
RAPE LAWS THAT EMPOWER THE WOMEN OF INDIA

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ABSTRACT

To improve the circumstances that women confront today, numerous laws about the status of women have been passed both in India and on a global scale. These laws also aim to reduce the number of crimes committed against women. The number of crimes and atrocities committed against women is rising daily, yet they are still under control. In truth, man's ability to rule the weaker sex in all spheres of society has been aided by nature. The denigration of women is caused by a variety of variables, including social, psychological, and political ones. This paper aims to highlight the case laws and legal provisions that help in administering justice to women who fall victim to being raped. I have also attempted to examine the rape laws in India and the difficulties in their execution in the research paper that follows. To lessen the suffering of the victim, I have tried to determine the extent of future legal revisions. Though our judiciary may currently be dispensing what is known as gender justice, my claim that it lacks a gender-sensitive approach still stands. The victim no longer receives justice without having to endure significant humiliation, and since it is believed that "justice delayed is justice denied," our judicial system must choose to expedite the process by all means.

Keywords: Rape, Violence, Women, Sex, Laws, Crimes

Introduction:

Without the victim's agreement, it is criminal to engage in sexual activity with another person or engage in any other form of sexual penetration of their mouth, vagina, or genitalia with or without force from a sex organ, another bodily part, or a foreign object.

According to Section 375¹ of the Indian Penal Code, 1860:-

A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

(First) — Against her will.

(Secondly) — Without her consent.

(Thirdly) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

(Fourthly) — With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

(Fifthly) — With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly) — With or without her consent, when she is under sixteen years of age.
Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

(Exception) — Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

¹ Section 375, IPC, 1860, https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=424

One of the most terrible types of sexual harassment of women is rape. The victim suffers both bodily and mental harm as a result of it. In a society where chastity is seen as the most important quality of womanhood and tested without hesitation by putting the woman through the experience of fire, the victim of coerced sexual intercourse is treated as an accomplice.

Rape violates the victim's right to privacy and leaves her permanently disabled. Unfortunately, in a patriarchal country like India, the victim must endure the consequences of the accused's actions and is held accountable for her outcome in some way. Our criminal justice system is also relatively complex and comes with a combination of challenges and hurdles.

The following is a list of the general guidelines for helping rape victims as stated in *Delhi Domestic Workers Women Forum v. Union of India*²:-

1. In cases of sexual assault, complainants should be given access to legal counsel. A member of your team who is knowledgeable about the criminal justice system is essential. The victim's advocate's duties would include linking the victim with organizations like mental health counselling and medical aid in addition to explaining the procedures to the victim, preparing her for the case, and helping her in the police station and court.
2. Legal assistance can be needed because the sexual assault victim may be upset when she shows up at the police station. She would benefit greatly from the guidance and representation of a lawyer both at this point and during any interrogations.
3. The victim should have been informed of her right to legal counsel before any questions were asked of her by the police, and the police report should reflect that fact.
4. A list of attorneys willing to represent victims who don't have a lawyer in mind or whose own counsel isn't available should be stored at the police station.
5. After receiving a request from the police, the Court will assign an advocate as soon as feasible. However, to guarantee that victims are questioned without undue delay,

² AIR 2002 SC 302

advocates are allowed to work at the police station before requesting or receiving leave from the Court.

6. The victim's anonymity in all rape cases must be preserved to the extent possible.
7. It is crucial to create a Criminal Injuries Compensation Board in view of the Directive Principles entrenched in Article 38(1) of the Indian Constitution. Rape victims frequently experience large financial losses. For instance, some people have suffered trauma to the degree where they are unable to work.
8. Whether or whether the offender is found guilty, the Criminal Injuries Compensation Board will grant compensation to victims if the criminal is found guilty. The board will take into account pain, suffering, and shock, as well as lost pay due to pregnancy and delivery expenses, if the rape occurred as a result of the rape.

In terms of the criminal justice system's emphasis on victims, the decision is of great importance. It acknowledged their rights to legal representation and aid, a prompt trial, their right to remain anonymous during legal proceedings, civil conduct throughout legal proceedings, and their entitlement to compensation. Regarding the final one, the Court determined that the establishment of a CICB was required, drawing its guidance from the Criminal Justice Act, 1972 of the United Kingdom as amended in 1988. The proposed board must take into account the hurt, suffering, and shock that happened as well as the loss of income incurred by the pregnancy and the costs of childbirth if they were caused by rape.

*“Rape is one of the most terrible crimes on earth and it happens every few minutes. The problem with groups who deal with rape is that they try to educate women about how to defend themselves. What really needs to be done is teaching men not to rape. Go to the source and start there.”*³— **Kurt Cobain**

³ Kurt Cobain, January 25, 2017, <https://www.newyorkminutemag.com/kurt-cobain-we-should-be-teaching-men-not-to-rape/>

A brief history of rapes in India:

Women were highly esteemed in ancient India and religion was highly valued, they were regarded as Shakti goddesses. Hindus had the belief that Lord Shiva's body was divided into two halves, one of which was feminine and the other masculine. Rigveda Sanskrit hymns are among the earliest sacred works, and they imply that in ancient India, women had equal educational chances, marriage wasn't forced upon them, and they even enjoyed complete rights and vocational freedom in the religious sector. However, a son was still favoured over a daughter. Even during the epic era, women held honourable and respected positions in the Ramayana and Mahabharata. As specialization occurred, men began doing more technical and professional work while women continued to do domestic work. This led to social, political, and economic changes that began to affect girls' status in society. In the past, both men and women performed specific tasks for their subsistence. The first time the term rape was ever stated was in 1860 when the IPC was being formed.⁴ During the colonial period, the British didn't know much about India and made laws on the basis of their experience that were practically identical to the laws of their hometown. A lady being kidnapped or raped in the 19th century was a great disgrace for her family because it was considered that she had given agreement. The first person to refer to rape and kidnapping offenses in the Indian Penal Code was Macaulay, who did so by citing sections 375 and 376 of the IPC.

Reforming, Redrafting and Revamping of Rape laws in India:

1. An amendment to Section 114 (A) of the Indian Evidence Act was made in 1983 as a result of the Mathura rape case of 1972, in which an Adivasi girl from Mathura was sexually assaulted by two policemen while they were holding her. This was the first time that rape laws had been altered. Prior to this case, our legal system had completely disregarded rapes committed by public employees. As a result of this case, a new rape category called custodial rape was established, which would cover rapes committed against women while they are under the care of public employees. Additionally, this amendment outlawed "defaming" rape victims in court and restricted the publication of the victim's identity. Due to this legislation, rape victims now go by the pen names as 'Nirbhaya'.

⁴ Rape laws in India, Dube Dipa, 2008

2. Women are uncomfortable reporting rape because, according to a PIL (Public Interest Litigation) filed by the NGO Sakshi, the defence in rape cases tries to control the victim's personal space rather than treating them as someone who has suffered severe physical and mental trauma and needs protection and care. In its opinion, the Supreme Court of India advised the law commission to review the rape laws and recommend any necessary changes. They noted that under section 155(4) of the Indian Evidence Act of 2002, the defendant may claim that the plaintiff had an immoral character by raising the issue of her prior sexual behaviour as a defence. The law committee reasoned that this was one of the factors preventing the rape victims from bringing a claim. Due to this, the legislation against cross-examination of the victim of rape was changed.
3. The POCSO Act 2012 was created as a result of statistics showing a surge in child rape in India in 2012. (Protection of children from sexual offences). Prior to the establishment of POCSO, the only reference to sexual offences against children was the IPC's "statutory rape" provision, which made it illegal to have sex with a girl younger than 16 without her agreement.
4. People began calling for changes to the rape laws and the manner the crime of rape was investigated after the Nirbhaya case in 2012. This is frequently seen as the turning point in anti-rape laws in India because it introduced new offences including stalking, acid attacks, and voyeurism to the definition of rape and made even the threat of rape a crime. From seven to ten years was the new minimum penalty. The minimum punishment was raised to twenty years in situations where the victim died or entered into a vegetative state. Since the landmark Aruna Shanbaug case, the Juvenile Justice Act was amended at this time to lower the age for being tried as an adult for severe crimes like rape and murder from 18 to 16. This modification reaffirmed that the "character of the victim" was absolutely immaterial to rape cases.
5. Asifa Bano, an 8-year-old child, was raped in 2018 in Kathua, Jammu & Kashmir. Seven persons were engaged in this heinous crime, including four police officers, a priest, his nephew, and his son. Because it occurred in a temple, this atrocity infuriated Indians all around the country. Since the incident had been against a child,

changes were made primarily to POCSO three months after the incident. It called for the execution of the culprit for raping anyone younger than 12 but made rape of a kid under the age of 16 punishable by a minimum of 20 years in jail.

A watershed moment for India's rape laws 'Nirbhaya Case'

Facts:

On December 16, 2012, six men brutally gang-raped a 23-year-old medical student in India's New Delhi. After being abused, the victim was tossed out of the bus in a remote location. The case was so harsh that it infuriated citizens all around the nation, sparking protests in which many people took part and which the authorities were unable to quell. The authorities were expected to act quickly because the situation was deteriorating. In light of this, an amendment to India's rape statute was made on March 21, 2013. The 2013 Criminal Law Amendment Act was created to punish rape-related crimes. The Criminal Law Amendment Act firstly redefined rape and then toughened the penalties associated with it. The victim, a young 23-year-old doctor, was accused of being attractive for rape because of her sophisticated lifestyle. The amendment specified that the victim's character would not be taken into account in rape trials to prevent this from happening in the future. Another flaw in the system was found because one of the six rapists in this case was a minor. The Juvenile Justice Act reduced from 18 to 16 the age at which someone might be tried as an adult for serious offences like rape and murder. Under the Juvenile Justice Act, an attempt was made to prosecute the minor who participated in this conduct.

Punishment for rape:

Section 376 of the IPC specifies the penalty for rape. According to Section 376(1) of the IPC, anyone who commits rape should be subject to imprisonment of either description for a term that shall not be less than seven years but which may be for life or for a term that may extend to ten years, as well as being subject to fines, with the exception of cases specified under Subsection (2). If the woman is his wife and over the age of twelve, the person is not accountable.

Landmark Judgements:

1. Independent Thought v. Union of India⁵

Facts:

Independent Thought, a national human rights organisation founded in 2009, filed the petition in this case. The petitioner claimed that Exception 2 to Section 375 of the IPC is both arbitrarily and discriminatorily applied to a girl child in the public interest by filing a writ petition under Article 32. The legal minimum age for consenting to sexual activity was raised from 16 to 18 years old by the Criminal Law (Amendment) Act of 2013. However, the second exception refers to non-consensual intercourse between a husband and his wife, and for that, the age is over 15. The POCSO Act of 2012 set the legal drinking age at eighteen. Exception 2 runs counter to POCSO Act Section 3, which makes penetrative sexual assault a crime.

Judgement:

The Division Bench deliberated on all pertinent matters in the case and rendered the following ruling:

Without any justifiable connection, the exclusion 2 discriminates against married and unmarried girl children. It betrays a girl child's bodily integrity, dignity, and right to choose her own reproductive system.

The age of consent has been raised by the Parliament from marriage to 18 years of age. Therefore, the age of 15 in exemption 2 is irrational, unjust, unfair, and infringes the girl child's right.

According to exception number 2, if a woman is over the age of 18, a man's sexual activity with his wife is not considered rape.

2. Mukesh & Anr v. State for NCT of Delhi & Ors.⁶

Facts:

The Nirbhaya case is the case's illustrious name. In this instance, a 23-year-old medical student

⁵ [2017] 10 SCC 800, AIR 2017 SC 4904

⁶ (2017) 6 SCC 1

rode a bus home after seeing a movie with a friend. She was viciously attacked and gang-raped by six people inside the bus. She and her friend were pushed out of the bus naked after being raped. The young patient passed away while receiving care at a Singaporean hospital.

Judgement:

Four of the six suspects in this case received the death punishment from the Supreme Court. The Juvenile Justice Board found one of them guilty and remanded him to a juvenile detention facility. Before the verdict was given, the other one committed suicide. Following this case, it was felt that certain elements of Section 375 needed to be changed, and as a result, the Criminal Law (Amendment) Act, 2013, went into force. According to the recently modified clause, rape is punishable by at least seven years in jail and up to life in prison. If a guy who works as a police officer, doctor, public official, or other type of public servant commits rape, he faces a minimum 10-year sentence in prison. When rape results in the victim's death or placement in a vegetative condition, the penalty of life in prison with the possibility of the death penalty has been established. Gang rape is punishable by at least 10 years in prison.

3. *Vishaka v. State of Rajasthan & ors.*⁷

Facts:

In this case, it was about defending women against workplace sexual harassment. In 1992, a social worker attempted to prevent a child marriage and was allegedly gang-raped in the process. Despite filing a police report, her case was not handled correctly. She filed a lawsuit in an attempt to obtain justice, and the trial court determined that there was insufficient evidence to convict the defendants.

As a result, numerous women's clubs and organisations disagreed with the ruling. It led to a public interest lawsuit being filed to address the problem of sexual harassment at work before the Supreme Court of India. One of the most important instances in the history of the nation has been said to be this one. The court stated that Articles 14, 15, 19, and 21 of the Indian Constitution viewed sexual harassment of a woman at work to be a violation of her rights.

⁷ (1997) 6 SCC 241

Changes introduced post judgement:

A thorough piece of legislation was presented in response to the problem of sexual harassment at work, including a number of standards and principles that employers and other responsible parties must adhere to in order to carry out the case's provisions. Employers have a responsibility to stop sexual harassment at work. The best solutions to fix the problem should be discussed with their team as well. Every workplace should have a complaint committee in place to resolve complaints. It should be led by a woman employee, participate in third parties or non-governmental organisations, and only have 50% female members.

Employers would be compelled to take appropriate action in response to all allegations of sexual harassment of female employees, which would be handled solely by this committee. The victim would then get advice and recommendations from the committee regarding the next step. These rules were developed to provide women with the appropriate protection from harassment in the public and private sectors. In response to the Supreme Court's ruling, the Indian government passed the Prevention of Sexual Misconduct at Work Act, 2013, into law. On December 9, 2013, this Act became law.

How to stand against the rape culture?

1. The justice system must be changed, judges must be gender sensitive.
2. The people blaming the victim must be called out.
3. Enthusiastic consent must be encouraged in the society.
4. The sobriety, attire, and sexual orientation of a victim are unimportant when addressing situations of sexual assault. Instead, challenge the assumption that sex is an entitlement and challenge the belief that men and boys must acquire authority via violence.
5. Examine your definition of masculinity and your embodiment of it. The methods accessible to men and boys (as well as women and girls) to evaluate and reinterpret masculinities with feminist ideals include self-reflection, community discussions, and artistic expression.

6. Create rules that say you will not tolerate any form of violence or sexual harassment in the places where you live, work, and play. Leaders must be very explicit about their commitment to supporting a zero-tolerance policy and the need for it to be followed on a daily basis.
7. Donate to groups that help survivors, empower women, raise awareness of their issues, and encourage tolerance of all sexual orientations and gender identities.
8. Rape is never a good joke. The delegitimization of sexual assault caused by rape jokes makes it more difficult for victims to speak up when their consent is violated. It is unacceptable to make jokes that normalise and justify sexual abuse.
9. Fight for justice and accountability whenever you observe opposition to the imposition of criminal penalties on offenders.
10. And, most important of all; lend your ears to the survivors.

Conclusion:

In conclusion, India has made significant progress in enacting harsh laws and pursuing aggressive prosecution of terrible crimes like rape, yet in my opinion following this research, all these strict laws were developed in response to incidents like Nirbhaya. Since we know that rape is an abhorrent crime as Indians and as people, why were the rape laws toughened after Nirbhaya and why not earlier? Making rape laws stricter is vital, but it is not the only way to prevent rape. We also need to work on educating men and helping them realise that women are not things that can be exploited to satisfy men's physical needs. Many incidences go unreported because the victims are afraid of social stigma. At every turn, from police stations to courtrooms, victims are subjected to harassment. Every stage of the victims' battle for justice, from the poor healthcare system to the criminal enforcement system, adds to their agony. Our society significantly contributes to creating obstacles to getting justice. Therefore, until and unless change originates from inside the society together with the legal reforms, the impact of the laws will never be fully realised.