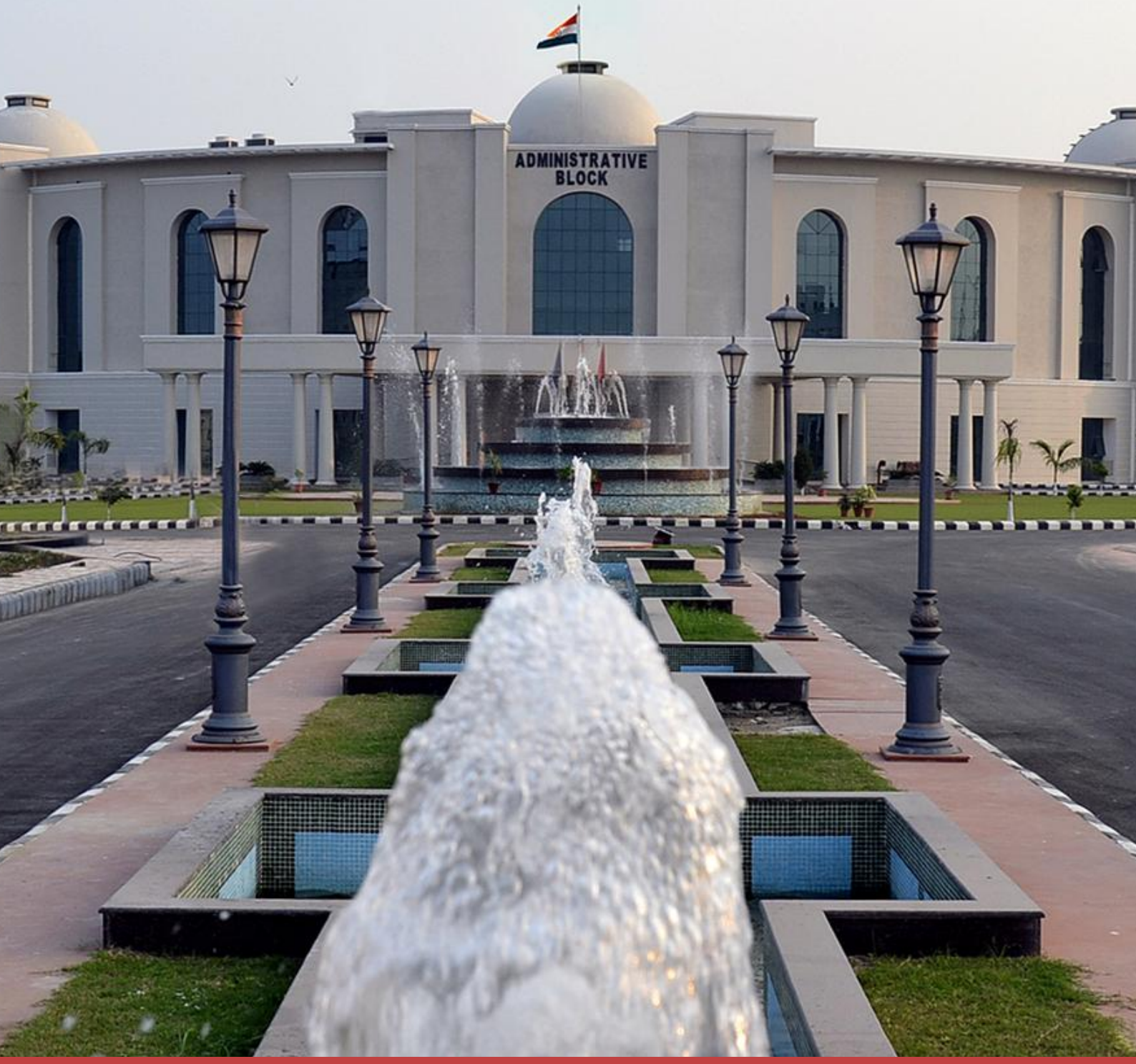
CASCL NEWSLETTER

November 2021 || Issue 1



CENTRE FOR ADVANCED STUDIES IN CRIMINAL LAW

RAJIV GANDHI NATIONAL UNIVERSITY OF LAW, PUNJAB

ABOUT RGNUL

Rajiv Gandhi National University of Law, Punjab (RGNUL) is an autonomous National Law University (NLU) established by the RGNUL Act (No. 12 of 2006) passed by the legislature of the State of Punjab, under the second wave of reforms instituted by the Bar Council of India. Established in 2006, RGNUL has garnered a pan-India reputation as a stellar institution for legal research and education. In May 2015, RGNUL became the first and the only NLU to have been accredited by the National Assessment and Accreditation Council (NAAC) with an 'A' grade. In March 2018, RGNUL was amongst the four NLUs to have been granted an autonomous status by the University Grants Commission (UGC). The University has been ranked among the top 10 law schools in India in the National Institutional Ranking Framework (NIRF), published by the Union Ministry of Human Resource Development, Government of India.

ABOUT CASCL

RGNUL has established a Centre for Advanced Studies in Criminal Law (CASCL) to undertake: advanced study and research in the emerging areas of criminal law. The Centre aims to bring about reforms in the substantive and procedural criminal law in view of the modern crime scenario; development of sound criminal justice policy and practice; to generate respect for human rights and rule of law in the administration of criminal justice; training and technical assistance to agencies concerned with administration of criminal justice; renewal of sentencing policies and correctional systems; revamping justice to the victims of crime, and legal aid and speedy disposal of the criminal cases.

RECENT CRIMINAL LAW DEVELOPMENTS IN THE COUNTRY

NO POWER TO GO BEYOND KEDARNATH RULING

The Division Bench of the Punjab and Haryana High Court in the case of *Haryana Progressive Farmers Union v. Union of India and others* while dismissing the plea observed that it has no power to go beyond the Kedarnath ruling of the Supreme Court which upheld the constitutional validity of sedition. The plea was moved by Haryana Progressive Farmers Union on the ground that Sec-124-A IPC violates Article 14, 19(1)(a) and 21 of the Constitution.

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HUSBAND'S MARRIAGE AFTER GRANT OF DIVORCE DOES NOT AMOUNT TO DOMESTIC VIOLENCE

In the case concerning *Bhushan v. Nilesha Bhushan Deshmukh* [Criminal Application No. 164 of 2017] decided on 9 August, 2021, after the divorce had been granted on the grounds of cruelty, the respondent contended that the second marriage performed by applicant 1 amounted to domestic violence. The court rejected such contention observing that the manner in which the proceedings were sought under the Protection of Women from Domestic Violence Act, 2005 were nothing but an abuse of the process of law and the respondent appeared to be interested in initiation and continuance of such proceedings as a means of harassment of the applicants and as such the abuse of process and the proceedings could not be permitted.

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ABILITY OF ECONOMIC OFFENDERS TO INFLUENCE WITNESSES AND OTHER EVIDENCE

The Allahabad High Court in *Pankaj Grover v. Directorate of Enforcement* rejected the anticipatory bail application under Sec. 438 of CrPC filed by the erstwhile Director of M/s Surgicoin Medequip Pvt. Ltd. who was accused in the National Rural Health Mission Scheme Scam noting the ability of the accused in socio-economic offences to influence witnesses and other evidences.

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CUSTODIAL VIOLENCE A CONCERN FOR CIVILIZED SOCIETY

The Allahabad High Court in *Sher Ali v. State of Uttar Pradesh* denied bail to a policeman who was booked for causing custodial death of a man in 1997. The High Court observed that, 'custodial violence, custodial torture and custodial deaths have always been a concern for civilized society'.

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RECENT CRIMINAL LAW DEVELOPMENTS IN THE COUNTRY

INQUIRY INTO TWEETS AGAINST JUDGE, COURT

The Punjab and Haryana High Court in the case of *Vishali Kapoor and Ors v. State of Punjab and Another* has ordered an inquiry into the tweets allegedly made against the court. The Petitioner was granted anticipatory bail by this Court earlier. Aggrieved by the court order, the Complainant in that case posted some derogatory tweets and the picture of the judge who gave the order was taken notice by the Court in the present case.

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THE SUPREME COURT SUMMARIZES THE SCOPE AND THE AMBIT UNDER SECTION 319 OF CRPC

The division bench of Justice DY Chandrachud and Justice MR Shah summarized the scope and ambit of the powers of the Court under Section 319 of the Code of Criminal Procedure.

The Bench summarized the principles that being the sole repository of justice it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system therefore, section 319 of CrPC is an enabling provision which empowers the court to proceed against any person who is not an accused in a case before it.

It has also been held by the court that the power under Section 319(1) CrPC can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC.

The bench also held that only if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319 CrPC and can proceed against such other person(s) but while exercising the powers under Section 319 CrPC the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial.

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NON-REPRESENTATION ON PART OF ACCUSED'S ADVOCATE NOT A GROUND FOR DISMISSAL OF CRIMINAL APPEAL

The Madras High Court had dismissed the accused's criminal appeal for non-prosecution on the grounds that the appellant had not been represented either in person or through the lawyers on record, therefore the present Special Leave Petition was filled.

RECENT CRIMINAL LAW DEVELOPMENTS IN THE COUNTRY

The Division bench of Justice A.M Khanwilkar and Justice Sanjiv Khanna in the case of *K. Muruganandam v. State* [SLP(Crl) Diary 8150/2021] observed that a court cannot dismiss an accused's appeal solely on the basis of the accused's advocate's non-representation or default. The Court is required to proceed with the hearing of the case only after appointing an amicus curia if the accused does not appear through counsel selected by him/her.

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THE SUPREME COURT REITERATED THAT IT IS IMPROPER TO QUASH FIR U/S 482 OF CRPC WHEN THERE ARE SERIOUS TRIABLE ALLEGATIONS IN COMPLAINT

In this case, the police filed an FIR against the accused under Sections 147, 148, 149, 406, 329, and 386 IPC after receiving an order from the Magistrate under Section 156(3) CrPC. A non-execution of a sale deed was the subject of the complaint. The accused petitioned the High Court for the quashing of the FIR and all criminal proceedings, stating that they were filed solely to force the accused to hand over the scheme to the complainant. The petition was granted by the High Court.

The Division bench of Justice DY Chandrachud and Justice MR Shah in the case of *Kaptan Singh v. State of Uttar Pradesh*; CrA 787 OF 2021 observed that, "When there are substantial triable accusations in the complaint, it is incorrect to quash criminal proceedings under Section 482 of the Criminal Procedure Code. While overturning a High Court decision, the Supreme Court reiterated that appreciating evidence is not permitted at the stage of quashing proceedings in the exercise of powers under Section 482 CrPC.

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NO CONVICTION UNDER SECTION 364A IPC IF KIDNAPPER TREATS VICTIM IN A GOOD MANNER: SUPREME COURT

The Double Bench of Supreme Court consisting of Justice Ashok Bhushan and Justice R Subhash Reddy, has laid down the essentials needed to be proved by the prsoecutors to convict an person who is accussed under Section 364A IPC, i.e. kidnapping for ransom.

According to Section 364A of The Indian Penal Code, the essentials are:

- (i) Kidnapping or abduction of any person or keeping a person in detention after such kidnapping or abduction; and
- (ii) threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or;

RECENT CRIMINAL LAW DEVELOPMENTS IN THE COUNTRY

(iii)(causes hurt or death to such person in order to compel the Government or any foreign State or any Governmental organization or any other person to do or abstain from doing any act or to pay a ransom.

The Court remarked that after first condition is established, one more condition has to be fulfilled since after first condition, word used is "and". Thus, in addition to first condition either condition (ii) or (iii) has to be proved, failing which conviction under Section 364A cannot be sustained.
However, from the evidence presented regarding kidnapping, it is proved that accused had kidnapped the victim for ransom, demand of ransom was also proved.

"The offence of kidnapping having been proved, the appellant deserves to be convicted under Section 363. Section 363 provides for punishment which is imprisonment of either description for a term which may extend to seven years and shall also be liable to fine."

The Court, hence, sentenced the accused to imprisonment of seven years and fine of Rs. 5,000/- and directed that after completion of imprisonment of seven years (if not completed already) the appellant shall be released.

CASE NAME: *Shaik Ahmed v. State of Telangana*

Read More.

R. NATARAJAN V. STATE OF TAMIL NADU: MERELY RESIDING IN THE SAME HOUSE MAKE IN-LAWS ACCOMPLICE IN A DOWRY DEATH CASE?

In the following case, A dvision bench consisting of Justice Navin Sinha and Justice R. Subhash Reddy, acquitted an old aged couple.

The appeal had been filed by an elderly couple, appellant 1, 77 years old and appellant 2, 69 years' old who was stated to be bed ridden. The case was that they had been wrongfully convicted under Section 498A IPC leading to three years of imprisonment with fine and a default stipulation in relation to the death of their daughter-in-law

Considering the submissions made on behalf of the parties and after going through the evidence and the order of the Trial Court as well as of the High Court, the Bench opined that the allegations against the appellants were generalised in nature.

Therefore, the Trial Court came to the conclusion that though they were living in a separate portion of the house, their conduct amounted to indirect harassment of the deceased. Noticeably, while discussing that the appellants allegedly fed the ears of their son against the deceased, the conclusion of the district court was that these were normal wear and tear of married life and that they probably (emphasis) added fuel to the fire.

RECENT CRIMINAL LAW DEVELOPMENTS IN THE COUNTRY

Hence, the Division Bench opined that the conviction of the appellants was not maintainable on a probability in absence of direct evidence. The benefit of doubt ought to have been given to the appellants. Consequently, the conviction of the appellants was set aside. Noticing that appellant 2 had already been granted exemption from surrendering on account of her medical condition, the Bench directed release of appellant 1 as well from the custody.

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CASCL COMMENTS: AN ALARMING RISE IN FALSE RAPE CASES

-Vaishnavi Chaudhary

INTRODUCTION

In the past few years, there has been an alarming rise in the number of false rape cases. According to a report released by the Delhi Commission for Women in 2014, 53% of the false rape cases filed in the preceding year turned out to be false. Today, false allegations of rape and molestation pervade the Indian Criminal Justice System.

There is no denying the fact that rape is an ever-present problem in our country. However, false rape cases are another facet of the problem as they are filed with the objective of "settling old scores". This menace has been recognised by Justice Subramonium Prasad of the Delhi High Court in the recent case of *Vivek Agnihotri v. State.*

As per the facts of the case, both the parties had reached a compromise and sought to quash the FIR. Subsequently, a petition was filed for the same. The court took recognition of the fact that false rape cases are being used with the objective of forcing the accused to give in to the demands of the complainant. Such cases are filed under Section 354, Section 354A, 354B, 354C and 354D. The court was further of the opinion that complainants of false rape allegations should not be allowed to walk away without any accountability.

The judgement of the court clearly paints a disappointing picture of the progress that we have made in the sphere of dealing with rape cases. Instead of solving the problem, the state of the criminal justice system is such that it has been further aggravated. It is pertinent to mention here that false rape cases not only harm the honour of the accused but also divert the resources that could be used in investigating genuine rape allegations.

The Court's stance on this issue is clear- false rape and molestations should be dealt with an "iron hand". This observation was made with reference to the frivolous litigation that is pursued by the parties in cases of such nature. While this judgement is an excellent precedent and addition to the existing Supreme Court jurisprudence on the same, its implementation continues to remain a challenge.

THE REVENGE ASPECT OF FALSE RAPE CASES

Revenge is one of the primary reasons for the increase in false rape cases. There are several cases that bear testimony to the same.

It is pertinent to note here that the courts' across the country have taken a similar stance with respect to false rape cases. In 2020, a single judge bench of the Kerela High Court dealt with the same issue. A woman had claimed that she was raped by a health inspector when she approached him for a Covid-19 certificate.

As the nature of allegation was so serious, the health inspector was denied bail by the court.

CASCL COMMENTS: AN ALARMING RISE IN FALSE RAPE CASES

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However, it came to light that the woman had lied due to family pressure and the two had in fact engaged in consensual sexual intercourse. Subsequently, the court directed the police to take action against the woman.

The court also observed that the case received widespread media coverage in the state and could have a very negative impact on the morale of the health workers during the pandemic. Similarly, in another incident, a fourteen year tribal girl of Chattisgarh had alleged that she had been gangraped. However, as the police conducted investigation, it was discovered that the girl had fabricated the story to avoid getting scolded by her parents for reaching home late as she was with her boyfriend.

In both the above cases, family pressure has played critical role that has resulted in false rape allegations. This is because in a country like ours, consensual sexual intercourse especially before marriage continues to be unacceptable. In such a scenario, a family is more concerned with preserving its 'honour' and therefore often pressurises its female members to lodge false rape reports instead of admitting the truth. This becomes more common when a woman is in an inter-religion or intercaste relationship and the same is discovered by her family.

REPERCUSSIONS OF FALSE RAPE ALLEGATIONS

False rape allegations have been weaponisd to avenge disputes cutting across religion, caste or class. As soon as a false rape allegation is made, a person's social standing in the society takes a fall. In such a scenario, it is the media's responsibility to take a conscious approach. However, that its rarely the case.

Most of the times, in such cases, the media tends to sensetaionalize the issue and ends up creating assumptions in the mind of the public. This approach is problematic as it makes the accused guilty in the mind of the public even before the trial ahs begun. In order to prevent this, the media should focus on reporting facts and not take any sides.

Men who are implicated in false rape cases often tend to have mental breakdowns. Apart from that, they also suffer setback in terms of their careers. In light of the same, a balanced approach has to be taken towards how we handle rape cases. While it is important to take measures to uphold the rights of the victims, it is equally important to do the same for the accused.

It is safe to arrive at the conclusion that there certainly are opposing views on whether to take a more cautious approach while dealing with false rape cases or not. However, we must bear in mind that 'presumption of innocence' principle and not form our opinions before

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in such a way that can harm the reputation of those who have been falsely accused to the extent that it cannot be repaired. In order to effectively address the problem of false rape cases, we need to examine our societal norms, the role of caste and the so called perception of 'honour' that continues to persist in our society.

CASE COMMENT: STATE OF KERALA V. SURAJ S. KUMAR

-Harsheeta Rai Sharma & Shreyansh Rathi

INTRODUCTION

"An eye for an eye, a toot for a tooth, a life for a life", or the legal principle lex talionis has been centuries old. Whether it was the Babylonian King Hammurabi's reign or Draconian Roman Laws or even Kautilya's Arthashastra, capital punishment was commonly given to the offenders. However, with the socio-legal progression and advancement, criticism for death penalty started mushrooming around the world. Some termed taking away of one's life as a violation of human rights, while others deemed it appropriate to kill the offender to teach a lesson to the community. According to Amnesty International, there have been 483 executions in 18 countries, a 26% decrease from 2019. Additionally, by 2020, 108 countries have abolished death penalty for all crimes and 33 countries have given pardons of death. In Indian jurisprudence as well, the critical question of whether death penalty should be given to an offender or not, has been numerously addressed by a wide spectrum of judgements with multifarious sets of circumstances and discretion of the jury.

State of Kerala v. Suraj S. Kumar is one such case. This recent case of uxoricide gained attraction of not only jurists but also the common citizenry because of its magnitude of evilness. It again brought into spotlight the conundrum of awarding death penalty.

FACTS OF THE CASE

The accused Sooraj S. Kumar had married Uthra, who is a differently abled, on 23 March 2018 with the primary objective of financial gains. After a child was born from the wedlock, the accused, who was already dissatisfied with the mental and physical disability of Uthra, contrived a plot to get rid of her and causing her death in such a manner that no relative can suspect him, so that he would be able to continue receiving financial assistance from Uthra's family as well as also be able to retain all the gold ornaments and other cash gifted to her at the time of marriage. The accused planned to cause the death of Uthra by getting her bitten by a venomous snake.

After acquainting himself with behaviors of various venomous snakes through YouTube and contacting a venomous snake catcher, on 26 February 2020, the accused purchased a Viper, a venomous snake from him in Rs. 10000. After initially failing to make her bitten by the snake, on 2 March 2020, he mixed sedative tablets to make her fall asleep and caused snake bite and eventually delayed medical aid to her. However, eventually, she was saved after a 52-day treatment.

While Uthra was living at her house, the accused again planned her murder and purchased a venomous cobra for Rs. 7000 on 24 April 2020 and clandestinely took it to Uthra's house and kept it hungry.

CASE COMMENT: STATE OF KERALA V. SURAJ S. KUMAR

-Harsheeta Rai Sharma & Shreyansh Rathi

These two are the mitigating factors in the case and as such, the case does not come within the purview of "rarest of rare cases" and thus, capital punishment could not be given in this case, thereby sentencing him to life imprisonment and fine of Rs. 5 Lakh.

The judgement was justified in its approach of awarding life imprisonment instead of death penalty because although the act of such gruesome and heinous killing of his disable wife shook the collective conscience of individuals of the society, the option of death sentence needs to be exercised only in rarest of rare cases when there lie no mitigating factors of reformation and rehabilitation of the person found guilty. As far as the argument of posing a threat to the society was concerned, a punishment of life imprisonment till death directly protects the society from any such threat from the individual while at the same time, providing the individual an opportunity to reform himself. Although the accused involved in a gruesome act, given that he is just 28 years old, the court was justified in pointing out that there exist chances of reformation and rehabilitation of the accused, which act as the mitigating factors against awarding death sentence. Additionally, such a life imprisonment acts as a better alternative than taking the life of the individual.

Section 302 of Indian Penal Code prescribes death penalty or imprisonment for life as punishment for causing death.

The court, in the present case, shied away from giving death penalty to the guilty as the court believed that the case did not pass the necessary test of 'rarest if rare cases.' In the Landmark judgement of *Bachan Singh v. State of Punjab*, the Supreme Court propounded the rarest of rare doctrine and relying on this doctrine, the Supreme court laid down the guidelines for death penalty in the case of *Machhi Singh v. State of Punjab.*

For death penalty to be awarded to the person guilty, two conditions need to be fulfilled. Firstly, the case and circumstances of the case should be so rare and heinous that it completely shakes the collective conscience of the society and secondly, the alternative option of imprisonment should be foreclosed and the mere survival of the guilty might pose threat to the society and there exist no mitigating factors. The selection of Death Penalty as the punishment for the guilty should be of last resort in case life imprisonment would not serve the purpose. It was also observed that a balance sheet of aggravating and mitigating circumstances would have to be prepared and a balance must be struck before awarding such death punishment to an individual.

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In the case of *Abdul Mannan v. State of Bihar* also, the Supreme Court again recognised that life imprisonment should be the rule and death penalty only an exception and that too in rarest of rare cases. The court observed that the sentencing court requires to satisfy itself before sentencing an individual

CASE COMMENT: STATE OF KERALA V. SURAJ S. KUMAR

-Harsheeta Rai Sharma & Shreyansh Rathi

to death penalty, the person would pose threat to society and there exists no chances of reformation or rehabilitation of that individual.

Considering the reasoning adopted by the Supreme Court in the cases from time to time regarding adoption of Death penalty as a punishment only in rarest of rare cases, the courts at every level should refrain from being influenced by mere fact of affecting the collective conscience of the society and should at the same time take into account the mitigating factors and chances of rehabilitation and reformation before awarding death penalty. Even the data shows that while the subordinate courts have been awarding death penalty in a number of cases, ultimately such death sentences end up commuting of punishment to life imprisonment by High Courts and Supreme Court in most of the cases and as such the decision taken by the Trial Court was justified in its approach.

EMPIRICAL REPORT ON 'VICTIM – ACCUSED RELATION: CHILD SEXUAL ABUSE INDIA'

-Tanu Kapoor & Sanskriti Dixit

Child sexual abuse is increasing in India every day and the major victim of this is the girl child. The research is majorly based to find the crime face that is committing such sexual abuse on girl child in Indian society. These findings will clearly help you detect the community of people mostly committing sexual abuse to girl child, also what are the major connections / relations between the abuser – abusee / accused-victim prior to the commission of such heinous offence which later turned the accuser to be named as a hard core criminal which was just hidden behind the name of relation(family, uncle , neighbour , friends, colleagues and sometimes even her own father) to seek for the right time to commit sexual abuse; Rape.

AIM OF RESEARCH

This piece of research aims to prepare a data on the category of offenders committing this heinous crime and presents an overview of research findings to date. Further, this piece of research aims at identifying common trends from research that can help to dispel certain myths and queries regarding perpetrators of child abuse, so as to have a better understanding of those who commits this crime which may also help to develop more effective prevention strategies for reducing the incidences of child maltreatment.

FINDINGS

A. Findings are based on the Judgements of Hon'ble Supreme Court of India from year 2010-2021.

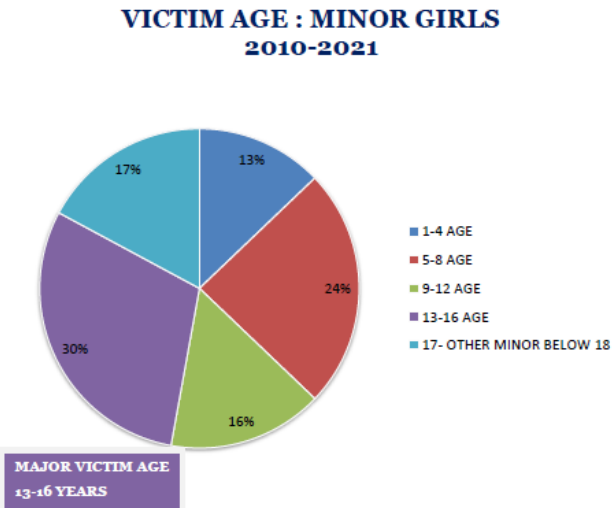
B. Research is pieced into 3 parts for better understanding:

1. Table 1: Minor girl child victim age: here, the findings
2. Table 2: Relation/ connection between the abuser-abusee/ accused-victim.
3. Table 3: Judgements of Year (2010-2021): Most tragic years of Indian history which make suffered the minor girl child to be drowned till death in the dark blood of heinousness.
4. Table 4: This finding draws us to a conclusion that majority of the times known persons are the accused committing girl child sexual abuse(as per the judgements from the year 2010-2021).

C. Major findings:

1. Age group: Major victims are from age 13-16: where a girl child hit its adolescent and near to puberty.
2. Relation: Major people committing heinous crimes of girl child sexual abuse are kidnapper (34.29%), Neighbours (21.43%) colleagues (17.14%).
3. Year: Major drastic years of Indian Judiciary and democracy: 2013-2015 Judgements: 28.57%, and the same percentage repeated in 2019-2021 Judgements with 28.57% (Black moments of De Ja Vu).

TABLE 1



VICTIM: MINOR GIRL AGE GROUP INDIA

- 0-4: TODDLER/ BABY/INFANT
- 5- 8: KIDS: CHILDHOOD
- 9-12 YEARS: MIDDLE CHILDHOOD: TWEEN
- 13-16 YEARS: ADOLESCENCE
- 17-18: MIDDLE ADOLESCENCE; NEAR ADULTHOOD

TABLE 1.1

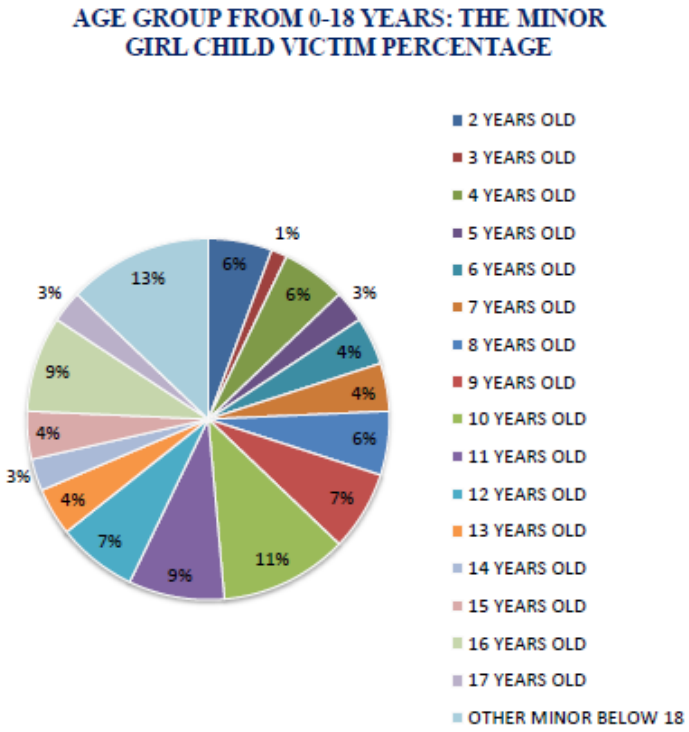
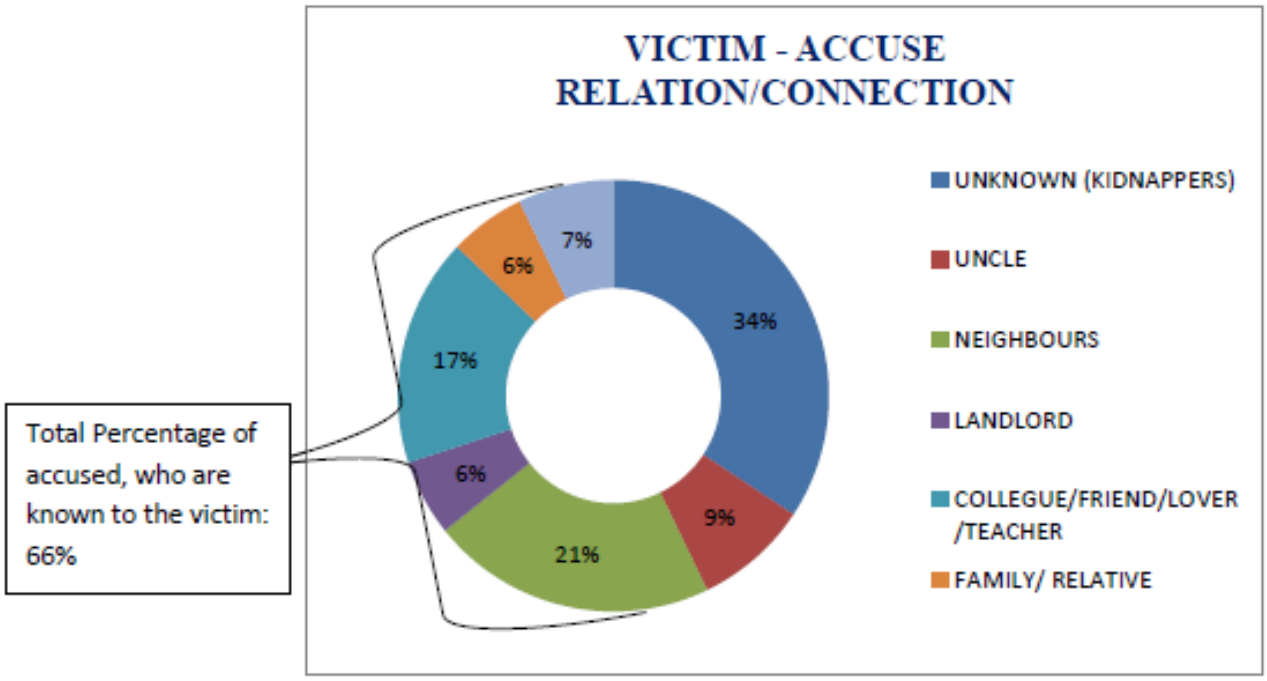


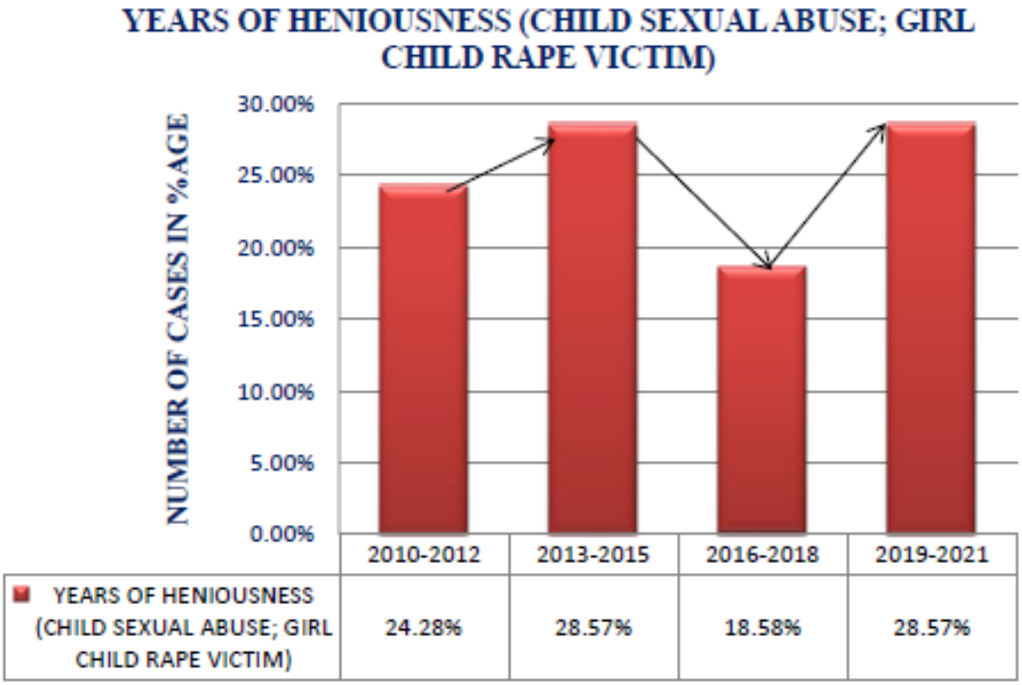
TABLE 2



***Majority of accused are Known to Victim i.e., 66%.**

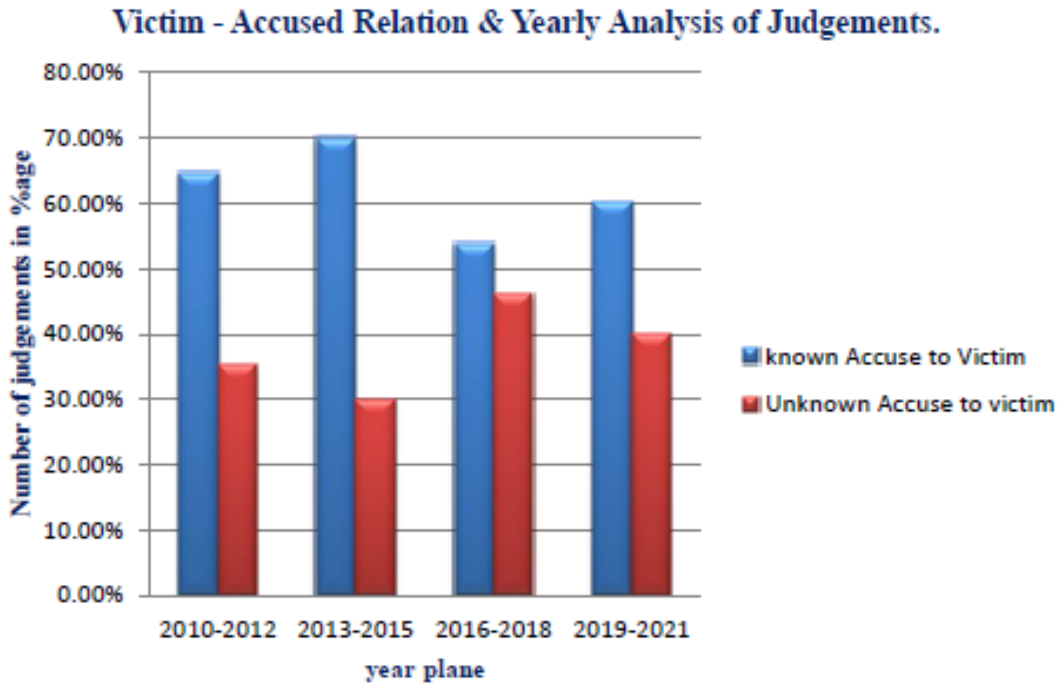
***Other known: this category includes: plumber, painter, mason, brokers and other people who came in contact for a short period of time for a particular contract.**

TABLE 3



*highest number of jump in cases was found in 2013-2015 and then again the same jump in 2019-2021, i.e., 28.57%.

TABLE 4



*The Majority of Accused as per tracing the judgements from year 2010 -2021 are known to Victim (Girl child) or have a relation / connection with the victim before planning and plotting such heinous crime.

NEWSLETTER TEAM

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