

Rape Crime, Law and Victim's Right an Analysis from Indian Penal System

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Abstract: God endowed man and women with same sense of emotion, passion, pain and pleasure, yet both differ from each other. Her gentle tenderness and tolerance make her different from her fellow partner. Indeed women are given place of pride in almost all the religion. Her importance, rights and privileges are recognized by almost all religious scripture. Even then she is subjected to several social prejudices. Causing carnal catastrophe is one of the most demeaning devices adopted to subjugate women. Today the greater challenging before her is to protect her dignity chastity and virginity. Women are sexually exploited in almost all sphere of life. This crime has neither face of its own nor any territorial boundary but with the fact that women are to greater extent its victim, the degree of this crime and the victims' status aftermath the crime differ. In India the incident of rape seems to be less when compared with the foreign country. Numerically, among all crime rape is relatively in frequent phenomenon (0.3 % of total crime in India) but among the crime against the women the rape constitute the highest percentage. Case study reveals that there has been a strong increase in offence of rape in past decade. There has been almost 2,487 rape cases reported between 1971 to 1978, which had increased to 4,621 cases in the same year. According to the official statistic produce by the National Human right commission Delhi in the year 1991, one woman is molested every 26 minute. These are statistic reported cases, which if include unreported cases the matter would have been of every second rather than minute. In response to this government of India approached Law commission with a request to suggest substantive and procedural reformation of criminal law. In spite of amendment made to the criminal law in 1983, the legal system could hardly control the crime, perhaps there is a necessity of awaking calls from the victims' side on one hand and rapid judicial intervention on the other. The question is not whether women have right to bodily integrity as this right is already adumbrated in almost the Articles of Indian Constitution exclusively under Art 21, which guarantees the right to life and liberty to men and women both alike. But whether it is imperative to take a decisive step toward extirpating this evil and make the contemporary and further society a safe place for women. The hypothetical point here is that this crime cannot be prevented only by new enactment or enlarging the law enforcing agencies because several other factors are responsible for increase in crime, to which legal system has to intervene. There is a necessity of more women oriented legislation and policies protecting the right of the women and preserving right of the victims of rape. Since this is a socio-legal issue it is the greatest challenge of the government, women organization and legal system to provide immediate remedy and that's why the study is subjected to consecutive enquiry and research.

Key word: Indian penal code; Indian Constitution; human dignity; victim's right

Introduction

According to professor Meacham Amir's study of 646 rape cases in Philadelphia he reveals that men who rape are not abnormal Amir's writes "*studies indicates that sex offenders do not constitutes a unique or psycho pathological type, nor are they as a group in variable more disturbed then the controlled group to which they are compared*" (Hassan, 2003, p. 129). Allen Taylor a parole officer who worked with rapist also points that they are the men of normal state of mind. Amir's study reveals that in case of group rape 90% of rapes were planned in, pair rape 83% of the rapes were planned and in single rape 58% were planned. Rape is not only a crime of aggression against the body it is a transgression against chastity (Turner, 1952, pp. 36-72). When a woman is forced into sexual relationship she, according to the male ethos is violated. One should not however assume that women can avoid the possibility of rape simply by behaving. The myth that the "bad girls" are raped this theory cannot be always correct. In a study of rape conducted by the NGO'S it was found that 82% of the rape victims had good reputation. Like indiscriminate terrorism, rape can happen to any women and few women are even without this knowledge. But unfortunately both court and police continue to suspect the rape victim, sui generis, of provoking or asking for her own assault¹. The victim is usually submitted to countless questions about her own sexual mores and behaviors by the investigators. A refusal to accompany a man to some isolated places to allow him to touch her does not in the eye of the court constitute rape she must have said "no" at the crucial moment and the rape victim to qualify as such must also have put up a physical struggle unless she can prove that to do so she would have been to endanger her life. (Harnarain, 1958)

Concept and Definition

Since the olden time, Indian criminal system has been enriched by the great jurist like Manu² his penology formula is still found worthy and suitable to the society even after 2500 years. Many westerns theories seem to have developed on it. The basic idea behind the ancient and modern theory of criminal justice is to control the crime and provide reasonable justice to the victim of crime.

The term **victim** of the crime is neither defined under any law nor has the judiciary made any attempt to define the term. The etymological meaning of phrase suggests that it would mean to include [a] anyone suffering physical emotional of financial harm as a direct result of the crime [b] spouses and the children of the person who has suffered [c] parents, foster parents, siblings, guardian or other custodian of

¹ (1955). *Kennedy's outline of criminal law*, at P 4, Cambridge University Press.

² Manu was the great Indian sage who had laid the first rule of "Dharmashastra" a Hindu code of ethics, a reference can be make from Kautalyal's Arthashastra.

minor victim of homicide. In this regard reliance can be placed upon United Nation General Assembly Declaration of Basic Principles of Justice for Victim and Abuse of power adopted in November 1985, which through Article 1&2 gives definition of the phrase:¹

Article 1: “Victims” means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economical loss or substantial impairment of their fundamental rights, through acts or omission that are in violation of criminal laws operative within the member states, including those laws prohibiting criminal abuse of power.

Article 2: “A person may be considered victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the family relationship between the perpetrator and the victim. The “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victim in distress or to prevent victimization. As per the above definition the term victim would include any person with no gender bias.

The Indian penal code has no demarcating line to differentiate gender for crime. The term he under IPC denotes any person male or female a few section in the court defines crime against women and provides only punishment for dominating male member of the society.² The court still seems to quiet sensitive to the crime against women. Among the crime against women include the crime of sexual abuse or emotional blackguard etc, sexual abuse is quite wide to include rape also. Rape is the worst form of victimization a women is subjected to. It totally distracts affecting the very soul of the victim of the crime. (Myere, pp. 398-405). This crime has drawn the attention of both the national and international law to define its nature. The Indian penal code has categorized sexual offence falling under section 375, 376A, 376B 376C, 376D and 377. According to section 375 of IPC rape is an offensive act were in a man is said to have committed the rape who has sexual intercourse with a women falling under six following circumstance.

Firstly, 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 that her consent is given because she believes he is another man to whom she is lawfully wedded; *Fifthly*, if she gives consent in the state of intoxication or if the women is unsound mind or the intoxication is administered by him personally or through another or any stupefying or

¹ Amnesty report, “15 steps to protect women” also see, <http://www.voanews.com/english/news/africa/Amnesty-Report-Says-Law-Fails-to-Protect-Female-on-17/7/2010>.

² Also see *Chitranjan Das* (1975). Indian CrLJ 30 (sc).

unwholesome substance, she is unable to understand the nature or the consequence to which she has given consent.

Sixthly, with or without her consent when she is less than sixteen years of age.

Section 375 is followed by section 376 which specifies punishment for the rape with an imprisonment of either for the period of seven years or which may be extended to 10yrs taking into consideration the nature of the crime.

Consent under Indian Penal Code

As per the above definition one can draw out the basic elements that constitute the offence as such in most of the crime either the consent is absent or the victim is under some kind of pressure no matter whether physical or emotional pressure. Consent is a defense under this section. But the consent as defense to an allegation of rape requires voluntary participation not only after the exercise of intelligence based on the knowledge of the act but after having freely exercised the choice between the resistance and assent. It is no defense that the woman consented after the act (Ram Ahuja, 1987, pp. 22-65). Any helpless resignation in the face of inevitable compulsion or passive giving is not consent. In state of *Orissa v/s khudiram sahu* the court held that the consent given by the victim must be voluntary¹ and not the mere act of helpless resignation. In *Sushil Kumar patil v/s state of West Bengal* it was held that in case of rape if the victim is minor then the question of consent does not arise². In 1980 the Supreme Court held "the court must bear in mind human psychology and behavioral probability when assigning credibility of the victim's version. In *Dhananjoy Chaterjee and Dhanna v/s state of west Bengal* the court in its effort to reform the deteriorating sexual behavior of civilized society observed in this case that most heinous type of barbaric rape and murder was committed on a helpless and defenseless school going girl of 18 years. The offence was not only inhuman and barbaric but it was totally ruthless crime of rape followed by cold blooded murder. The savage nature of the crime has shocked our judicial conscious.

Classification of the Rapist and the Degree of Offence

Attempt has been made by the law maker and the criminologist to classify the rapist or the sexual offender. According to the criminologist sexual assault do not represent all categories of sexual crime. There are crime of simple sexual assault and crime of grave and motivated nature as such the classification of rapist is

¹ For difference between consent and helpless submission, see Rabi Narayan Das v/s State, 1992 in *Indian Cr LJ*.

² Also see Bhawani Giri v/s State of Rajasthan, Judgment passed by Supreme Court of India, 1995.

believed to represent all types of rapist found in society according Geybhard rapist were of five categories. (Henting, 1984, p. 73)

1. Sadist, who have a past history of violence a stronger hostility toward female, and who obtain satisfaction only when it is accompanied by physical violence.
2. Amoral delinquents, who are not hostile to females, use force to get what they want and commit rape to satisfy sexual desire without taking interest in the victim.
3. Drunken variety, who after drinking delude themselves into thinking that a female is trying to seduce them.
4. Explosive, who are normally “upright” citizens? A disturbed family background usually underlies the behavior of these offenders.
5. Double standard, who divide females into good and bad. They rationalize the use of force, if necessary on bad girls.

Typology of rapist is also given on the basis of their sexual and social normalcy, criminologist have divided rapist into following 4 types:¹

1. Sexually and socially normal: He is a rapist who led a normal sexual life and does not usually transgress the accepted rule of sexual behavior. He breaks out of his conformist pattern only under special circumstances, say under the affect of alcohol when he loses his reasoning and attack a known that unexpectedly or expectedly refuses him.
2. Sexually deviated and socially normal: He is a rapist who obtains sadistic pleasure from the sexual act under duress and in painful condition.
3. Socially deviated and sexually normal: he is a rapist who would not behave in a sexually deviant fashion but for some social abnormality. Socially he is unskilled enough to snub the friends who want him to join them on a certain occasion.
4. Sexually and socially deviated: He is a rapist who combines unusual sexual urges with a character defect that diminishes his self control. He is a type of person with an excessively strong libido; He is anti social who peruses predatory sexual interest without regard to social rules or to wishes of his partner. This category also include men with abnormal attitude toward women raising from their own inferiority complex harboring irrational grudges they seek psychological satisfaction by degrading and humiliating humans. This group of rapist forms a small minority then mentioned above.

The degree of offence is incalculable in spite a reference to the finding of the nature of offenders, the degree of offence seems to increase more when the same offence is committed by civilized members of community. To put in other words the learned members of the society who are recognized officer under law. This is in

¹ Delgado, J.M.R. The neurological basis of Violence in *International social science*, Vol. 2, p. 259.

fact a crucial situation where the law tends to be harsher on the offender. At this point let me recollect section 376 of Indian penal code which classifies the offence under section 376A, 376B, 376C & 376D this new section were introduced with a view to stop sexual abuses of women in custody, (Ratan & Dheeraj, 1997, p. 514) controlled by various categories of person which though not amounting to rape were nevertheless considered highly reprehensive. To check the possibility of apprehension and to prevent the misuse of their dominating nature of the public servant on one hand and with the object of protecting the dignity of women on the other a substantial change to the section 375 and 376 were made by the criminal law amendment Act of 1983 thereby bringing the act of sexual offence of the authorities and public servants within the preview of the law. Section 376 [2] provides that who-ever being a police officer commits rape, within the limit of police station to which he is appointed or in the premises of any station house whether or not situated in the police station to which he is appointed or on a woman in his custody or in the custody of a police officer subordinate to him commits the offence shall be considered graver.¹ Thereby this section to the greater extend widens the spirit of justice in feminine perspective standing to uphold her dignity.

The Modus Operandi

An act is defined as rape if the victim does not reciprocate, has no sexual orientation to the offender and attempt to resist the attempt of attacker. Generally the method adopted by the victim to defend themselves is often taken into consideration during enquiry. The court shall also take into account the rape situation itself that as, the constellation of circumstance the existing immediately at an around, the commission and preparation of criminal assault. This analysis is divided into three phases.² Before the crime that is; the initial contact during the crime that is; the use of violence and the resistance so forth after the crime that is; reporting the crime to the police.

A. The Initial Contact

Though the particular place where the victim met her assailant and where the rape was committed cannot of course be the cause of the offence and the offender may not have chosen one place in preference to another, these locations of initial meeting are also important in establishing the flow of events leading to criminal assault. (Wrotham, 1949, pp. 67-68). Moreover, these specific locals are variables

¹ The punishment extent to 5yrs of imprisonment, section 376 of Indian Penal Code, pp. 512-530.

² *Ibidem*.

in the offender's general assignment of risk in committing the offence or its places or modus operandi. An analysis of the place of initial interaction may lend support or refute the notion that the rapists generally attack their victims in deserted place where the victims are unable to know or recognize the offenders before their victimization (Francia, pp. 49-56) (Roberts, Bergess & Regehr, 2009, p. 228).

While analyzing the factor as to whether there was any contact between the victims and offenders prior to the crime, the study indicated that a little more than half of the victim knew the offenders previous to the offence. In analyzing the place where the victim first encounter her or where the offender or the victim made an initial contact, it was found that in 21.5% cases initial contact was made within the residence. 11.9% cases in their friends acquaintance. In 7.1% cases in their place of work and in 30.9% cases in some public places like bus stand, railway station, park, resort, hotels etc. The initial interaction turns favorable signal to the assaulter which instill in him some idea about the possibility of sexual relations.

B. The Planning Of the Offence

This raises the question of planning of the crime. The study reveals that in 19.5% cases rape was fully preplanned. In 16.7% cases it was partially planned. "Planned rape" here means that place was arranged and plan was made to coerce the victim into sexual relation. In a particular planned rape vague plans are hastily made after the offender has encountered the victim and the situation seems right for the offence. The planning might be in term of situation or manipulation of victim or the manipulation of both victim and the situation. Manipulation of victim is possible only in those cases where victim is previously known. Sometime the manipulation of victim would involve willing submission of the victim to the offender. (Denewe, pp. 114-115)

C. Violence and Resistance

Taking into consideration the second phase during the crime particular violence and resistance it would lead one to understand whether the concept of consent is involved although it is taken for granted that the rape involves use of physical or non physical forces to render the victims submission. Rape defers in kind of violence they display in rape event. Similarly some victim offer resistance but some becomes so frightened that they do not resist at all. Till the amendment made in rape law in Dec 1983 the victim had to prove in the court that the nature and the extent of resistance offered and type of violence or threat of violence used by assailant. Now the onus lies not on the victim but on the criminal. Since the term force is the dominant factor in proving or disproving the legal cases. The term force may be perceived from two angles (a) A physical force (b) Non physical

force. Physical force means any kind of physical or bodily interference with the victim either to overcome her initially or bring her resistance to naught. In non physical forces or violence bodily constrained against the victim is not used but the victim is manipulated by any of the following methods (Ramakrishnan, 1978, pp. 12-22). Tempting with money obtaining concern under fraudulent pretext of marriage coercion or threaten with bodily harm or any other kind of verbal violence including verbal threat. Taking the two type of the violence together it was found that violence occurred more in gang and pair rapes than in single rape. (Petra & Hedge, 2002, p. 13)

D. Victim's Resistance

There are certain social and psychological conditions which may make rape possible for example the disproportion in the physical strength between the victim and the attacker. (Petra & Hedge, 2002, p. 74)

The victim being in the semi conscious condition having been given some drugs by the assailant an element of surprise which overcome or neutralize the victim's resistance a threat which paralyses or subdues the initial resistances by the victim, fear of bodily harm or fear of death rather than sexual attack and so forth. Of 22 cases in which resistance was offered in 31.8% cases it was offered by hand that is fighting back or struggling or physical resistance. Some strategies used by the victim in defending themselves against rape ranged from appeal for sympathy to pleading with frantic tears. (Agarwal, 2002, pp. 164-186)

E. After the Crime

Aftermath of the crime the victim report their ordeal and how soon do they report are the concern which falls under this strategy. Not in all rape cases the victim reports the incident to the police. In most of the cases they may require immediate medical attention. Likewise they may delay or decide not to report at all. In 90.4% cases the event was first reported to the family members. In 54.8% the victim was taken to hospital before reporting to the police. After the report was lodge the police was able to arrest assailant in 33.3% cases. Of the total cases 14.3% cases were still pending and 26.2% cases were finally adjudicated. (Agarwal, 2002, pp. 164-186)

Victimization of the Victim

Rape is the worst form of victimization a women is subjected to. It is one of the most terrifying events in women's life. The incident often affect her psychology as

she loses her chastity, victims feel humiliated and degraded in the society. Being the victim of an illicit passion she is rejected by almost all, as a sinner. Until quite recently, criminologists lacked substantial understanding of the nature of various forms of victimization (Parashar, 1999, 37-42). However, of late, many studies have moved in this direction. Due to which psychologists and criminologists are beginning to understand the forms and nature of various types' criminal victimization. Sexual violence is a serious problem that affects millions of people every year. Women being the vulnerable group are targeted to it frequently. The victim of rape is victimized in sundry ways and rape is pregnant with momentous consequences for its victim. Victimization of rape victims continues even after the traumatic experience of rape and she continuously undergoes psycho, physical and social torture or re-victimization. These three consequences are only analytically distinct and in fact they are inseparable trinity. (Balsamo, 1999, pp. 3-5)

A. Physical victimization

In the process of preventing the incident the victim incurs a wide variety of physical injuries during the resistance put up. The injury found on various parts of the body, throat, neck, cheeks, thighs, the injuries are themselves a mark of obsession. Consequently varieties of physical complaints and complications begin to appear in the post-rape period. Physical pain in different parts of the body, skeletal muscle tension, gastrointestinal irritability is to cite a few, especially if the victim is a child. The victim is also prone to physiological problems. (Wall, 1988, p. 10) They often suffer sleep disorders, nightmares, anxiety, depression, suicidal intentions etc. In case there is a possibility of contracting venereal disease besides other physical injuries there is a necessity of immediate medical attention. Besides bearing the physical pain and mental agony the victim is alone left to bear the cost of medical care. Needless to say the hospital lacks physicians with special training in handling the physical and emotional complications which rape victims are exposed to. (Hilberman, 1976, p. 36). Further hospital treatment to treat the psychological damage of rape victims can only be an imagination.

B. Psychological victimization

Psychological victimization of the victim and its consequences can be understood in the phases of rape: before, during and after rape. The fear of rape as a matter of crime is a source of mental anxiety to the victim; all women perpetually suffer from the fear of being raped (Ghadially, 2007). Irrespective of her age, health, appearance, mental state, shelter and relations, no woman is immune from being the victim of rape perhaps to some extent as per her destiny. Thus rape affects all women whether or not they are actually victimized. Any incident of rape may make

women other than the victim feel that she too could be a prey. Griffin in his psychological research verbalize the experience of many women as follow “I have never been free of fear of rape from a very early age I thought of rape as an incident which may unfortunately happen as part of an environment as something to be feared and prayed against life fire or lightening” (Pirog-Good, 1989). This quotation signifies the fact that every women survives under one and the same traumatic existing social condition. A fear of rape haunts every woman irrespective of the truth that she may or may not be a prey. Thus the act of rape itself is a crisis situation for victim which creates acute psychological social and physical distress. Most lingering ordeal that rape victim as to undergo is the post rape period. In most of the cases it so happens that the incident is left unreported to prevent public attention (Burgess Jackson, 1999, p. 24), to protect the reputation to prevent any ordeal and emotional injury or the victim by the police investigation and the appearance in the court, fear of black mail by the offender and no confidence¹ in police court and justice thus in many cases parents and relatives remain afraid of searching and skeptical examination of the police and lawyers.

Agonising Cross-Examination of the Victim

The victim after being exploited by the perpetrator, are again double squeezed during the trial. To the impeach the credit of the witness been supported by section 155 of the Indian Evidence Act, the defense lawyer invades upon the privacy of the victim with humiliating question and tries to prove her as of bad character, clause 4 of the Act runs “*when a man is prosecuted for rape or an attempt to ravish, the burden would be on the them to prove that the victim was of generally of immoral character*” (Posner, 1992, p. 30). In spite of interpretation of right to privacy as a part of personal liberty, victim of sexual crime are encroached upon in the temple of justice. More often the defense taken by the defender would include the statement that the case was reported to the police lately or delay or that there is a change in statement made by the victim or her family etc. it is very unfortunate that the court reacts to such defense (Ehrlich, 2000, p. 32). However it is only under the climax of true human the judiciary reacts, for instance the judgment passed by the Supreme Court in *Trilokya singh case* were honorable justice A.S. Anand and Sagir Ahammed bitterly criticized the ruling of the lower court and observed that the incident of rape being a shame full incident affects the family prestige and it is obvious for the girl to disclose the fact before her mother. At this point let me also recollect the incident of 17 year girl suffering from epilepsy was raped by the five men, during the trial she was subjected to agonizing cross examination which lasted for two days and her deposition run into 80 pages. The lower court saw her demeanor, saw her as a simple human being, recounting her sordid experience

¹ Also Delhi Domestic Working Womens Forum Vs. UOI (1995) 1 SCC 14.

faithfully. The court saw her heard her and believed her. The court accepted her version as honest with a ring of truth held that the “state of shock in which she was found, possibly establishes the truth beyond doubt that consent is absent. To speak practically the rape crime which are committed in the lonely places it’s improbable to get direct witness, and legal requirement is that the case must be proved beyond reasonable doubt. This becomes a technical point for the defense lawyer to defend his argument. It further acts as a blessing to the perpetrator. The gravity of the mental agony that a rape victim undergoes is difficult to measure. Many a time the victim reconciles with the mental trauma caused by her rape by taking refuge in suicide or by taking refuge in suicide or by running away from her home to end in prostitution.

C. Social victimization

Although it involves a limited number of women, rape is basically a social problem of great magnitude. Rape has quit a far reaching implication on the victim’s plane the implication of the rape depend upon her age, marital status etc. if the victim is the child of the young age the impact depend not only on the volume of psychological pain but psychological complication also varies with ages. In case of unmarried, women it would create a problem in the settlement of her marriage, in case (Allen, 2002) with married women there would be a possibility of breakdown of her marriage. Even if the marital life continues or the marriage of an unmarried happens to be solemnized the sword of the fear of rape being divulged as a consequence marriage would be disturbed when it becomes known always hangs over the head.¹

Victim’s Right

Criminal law in Indian has always adopted a punitive and prohibited approach to curb the crime. In spite of such an approach crime rate in our country are in increase. The major problem which the legal system faces today is with regard to the right of the rape victim. The basic object of the administration of justice is not only to see that the culprit is punished but the victim receives appropriate compensation. (Smart, 1989, p. 15). Unfortunately this is the only crime were victim damage can never be compensated. Truly it must be a traumatic situation where the victim is deprived by her inalienable right to dignity and livelihood. (Smart, 1989, p. 15). But then morally and legally their right can never be deserted and as a human they are entitled to the primary right, they are the right to compensation, right to live with human dignity,

¹ Romeo Felicia F. Acquaintance Rape on College and University Campuses in *College Student Journal*.

A. Right to Compensation

In literal sense the term compensation stands to mean a something that compensates, or is given to compensate for counterbalancing feature or factor; amends' recompense etc. compensation from the victim perspective mean something given in recompense. (Ehrlich, 2001, p. 74) It is to be noted that the whole purpose of the compensation is to make good the loss sustained by the victim or legal representative of the deceased. Initially the focus of the criminologist and the law makers were only on aspect of punishment. But the fact is that having encountered with the incident the victims are left out with nothing. Other than the rape victim any victim can be compensated for loss. (Girshick, 2002). For victim of rape there can be no equivalent compensation for what she has lost. But even then the victim is left alone to suffer the trauma; law can never denigrate her right of medical assistance and for all this pecuniary support is essential. (Veeraraghavan, 1987, p. 28)

Unfortunately under Indian criminal law system the institutionalized payment of the compensation to the victim of rape is unsatisfactory. We neither have a comprehensive legislation nor a statutory scheme. While granting compensation the court generally observes the nature of crime rather than the magnitude of the injury that victim receives both physically and psychologically. As such the court had only sympathetic attitude toward the psychological victimization of rape victim. The amended criminal procedure code seems to be more promising. The trial court in fact is given more power to decide the matter gravely. The 1983 criminal law amended act has increased the punishment for rape which at initially should be for a minimum sentence of 7yrs. It may extent to the term of 10yrs or life imprisonment. (Spohn, Horney, 1992, p. 8)

B. The Right to Live with Human Dignity

The gender equality can be elusive unless women are recognized as equally entitled to other human right such as right to live with human dignity and right to privacy. The philosophy of human dignity is nowhere interpreted and cherished then in India. In fact the art. 21 of the Indian Constitution is called as the parent Article for human dignity. The preamble of the Indian constitution represent not just the soul idea of the architecture but in fact is the soul of the constitution were in each and every member desires to create constitutionally civilized nation, assures among the other right, the dignity of human life as one of the significant right and article 21 cherish and protects this eternal right of the individual, it mandates the states not to deprive a person of his personal liberty except according to the procedure established by law (Pandey, 2003). A phenomenal interpretation was given to Article 21 of the constitution; were in it was defined that right to live is not merely

confined to physical existence but it includes within its ambit, right to live with human dignity. Further the same concept was widened by Supreme Court in Francis coralie v/s union territory of India by interpreting the term right to life to include the right to lead a dignified life. The interpretation of life under article 21 cannot be restricted to mere animal existence it means something much more than physical survival every limb or faculty through which life is enjoyed is thus protected by article 21 any act which damages or injures or interferes with the use any limb or faculty of a person either permanently or temporarily would be within the inhabitation of article 21.¹ The Supreme Court speaking through Chief Justice Verma observed that the threat of sexual harassment prevented a women from presuming her carrier and thereby violates the right to carry on any occupation guaranteed by article 19 (1) (g) of the constitution². The whole idea behind the ratio decidendi of the judgments is to convince the society that the rape is a crime not only against the body but the very soul of the victim it is not only the violation of human dignity but the basic human right.

Conclusion

Sexual offence constitutes the most shocking crime against the conscience and morality. Today there is a crying need for the recognition of privacy of the member of the fair sex. Crimes against women are showing an increasing trend day to day. So at this critical juncture, women should be made legally strong to offset her physical weakness and should be made self-sufficient against social and economical exploitation. Rape upon a woman by an individual is violence upon her physique and psyche of highest intensity. She never surmounts the shock, the guilt and the trauma she has to undergo during such event. She carries the guilt on her conscious till the last of her breath. But when it is a gang rape and that also by the custodian of law immensity of trauma, guilt and humiliation is unfathomable. The victims of rape can never be compensated but her emotions can be respected only through execution of justifiable punishment to the culprit. On one side the Indian penal system makes all effort to reform the offender through meaningful re-socialization and re-assimilation in the social mainstream from which they deviated. But unfortunately the same concern is not displayed by the society toward the rape victims. Reinstating the status of women victim is challenging but not impossible. It is not so late, even when we have international and national law to mitigate the justifiable needs of the victim. This will be possible by coordinating the principles of international treaties and conventions to the national legislation, and providing better platform of fair trial to these victims.

¹ AIR 1978, SCC, 597.

² Vishaka Vs. State of Rajasthan and others AIR, 1997 S.C 3011.

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