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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **CONVERSE ABOUT CRUCIAL LEGAL REFORM: ARE WE IN A BETTER POSITION?**

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## **ABSTRACT**

This article leads us to the crucial legal reform in India that is a landmark movement in India's rape laws and are we actually in a better position no matter how many legal reforms Takes place. We'd lead to Mathura rape case, 1972 a case marked a crucial turning point in India's legal history, exposing major shortcomings in the management of sexual assault cases, particularly those occurring in custodial settings. A case which out sparked the rage in Indians during that time.

This article is not just limited to the briefs and happenings of case but also what current scenarios corresponds in India, rape has always been one of the biggest issues in our country and in current scenario we keep hearing about the cases and statistics but the thing is, is our judiciary effective in handling and punishing the guilty? Are things being fair towards the guilty and innocent? Are we getting quick and efficient judgements? We'd look for answers for these questions through this article by discussing the landmark movement due to Mathura rape case along with looking at current statistics and numbers to find out whether the things have actually changed for women by the legal reform ever since, "are we in a better position?"

## **INTRODUCTION:**

The 1972 Mathura rape case<sup>1</sup> which involved the brutal custodial rape of a young tribal woman by two policemen, became a watershed moment that revealed certain aberrations in the Indian judicial system and brought in significant legal changes concerning sexual violence and consent. Rape is an old and very serious social problem in India, which is rooted in the society and its structures and relates to the safety, security, and dignity of women and other disadvantaged groups.

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<sup>1</sup> Tukaram v. State of Maharashtra (1979 AIR 185, 1979 SCR (1) 810).



The issue of rape in India is still a cause for worry with high prevalence and low rates of conviction. It has been reported that roughly 85 rapes are committed each day in the country and the yearly conviction rates stands at 28%. The recent occurrences such as the case involving a rape and killing of a medical intern in Kolkata have led to massive protests seeking support for tougher punishment as well as enforcement.

## **ABOUT MATHURA RAPE CASE 1972**

### **Overview:**

The Mathura rape case of 1972 is an important incident in Indian legal history, not only exposed to deep-seated issues surrounding sexual violence but also ignited a nationwide movement for women's rights and legal reform. This case is often regarded as a turning point in the discourse on gender-based violence in India, arising from the systemic failures of the justice system and the societal attitudes towards victims of sexual assault. Victim was a Mathura was a young tribal girl, an orphan living in a rural area of Maharashtra. She was between 14 and 16 years of age at the time of the incident. Mathura worked as a domestic helper to make both ends meet and would stay sometimes with her two brothers. On March 26, 1972, Mathura was called to the police station at Desaijanj when her brother lodged a complaint against Ashok, one who allegedly tried to kidnap her. The police called Mathura to the station to ask her about the complaint, setting the stage for the horrific events that followed. Assault Mathura's relatives left the police station, and she was alone with two policemen, Ganpat and Tukaram. This is also when Mathura is accused of having been raped by Ganpat and at the same time, Tukaram, intoxicated, tries to assault Mathura too. Mathura later narrated the traumatic experience describing how she was threatened and coerced into keeping mum. After the rape incident, Mathura escaped from the police station and communicated the incident of rape with the villagers who had gathered to see the commotion. An FIR was lodged against the two policemen and Mathura underwent medical examination nearly after 24 hours of the event

### **Judgement:**

The Initial legal proceedings included Trial and Acquittal, The case went to trial in 1974, with defense where it was submitted that Mathura was "habituated to sexual intercourse," thus meaning that she must have given her consent. The Sessions Court acquitted the accused by holding that in her failure to put up physical resistance, there must be held to be implied consent. This judgment was based on deeply entrenched patriarchal views, blaming the victim



for the assault. Public Outrage, The acquittal outraged public conscience all over India. Women's rights activists, legal scholars, and the general public protested against the judgment, arguing that it perpetuated victim-blaming and reinforced societal norms that devalued women's testimonies.

Further the appeals and Reversal took place in which The judgment was challenged in the Bombay High Court. In 1976, the Bombay High Court reversed the judgment of acquittal. The High Court held that the victim's evidence should be taken seriously and that the behavior of the police was abominable. Supreme In 1979, the Supreme Court of India reversed the High Court judgment and reinstated the judgment of acquittal pronounced against the policemen. The Supreme Court argued that there was not enough evidence to corroborate Mathura's testimony as true, hence she had not dissented.

#### **Legal and social impact:**

Criminal Law Amendment Act of 1983<sup>2</sup>: Due to mass protests arising from the incident, significant legal changes became in line. It included the Criminal Law Amendment Act, with some reforms, Burden of proof was reversed in custodial rape cases; shifted the burden from the victim to the accused.

Providing for in-camera trials for the protection of identities of victims.

Establish the fact that the court should assume that there has been no consent if the victim is saying that they have never given consent.

It brought about enormous changes in the IPC<sup>3</sup>, the CrPC<sup>4</sup>, and the Indian Evidence Act, more particularly in respect of crimes against women as well. The laws relating to rape and custodial torture were amended. The amendments were mainly a response to the public outcry following the Mathura rape case and aimed at strengthening the legal framework for the protection of women's rights and to ensure justice.

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<sup>2</sup> The Criminal Law (Amendment) Act, 1983.

<sup>3</sup> The Indian Penal Code, 1860.

<sup>4</sup> The Code of Criminal Procedure, 1973.

## **OTHER SIMILAR CASES LEADING IN INDIA:**

- 2012, Delhi rape case (nirbhaya case)<sup>5</sup>

The Nirbhaya Rape Case entitled – The State vs Ram Singh & Ors. Is perhaps one of the cases which brought the issue of Women and Sexual Violence in females' community at the national and international levels. It was on the 16<sup>th</sup> of December, 2012, that bloody and horrifying news came to the world of a home young woman named Jyoti Singh who had been gang raped on a moving bus in the nation's capital, Delhi. The brutal nature of this crime which led to her death two weeks after the incident caused a lot of anger and demonstrations across the country which even called for the change of the existing laws on sexual violence against women. After the incident, however, police action was swift as five adults and one juvenile were arrested. The case was subject to a fast-track trial due to public pressure on expediency of justice. On the 10<sup>th</sup> of September, 2013, the trial court convicted the four adult defendants of conspiracy to commit gang rape and murder and sentenced them to death by hanging. Nirbhaya juvenile offender was tried in a different institution, receiving three years in custody which was then the highest penalty imposed to minors alleged in crime. Many processes occurred in the case including taking it to the judicial authority of Delhi and the highest court of India. In it dated 5<sup>th</sup> May, 2017, the Apex court confirmed the death sentences of the males from Nirbhaya's case stating that those were the most fitting punishments for the so called crime which was said to be 'savage' and 'horrendous to the society as a whole.' A long-awaited procedure that began three decades of postponements eventually saw the four men hanged on 20 March 2020. All India Nirbhaya case had a far-reaching influence on the Indian society as well as within the legal framework. As a result, the Criminal Law (Amendment) Act, 2013 was passed which imposed harsh punishment on the act of sex crime with certain forms of rape attracting the death penalty. In addition, an organization known as Nirbhaya Fund was created by the Indian administration which aimed at improving the safety and security of women across the nation.

- Shakti Mills case, 2013

The Shakti Mills case<sup>6</sup> is about a gang rape incident that took place in Mumbai in the month of August in the year twenty thirteen against a photojournalist aged 22 years. While on

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<sup>5</sup> The State vs. Mukesh Singh & Others.

<sup>6</sup> The State of Maharashtra vs. Shakti Mills

duty, she was with her male co-worker whom a group of five men attacked in an abandoned factory. The gang raped the woman and made threats of spreading photographs taken during the assault which compelled the woman to remain silent, which shocked the whole nation for such acts. Public outrage led to the case being taken on an urgent basis. On 20 March 2014, a session court in Mumbai convicted all five accused with three of the adult convicts sentenced to death while the one juvenile sentenced to three years in a rehabilitation center. The case portrayed the need for expeditious measures in reforms of the laws on sexual violence. The Criminal Law (Amendment) Act, 2013 was passed by the government of India to provide more changes on the existing law with serious consequences for perpetrators of similar crimes with the inclusion of death sentence for the offenders. In terms of her case's legal implications, the Shakti Mills incident constitutes an important phase in the fasted completion of rights and safety of women in India, calling for social transformation and legal abetment on sexual hostility.

- The Kolkata case, 2024

In August 2024, the case of Kolkata rape<sup>7</sup> and murder came up, and it has contributed a lot to the fight against sexual violence in India. The shocking news of a brutal attack followed by the death of a 31-year-old female postgraduate student at the R.G Kar Medical College and Hospital elicited outcry across the country. The woman's body was discovered inside a seminar room after she had finished a night duty while the police officer identified as Sanjoy Roy a civic volunteer working for the Kolkata Police was apprehended within no time. The event led to serious protests especially among professionals in the medical field which in turn led junior doctors in West Bengal to strike for 42 days. They called for justice for the deceased and protection of women in their working environment. In addition, it also brought forth the introduction of the Aparajita Woman and Child Bill which is aimed at ensuring proper implementation of measures against sexual violence by the government of West Bengal. As the investigation continued to surface new evidence, the case was also handed to CBI for further investigation due to the police's poor management at the start of the case. There were also allegations of evidence being collected with bribes and other foul play and these made the matter worse and depicted how rotten the legal system could be. The savagery of this incident brings out the pressing demand for societal transformation and legal reform that exists in India. It stresses on the need to ensure that women are

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<sup>7</sup> The State of West Bengal vs. Sanjoy Roy



protected in every aspect. The Kolkata case stands as a strong warning against complacency, in that collective anger and action can indeed effect positive change, and gives hope of a time when women's rights will be upheld and defended.

## **COMPARISON OF RAPE DATA OF 1970s AND 2020s**

- 1970s overview:

The decade of the 1970s showed very few incidents reported owing to social constraints and ignorance of the situation. Many of such incidents remained unheard of. Rape was often seen as a personal affair, and victims suffered great reproach from society that prevented them from taking any action.

The legal definition of 'rape' was regarded as very restrictive, as it only included vaginal penetration by the penis, and therefore it was an inadequate definition – evidence of what would constitute a charge of rape. Figures for successful prosecutions were low, and many cases were dropped or otherwise not acted upon because of prevailing views on women in society.

- 2020s overview:

The statistics indicate that there were 31,677 rape incidents made known to the authorities in the year 2021, which is higher than the 28,046 cases recorded in the year 2020<sup>8</sup> showing a rise in the number of incidents reported. This shows on the other hand that there is growing determination among victims to come out and report the cases, most likely as a result of the heightened awareness and advocacy. The Criminal Law (Amendment) Act of 2013 redefined the crime of rape as well as makes provisions for harsher measures including the death sentence in aggravated cases. However, existing support systems, such as fast-track courts and legal aid, still face obstacles in the judicial system. The public outcry and the extensive media coverage that followed triggered the people's desire for justice in the society although stigma is still attached. In spite of the increase in the reported number of cases, low conviction rate has been recorded with only close to 27% of reported cases translating into convictions as per the recent statistics available.

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<sup>8</sup> National Crime Records Bureau (NCRB).

## **ARE WE IN A BETTER POSITION?**

Although Considerable changes in the laws have taken place, for instance laws concerning the issues of domestic violence, laws on sexual harassment, laws on discrimination against one's gender and so on Women have a better understanding of their rights and problems and as a result, there is more activism and support services targeting women's issues. There have been positive trends with respect to the growth in educational attainment and women's workforce participation taking into consideration the increasing urban female labor force participation rates. The number of women in politics and decision making positions has increased as well, and these women have played a role in changing policies for the better concerning women's rights. There are various systems that have been put in place including but not limited to helplines and counseling services that have empowered women, making it easier for them to seek assistance and report cases of violence there are still;

various efforts and campaigns to raise awareness and sensitize populations on the issues, violence and sexual assault in the family continue to be problems with many cases remaining unreported because of stigma. Women, and to some extent men, still carry the burden of traditional gender roles and impositions granted by society that restrict their freedom and opportunities. Increased access to justice has improved in terms of legal instruments and policies, however the legal processes remain slow and prejudice exists, denying many victims of violence, redress. Women, especially those living in the rural settings, continue to experience various levels of economic deprivation

These patterns still reflect that there have been paradigm shifts in women's rights and status in the social framework in India since the last three decades but there are also considerable barriers hence the need to strive for gender equality.

## **CONCLUSION**

Rape is a rampant and serious issue in India owing to many societal, and cultural and systemic factors. Despite being a country with strong laws and traditions, the practice of heinous sexual violence against women presents a threat to most and even in the society that cherishes the dignity of laws and women. This essay examines the problem of rape in Indian context and argues for the necessity of the legal reforms and their application pitching in to deal with the problem. While corrects its obvious lack of an attention wielding initial impression about a country enduring rape among its population, in its structural reforms the legal apparatus has

been updated up to certain point. Rape and other Sexual Offences, Provisions within the existing laws, like the Criminal Law (Amendment) Act incorporated more punitive measures including the death penalty for the most extreme cases of sexual violence.

However, these measures tend not to be implemented. Most of the women victims of sexual assault go through the worst and most prolonged judicial procedure and in result many choose to remember trauma instead of seeking justice. Furthermore, police attitude towards sexual violence instances is often practicing insensitivity and untrained conduct which adds to the victim's ordeal. Apart from legal frameworks, there is an urgent call for better services to be provided to victims of sexual assault. It should be a matter of law that counselling, legal assistance and medical care are provided to victims of such crimes. These services assist in the recovery process of the trauma and also encourage the victims to bear the hope of justice. Additionally, it is also important to carry out campaigns to sensitize the society and promote knowledge on issues such as consent, women's rights, and gender equality to eradicate sexual violence.

#### **REFERENCES:**

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

The Criminal Law (Amendment) Act, 1983.

The Indian Penal Code, 1860.

The Code of Criminal Procedure, 1973.

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