



A CRIMINOLOGICAL STUDY OF CONSENT, ELOPEMENT AND RAPE: ARE SOME RAPE OFFENDERS REALLY RAPISTS?

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Abstract

Facts on rape cases in India is acquired from the rape victims and not rape offenders, and this creates a lack of information as to what encourages some individuals to commit rape. There are many rape cases which are consensual sexual relationship, but they are converted to rape cases later. Researches focused on rape offenders and conducted with the perspectives involving rape offenders is still an untouched area of research in India. The present study's main objective is to explore how many rape cases exist, which are consensual sexual relationship and elopement cases. Because not every rape case is gruesome. Fifty convicted rape offenders are the source of the data from the Sabarmati Central Prison, Ahmedabad, Gujarat, India. Face to face interview method and purposive sampling method was adopted to collect data with an interview scheduled prepared by the researchers. The study has used a mixed-method data collection technique which has generated both qualitative and quantitative data. Findings of the present study indicate that every case is not as grave as the Delhi Gang rape case, i.e., the Nirbhaya case but some of the rape cases are merely elopement cases that have fallen under the rape spectrum in the criminal justice system. The present study underlines that not every rape offender is a rapist. Still, some are being misinterpreted by the law on the ground of consensual elopement cases and consensual sexual relationships. The study has aimed to bridge the gap of information and knowledge about rape cases from the perspective of rape offenders, which may help the mechanism of the criminal justice system involved in preventing and controlling rape offences in the country. The bottom-line of the study is merely changing the law for stricter punishment in rape cases or providing assistance to rape victims will not be enough to deal with the rising rape cases in the country.

Key Words: Rape, Rape Offenders, Rape Laws, Consent, Elopement, CJS.

Introduction

Sexual crimes against women are on the rise rapidly in India, which has become significant problems. (NCRB, 2015). The most common crime with women is Rape. In the past decade, public awareness of sexual violence has been increased. The testimony of victims, first in consciousness-raising groups, then in public speak outs, and finally, informal survey research, has documented the high prevalence of all forms of sexual violence (Herman, 1990). The Verma commission, address deficits in the management of rape and other sexual offences, recommended widespread changes (Verma Committee, 2013). It focused on criminal justice issues of defining laws, enhancing processes, and increasing punishments. Still, there should be a criminological assessment of the case before the judgement of any sexual violence case.

This paper focuses on the criminological assessment of rape cases where elopement is concerned. Because our criminal justice system works only based on a section of laws. Still, it does not consider or



address criminological factors, societal and cultural factors – the facilitate the commission of the crime. The paper focuses on the matters of elopement involved in rape cases and makes the argument of criminological assessment of victim-offender relationship is required; it ends with a section on the ethical issues relevant to this practice area. It has become the need of an hour because, after the Nirbhaya case, there is a hike in the registration of rape crimes in India and with that conviction rate is also hiked up.

There is an infamous Hale's warning "*It is true that rape is a most detestable crime, and therefore ought severely and impartially to be punished...but it is an accusation easily to be made, hard to be proved, and harder yet to be defended by the party accused, though never so innocent.*" (Sonia, 2012) (Geis, 1978).

Defining Consent, Elopement and Rape

Rape

Under Section 375 (Indian Penal Code, 1860), A man is said to commit rape if he has sexual intercourse with a woman, (i) Against her will, (ii) Without her consent (iii) With her consent when her consent is obtained by putting her or any person in whom she is interested in fear of death, or of hurt. (iv) With the consent, when the man knows that he is not her husband and that she has given consent because she believes that he is another man to whom she is lawfully married (v) With her consent when at the time of giving such consent, because of unsoundness of mind or intoxication or administration of any stupefying substance, she is unable to understand the nature and consequences of that to which she has given consent (vi) With or without her consent when she is under 16 years of age. The exception is Sexual intercourse by a man with his wife (even against her will) is not raped if she is above 15 years of age.

In a nutshell, Unlawful sexual activity and usually sexual intercourse carried out forcibly or under threat of injury against the will usually of a female or with a person who is under a certain age or incapable of valid consent.

Elopement

To Elope means to run away and not to come back to the point of origin. Elopement often used to refer to a marriage conducted in a sudden and secretive fashion, usually involving a hurried flight away from one's place of residence together with one's beloved to get married.

Consent

Definition of consent is Under Section 375 of I.P.C., i.e. Consent means voluntary agreement, compliance, or permission. In details, consent means (i) A woman of sixteen years and above can give valid consent for sexual intercourse, but it should be before the act (ii) Consent must be free, voluntary, in sound mind and without intoxication. (iii) Consent is not valid if obtained by fraud, fear, impersonation or by misrepresentation. (iv) Rape can be committed against a prostitute if it is with her consent but without her will. (v) A husband cannot be guilty of rape on his wife if she is above fifteen years of age. (Aneja, 2012).

Presumption and proof of consent in Circumstantial Evidence are signs of resistance like tearing of clothes, injuries on the body and private parts, shouting, crying, beating, biting. Sign or Symbol of resistance may not be present depending on the fear of death, drugs etc. but Under Section 376(2), where the sexual intercourse is proved, *if the victim states before the Court that she did not consent, the*



Court shall presume that she did not consent (Section 114-A) (Indian Evidence Act, 1872) “The burden of proof of the consent rests on the accused in such cases”.

Research Design

This study's main objective is to explore how many rape cases are consensual elopement cases and not gruesome ones. Data is collected from 50 rape offenders from the Sabarmati Central Prison of Gujarat, India. The researchers prepared an Interview schedule, and the purposive sampling method was adopted to collect data.

Results

This study's main objective is to explore how many rape cases are consensual elopement cases and not gruesome ones. This section is an evaluation of the primary data which has been collected in interviews. The findings of data are as under: The tables below indicate the character of the sample interviewed.

1. What is the case type?

Case type	Participants
Rape case	09
Gang Rape	07
Elopement	27
Elopement with a minor girl	07
Total	50

Out of 50 participants, 09 cases were rape cases, 07 were gang rape, and 27 were elopement cases, and 07 cases were elopement with minor girls. Elopement cases are converted into rape case based on the victim’s testimony in the court of law. Elopement case with the minor girls are Where sex was being done by both the parties with consent, but due to the definition of rape in IPC as having sex with a minor girl with consent is considered rape they were booked in the rape case. Most of them do not know about the law or a clear definition of rape.

2. How victim is known?

How is the victim known?	Participants
Neighbours	02
Co-worker	05
Friend	04
Girl Friend (Lover)	29
Student	04
Same village girl	04
Employee	02
Total	50

Out of 50 participants, 02 were neighbours of victim, 05 were co-worker, 04 were friend, 29 were girlfriend (Lover), 04 were students of the participants, 04 were same village girl of the participant and 02 were an employee of the participant means participants were the employer of the victim.



3. If the participant accepted the committed crime or not?

Accepted / Not Accepted	Participants
Accepted	03
Not accepted	46
Not responded	01
Total	50

Out of 50 participants, 46 participants did not accept the crime in which they are convicted, 03 participants accepted that they had raped victim, three of them were drunk While the crime happened, they see crime as their mistake. 01 respondent denied answering. Menachem Amir says There is no problem of validating or evaluating the truth of the offender's interpretation. Even if wrong, it created an action/crime. Therefore, it is a point of the study.

4. Leading Factor of crime?

Factor	Participants
Alcohol	12
Mentality (Personality Traits)	08
Elopement	27
Victim Precipitation	03
Total	50

On asking them about their opinion that, according to them what could be the leading factor of rape crime, 12 participants say under the influence of alcohol rape happens, 08 participants believe that rape happens due to psychological/mental issue of the offender which can be called as personality traits, according to 27 participants rape cases are generally elopement case which is converted as a rape case. According to 03 respondent, mostly rape happens because women invite, which means victim precipitation is the leading factor.

5. Punishment

Punishment	Participants
Seven years imprisonment	22
Ten years of imprisonment	16
Imprisonment for life	12
Total	50

These tables show punishment data that participants were serving in prison due to conviction in their rape cases. Out of 50 participants, 22 were serving seven years imprisonment, 16 serving 10 years of imprisonment and 12 participants were serving imprisonment for life.

6. Are offenders believe that CJS working effectively and efficiently?

Response	Participants
Yes	15
No	34
Not responded	01
Total	50



Out of 50 participants, 15 participants said that the CJS process is working effectively and efficiently, while 34 participants said the CJS process is not working effectively and Efficiently to prevent and control future offenders. According to participants, there are so many reasons behind that are as follows. Courts do not consider the evidence like forensic science laboratory reports and medical reports, police investigations are improper, mostly court gives judgment under media and political pressure, judgments are not intellectual they are from sympathy towards the victim without knowing the facts and findings of the case, the law is women-oriented, the court is biased in the rape case, the court does not listen to rape accused, court give punishment only based on the victim’s testimony in the court of law. However, there is no proper evidence, and this gives way to women to misuse the law.

7. Any Positive experience of Criminal Justice System processes?

Response	Participants
Police	03
Court	06
Prison	07
Forensic Medical Report	03
No positive experience	28
Not responded	03
Total	50

Out of 50 participants, 03 participants said they have a positive experience with police as they have done the proper investigation, as per 06 participants courts are the positive experience of them as courts deliver adequate justice and play a mediator between complainants and accused. According to 07 participants, the prison department is the positive component of the CJS process as prison gives food and work. 03 participants say FSL and medical reports are perfect in CJS. 03 participants denied answering. However, according to 28 participants, they have no positive experience with CJS. This indicates no visible significant positive experience of the participants of the Criminal Justice System.

Case Studies

Participants no 03

The offender (Mr K.) was a teacher of the victim (Ms R.) in the college. Age of the teacher and student was 35 and 19, respectively. Both were in a relationship, but their age difference and teacher-student relationship families did not agree to their marriage. Getting into emotions, they eloped to other district and started living together wherein they had consensual sex. Later victim’s parents reached out to them and pressurized her to file a rape case. Parents threatened her to do so with the fear of violence and their name shaming in society. On Victim’s filing, the police arrested the offender in the rape case and during the trial in court victim gave testimony that she did not consent for sex and on that basis, the offender got convicted. (IPC 376 (2) (f) being relative, guardian or teacher of or a person in a position of trust or authority towards the woman commits rape on such woman).

Participants no 19

The victim (Ms A) was the offender’s (Mr G.) neighbour, and they knew each other for a very long time. The victim’s age was 15, and the offender’s 22. They were in deep love with each other. They wanted to be together and at the suggestion of one of the offender's friends, they decided to elope and they had consensual sex too. The family of the offender searched them and made them apart. Friends and Relatives of the Victim’s family got to know about this, hence under the pressure of getting their



names ruined they approached the offender's family for their marriage. The offender's family refused the proposal which created a sense of betrayal to the victim's family. They made their daughter file a rape case against the offender and to which she agreed. She gave her testimony in the court of law that she did not consent for the sex and the offender got convicted. (IPC 376 (2) (i) commits rape on a woman when she is under sixteen years of age)

Participant no 42

The offender (Mr P.) was the local shop owner where the victim (Ms D.) often visited buying things. They fell in love and were in a relationship for about three years. One day their families came to know about the same, and they warned them to separate their ways. Disagreeing with that, they decided elopement to another city. They lived there for approximately six months and had consented sex. For these six months, their families were unknown about their whereabouts. One day the families traced them and brought them back to their respective place of residence. Later on, the girl felt cheated and fooled of being used only for a sexual purpose, which led her to file a rape case against him and gave testimony in court that the offender has raped her repeatedly without her consent. On her testimony offender got convicted. (IPC 376 (2) (n) commits rape often on the same woman)

Conclusion

This study found that not all rape cases are as heinous as the Nirbhaya case. Some of them are generally elopement cases which are turned into rape cases due to the flaws in the criminal justice processes. This study emphasizes that not all rape offenders are real offenders, but victims, who are converted as offenders due to the misinterpretation of laws on consensual elopement cases. The study suggests that Rape victims' assistance cell and strict punishment laws for the rape offenders alone are not enough to deal with the issue.

Suggestions

1. Criminological assessment of victim and offenders is much more needed now so that access to justice should not be denied to anybody. Everyone who conflicts with the law should get justice and not a biased conviction. The criminological Assessment of both parties will lead to a fair trial.
2. Punishment should be person-specific and not crime specific. Because we are giving almost the same sentence to every rape offender, and still there are rape cases happening means the deterrence effect of punishment in rape cases is next to zero. Punishment for rape should be sufficient, which can stop recidivism.
3. There is a need for developing a consistent policy relating to sentencing in India. A full-time sentencing commission should be set up to formulate policy and draft sentencing guidelines to ensure offenders' sentencing consistency. Various countries have done this, including the US, UK and Israel. (Dhawan, 2016)
4. Rehabilitation and rebuilding a person is the right course of action. It might not be the ideal or the most comfortable way, but it is certainly the course of action that a humane society should resort to.
5. First-time offenders and recidivist / habitual offenders should be treated differently. Because first-time offenders might be young, if we deal with all the same, it will not be the right approach to dealing with rape offenders. With proper care, education and regular sessions with criminologist & psychologists, it is possible to save and rehabilitate them (Jacob, 2017). There are possibilities that a lot of these men after their rehabilitation process is through, might even go on to become advocates for women's rights.



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