
FROM OUTRAGE TO REFORM: A CRITICAL STUDY OF MUKESH & ANR. V. NCT OF DELHI AND ITS IMPACT ON INDIA'S LEGAL FRAMEWORK ON SEXUAL OFFENCES

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ABSTRACT

The judgment of the case *Mukesh & Another vs. State of NCT of Delhi*¹ known as the 'Nirbhaya case' is the Supreme Court's judgement of criminal appeal arising from the infamous 2012 gang rape and murder of the young woman. This cruel case evoked national anger in India and led to change in laws related to sexual violence in India. The court affirmed the death penalty for the accused referring to the 'rarest of the rare' principle and stressed on the effects of the crime on the community.

The judgment also concerned itself not only with criminal law, particularly the death penalty but also with the proposed evidence, and the use of victim impact statements, as well as constitutional rights. Criminal law reform was also an outcome, the Criminal Law (Amendment) Act, 2013 that broadened the definition of sexual offenses, introduced tougher sentencing and demanded swifter trials in sexual violence cases. It also led to improvements in the dealing with juvenile offenders and raised much debate over the safety of women.

However, the judgment stirred again the disputes in connection with the capital punishment and its usefulness including the issues regarding minors in severe crimes. It was easily effective in achieving the change that it sought in the Indian society and laws, including the awareness of gender issues and the rights of women who have been sexually assaulted. It continues to remain as an important legislative tool in the country's legal battles against perpetrators of violence against women and as a factor that continues to propel current reforms on the country's judicial system.

¹ Mukesh & Another v. State of NCT of Delhi, (2017) 6 SCC 1 (India).

INTRODUCTION

The case of *Mukesh & Another vs. State of NCT of Delhi*² is a landmark judgement of the Supreme court of India whereby the court was dealing with the gruesome assault and murder of the 2012 Delhi gang rape that came to be called as Nirbhaya case. The case involves a brutal gang rape and murder of a young woman in Delhi which prompted stir in the entire country and demand for change of laws in India concerning rape and other heinous crimes against women. The trial as well as subsequent appeals became a focal point for alteration of the Indian approach to justice in extraordinary cases of violence and brutalities, societal factors of gender violence, and women security and justice.

The case mainly deals with various facets of criminal law, such as the admissibility of the death penalty, the meaning of rarest of rare doctrine and the victim's impact statements factor in the sentencing decision. The Supreme Court affirmed not only the accused persons' convictions and death penalties, but also placed emphasis on the nature and consequences of the offense to society. It explained matters of civil justice on the essentials of a fair trial, the consideration of evidence and fundamental rights under the constitution of India.

This case is important as it exposed the loopholes in the legal system regarding the crime of sexual violence and brought changes in India's Criminal laws especially the Criminal Law (Amendment) Act, 2013. The judgment also included the court's stand on re-evaluation of retributive justice against human rights; hence, making it an indeed significant case in relation to reform on capital punishment, judicial reform, and safety of women in India.

RESEARCH QUESTION

1. In the case of Mukesh and Another vs. State, how did the Supreme Court's ruling affect the rape laws in India and, more specifically, how it impacted the Criminal Law (Amendment) Act, 2013?
2. As to how the sentencing implemented in Mukesh and Another vs. State, such findings conform to the changes under the Criminal Law (Amendment) Act, 2013 about punishment for aggravated rape?

² *Supra* note 1.

3. Analyzing the judgment in Mukesh and Another vs. State in the light of gaps and criticisms of the Indian legal system highlighted by the 2012 Delhi gang rape case, it would be pertinent to ask: what changes did it bring in the public perception as well as in legal practices actualized in the Mukesh's case?
4. To what extent did the social and political parties react to it, and how did these reactions contribute to the birth of new legislation?
5. To what extent and manner does the case of Mukesh and Another vs. State responds to the victims' retribution and human rights in capital punishment cases in India?

RESEARCH OBJECTIVE

The objectives of this research is given below:

1. Analyse the Legal Changes after Nirbhaya Case:

To study the effectiveness of the Criminal Law Amendment Act of 2013 and other legislative changes made after the Nirbhaya rape case, they study the intervention, role and effectiveness of legislation in tackling and preventing sexual assault. This research shall seek to find out if these laws have effectively closed legal loopholes and how they have impacted on cases of rape in the Indian courts.

2. Define the Function of Legal Principles in Realizing Sexual Violence Cases in the Future:

In the light of the above mentioned discussion the following research question has been formulated to draw conclusion To examine the functioning of Nirbhaya case verdict as a precedent in future judgments of rape and sexual violence in India. Thus, this research will also look at the ruling that came thereafter, for example, the Kathua and Unnao trials, so as to establish the continuity and development of the rationale for and the sanction given in the cases.

3. Assess the Utility of Fast-Track Courts in Sexual Offence Cases:

Towards this end, we attempt to analyse the performance of fast-track courts that have been created post-Nirbhaya to track the expeditious delivery of justice, the problems encountered and whether the concept has ensured that justice for rape survivors is not delayed. This will be

done by assessing the existing legal frameworks addressing the Disha Bill and quicker trials' framework.

4. Examine the Reception of Sexual Violence Cases in Societal and Media Perspective in post-Nirbhaya Era:

In order to understand the changes that have occurred in the perception of sexual violence cases in India since the Nirbhaya case, how protests and media affects legal amendments, handling of legal cases related to sexual violence and policy-making. This objective will be isolated on how the action of the public comes up with legal changes.

5. Examine the Police's Participation in Handling of Sexual Offenses:

In order to examine the shifts in police conduct, gender awareness, and legal measures that were implemented to modify the police forces after the Nirbhaya case, and to examine how such modifications affected the procedures of reporting, investigating, and trying the sexual violence cases across India.

RESEARCH METHODOLOGY

Three key research methodologies used in analyzing the Nirbhaya case can be identified:

1. Doctrinal Research: This approach entails a close look at legal systems, case laws, acts, ordinances and regulations in the Criminal Law Amendment Act of 2013 and the Juvenile Justice Act of 2015. It also outlines how these laws were either defended or argued in the trial and the appeals especially the famous dictums by the judiciary such as *Mukesh & Anr. v. State for NCT of Delhi*.³
2. Comparative Case Analysis: The method adopted in the study is the case-to-case based comparison wherein two cases of rape from India being the one of Kathua and the Unnao are used to compare the legal verdict and the legislative changes after Nirbhaya. It examines how different cases contributed to the on-going discourses on sexual violence, legal changes and social effects.
3. Socio-Legal Research: This methods evaluates the reaction by society, the press, and voices

³ *Supra* note 1.

from the public that contributed to legal changes. The paper also focuses on how social movements influenced legal changes which enhanced women's rights protection, legislation

LITERATURE REVIEW

- The unfortunate incidence of gang rape of a young physiotherapy student named Jyoti Singh popularly called Nirbhaya occurred on the 16th of December 2012 in New Delhi, the capital of India. Though the Nirbhaya case has been haunting the nation, the legal and policy reforms initiated by it will continue to be the turning point in the history of struggles for getting justice for survivors of GBV in India. The Criminal Law (Amendment) Act, 2013 and the "Guidelines and protocols: Two significant progressive reforms include Medico-legal care for survivors/victims of sexual violence as outlined by the Ministry of Health and Family Welfare March, 2014. It is over four years since the issuance of these Guidelines and over five years since the passing of the Criminal Law (Amendment) Act, 2013. This means that any reasonable tribute to Nirbhaya can best be described as a fair implementation of legal reforms, attempts at enhancing multi-sectoral response, and sincere attempts to contain crimes against women, gender and sexual minorities, and children. This paper attempts to review the issue through a critical analysis of the available literatures, rape cases, police reaction, court rulings, the existing scientific data, media coverage and field observation. It comes up with the measures of implementation shortfall that remain a stride and are the major cause of inhibiting these progressive policies and reforms. The most complex issue with the reforms is the fact that they are intersectoral, thus making their implementation extremely difficult. Failure to properly put into operation such policies and reforms is tantamount to acting in a manner that deprives survivors of their rightful due.⁴
- The article "The Nirbhaya Case: In the analysis of the 2012 Delhi gang rape case titled "Critical Analysis of Landmark Criminal Justice Trial" by Ujjwala Sakhalkar and Ashutosh Patare the authors provide a critical look at the landmark case in India which changed the criminal justice system. One such event that occurred in Delhi was the brutal attack of a young paramedic student in which she was gang-raped and tortured

⁴ Shang-Wei Lin et al., A Comparison of the Clinical Outcomes of Male and Female Sepsis Patients: A Retrospective Observational Study, PubMed, <https://pubmed.ncbi.nlm.nih.gov/29650498/> (last visited Sept. 16, 2024).

in a moving bus; this particular event came to the limelight and exposed the nation to the high rate of sexual assault on women in India that had been hidden for a long time. The girls harassed incident created immense public furore, candle light marches and demand for justice forced the government to reconsider his position on crimes against women. This paper presents the judicial process, right from the fast-track court, which immediately acted on the case; the court giving death sentence to the accused, his appeals to the higher authorities for mercy petitions, which were turned down; the ultimate authoritative statement of the apex court, the Supreme Court of India, upholding the punishment relegating the crime to the 'rarest of the rare' category. The authors also explain the further changes in the production of law after Bhanwadi case most important of them is Criminal Law (Amendment) Act of 2013 that broaden the definition of rape, included the new categories of sexual offenses including stalking and throwing acid, included new severe punishments for such crimes. Other reforms that followed are the fast track courts to handle trials connected to sexual violence, passing of new Juvenile Justice Act, allowing juveniles involved in the heinous crime be tried in an adult court and creating National Database on Sexual Offenders (NDSO). It was some of these changes which have made the Nirbhaya case as the turning point in India that seeks justice and protection for women and demands to change its legal and judicial system.⁵

- The article "Ten Years Since Nirbhaya: In their article "A Critical Analysis of Retributive Justice in Addressing Sexual Violence," Garima Jain and Ankita Mishra provide a critical analysis of the composite case concerning catfishing and its possible implications on India's legal and socio-political dispensation toward sexual violence. After the 2012 event, specific changes in the laws like the Criminal Law (Amendment) Act of 2013 were enacted raising the quantum with death penalties and new forms of crimes like, throwing acid on women and stalking. Nonetheless, critics assert that such retributive justice approach, as a way of meeting public concern of increasing harsh penalties, does not target the social and cultural causes of sexual violence. The article argues against this punitive approach noting that it erases victim-survivors' desires for

⁵ The Nirbhaya Case: Critical Analysis of Landmark Criminal, ResearchGate
https://www.researchgate.net/publication/376957295_THE_NIRBHAYA_CASE_CRITICAL_ANALYSIS_OF_LANDMARK_CRIMINAL .(last visited Sept. 16, 2024).

voice, support and power in the legal process. Instead, it supports the ideology of honor to men and diminishes the survivor's part to that of a bystander.⁶

- In his 2017 article, Anup Surendranath, titled "Death Penalty and the Nirbhaya Case: In the article "The Fallacy of Deterrence," the author makes an emphasis on the fact that execution in the case of Nirbhaya was more about meeting the public's desire for vengeance than serving as a deterrent to crime. He asserts that there is no scientific data to prove that presence of capital punishment bring down the rate of crime. Further, Surendranath also argue about the lack of objective criteria specifically with regard to the appellations of the 'rarest of the rare' doctrine in the theory and practice of judicial decisions as fairly and reasonably assignable in capital punishment cases.⁷

CASE ANALYSIS

Nirbhaya gang rape case happened on the 16 th night of December, 2012, a 23-year-old woman and a male friend were going home from a movie theater. They used a private chartered bus from Munirka for Dwarka route for that they were heading to. In the house Six male individuals were already there. As soon as the woman boarded the bus the interior light inside the bus was switch off, the man with the woman was verbally harassed and then physically attacked using an iron bar. The companions had a companion who also fell victim to the attackers, they severely assaulted the companion and thereafter stole from the couple. In the same year the woman was then subjected to a horrifying ordeal of gang rape. Every man had a go, one after the other, and it was natural and unnatural rape," The defense lawyer was interrupted. They almost killed her by seriously assaulting her private areas with an iron rod. The culprits undressed and severely beat up the two men, and then, tossed them out of the moving bus, naked and in wounds by National Highway 8. For the last degree of evil they tried to knock them down with the car then left the scene." The woman later was referred to as "Nirbhaya" which means fearless this was in support of justice all over the country.

The petitioners urged the court saying that the case had received ample trial in the lower court and conviction affirmed by the High Court. Finally, after applying all the legal options for the

⁶ Garima Jain & Ankita Mishra, Ten years since Nirbhaya: A critical analysis of retributive justice in addressing sexual violence, <https://gavps.jibs.edu.in/index.php/gavps/article/view/6/4> (last visited Dec. 16, 2012).

⁷ Garima Jain & Ankita Mishra, Death Penalty and Execution: The Delhi Gang Rape Case and the Diminishing Role of the Judiciary, Caravan, <https://caravanmagazine.in/law/death-penalty-execution-delhi-gang-rape-anup-surendranath> (last visited Mar. 24, 2020).

petitioner such as revisiting the matter under *Article 137*⁸ in a review petition, the petitioner accused the Supreme Court of judgment making errors of facts. The defence of the petitioner was aimed at proving that the accused persons were not at the scene of the crime, however, the court rejected such allegations citing documentary and forensic evidences.

Filing a review petition did not work, and therefore a curative petition was filed but it was equally dismissed by the supreme Court to show that justice needs to be sought and social repercussions should act as deterrent. The last the application to a compassionate pardon was made to the President of India who after consulting the Council of Ministers, confirmed the death sentence passed by the Supreme Court as the crime committed was heinous and was a social offence.

The Bench of three learned Judges of Apex court held that the act committed by the accused was that which called for no sympathy. The court described the crime as falling in the category of the 'rarest of rare' hence justifying the death penalty. With the help of dna analysis, fingerprints, witnesses, and dental exam the court proved the role of the accused in the performance of the severe violent act. The bench showed concern in the level of cruelty that was demonstrated by the accused persons by treating the victim as their object of pleasure, and subjecting her to the worst form of sexual abuse.

Out of the four convicts — Mukesh, Pawan, Vinay Sharma, Akshay Kumar Singh, the court affirmed the death penalty. The fifth accused, who was under age at the time of the commission of the crime, was with a jail term of three years and sent to a juvenile correctional home. However, appreciating the Supreme Court's verdict along with Delhi High Court and the trial court's decision, it provided a message to the society that crime of such brutality cannot be unpunished. It proved to be a significant turning point for the legal and continuously social battle against Rape Culture in India.

After December 2012

A major development in legislation taken over the years was the Criminal Amendment Act in 2013 which made a monumental change in the *Section 375*⁹ and added the *Section 354A*¹⁰,

⁸ INDIA CONST art. 137.

⁹ Indian Penal Code, § 375, No.45 Of 1860, Acts of Parliament, 1860 (India).

¹⁰ Indian Penal Code, § 354 (a), No.45 Of 1860, Acts of Parliament, 1860 (India).

Section 354B¹¹, **Section 354C¹²**, and **Section 354D¹³**. This reform altered the meaning of rape which hitherto referred strictly to connection for carnal knowledge to include any forced and aggressive intrusion into a woman's body orifices in order for it to be considered rape. This was contained in this amendment to reflect a better understanding of the crime and included the preliminary stages of rape.

The need for such legal changes especially those concerning protections of women find their antecedent in the Justice Verma Committee. Specially, the committee was set up to provide speedy trial of cases and to set up stringent provisions for the accused to punish them for various crimes against women to ensure legal reforms which should be brought in after the 'Nirbhaya' type of tragedy.

ANALYSIS

This particular case turned out to be a nightmare for the country and because of that, we saw so many changes in our legal systems. such as;

1. The enhancement of **Criminal Law Amendment of 2013**¹⁴also referred to as the Anti-rape Act made significant change on the laws governing rape. This legislative reform also widened the definition of rape by including other offences including stalking, battery involving use of acid and voyeurism. Even a threat to rape her was considered criminal and therefore the perpetrator was to face legal consequences of his actions. In addition, the minimum years for rape was increased from seven to ten years noting the increase in the cases of rape. If the crime led to the death of the victim or his or her complete disability, the minimum sentence was increased to 20 years.
2. One of the significant changes of legal attitudes that was noted concerned the nonadmissibility of the victim's character in rape cases and the exclusion of irrelevant factors in meting out punishment. Though there is a structural deficiency pointed out by the juvenile participation in the Nirbhaya case, through the **JJ Amendment Act 2015¹⁵**, the age of the juvenile trying them as an adult in violent crimes including rape was changed from 18 to 16

¹¹ Indian Penal Code, § 354 (b), No.45 Of 1860, Acts of Parliament, 1860 (India).

¹² Indian Penal Code, § 354 (c), No.45 Of 1860, Acts of Parliament, 1860 (India).

¹³ Indian Penal Code, § 354 (d), No.45 Of 1860, Acts of Parliament, 1860 (India).

¹⁴ Criminal Law (Amendment) Act, 2013, Act No. 13 of 2013.

¹⁵ Juvenile Justice (Care and Protection of Children) Act, 2015, Act No. 2 of 2016.

years. It also provided on procedural concerns necessary under the amendment requiring registration of complaints and medical examinations. It provided that any officer who omits to report reported rape case or hinder investigations will be prosecuted for a criminal offence. Furthermore, the committee's findings also sought to deal with other matters relating to marital rape and rape through commission of fornication, which called for void marriages hence they were more encompassing in their approach to the legal regime of sexual assaults.

The amendments introduced in the Indian Penal Code, 1860

Added into the legislation was **Section 166A**¹⁶ defining the offence of Civil disobedience by a public servant. After the amendment, this offense carries a penalty which entails, rigorous imprisonment of 6 months to 2 years as well as fines.

Sections 326A¹⁷ and **326B**¹⁸ were inserted to deter the dreadful crime of throwing acid to people. The amendment therefore categorises acid attacks as a new crimes which attracts either imprisonment for a term of 10 years, which may be for life, or a fine, or both.

The given part of law was introduced as **Section 354A**¹⁹ that is concerned with the issue of sexual harassment and the pertinent punishment. **Section 354B**²⁰ deals with the offence of compelling a woman to strip bare the consequence of which has been provided under law. The offence of voyeurism falls under **Section 354C**²¹ which states that it is an offence to observe a woman who is undressing or engaged in sexual activities or is in a state where her private parts are exposed. **Section 354D**²² involves the specific offence of stalking and **Section 429**²³ sets legal contra to this invasive action. The age of consent became seventeen years seventeen years of age and was compared to a new legal standard that defines men's ability to give consent.

New clarification of rape that occurred include; unconsented penis or other objects in the mouth, the urethra, vagina, anus, and the mouth to vagina, urethra and anus.

¹⁶ Indian Penal Code, § 166(a), No.45 Of 1860, Acts of Parliament, 1860 (India).

¹⁷ Indian Penal Code, § 326(a), No.45 Of 1860, Acts of Parliament, 1860 (India).

¹⁸ Indian Penal Code, § 326 (b), No.45 Of 1860, Acts of Parliament, 1860 (India).

¹⁹ *Supra* note 10.

²⁰ *Supra* note 11.

²¹ *Supra* note 12.

²² *Supra* note 13.

²³ Indian Penal Code, § 429, No.45 Of 1860, Acts of Parliament, 1860 (India).

From here **Section 376(2)(c)**²⁴ was introduced whereby the Indian Parliament gave recognition to the acts rapists in personnel of armed forces, there being circumstances that are peculiar to such cases. **Section 376A**²⁵ was added which mainly relates to rape leading to death or putting the victim in a comatose state and according to these the punishment.

Section 376D²⁶ is dedicated to the crime of gang rape because it is a heinous crime that deserves the negative consequences that will be legally incurred upon the offend.

If an offender commits offences of the same nature they face the risk of receiving a life imprisonment or even death, in order to give emphasis on serial sexual offences.

Moreover, the use of trafficked person now involves penal provisions to enhance legal measures of fighting human trafficking.

Further elaboration was made that penetration for the purpose of rape could be to any extent and it was made clear that the lack of physical or other form of struggle is irrelevant for the commission of the rape offence.

Legislative reform of post Nirbhaya case

Subsequently after the Nirbhaya case the Government of India introduced two key legal actions in acknowledgment of mass protests across the country: **the Criminal Law Amendment Act of 2013**²⁷(CLA 2013) and from the Ministry of Health and Family Welfare (MoHFW) Guidelines.

Therefore, in the third place, there was creation of the One Stop Centres meant to provide emergency to intermediate and/or long-term support to Gender Based Violence (GBV) survivors.

Loosely translated, the protesters voiced about issues ranging from poor and inefficient security to women, lack of proper means of transportation, the inefficiency of the policemen, who tended to shift the blame on the survivor of rape and hesitate before registering an FIR, and bureaucratic procedures surrounding sexual assault. The role of enhancing the anti-rape laws

²⁴ Indian Penal Code, § 376(2)(c), No.45 Of 1860, Acts of Parliament, 1860 (India).

²⁵ Indian Penal Code, § 376 (a), No.45 Of 1860, Acts of Parliament, 1860 (India).

²⁶ Indian Penal Code, § 376 (d), No.45 Of 1860, Acts of Parliament, 1860 (India).

²⁷ *Supra* note 14.

was given to the Justice Verma Committee, which paved way for replacement/up gradation of many laws.

Delhi's police department also employed more women officers, to ensure that they can come forward with their stories. More security measures were deployed and surveillance ramps up and police officers too underwent gender mainstreaming with a view of improving on their knowledge on women rights and safety concerns.

Six courts of special nature were established solely for fast track trial of rape cases which has focused on early and adequate relief to the survivors. The laws against the sexual assault were also tightened even more to enhance the strength of the legal systems.

This was evidenced by the case of the accused being only seventeen years old, hence indicating the need to revisit some of the juvenile laws.

The era that came after Nirbhaya saw the development of a social forum where sexual violence could be discussed, hence fostering a dialogue that was previously nonexistent.

Failure in the provision of medico-legal care is now an offense under **Section 166B**²⁸ of the Indian Penal Code after passing the Criminal Law Amendment Act in 2013.

AFTERMATH OF THE NIRBHAYA CASE

It would be pertinent to mention that the Hon'ble Supreme Court of India ***in Mukesh & Anr. v. State for NCT of Delhi & Ors., 2017***²⁹, also known as the Nirbhaya case, several significant cases followed that both reaffirmed the principles laid down by Supreme Court in this verdict and future legal and sociological discourse related to sexual assault, capital punishment and women's right. Here are some of the famous ones that came into existence a few years back:

1. ***Kathua Rape Case (2018)***³⁰

An 8 years old girl was raped and killed by a group of men in Kathua, Jammu and Kashmir. This case brought a lot of attention to the nation especially because the crime was of social and political nature as some people defended the perpetrators. Earlier in June 2019, six men were

²⁸ Indian Penal Code, § 166(b), No.45 Of 1860, Acts of Parliament, 1860 (India).

²⁹ *Supra* note 1.

³⁰ State (UT of J&K) v. Shubam Sangra, 2022 SCC OnLine SC 1592.

convicted and in relation to that the court passed out a life sentence to three of the involved men. Even though the death penalty could not be carried out on the perpetrators of the crime, the case highlighted this as the reason why rigorous and prompt justice had to be meted on anyone found guilty of the heinous crime of rape or any form of sexual assault on the vulnerable section of the society especially the children. *Criminal Law (Amendment) Act, 2018*³¹ was enacted to provide for the death penalty for persons convicted of raping a girl under the age of twelve years more stringent in the laws protecting children from sexual violence. It was in line with the growing concern for safety of children after the Nirbhaya incident.

2. *Unnao Rape Case (2017)*³²

In this case the MLA of the ruling party in Uttar Pradesh, Kuldeep Singh Sengar, raped a minor girl. It further received immense coverage when the survivor's father was reportedly killed and the survivor herself, was badly injured. The case was further intensified when in 2019 through a suspected staged accident, the survivor also barely survived. Sengar was convicted to life imprisonment in 2019 for the rape and for the other crimes related to the case other investigations were launched. This case rose concerns on the trends of political compulsiveness and rape survivor injustice system in the country. It raised the awareness of Justice and fair treatment in politically charged cases of witness protection.

3. *The Hyderabad Veterinarian Rape and Murder Case*³³

In Hyderabad in 2019, 26-year-old veterinarian was gang-raped and killed and similar to Nirbhaya case led the public outrage. The four accused were gunned down in a police encounter for which the action received accolades as well as criticism.

Aftermath: While many people thought that was an immediate form of justice, law practitioners condemned it noting that it endorses murders since they do not follow the legal procedures. **The Indian Supreme court called for a probe into the encounter on the same matter.** **Relevance to Nirbhaya Case:** This case brought out the fact that although there has been a positive change in the laws in India post Nirbhaya, the justice delivery system is still a slow process especially in the rape cases. The demand for more efficient and just decisions was still an imperative.

³¹ Criminal Law (Amendment) Ordinance, 2018, Ordinance No. 6 of 2018.

³² Kuldeep Singh Sengar v. State of U.P., (2020) 3 SCC 240.

³³ Muhammed Ameerul Islam v. State of Kerala, (2018) 15 SC.

require.

4. Disha Bill (2020)³⁴

The government of Andhra Pradesh, in wake of the Hyderabad veterinarian case, passed Disha Act in 2020, the name of which is derived from the nom de plume of the deceased. The Act directed that all rape cases should be fully determined and the verdicts passed within twenty one days of the conduct of the offence, so as to provided speedy justice. The bill also provided for increase of the degree of response, including death penalty for rape. Faster trials and demanding punishment followed by Nirbhaya, contributed to similar legislation such as the Disha Act, thereby indicating the new trend towards establishing fast-track courts, advances and strengthening provisions of laws against sexual violence.

The Nirbhaya case established a legal and social change in India and the following cases also established the need for legal reform. For each case, he support the harsher penalty regime, speedy trial and more consideration for the victims of sexual offences. But, the cases also revealed problems in the justice system, for instance delay on the process of penalty enforcement as well as some issue on police rendezvous. The legal framework has been changing in India with the spirit of Nirbhaya Case and similar other subsequent cases to meet the requirements of justice delivery system, reasonable justice and procedural justice.

CONCLUSION

As it was mentioned in the case, the Supreme Court affirmed the death penalty as a proper punishment for the accused with reference to ‘rarest of rare’ principle. The court recognized that the crime was brutal, which involved a heinous act of the gang rape and subsequent murder of a young woman and thus affirmed that there is no greater penalty which can be imposed on the perpetrators under the law. This really set the tone for handling cases of severe sexual violent nature by putting a message across of non-tolerance and consequent wrath of the law.

Apart from the verdict, this case gave birth to another major revolution in India’s legal system. This culminated into changes of the criminal law by passage of the Criminal Law (Amendment) Act of 2013 that saw higher standards of severity of the sexual offenses where the offender was subjected to death penalty in cases which the offender was a repeater or where the victim

³⁴ Criminal Law (Amendment) Act, 2019, Act No. 22 of 2019.

perished as a result of the offenses. The case also led to the establishment of faster trial courts that was meant to fast tract sexual violence cases as a way of ensuring that justice delivery would not be slowed down.

Besides, the case contributed to reforms of the system of juvenile justice. The Juvenile Justice (Care and Protection of Children) Act 2015 was changed to allow juveniles of ages 16 to 18 years to be prosecuted as adults particularly in heinous crimes in a direct response to the features of the Nirbhaya case. They were considered as would help to make sure that justice had a right means of dealing with the seriousness of the crimes. The society also learnt that change in the case didn't only require the legal changes, but change in the society as well. It made gender sensitization and protection of the victim as one of the issues of importance for the nation. This shocked the Indian society to demand change and develop the consciousness of protecting women and the crime against them as well as reconsidering the perception and combating of sexual violence in the society. This case highlighted the need to come up with better and enhanced developments and safeguards with regard to the position of women; prevention in this case was the area of major emphasis as was the role of social changes and introduction of legislation.

However, the judgment has stirred up controversies on the use of death penalty once again. When the verdict was made, many rejoiced the triumph of justice but some few wondered whether capital punishment really prevents crime or whether it promotes violence. Likewise, the handling of the juvenile offender in terrible crime was also a much debated on the policy, the rehabilitation of young delinquents on the one hand and the quest for justice on the other hand.

Thus, it could be said that the Nirbhaya's case significantly influenced the legal and social realities in India. As much as it served to give justice to the victim and her family it brought about legal and societal changes. The case also endeavoured more effective laws by legal bodies, speedy justice delivery and legal awareness regarding the sexual assault victims. It has provided the impetus for continued endeavours for the protection of women and to ensure that such heinous crimes against women are duly punished without any delay.

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