

**SCARS OF SILENCE: FROM NIRBHAYA TO THE NEW LAWS HAS ANYTHING CHANGED
BEYOND THE COURTROOM?**

JUDGEMENT COUSE TITLE

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[ARISING OUT OF S.L.P. (CRIMINAL) NOS. 3119-3120 OF 2014]

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ABSTRACT

It's not uncommon to hear some news about rape on the news channel or read an article about some crime against women these days. Most recent being the Kolkata Rape Case, which is in reality a harsh reminder of the brutality 48.5% of Indians face. This has once again exposed the deep-rooted notion of gender discrimination, gender violence and gender injustice in the Indian society.

Despite the recent legislative advancements, such as the introduction of stringent penalties for sexual offenses under the Criminal Law (Amendment) Act of 2023, the situation remains dire, with the National Crime Records Bureau (NCRB) reporting over 31,000 rape cases in 2022 alone, which is nearly 86 cases per day, reflecting a disturbing persistence of such crimes.

The high-profile cases often get the nation's attention, but most victims receive little more than the media coverage and gestures of support. This manuscript critically analyzes India's journey in addressing sexual violence, from colonial-era biases to the modern legal reforms, underscoring the need for effective implementation rather than mere legal formalities. As India continues to battle this pervasive issue, it is clear that stronger deterrence and consistent enforcement of laws are crucial to ensure that justice is not confined to paper.

KEYWORDS: *Crime against women, Rape, Nirbhaya, Legislative Reforms, Government, Gender Justice*

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INTRODUCTION

India, a divine country is regarded as the land of gods, where women and children, and even animals such as cows are worshipped during special occasions like Govardhan Pooja, etc. That same nation is dealing with an illness—a condition for which there is no permanent treatment but just temporary solutions. The very mention of the term "rape" is enough to make people feel powerless, furious, and angry. The act of sexual assault destroys the victim's emotional, mental, and psychological foundations in addition to their physical health.

According to Reuters, in the year 2022, the country reported over 31,000 rape cases, a year during which a significant portion of the population was confined to their residences as a result of COVID-19.¹ The situation could have been significantly worse if the quarantine had not been in place, and the same numbers could have increased to the lakhs.

The recent Kolkata Rape Case could have been any other rape case and gone unreported in the media for a few days; however, due to the severity of the abuse the perpetrators inflicted on the victim, the case gained national attention, and protests ensued. This brings us full circle to the beginning of the major battle.

This case serves as a gruesome reminder of the Nirbhaya Case of 2012, in which a similar scenario happened. A few individuals perpetrated gang rape and protests of the public due to the rage and anger continued. The authorities did not intervene and acted as mute spectators while our courts of justice granted them an extended vacation of 8-10 years.

In this Manuscript, we have revisited a landmark case, which is famously known as the “Nirbhaya Rape Case”.

¹ Shivam Patel, India struggles with high rape cases, low conviction rates, Reuters ((Oct. 11, 2024, 8:25 PM).

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HISTORICAL BACKGROUND

India's journey in combating rape is like an age-old battle between shadows and sunlight. Seventeenth-century jurist, Sir Matthew Hale's assertion with regards to rape as "an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, though never so innocent" illustrates the biased perspective of colonial courts against victims. The very presumption that the women may be deceitful led the trial courts to focus more on establishing the credibility of the victim than on demonstrating the culpability of the accused.

According to the data of NCRB, in 2001, the rate of all rape-related crime was 11.6 per 100,000 women and girls.² By 2018, it had increased to 19.8. The majority of the 70.7% increase in the rate between 2001 and 2018 occurred after 2012, following a gang-rape and murder case in the capital of India. The largest proportion of crimes was recorded as assault with the intent to outrage modesty of the woman, followed by rape.

Over the years, lawmakers have changed and adjusted the rape laws, although these changes have significantly failed to establish deterrent among individuals. Following the horrific Mathura Rape case, parliament enacted The Criminal Law Amendment Act of 1983.³ The similar narrative recurs in 2012 following the Delhi Rape case, the nationwide demonstration and widespread public indignation following the Nirbhaya case forced the government to respond immediately, resulting in the establishment of the Justice J.S. Verma committee to propose modifications to criminal legislation. The committee issued recommendations on a broad spectrum of matters concerning various sexual offences. Judgements like the Farooqui case undermines years of reform efforts and regresses us thirty-eight years back to the Mathura case. This illustrates the deeply entrenched patriarchy that exists in our society. The repercussions of the colonial mentality are still evident in contemporary situation, and the condition of women in society remains unchanged.

² Sexual crimes against women up 70% in 2 decades, Live Mint (Oct. 11, 2024, 8:47 PM).

³ The Criminal Law (Amendment) Act, 1983, No. 43, Acts of Parliament, 1983 (India).

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FACTS OF THE CASE

Which Indian is unknown to the horrific night of 16th December 2012- the night which shook the whole nation's conscience and brought the masses on the road for rallies calling for structural changes to address the persisting issue of sexual assault!

What began as a peaceful evening for two young friends soon became an unimaginable nightmare. After watching a film for an enjoyable time, they started on what they presumed to be the usual bus trip back home, unaware of the fact that it would turn into the most dreadful journey of their lives. In that ill-fated chartered bus, a darkness beyond understanding took hold over others. The bus, almost vacant had the human presence of six barbaric men, which became the scene of unfathomable brutality. These individuals, driven by perverse desires and a self-centered obsession with their vengeance, overstepped all boundaries pertaining to human morality and generosity.

The 23-year-old female medical student became the prey of their violent lust. What was expected to be a peaceful journey to the home turned into her most frightening experience. When the bus doors closed the perpetrators stopped further entry, and an oppressive feeling of danger quickly permeated the surroundings. The lights were turned off, and a menacing silence took over. An altercation started between her companion and the men, but it was merely the prelude to an even more malevolent act. What followed was not theft or robbery—it was far more egregious. The woman was forcibly taken to the back of the vehicle, where, between her agonizing cries, the very essence of mankind appeared to die.

She was not assaulted once, nor twice, but six times, each attack more violent than the last. For 40 torturous minutes, her pain continued, her voice echoing in the darkness as she begged, “Chod do, bachao,”—pleas for mercy that went ignored. She was disrobed, beaten, assaulted, and brutally raped followed by an attempt to murder. The monsters, still unsatisfied, threw both her and her companion from the running bus onto the freezing National Highway where the likelihood of their survival or rescue was negligible.

Unexpectedly, someone heard their cries and came to their rescue. It was a matter of utter surprise that even after having a hospital opposite this lane, there was no ambulance. Instead, they were taken to the hospital in a PCR van, without the most fundamental life-saving facilities.

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India's brave daughter fought continuously for every breath for 13 days and then, she tragically succumbed to her injuries on December 29th, 2012, in a Singapore hospital, despite extensive medical support to preserve the life that cruelty had so brutally shattered. Her strength during the unimaginable pain made her "Nirbhaya- India's Bravest Daughter".

The incident of grit, pain, and an unyielding quest for justice sparked national disappointment and important discussions about women's safety and justice. It has been a dud as most of the steps that were taken in the wake of Nirbhaya were on paper and remained on paper only i.e., they were never implemented.

ISSUES OF THE CASE

1. Whether the accused were guilty of criminal conspiracy under Section 120B of the IPC⁴ in planning and executing the abduction, rape, and murder of the victims?
2. Whether the accused were liable for the offenses of gang rape and unnatural offenses under Sections 376(2)(g) and 377 of the IPC,⁵ respectively, in furtherance of their common intention?
3. Whether the accused were responsible for murder under Section 302 of the IPC,⁶ and whether the case justified the imposition of the death penalty under the "rarest of rare" doctrine?
4. Whether the accused guilty of destroying evidence and robbery under Sections 201, 395, and 397 of the IPC,⁷ and liable for possessing stolen property under Section 412 of the IPC?⁸

⁴ The Indian Penal Code, 1860 § 120B, No. 28, Acts of Parliament, 1860 (India).

⁵ The Indian Penal Code, 1860 § 376(2)(g), 377, No. 28, Acts of Parliament, 1860 (India).

⁶ The Indian Penal Code, 1860 § 302, No. 28, Acts of Parliament, 1860 (India).

⁷ The Indian Penal Code, 1860 § 201, 395, 397, No. 28, Acts of Parliament, 1860 (India).

⁸ The Indian Penal Code, 1860 § 412, No. 28, Acts of Parliament, 1860 (India).

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ARGUMENTS PRESENTED BY THE APPELLANT

- The Learned Counsel for the Appellants argued that the FIR was lodged late i.e., at 5:40 AM on 17th December, however, the recording of statements was done much before at 3:45 AM only and that crucial steps in the investigation were delayed, leading to suspicion of evidence manipulation. They criticized the recording of dying declarations and inconsistencies in timelines between different witness statements.
- The Learned Counsel for the Appellants further argued that the arrests and recovery of evidence, including the identification of the bus, were flawed and improperly handled. They claimed that the investigating officers tampered with or planted the DNA evidence. Their arguments were based on the alleged procedural lapses, such as improper chain of custody, mishandling of forensic samples, and the delayed registration of the FIR, which they believed provided opportunities for manipulation. The defence specifically questioned how these evidences were collected and stored, asserting that this compromised its integrity.
- In addition to these, the Learned Counsel for the Appellants questioned the credibility of the statements of PW-1, i.e., the young companion of the deceased, focusing on inconsistencies in his statements, such as the absence of *iron rods* in his initial testimony and the inclusion of it in the later one, raising significant doubts about his memory. They argued that his descriptions of the accused and the bus were inconsistent, with new details added over time. The defence also claimed that the trauma from the incident may have affected PW-1's ability to accurately recall events, rendering his testimony unreliable. This aimed to undermine his role as a key witness.
- The Learned Counsel for the Appellants also challenged the admissibility and consistency of the dying declarations under Section 32(1) of the Indian Evidence Act,⁹ arguing that they were recorded in improper circumstances. They contended that the victim's deteriorating health affected her mental state, impacting the credibility and voluntariness of her statements. They also questioned whether legal procedures, such as the presence of a magistrate or medical officer certifying her fitness to provide the declaration, were properly followed, which could render the dying declarations unreliable.

⁹ The Indian Evidence Act, 1872 § 32 (1), No. 45, Acts of Parliament, 1860 (India).

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ARGUMENTS PRESENTED BY THE RESPONDENT (PROSECUTION)

- The Learned Counsel for the Respondents argued that the investigation followed all legal protocols, with no procedural lapses. The prosecution provided substantial forensic evidence, including DNA reports where the samples found on the victim conclusively matched with those of the accused, corroborating their involvement in the assault, CCTV footage of the bus route and locations connected to the crime which showed the movement of the bus while linking it to the accused., and mobile phone records which were used to establish the presence of the accused near the crime scene, confirming their involvement and location during the incident.
- The Learned Counsel for the Respondents argued that the testimony of the PW-1 was consistent on the critical facts, even if there were some minor discrepancies which existed. His statements were further corroborated by the key forensic evidence including the medical reports taken under the Section 45 of the Indian Evidence Act¹⁰ (expert testimony) which showed serious injuries to the victims following the barbaric act. The DNA analysis done under Section 293 of the CrPC¹¹ and the forensic examination of bloodstains from the crime scene was pointing out to the fact that the crime has been committed by the appellants only. The prosecution also maintained that these scientific tests were in due compliance with the highest level of legal standards, establishing the credibility of their case.
- The Learned Counsel for the Respondents also contended that the dying declarations were credible as it was made voluntarily and in accordance with Section 32(1) of the Indian Evidence Act. They emphasized that the declarations were recorded by authorized personnel, including a magistrate in addition to the medical certificate by the registered medical practitioner confirming the mental fitness of the victim. The consistent statements of the victims in multiple declarations further confirmed their reliability. She had clearly identified the accused and finest details of the incident, which was crucial for proving the guilt of the accused by making these declarations admissible as evidence in the court.
- The Learned Counsel for the Respondents established the legal admissibility of evidences including DNA analysis, mobile tower locations, and CCTV footage which were the primary corroborative evidence to establish the presence of the accused at the crime scene.

¹⁰ The Indian Evidence Act, 1872 § 32 (1), No. 45, Acts of Parliament, 1860 (India).

¹¹ The Criminal Procedural Code, 1973 § 293, No. 2, Acts of Parliament, 1974 (India).

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They collected the DNA evidence under Section 293 of the CrPC and the sample of accused was perfectly matched from the accused with those from the victim, confirming his involvement in this heinous act. Furthermore, they collected the locations of the accused by assessing the data from the mobile tower under the Section 65B of the Indian Evidence Act¹² which legalizes the evidentiary value of electronic data. In addition to this, the CCTV footage, admissible under Section 65B of the Indian Evidence Act also confirmed the fact that the accused were near the crime scene during that night. As per the prosecution, these modern investigative techniques left no doubt regarding the guilt of the accused.

JUDGEMENT OF THE CASE

The Supreme Court upheld the convictions and death sentences of the accused. The Court determined that the appellants were guilty of the offence of criminal conspiracy under Section 120B of the IPC, evidenced by their repeated efforts in the abduction, assault, and subsequent attempts to cover up the crime. The Court ruled that the common intention of the appellants was established for the offenses of gang rape [Section 376(2)(g)] and unnatural offenses [Section 377 of the IPC], in addition to the forensic and medical evidence corroborating the testimony of the victim. Keeping into the consideration the brutality as well as dehumanization of the crime and its impact on the societal conscience, the Court also applied the *rarest of rare* doctrine and held the appellants liable for murder under Section 302. Additionally, the appellants were convicted of destroying evidence under Section 201 of the IPC, robbery under Sections 395 and 397 of the IPC, and possession of stolen property under Section 412 of the IPC, as the recovered items connected them to the crime. This landmark judgment was an eye-opener for the mass movement to end violence against women and advocated for the gender justice norms. But the path which this judgment aimed to pave, is still filled with societal, psychological and legislative hurdles.

¹² The Indian Evidence Act, 1872 § 32 (1), No. 45, Acts of Parliament, 1860 (India).

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ANALYSIS AND CONCLUSION

The best thermometer to the progress of a nation is its treatment of its women.

- Swami Vivekanand

We, the people of India on multiple occasions on the national and international forums, have asserted and acknowledged that women are an integral part of our Indian society and we treat them as an important pillar of the socio-economic development of India. But we are the same nation where after an interval of just 15 minutes, a woman is raped!¹³

Crimes against women are a major area of concern because despite having an array of legal advancements and policies aimed to protect them from violence and to sensitize the public on the prevailing issue, the crimes against women are upsurging. It's not just one case, it's about all those lakhs of women who have been brutally raped to date. Indians say that this case shook their conscience, while the legislative, executive, and judiciary boosted their efforts to draft, introduce, and amend the women specific-legislations. Post Nirbhaya, India saw the amendment in the Juvenile Justice Act, criminalization of offenses like stalking, voyeurism, and acid attacks, provision of fast track courts for faster trials in rape cases, installation of CCTV cameras, one-stop centers, Nirbhaya Fund, but when a victim approaches the forums of justice, what she gets is 10 days of digital limelight, few consoling statements from political leaders, candle march, strikes, disruption in public services, and most importantly, legislation on paper.

India had witnessed not just Nirbhaya, but the Unnao Rape, Disha, and most recently, Kolkata Rape Case. A lot has been done on paper, what the society demands now is a stringent deterrence and fear in the minds of all those would-be perpetrators. The real progress is not reading multiple amendments in law books, but it would be about the implementation rate of these legislative changes so that no women have to plead for justice in her own home, her India.

¹³ India's struggles with high rape cases, low conviction rates, The Economic Times (Oct. 11, 2024, 9:29 PM).