



The Indian Rape Culture as to Why Men Rape: An Analysis

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ABSTRACT

India has been dubbed as one of the most dangerous countries for women. As per the data, the Indian police was successful in filing approximately 31, 677 rape cases in the year 2021. Our society still follows patriarchy where women at times have to be a victim of their own acquaintances. The NCRB report shows that 96% of rapes committed in India are done by the victim's near and dear ones. People often opine that there must be tough laws but what actually means by a tough law? The law must always be effective irrespective of its toughness or flexibility. Moreover the agencies involved in investigation and prosecution must be more efficient along with the effective law. In this paper the points on which people across the globe seldom talk are kept on the backend and the reasons or the causes and their solutions have been highlighted.

INTRODUCTION

In 1976, a Ph.D. student named Samuel Smithyman published a rather unusual advertisement in the newspapers of Los Angeles. He was searching out for a rapist for his research. He waited for his phone to ring, all the while skeptical that anyone would actually call. Around 200 people called him at the end out of which one of the callers was a computer programmer who had raped his girlfriend, another was a painter who had raped the wife of his acquaintance and many others. Dr. Smithyman interviewed around 50 such people and published a dissertation. His findings were not much different from that of Madhumita Pandey who researched on the same issue around 2 years prior to Samuel. Madhumita Pandey was 22 years old when she visited Tihar jail for the first time to interview a convicted rapist. During her research, she interviewed around 122 convicted rapists in Tihar jail. Madhumita and Samuel's research are very rare as they encounter us with the mentality of a rapist. It is important to understand a rapist's motivation and thought process as we seldom talk about them. After the Hyderabad rape case, two points gaining the attention of the general public were- the punishment which must be given to the accused and what women can do to prevent rapes. After the Hyderabad rape case, Telangana police issued an advisory that advised women to always wait in crowded areas and to call the police whenever required without any hesitation. In the Indian context, individuals tend to lay emphasis on the victim rather than the rapist or accused. But the editor of the Psychology of Violence journal contradicts this mentality. She opines that we would never come closer to understanding rapes until we understand the perpetrator.

INDIAN LAWS ON RAPE

In India the major provision related to rape is **Section 375¹** of The Indian Penal Code, 1860. It mentions that there are some necessary requisites for declaring an act to be a rape like absence of consent, contradiction with the free will, providing consent under fear of death or hurt to near and dear ones,

¹ A man is said to commit "rape" if he-

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:

First. Against her will.

Secondly. Without her consent.

Thirdly. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

indulging in sexual activities with a woman under 18 years of age, etc. In the year 2012, an incident which shook the entire Indian subcontinent was the case of **Mukesh and Anr. V. NCT of Delhi and Ors.** or the Nirbhaya Rape Case. This heinous incident not only laid an impact on the society but also the laws related to rape in India. Laws were made tougher as it is evident from the Criminal Law (Amendment) Act of 2013. After the amendment, the sentence of imprisonment was increased from 7 years to 10 years and in cases where the victim is left in a vegetative state or the victim succumbs to death, the sentence was increased to minimum 20 years which was earlier 10 years. Further more, the accused's age of trial in cases of heinous offences like murder or rape was altered to 16 years which was earlier 18 years and individuals committing such violent offences between the age of 16-18 were held to be tried as adults. In the year 2018, another amendment was made in the Criminal Law Act after **Asifa Bano V. The Union Territory of Jammu and Kashmir** or Asifa Bano Rape Case where an 8 year old girl from Kathua was brutally raped and murdered in Jammu and Kashmir by a group of around 7 men along with a priest. The amendment provisioned death penalty and a minimum sentence of 20 years as a punishment for an individual who commits rape of a girl under 12 years of age.

OUTCOMES OF MADHUMITA AND SAMUEL'S RESEARCH

There was something common in Madhumita and Samuel's research. After every heinous rape case, we often label rapists as monsters or animals as no human would ever commit such an awful crime. But many researchers assert that when they talk to rapists, they sound like sane individuals. Samuel said he was surprised to find the rapist conversing with him normally. Madhumita on the other hand said that she felt sorry for the rapists while she was interviewing them. She would even forget the crime they have committed. Even a Canadian researcher who interviewed a rapist who had murdered his convicts after the act, claimed the same thing. This nowhere means that we should justify the actions of these criminals, but in order to solve the problem of rapes, we need to understand the rapist first.

Many researchers often state that most rapists show no remorse and don't even perpetrate that they have committed a heinous offence. Mary Koss, a professor of Public Health asserts that when she asks a rapist if they had forced themselves on their victims, the rapists generally agree. But when she asks if they raped, they would deny it. Studies have shown that people who kept sex slaves during wars didn't accept that they actually raped their victims. Madhumita says that rapists don't realise that they have committed a crime of raping someone. They show no understanding of the concept of rape itself and even tend to blame the victims for the incident. Madhumita asserts that rapists often convince themselves of an alternative reality. People often claim this excuse that you need two hands to clap and women roaming outside at night are themselves not innocent. Madhumita during her interview also encountered a 49 year old man who had raped a 5 year old girl. He stated that the girl was the one provoking him and had a questionable character which had to be corrected. This phenomena is known as Cognitive Dissonance where the rapists could simply believe that his sexual desires are more important, the victim impliedly was asking for it and the sexual desires of a man are uncontrollable. Madhumita interviewed 65 murder convicts of Tihar jail to understand if other criminals blamed their victims too. She noticed that their response was contrary to that of rapists. Murderers blamed themselves rather than blaming the victims as the rapists did. Madhumita suggests that one reason behind the difference in this mentality could be because a murderer might find himself more accountable after the victim's death. This doesn't mean that rapists don't feel sorry for the victims but they rather chose to blame the victims. Even their regret or guilt is for an entirely different thing. The 49 year old man whom Madhumita interviewed asserted that he ruined the life of a 5 year old child who would now no longer be a virgin and no one would marry her. He also stated that he would marry her once he comes out of the prison. His statements clearly signify that the rapist has no clear understanding of what rape is and what consent is. He tends to emphasise much on the honour of the victim rather than worrying about the pain and torture she must have gone through.

REALITY CHECK BY THE QUINT

In a survey done by The Quint, people were asked about why men rape in India. People held different opinions like one needs two hands to clap so a girl invites rape by initiating something then it becomes obvious for a man to tease her back, going back at 10-11pm is not very reasonable for a woman and they are not under control, women are made such so as to enter their premises earlier, western culture is resulting in increasing rates of rape as women are wearing short dresses which provokes a man, etc. Some of the individuals had a very contrary opinion though like rapists have a separate view at home and a separate view outside, they look at women in a very awful and lustful manner, no one knows what goes in their minds and what kind of mindset they bear when they commit such an offence, they commit rape because they don't know the appropriate manner and approach in which one

Fifthly. With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. With or without her consent, when she is under eighteen years of age.

Seventhly. When she is unable to communicate consent.

Explanation 1. For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2. Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1. A medical procedure or intervention shall not constitute rape.

Exception 2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape

should talk to a women, men are not allowed to talk to women in schools and are made to sit differently, they are treated as a mystery and are hidden from men because of which men tend to become curious regarding the mystery and indulge into sexual violence at last, why we are focussing on what she is wearing when even girls wearing sarees are molested, men are free to wear whatsoever they wish then why not women, it is their choice their wish to wear whatever they are comfortable with but men must not let any wrong thought to prevail in his mind, men must change their mentality, men must be trained and taught about how to treat a women and more than that how to treat a person first, women must not be told not to get raped or not to let it happen, rather men must be taught not to rape.

THEORIES EXPLAINING SEXUAL VIOLENCE AND RAPISTS

The observations might apply to many rapists but we can divide the motivations of rapists into two categories- First is that men rape women for biological and evolutionary reasons. The explanation being that rape is a reproductive strategy by men to ensure the continuation of their genetic material and heredity. This theory ensures that every man has a tendency to perpetrate sexual violence. Another theory ensures that sexual violence occurs due to societal, cultural, or man made reasons. The individuals supporting rapists as monsters or animals are much likely to favour the biological theory. The second one favours that men rape because of societal or cultural motivations. The biological theory can't explain the commonplace of rape in some countries and its rarity in others. Because if rape and sexual violence are natural then every country would have the similar rate of rape offences. But this is not the case. So even if there is some truth in biological theory, sexual violence can't be explained without cultural theory. Both these theories are helpful in examining sexual violence as there are various types of rapists as per the researchers. For instance, opportunistic rapists are those who tend to rape in accordance of certain situations like if the women they are raping is from a poor background and will not be able to take serious actions against them, then such individuals tend to rape. Then there are another kind of rapists called specialised rapists who tend to rape because they find sexual violence as their utmost satisfaction.

INTERNATIONAL PERSPECTIVE

Sexual violence against women and girls be it inside the home or outside the premises, both hold a quite long historical trend. The function of such violence is to majorly subjugate and humiliate women within the chosen section. Furthermore, rape is nit something which is generally committed when isolated and victims of such offence are often exposed to various abuses of human rights, which further result in traumatising the victims. The disputes in which citizens or natives are the principal targets, sexual violence has become even more intentional and sneaking weapon of war. Such violence most provably infringes rights of women to be free from any sort of discrimination on the grounds of sexual identity as provisioned under the ICCPR. Under **Article 1** of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the definition of discrimination has been provided as "*gender-based violence precisely because gender-based violence has the effect or purpose of impairing or nullifying the enjoyment by women of human rights*". The CEDAW has set forth a great range of several duties in regard of ending sexual violence among nations. It guarantees pertinent treatment for victims of such offence in the justice system, counselling, support services, medical facilities, and psychological aid. In a resolution of 1993, the General Assembly of UN proclaimed that forbidding discrimination on grounds of gender incorporates elimination of violence on grounds of gender or gender-based violence, and that states "*should pursue by all appropriate means and without delay a policy of eliminating violence against women.*" Article 2 of the Convention on the Rights of the Child (CRC) also states that there shall be a freedom from any sort of discrimination on grounds of gender. Further, the banishment of every sort of discrimination against women and the protection of their and the children's rights has also been ensured under The African Charter on Human and Peoples' Rights. It includes right to integrity of oneself and the right to be free of all kinds of humiliations and exploitations, particularly slavery, slave trade, torture, cruel, humiliating punishment and treatment." In the year 2004, the African Union Protocol to the African Charter on Human and People's Rights was signed by Côte d'Ivoire, which later came into effect in 2005 among which, **Article 11** and **Article 14** on armed conflict and regarding illegal abortion respectively are the most relevant ones in this regard.

Tribunals have played a crucial role in setting out precedents in cases of sexual violence related conflicts which include including eloquent definitions and essentials of numerous crimes related to gender. The law of the ICC also transparently recognises rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence which are to be treated as crimes against humanity. Crimes against humanity, may also be subject to universal jurisdiction which means that courts established at national levels can be provided the jurisdiction of trying a person who is suspected to have committed a crime against humanity even if both the suspect or the victim are not nationals of that state where the court is situated and the offence had been committed outside the said country. Acts of sexual violence which affect the natives or citizens at large can be treated and prosecuted as crimes committed against humanity in Côte d'Ivoire. .

METHODS TO CURB INCREASING RATES

There are not so much of methods present to curb the biological factors leading to rape but societal or cultural factors are more flexible in this regard. The first step would be to accept the fact that there is a problem with our society's mentality which must be dealt with. Rather than labelling rapists as animals or monsters, it would be of greater help if we lay emphasis on our society and its practices. Only providing death penalty would not solve the problem either as it would not help in the long run but would only satisfy the public for quite some time. Education and literacy must be spread among both men and women which plays a major role in affecting the mentality and thought process of an individual. The Verma Committee which was introduced in 2012 after the Nirbhaya Rape Case has also stated the same. One cannot obviously solve the problem overnight and therefore it is an

understood fact that there is no golden solution for this problem. Even today, we put a barrier between men and women at times. It is easy to kill 4 rape accused in an encounter than to find out the root cause of rape committed by 122 convicts.

CONCLUSION

There are a number of cases in India which are not even filed because of the fear of facing humiliation from the society and the ones reported are not at times proved due to lack of evidences. Though the penal provisions related to rape have been amended and are capable enough to deter the criminals but still the condition of women in India is worsening. They don't feel safe at all while stepping out of their houses. This is due to the lack of fear among the offenders and the mentality which the society around them has forced them to inculcate. We can't say that only people belonging to poor and illiterate backgrounds tend to commit rapes, but a huge number of population belonging to upper class or richer section of the society is often indulged in offences like molestation, harassment and rapes. Thus this is high time for each and every citizen of India to stand up for rape victims and not to just sit and wait for more cases like Nirbhaya, Dr. Priyanka Reddy and Kathua to come up so that the legislature could take actions after the offence gets committed. If the society's foundation itself is so weak, how can the pillars of a nation function. It is we who need to change our practices and way of thinking first, the legislature and the judiciary can not solely uproot this problem as it has been evolved out of the society itself.