
JUSTICE IN JEOPARDY: POWER, SOCIETY AND RAPE ACCUSED IN INDIA

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Abstract

Rape is one of the most serious offences under Indian criminal law, raising serious concerns regarding dignity, honour, reputation, equality, and access to justice. Despite landmark legislative reforms after the 2012 Nirbhaya case, notably the Criminal Law (Amendment) Act, 2013 and the comprehensive overhaul through the Bharatiya Nyaya Sanhita (BNS), 2023, which strengthened definitions of rape and enhanced punishments and introduced time-bound procedural safeguards under the Bharatiya Nagarik Suraksha Sanhita (BNSS), persistent challenges such as low conviction rates, delayed trials, and investigative deficiencies continue to hamper effective justice delivery. An increasingly shocking dimension of this issue is the political patronage and societal support to the accused of rape. This study critically examines how such support weakens the fundamental principles such as fair trial, equality before law, rule of law, impartiality, timely justice and protection of individual dignity. Through doctrinal analysis and case studies, including the Bilkis Bano case, the Hathras rape case, the Kathua rape case, and the Unnao rape case, the study highlights the impact of political patronage, public support, and remission practices on the integrity of the criminal justice system. It further examines the constitutional implications, particularly the right to a fair trial under Article 21 and rule of law under Article 14 of the Constitution. The study argues that such forces contribute to victim intimidation, investigative bias, impairment of fair trial and erosion of public confidence in the legal system. It concludes by recommending legal, institutional and societal reforms aimed at ensuring that justice in rape cases remains impartial, victim-centric, and free from external influence.

Keywords: *Criminal law, Criminal Law (Amendment) Act, 2013, Bharatiya Nyaya Sanhita (BNS), 2023, Bharatiya Nagarik Suraksha Sanhita (BNSS), fair trial and victim-centric.*

Introduction

Sexual violence, particularly rape is one of the most heinous offences under Indian criminal law. A rapist not only causes physical injuries but leaves an indelible scar on the most cherished possession of a woman i.e.; her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. The offence is primarily governed by the Indian Penal Code, 1860 now Bharatiya Nyaya Sanhita, 2023 and further strengthened by special legislation such as the Protection of Children from Sexual Offences Act, 2012. After the 2012 Delhi gang rape case, significant legislative reforms were introduced to broaden the scope of sexual offences and enhance punitive measures. Despite these developments, systemic challenges such as low conviction rates, delays in trials, and deficiencies in investigation continue to impede the realization of effective justice. This indicates that the problem lies not only in the law but also in its implementation and the socio-political environment surrounding it. A particularly troubling aspect is the political and societal legitimization of rape accused. In several instances, accused or even convicted individuals have received public backing through political statements, community support, or celebratory gestures upon release. Such interventions significantly weaken the right to fair trial as part of the right to life and personal liberty under Article 21 of the Indian Constitution, by influencing investigation and judicial processes. This paper seeks to critically examine how such political and societal forces weaken victim justice and erode the foundational principles of the rule of law.

Research Methodology

This paper employs a doctrinal legal research methodology combined with a comparative analytical approach, focusing on both primary and secondary sources. The primary sources such as The Bharatiya Nyaya Sanhita, 2023, The Indian Penal Code, 1860, Protection of Children from Sexual Offences Act, 2012, Constitution of India and relevant provisions from allied legislation such as the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Bharatiya Sakshya Adhiniyam, 2023, and judicial precedents. The secondary sources include, Reports from the National Crime Records Bureau, Academic articles, legal commentaries, and policy reports and Media reports documenting real-life incidents.

Constitutional Mandates and Statutory Provisions

The Constitution of India under Article 21 guarantees the right to a fair trial and the protection of victim dignity as part of right to life and personal liberty. The Supreme Court of India in the case of Maneka Gandhi v. Union of India, expanded the scope of Article 21 to include the right to a just, fair, and reasonable procedure. It has been further interpreted to incorporate the rights of victims in criminal proceedings, including the right to dignity, privacy, and protection from secondary victimization. In addition, Article 14 guarantees equality before the law and Article 15 prohibits discrimination on the grounds of sex and Article 39A mandates equal justice, thereby reinforcing the State's obligation to protect women from sexual violence.

The statutory provisions governing rape and sexual offences in India is primarily structured through the Bharatiya Nyaya Sanhita, 2023 (BNS) which repeal the Indian Penal Code, 1860 (IPC), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Protection of Children from Sexual Offences Act, 2012 (POCSO). The BNS (Sections 63–72) defines rape based on the absence of free and voluntary consent and prescribes stringent punishments, including life imprisonment and death penalty in aggravated cases such as offences against minors, gang rape, and repeat offenders, while also addressing abuse of authority and deceitful means. Complementing this, the BNSS provides procedural safeguards, including mandatory FIR registration, victim-sensitive investigation, in-camera trials, and provisions for speedy justice and victim compensation, thereby reinforcing the right to a fair trial under Article 21. Additionally, the POCSO Act offers a specialized, child-centric framework for offences against minors, with broader definitions, stricter punishments, and child-friendly procedures, including presumptions against the accused in certain cases. Collectively, these laws aim to uphold dignity, privacy, and access to justice, though concerns such as the continued marital rape exception and gaps in implementation remain significant from a constitutional perspective under Articles 14 and 21.

Case Studies on Political Patronage and Social Legitimization

Unnao Rape Case (2017): On the 4th of June, 2017, a minor girl was allegedly raped by BJP MLA Kuldeep Singh Sengar in Unnao, Uttar Pradesh. The police initially showed reluctance in registering the FIR and failed to name the accused, reflecting institutional bias and political influence. The victim's father was arrested on questionable grounds and later died in custody, allegedly after being beaten by the accused's partner. The role of political and societal support became evident as local leaders affiliated with the ruling party were seen defending the accused MLA, delaying arrests until sustained public and media pressure compelled the authorities to initiate action. The case also highlighted deliberate attempts to obstruct justice, through manipulation, including transfers of police officials and continuous threats to the victim and witnesses. A later road accident where the rape victim and her lawyer were seriously injured and two of her family members died when a truck struck their car, underscored the grave risks faced in pursuing justice. Finally, the intervention of the Supreme Court of India ensured the transfer of the trial outside the state and Kuldeep Singh Sengar was convicted of rape and related offences and sentenced to life imprisonment. However, this case exemplifies how political patronage undermines fair trial and victim justice.

Kathua Rape Case(2018): This case involved the abduction, gang rape, and murder of an 8-year-old girl by seven males (six men and a juvenile) in January 2018 in the Rasana village near Kathua in Jammu and Kashmir. Notably, the deceased was a Muslim girl and the accused were Hindus, which had made that an issue of communal politics. Rallies were organized in support of the accused under the banner of the Hindu Ekta Manch. The role played by members of the Bharatiya Janata Party,

including two Ministers in the then J&K government, had participated in these rallies, conferring political legitimacy to the accused. Even local lawyers attempted to block the filing of the chargesheet. The case was thus transferred from J&K to Punjab by the Supreme Court for a fair trial. Finally, six of the seven men accused in the case were convicted and three of the men got life imprisonment, and the other three got five-year imprisonment. The case shows caste-religious politics overriding justice.

Hathras Rape Case(2020): On September, 2020 a 19-year-old Dalit girl was gang raped by upper-caste men in the village of Hathras, Uttar Pradesh. She died two weeks later in a hospital. No arrests were made in the first 10 days after the incident took place and the controversy arose, after her death, the victim's body was forcefully cremated by the police without the consent of her family. There were also allegations of pressure on the victim's family and restrictions on media reports. The case and its subsequent handling received widespread media attention and condemnation from across the country, and was the subject of protests against the Uttar Pradesh government. The investigations were later transferred to the CBI. CBI filed a chargesheet on December 2020, in a special court in Hathras, charging gang rape and murder charges along with charges under SC/ST Prevention of Atrocities Act, against the four accused. The Hathras district court, on 2nd March 2023, in its decision, acquitted three of the four accused due to lack of evidence. The fourth accused, was convicted for the offences of culpable homicide not amounting to murder and provisions under the SC/ST Act, but not for rape and murder, and was sentenced to life imprisonment along with a fine of ₹50,000. The case has appealed against the verdict in the Allahabad High Court. This case thus exemplifies how state action, coupled with societal pressures, can obstruct justice.

Bilkis Bano Case: During the 2002 Gujarat riots, Bilkis Bano, who was five months pregnant, accompanied by her husband, her 3-year-old daughter, and other family members, fled her home, in an attempt to escape the violence sweeping the region. They were brutally attacked by a mob of 20-30 men armed with sickles, swords, and stones. Eleven men from the mob gang-raped her, along with her mother and three other women. The attackers targeted the group mercilessly, killing seven members of her family but Bilkis Bano survived the attack. The investigation was transferred to the CBI and the trial was moved outside the state to ensure fairness. The accused were eventually convicted and sentenced to life imprisonment. However, controversy reappeared in August 2022, when the convicts were granted remission by the state government and their release was followed by public celebrations and garlanding. Bilkis Bano moved the Supreme Court of India challenging the remission granted to the convicts. In January 2024, Supreme Court of India held that the Gujarat government was not competent to grant remission because the remission could only be granted by the government of the state where the trial was held, namely Maharashtra. The Court struck down the remission granted in August 2022, and ordered the 11 men to surrender to the jail authorities within 15 days. This case raised serious concerns about the exercise of executive discretion and public support and its impact on the justice delivery system.

Impact on Core Principles of Justice

The Indian criminal justice system is set up upon fundamental principles such as fair trial, equality before law, rule of law, impartiality, timely justice and protection of individual dignity. But the growing political and societal support to the rape accused and convict create a serious threat to these fundamental values. Principle of a fair and impartial trial, which is an integral part of Article 21 of the Indian Constitution. When accused persons get support from politicians or society, it creates an environment where investigative agencies and prosecuting authorities may be subjected to direct or indirect pressure. This compromises the impartiality of the investigation, leading to delayed registration of FIRs, manipulation of charges, or compromises the evidence. And as a result the integrity of the trial process is significantly weakened. Another fundamental principle affected is rule of law, guaranteed under Article 14 of the Indian Constitution. The rule of law mandates that all individuals are equal before the law, regardless of their social or political background. However, in cases where accused get political patronage or public sympathy, they are often able to evade or delay legal consequences. This creates injustice to marginalized groups and weakens public confidence in the legal system. Furthermore, this type of support system directly impacts the rights and dignity of victims. Victims of sexual violence are frequently subjected to threat, social isolation and psychological pressure, particularly when the accused is backed by politician or influential persons. This not only discourages victims from pursuing legal remedies but also contributes to underreporting of offences. Additionally, the principle of independence of the judiciary is compromised when political parties and the public, openly endorse or defend accused or convicted persons. Such actions can influence public opinion and in certain cases, create indirect pressure on judicial processes. The situation is further worsened by structural loopholes in laws such as the Representation of the People Act, 1951, which allow individuals facing serious criminal charges to remain politically active, hence enabling them to exercise influence over judicial proceedings. In a nutshell, political patronage and societal support to rape accused and even convicted affect at the very essential of justice by distorting the principles of fairness, equality, and accountability. It not only obstructs the path to justice for victims but also undermines the credibility of the legal system as a whole.

Recomendations

To successfully address the negative impact of political and societal support to rape accused, a comprehensive set of legal, institutional, and social reforms is necessary. Firstly, there is a need to amend the Representation of People Act to disqualify candidates with serious sexual offence charges. This would prevent persons with serious charges from misusing political power to interfere with the justice process. Secondly, Mandatory independent judicial commissions or court-monitored investigation for cases involving politicians. Such things would help in the investigative process from external pressure, ensure impartial collection of evidence, and increase public confidence in the justice system. Thirdly, victim protection mechanisms must be implemented to safeguard victims from threat and coercion. So that victim can approach legal authority easily. Fourthly, strict guidelines should be

framed for remission and parole in cases involving sexual offences including rape. Decisions regarding early release must take into account the gravity of the offence, the rights of the victim, and broader societal interests, ensuring that justice is not compromised. Finally, public awareness campaigns addressing victim-blaming attitudes, caste or religion based solidarity, and promoting gender sensitivity can help to create an environment where justice is not influenced by prejudice or power.

Conclusion

Rape is a severe crime that damages individuals and erodes societal values and safety. The issue of political patronage and societal support to rape accused in India presents a serious threat to the integrity of India's criminal justice system. Despite significant legislative advancements after Delhi gang rape case 2012, including the Criminal Law (Amendment) Act, 2013, and the enactment of the Bharatiya Nyaya Sanhita (BNS), 2023, the effectiveness of these laws continues to be undermined by external influences that distort the course of justice. Instances of public support, political patronage, and celebratory responses to accused or convicted individuals reflect a worrisome erosion of legal and moral accountability. This type of support directly threatens the foundational principles of justice, including fairness, equality before law, rule of law, the right to a fair trial. It not only compromises the impartiality of investigation and trial but also aggravates the trauma faced by victims, discouraging them from seeking legal remedy. This situation diminishes public confidence in the legal system. More than legislative reform, this issue demands a collective effort to ensure institutional accountability, regulate political conduct, and transform societal attitudes. A free and fair investigating system, strong electoral norms, and promoting victim-centric justice are necessary steps in this direction. The true measure of a legal system lies not merely in the laws it enacts but in its ability to uphold justice without fear or favour. Ultimately, the adjudication of rape cases must remain free from political and societal interference to preserving the rule of law and safeguarding the dignity of individuals in a constitutional democracy.

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