

## Victim Today and Tomorrow- The Lawyers' Perception

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**Abstract:** In India where a rape is reported every 21 minutes, even the most horrific of them soon get forgotten while the victim's memory is embedded with it forever. Violence against women is deeply entrenched in the feudal, patriarchal Indian society, where for the rapist, every woman is a fair game to play with and to safeguard their interests, and lawyers are playing a loyal role. This article makes an attempt to grasp the perspective of the lawyers both male and female regarding the rape law amendments that have taken place so far. It seeks to understand what changes the legal professionals think to be correct and what is incorrect with the system of judiciary. Also several specific rape cases have been involved including both popular and the forgotten rape cases to get an idea as to how far the criminal lawyers as a part of the legal system and handle rape cases very often, keep themselves updated with the happenings around the country. So much so has changed in the Indian law books to safeguard the interest of the women at home and outside the warmth of residence. But in implementation, has anything changed from Mathura rape case to Nirbhaya and beyond? This is the answer that this paper seeks to get from the side of the legal professionals as to grasp if they realize the loopholes of the criminal justice system or are they under the ignorant dilemma that law is the ultimate tool a woman has to take up to get true justice.

**Keywords:** Rape, victim, media, conviction, legal, lawyer, amendment, court, woman.

### INTRODUCTION

On 16<sup>th</sup> of December, 2012, while she was winding back with her partner on a bus, her life took an ugly turn as she was brutally raped by 6 men, of which 5 were passengers and the driver alongside. After 13 long days from the assault she was transferred to a hospital in Singapore for treatment. Two days from then she took her last breath as her anatomy failed to bear the atrocities cited upon her. While many said that one of her rapists, Mukesh Singh's, illiteracy and upbringing in the seedy slums of Delhi are to be blamed for his mentality, what about the educated and the literate like ML Sharma, the defence lawyer of the rapists. He sounded more vicious than the accused. His male chauvinist remarks where he declared women have no place in our country and women should not be out on streets after dusk supplying themselves as food for men, were not just of one individual. He voiced for most men in our country. These men are not confined to panchayats or religious institutions. These men are all around in politics, in police and in court rooms. It reflects the mentality with which the defence lawyers in India enter the court rooms.

The contents and analyses of this article is based on a research study, titled "The Legal Professionals Perception on Rape in India: a Study of West Bengal", where 30 lawyers from Kolkata, West Bengal were conducted a face-to-face interview and material from the interview were recorded on a

schedule during the course. This article takes a whirl into the perspective of the lawyers, both males and females, towards rape so as to understand what role they play in the justice system, in regards to rape. It attempts to show the facade the victim is given by the lawyers while they deal with her. There has been studies and media initiated interviews done from the eyes of the general public regarding the situation of rape, keeping that in mind this paper will give light on to how much the legal professionals differ or acknowledge with the public.

With women frequently accused of making false allegations, and victims who had consumed alcohol blamed for "getting themselves raped", it is a wonder that the conviction rate for reported rapes is as high as the current figure of 5. The study revealed that largely lawyers are of the opinion that false case report has increased in number as laws are being turned in favour of women. Also, legitimate data from NCRB (National Crime Report Bureau), were considered to be fabricated for the sake of male-bashing. In India where a rape is reported every 21 minutes, even the most horrific of them soon get forgotten while the victim's memory is embedded with it forever. Violence against women is deeply entrenched in the feudal, patriarchal Indian society, where for the rapist, every woman is a fair game to play with and to safeguard their interests the lawyers are playing a loyal role. Comments passed by Advocate AP Singh who defends two death row

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convicts in the Nirbhaya gang rape-murder case, where he boasted of honour killing his sister and daughter stand as abominable examples.

This was an interesting remark made by one of lawyers who was respondent of the study, when asked about the Nirbhaya Rape case, highlighting the role of media in shaping and sensitizing the Nirbhaya rape case- *“This rape was given importance because of the victim’s intestines that was ruined and that the media gave it much importance. Every day now and then tons of such rapes perhaps even worse than this happens at some corner of a remote village and hardly a soul gets to know about it”*. The condition of women raped in rural sectors, or the *dalit* women is far worst as the illiteracy and the demographic constraints lead to a situation where the cases are hardly reported. When reported, no immediate medical facilities are provided to the victim and most often the investigation of the police is inefficient. Rape as such, is an all in all torture for victims blame themselves for sexual aggressions and therefore decide not to report. They do not wish to go through the trauma of trial. Secondly, victim’s accusations are often turned away by policemen and other law handlers with the assumption that the case is hardly significant. Thirdly, the prosecuted cases end up as withdrawal for the victim is blamed in turn and lastly, rapists fail to see or rather admit that their act was morally vicious.

The Mathura rape case has been a landmark case that awakened India decades ago. The ensuing outrage from the public and women’s organizations led the government to enact tougher laws against rape in India. Yet, hardly lawyers even recollect the case that brought about the acknowledgement of the victim’s mere words rather than evidence when she claims she has been forced into sexual activities. This represents the knowledge basis of lawyers who take up rape cases. With time their memory chooses to fade away the earlier rape cases and go with the flow of media on hot sale of particular rape case where they can demean the victim to curb out their clients.

The present structure of legal education divorces the intellectual side of a student from his/her emotional side. The strong emphasis on analytical thinking in law schools deeply undermines the need for instilling a sense of ethical responsibility in the students. These students when get into the field of practice take up cases only to win and sustain in the market rather than to bring in justice. In the journey they compensate with language and ethical behaviour. It is no surprise, therefore, that more than 90 per cent of Supreme Court lawyers appearing for the Advocates on Record (AOR) examination in 2013, failed the paper on ‘professional ethics and advocacy’ which asks critical questions such as harmonisation of duties as a lawyer and officer of the court; whether or not to take up cases inconsistent with one’s personal value system; the way

lawyers should conduct themselves etc. One result of male dominance over woman is the exclusion of woman from the political decision-making that adversely affects them. As female nature became sexualized and female desire for sexuality legitimated, rape became redefined as “not only a male psychological aberration, but also an act in which women . . . contributed to their victimization.” [1]. Many people become sceptical that a woman cannot be raped if she did not give consent. The implication is that a woman would be able to fend off a man attempting to rape her. Such was the reaction of many legal professionals as well as the State Chief Minister of West Bengal when a woman Suzette Jordan was raped in Park Street, Kolkata, at later hours. She was accused to be involved in consensual sexual activity.

Butalia highlights an issue that it is lawyers who use every objective identity in the book to allow rapists to get away, judges who make concessions because the rapists are warm-blooded young men who have their whole lives in front of them. It is then tough to expect that, they, made of the same stuff as the men who gang-raped the young woman last week, will suddenly and miraculously behave differently’ [2]. One can well imagine what a rape victim who has survived to reach up to the court room, actually faces when she is thoroughly questioned by the defence for hours in details about what she went through the day she was raped. The historical development of law is anything but smooth. The law may be adequately written but its implementation resting greatly at the hands of lawyers is at question ‘...law is strictly restricted in its capacity to deliver gender justice, which in itself is contingent on the nature of law and its functioning’. [Legal Service India, May 14, 2014]

The impact of patriarchy is not restricted to the male gender alone. Injustice and atrocities on women have been very often rendered by fellow women. The realm of “law” and “Lawyers” is not aloof of this impact. It is interesting to note that in the research study more than men it was women lawyers who considered dress-code to be a cause for rape neglecting many other important issues such as patriarchal society of which they are also a part and a sufferer. Female lawyers were of the opinion that dress code of TODAY’S women is an igniting factor in the rising the beast within a man. The socialization process such as uncultured lifestyle, hanging out with the opposite sex, over use of internet and technology, involvement in smoking and drinking shreds down the level of security this making women more vulnerable to rape. Most of the male lawyers have culminated the cause under socialization process where mostly it is the socialization of the girl which is going downward and needs a proper check. They also said that they restrict their daughters to be a part of this cutting of fabric from the body and remain modest in their apparels. In a country where a child of 5 to an age stricken woman of 60 are raped, lawyers are still of the

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thought that it is the dressing pattern of women that makes their body, a platter to be savoured amongst men. Concept of marital rape has no space in India where the husband has an autocratic right over his wife's body. Lawyers mostly feel that this law, if included, will give a chance to the females to register false case and extract money or otherwise from the husbands. A typical male mentality reflects in the minds of the lawyers in India, that a wife cannot reject her husband for sexual intercourse over bed. This is a response of one of the female lawyers when she was asked if Marital rape should be considered as a form of rape- *"I cannot imagine that there can be anything called marital rape in reality. How is it possible that a woman who is married and enjoys sexual relation with her husband for a while suddenly feels that she is being raped? This is a complete lie if women say so. There is no justification of such laws in the Indian society"*.

The very study concedes that majority of males have joined hands in the opinion that even if the victim was not considered before, after the 1023 amendment the laws have inclined towards her. The inclusion of in-camera trial, female inspections etc., have been done keeping in mind the victim. However, most of the female lawyers on the other hand were of the belief that all these concessions are namesake and insufficient to curb the loss that a victim faces. None of the lawyers pointed out the verbal abuse that a victim goes through inside the court room. She is made to live her rape again and again and though there is a secrecy that is to be maintained the entire population around that area is made aware that the victim is one of rape through loud announcements. Law has always tried to weigh the loss of a rape victim with monetary compensations and (if possible) punishment to the accused. The victim consideration remains faded and the male legal professionals fail to acknowledge that. The visualizing of lawyers in India is of court-room advocate rather than advisor or social planner. Lawyers see themselves in this way and clients typically come to them at a relatively late stage of dispute, when it is already at the doors of court. The client-lawyer relationship tends to be episodic rather than being enduring. The dedication that the lawyers have is bonded to the court room rather than the subject they deal with.

Flavia Agnes very correctly maintains that though the nomenclature from "victim" to "survivor" has changed, rape trials continue to be harrowing, and victims continue to be humiliated by the defence pushing her several notches down the social. She points out the public prosecutor's lethargy or the inability to produce relevant case law to counter the arguments by defence lawyers. They especially lack sensitivity towards victims of sexual crimes. She talks of the Public prosecutors who represent the victims. They often tend to make moral judgments on the victim's character and thus failed to perform their duty with

sincerity and commitment. The skill and competency that is needed to represent victims in complex cases is also absent in the public prosecutors. 'The apathy on the part of the police and the public prosecutor can seriously hamper the progress of a (rape) case. Defence lawyers engaged by the accused are paid high fees and are in general more motivated' [3].

In all the laws the victim fades away in lump sum amount of money and uninhabitable arena as rehabilitation where she is clubbed with several other victims- a house to remember the horrendous past every moment. The rush is on punishment. She is made to go through the moments of shudder again and again during investigation and trial. The torture continues long after actual victimization. It forces her to live in constant fear and her self-esteem degrades down to zilch. The victims are often portrayed as rather enjoying the depiction of their victimization. These images that reinforce rape myths are hardly adhered to by the lawyers. In a sensitisation programme for lawyers and judicial officers, an exercise was given which would give a clue to the rape complainant's feelings in court. All were asked to close their eyes and imagine the experience of their first union with their loved one. Then they were asked to narrate it to the colleague sitting on their right. They were horrified at this intrusion of their privacy. Then the trainers asked them: "if you cannot narrate a pleasant sexual experience to a friend without inhibition, how do you expect a frightened woman in a strange court hall to narrate fluently, in the presence of a battery of hostile lawyers, her devastating experience of sexual violence?" The participants had no answer (Law Resource India, July 25, 2012).

When police, court officials, jury and official agents of social institutions apply a label, it sticks. Furthermore, because deviants are handled through complex organizations, bureaucratic workers "processes", seldom questioning the labels for those rules and challenge them. The victim if rape is seen with the eyes the society labels her as. Most often when society imposes a label, once applied becomes almost impossible for the deviant to get transformed into non-deviant identity. Let us recall the instance where the members of the patriarchal section assault the "rape victim" and label them. "Nirbhaya" became the name of Jyoti Singh Pandey after the Delhi gang-rape. This labelling went with her to her grave. There lies a hesitance in acknowledging the true identity of the woman. When Suzette refused to be tagged as the victim in Park Street and dared to face the incident, many people joined hands with her and appreciated the bold attempt. Once a victim is labelled with a particular sight sooner or later it becomes her identity. She no longer conforms to social definition of normal and with no fault of her own society makes her feel that she is to suffer throughout. Someone who enters to this status slowly accepts the new identity. Many reports show that rape has its psychological and mental trauma that

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remains residual for a longer time do to constant labelling

In the rape trials, not only is the character of the victim often used by the defence as a tool of evidence but also the prosecutrix. '...the character of the prosecutrix was often used by the defence to prove consent by drawing the inference of the same by arguing that a woman of "loose character" is likely to have consented to sexual intercourse with the accused' [4]. The defence seeks to highlight the apparent promiscuity of the prosecutrix. When consent is in question, the past sexual history of the prosecutrix may be used to suggest that she consented to sexual intercourse with the accused as she generally consents to it with other men as well. In effect, this use suggests that women habituated to sexual intercourse are likely to consent to sexual intercourse. Thereby the character evidence may also be used during cross-examination to suggest that a woman habituated to sexual intercourse is of immoral character and thus, will not have any moral inhibitions to lying. This use of character evidence threatens the entire testimony of the prosecutrix.

The defence still use the successful ploy in attacking a rape survivor's testimony by pleasantly introducing a narrative of inconsistencies. Defence lawyers are very well aware of the fact that the act of remembrance is very traumatic. It is expected that a survivor should narrate the howl scenario no matter how irrelevant the details be at the same time maintaining her signs of distress in the behaviour. She has to run the test to prove that her accusation is true. She is continuously asked to represent a photographic version of what happened to her while she was raped. The entire conversation, gives cues that lingers around the body of the victim. A kind of 'court-room pornography' is played within the trial procedure. Questions like is the hymen seal broken, how much finger could be inserted into vagina under medical examination; is penetration to be understood as vaginal, in which exact position (or positions) was she raped, was there bleeding after rape, was the victims used to having sexual intercourse on a regular basis and the list never ends unless the victim is broken into thousand pieces and making it sure that she never forgets she was raped. Under the much appreciated in camera trails that lawyers talk about, the victim fails to liberalise herself from the clutches of patriarchal values and thoughts. One of the lawyers in the study, opened up that when rape victims are questioned in the court rooms, the lawyers sitting aback often rank her body as eligible for rape or not, they draw conclusion in what position she must have been raped and have rate-cards for sexual pleasure of the rapist.

It is outlandish when one of the lawyers, in the study, were asked about the validity of law in bringing about justice to women this was the oblivious response - *"If justice can come about it is only through Law.*

*There is no other way out for Law is the last resort a victim has if she wishes to get back a part of what she lost"*. The lawyers are of the feeling that law is efficient enough to render justice to women and that it is the ultimate tool women can use to demand for justice. Only a small section of respondents considered the importance of social involvement in rendering justice to a rape victim. When law is defined my men who are succumbed to their patriarchal values and pseudo masculinity gender justice is rather a foolish dream. The concept that state is neutral is only limited to written words. The judiciary itself considers women as subordinate to men and instruments of man's pleasure. When a woman comes up to file a petition he becomes hostile towards her. Also, if a women's organisation is seen supporting the female then anger aggravates. The men inside the court make the woman a topic of discussion and smile and laugh at her. This is the ambiance where the procedure is continued for long hours. If the victim loses hope it is no shock [5].

Rape vividly is a very serious crime with severe trauma for a woman that remains unseen amongst the lawyers. The crime of rape punishes victimizers for entering into an individual's most private sphere. Entering a woman's most private sphere does not have to include male type conduct in order for the invasion to be severely punished by law. Unlike men, women have at least two most private spheres-the clitoris and the vagina. The clitoris and the vagina are both female sex organs. The punishment for the invasion of either of those most private spheres should be identical. The private sphere for women should be defined in women's terms and from a woman's perspective; otherwise, rape will continue to be a crime of violence on women by men, as defined by men. This practice permits men to continue, as they have from the beginning of history, to treat women as property. This affords men the right to touch a woman's body, even her treasures, until she resists to the point that he understands that she is resisting. As we approach the millennium, it is time for women to say "no." A woman's body is not the property of a man, and he is not entitled to touch, unless he gets permission. There is no right for anyone to invade a woman's most private sphere. The severity of the punishment is generally related to the invasion. The severity of the invasion of a woman's body ought to be defined from a woman's perspective of intrusiveness.

Brinda Karat, All India Democratic Women's Association (AIDWA), member says, "I have raised the issue in the Parliament several times that there is a need to step up conviction rate in rape cases drastically. Poor legal system, wrong understanding of policemen and the lawyers in these cases and lengthy procedures especially in child rape where after horrifying rounds of investigation the victim starts feeling that she is an accused and should not have registered the case, are few reasons for low conviction rate." ... "In every 10 hours,

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a girl of the age of 1-10 is being raped in India. We are raising this issue and have demanded enforcement of stringent laws by government,” she adds [6].

Still there is need for amending the anomaly related to the age of consent, and of wife in accordance with the Marriage Act in India. The courts and the legislature have to make many changes if the laws of rape are to be any deterrence. The sentence of punishment, which normally ranges from one to ten years, where on an average most convicts get away with three to four years of rigorous imprisonment with a very small fine; and in some cases, where the accused is resourceful or influential- may even expiate by paying huge amounts of money and get exculpated. The lawyers indulge their hard work in freeing their clients from the little punishment they need to serve. The courts have to comprehend the fact that these conscienceless criminals- who sometimes even beat and torture their victims- who even include small children, are not going to be deterred or ennobled by such a small time of imprisonment. Therefore, in the best interest of justice and the society, these criminals should be sentenced to life imprisonment.

While there were 37,000 cases of molestation and eve-teasing in 2006-07, the conviction rate for such crimes, is below 30 per cent. For rape it is just a dismal 27 per cent. Law remains but the number of victims (including minor) continues to increase destroying the very soul of the helpless women. Contrary to the popular belief rape is almost never perpetrated for sexual gratification. It is an ‘act of violence that happens to be expressed through sexual means’. Severe and certain punishment in a time bound manner, of the rapists has some deterrent value. Arrest alone may not constitute a strong societal response. At the summit is the concern that even if laws are amended in favour of women, will the lawyers be competent enough to abide by them and render true justice against their urge for income? The study reflects one very significant side that there is a deep-rooted patriarchy within the lawyers, where women are expected to be indoors after dark hours and do the household chores else, rape is only probable. Their statements on woman’s conduct in context of the gang-rape is derogatory in nature but this stems a greater fact that these well-shared views represent the accused in a court. Rape is the result of long and deep rooted social traditions in which males have dominated the political and economic activities and women have adhered to it.

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