened to report the crime. it is not wrong to say that there is no way to tackle the issue of rape completely but giving harsher punishments is not the way to reduce the crimes.

IV. CHALLENGES IN SENTENCING SEXUAL OFFENCES IN INDIA

Despite there being legal framework that govern the sentencing process and policies there still remains critical challenges in the sentencing of sexual offences in India. these challenges hamper the consistency, fairness and victim's confidence in the criminal justice administration.

The primary challenge of the sentencing process is the lack of structured sentencing guidelines, Indian courts lack the detailed guidance on choosing the appropriate punishment. Because of this sentencing largely depends on the individual judicial discretion which varies from one judge to another. This absence of structured guidelines which ultimately results in the inconsistent punishments diminishes the public confidence.

Another challenge that remains is the delays in the judicial proceedings. Nirbhaya's case

²¹ *State of Maharashtra v. Vijay Mohan Jadhav*, Sessions Case No. 846 of 2013 (Sessions Court Mumbai Sept. 6, 2014).

continued for 7 years and 3 months, multiple appeals and review petitions were filed because of which there was a delay which caused hardships to the family of the victim. Delays in such cases also leads to diluting the effectiveness of the punishment, even the reliability on evidence is diminished. There is a need to establish the fast-track courts with adequate resources that can handle the sexual offences cases efficiently and ensure timely justice.

Another significant challenge that remains is the victim participation in the sentencing hearing. The victim should not be a mere spectator and rarely having a voice in the sentencing phase. When the victim's impact statements are included into the judicial process it will help judges addressing the victim's trauma and will help in determining the appropriate punishments.

Addressing these challenges requires the comprehensive reforms to sentencing practices in the sexual offences. The judiciary has to deal the matter with sensitization, there lies a need for structured sentencing guidelines, improved conviction rates, rehabilitation-focused measures. Reforms such as these will be able to gain public confidence in the criminal justice administration and justice to the survivors of sexual offences.

V. CONCLUSION

Sentencing process remains heavily influenced by the judicial discretion, subjective reasoning and uneven guidelines. Due to this inconsistency there remains the issue of undermining the public trust. While the discretion of the judges do allow them to adapt to each case according to its needs but excessive reliance on the subjective factors often results in the punishments that appears to be arbitrary. The reasoning of judiciary is also influenced by the outside forces which includes the public opinion, media scrutiny which further adds to the inconsistent sentencing. The public perception and the media's role in the high-profile cases shapes the sentencing discourse. While these outside forces do lead to more accountability but this emotional outrage can hamper the judicial fairness. To address challenges Indian sentencing policy do need reforms in the form of structured sentencing guidelines where the detailed guidelines needs to be mentioned. There has to be victim's participation and dedicated fast track courts in order to provide speedy trail and justice to the survivors. Another important policy that is needed is on remission and early release, the convicts in the severe sexual offences must at least serve a reasonable portion of there sentences which will maintain the sentencing integrity and public trust. Instead of punishing the criminal there has to be mandatory rehabilitation and counselling programs for the convicted offenders to address the behavioural issues and to reduce the scope of re-offending. Addressing the issues of inconsistency in the sentencing through structured reforms will improve the confidence of public on the judiciary. Ensuring fairness and certainty

in the sentencing process will contribute to social justice and gender equity in India.
