
RAPE LAWS IN INDIA WITH SPECIFIC REFERENCE TO PRESUMPTION IN FAVOUR OF VICTIM UNDER THE INDIAN EVIDENCE ACT, 1872

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ABSTRACT

A sexual assault which involves sexual penetration or sexual intercourse without the person's consent is called rape. In most of the cases, the victims are elderly women. In some cases, the victims are children. Few victims have critical injuries and the assault has a serious impact on the victim - both physical and mental, causing severe trauma that lasts for life. Not only the victims but her family members are also affected. This paper focuses on Section 114-A of the Indian Evidence Act, 1872 which deals with the presumption in favour of the victim and gives a gist of the Sections of the Indian Penal code which set out laws regarding the heinous crime of rape and the punishments related to the same. The method of research used is the doctrinal method of research. The questions which shall be answered through this paper are what exactly was the amendment made to section 114-A of the Indian Evidence Act, 1872 and the reason behind it. Also, it will attempt to answer whether the amendment is an infringement of the moral rights of the accused. After reading the paper one will be able to understand the types of rape according to Section 375 of the Indian Penal Code and the punishments stipulated for this heinous crime. The researcher also aims to provide solutions that might help in reducing this crime to some extent.

Table of Cases

- 1) Tukaram and Anr vs The State of Maharashtra, AIR 1979 SC 185
- 2) Anurag Soni v State of Chhattisgarh, AIR 2019 SC 1857
- 3) Mohd Habib v State, 1989. CR. LJ 137 Delhi

PART 1

Introduction

Sections 375 and 376 of the Indian Penal Code lay down laws in relation to rape.

Section 375 defines ‘rape’ and section 376 prescribes punishment for rape.¹ Section 375 of IPC provides that a man commits rape when he has sexual intercourse with a woman under the following situations:

- 1) Against the woman’s will or without her consent;
- 2) With her consent, when the consent has been taken by putting her or any of her dear ones in fear of causing hurt or death.
- 3) When the man knows that he is not the woman’s husband but the woman believes that she lawfully married to him.
- 4) When the woman is of unsound mind or she has been administered any intoxicating substance to obtain consent.
- 5) When the woman’s age is less than 16 years.

However, there are certain exceptions under Section 375.

In the Indian Evidence Act 1872, Section 114A deals with the presumption in favour of the victim. This section creates a statutory presumption that requires the court to presume the absence of consent if any such claim is insisted upon by the victim. Section 114A was appended in 1983 after the landmark judgement passed in the Mathura rape case (Tukaram v State of Maharashtra²). In this case, the suspects were released since no alarm was raised by the victim and there was an absence of tell-tale marks which showed that she resisted. The conclusion was thus drawn that she had consented to the act of sexual intercourse. This infuriated the general public in the country which finally resulted in the amendment of Section 114-A of the Indian Evidence Act, 1872. This reduced the burden on the victim to prove that there was an absence of consent.

¹ Krishna Deo Gaur, *Textbook on The Indian Penal Code*, 19 (4th ed. Universal Law Publishing Company 2009)

² Tukaram and Anr vs State of Maharashtra, AIR 1979 SC 185

Research Questions

The following questions will be answered through this study:

- 1) What constitutes rape under section 375 of IPC?
- 2) What are the punishments for Rape in Section 376 of IPC?
- 3) What was the reason behind amending Section 114A in the Indian Evidence Act?
- 4) What exactly is section 114A and what are the presumptions given in this section?
- 5) Is the presumption of innocence an infringement of the moral rights of the accused?

Research Objectives

The objective of this study is:

- 1) To understand when is rape said to be done or what constitutes rape under Section 375 of IPC.
- 2) To study the punishments that are stated in Section 376 of IPC.
- 3) The reason behind amending the Indian Evidence Act and the reason for amending section 114A.
- 4) To understand the significance of amending Section 114 A and the presumptions that it states in the favour of the victim.
- 5) To study whether the presumption of innocence is an infringement to the moral rights of the accused.

Significance of Study

Rape is a heinous crime which is a type of sexual assault. There are various laws that define rape and the punishment for committing this crime. The Indian Evidence Act also in Section 114A states presumptions in favour of the victim. The law has been taking various efforts to reduce the cases of rape but the laws should be more stringent and the enforcement of these laws should be more effective. This study will help in understanding the Sections relating to

the Rape laws and the presumption in favour of the victim in The Indian Evidence Act. This research will help the academicians in their understanding of the laws and their relevance.

This research may also help the judiciary to be more stringent in the application of Rape laws.

Research Methodology

The research methodology that will be adopted in this synopsis shall be the Doctrinal method of research.

This method is also called the traditional method of research. It involves analysis of case law, arranging, ordering and systematizing legal propositions and study of legal institutions.³

There are certain features and advantages considering which this research method has been adopted. Following are the features and advantages:

- 1) Within a limited time, researchers are provided with the tools to reach decisions on a variety of problems.
- 2) This method is research method is flexible and thus makes it easier to stretch it to any extent to make it workable.
- 3) This type of research is considered to provide appropriate guidance and hence it is of informational value.

Sources of Data

Both primary and secondary sources have been used for the current research. Primary sources include the Constitution, acts and judicial decisions. To make the research more effective various secondary resources such as Online databases, books by prominent authors, articles and journals have been used.

³ Dr T. Padma and K P C Rao, *Legal Research Methodology*, 31(1st ed. Asia Law House, Hyderabad 2011)

Literature Review

The researcher has referred to various books, articles and journals to make this research effective:

- 1) The book *Rape Laws in India*⁴ by Dipa Dube describes in detail the offence of rape and the laws related to it tries to encourage a debate among the policymakers. The book analyses the Rape laws and highlights the issues in enforcement of the law. This book also states the history of how the laws were developed. Overall, this book aims at doing a critical study of the rape laws.
- 2) The book *The Indian Evidence Act (1. Of 1872)*⁵ by James Fitzjames Stephen is a book describing the Indian Evidence Act. This book gives great detail about every section of The Indian Evidence Act. The book has helped the researcher to know more about Section 114-A of the Act.
- 3) In the book *The Cases That Shook India*⁶ by Chintan Chandrachud in part 2 has mentioned the case *Tukaram v State of Maharashtra* which was the main reason behind amending the evidence act 1872 and adding section 114A which states presumption in favour of the victim.
- 4) *Tukaram and Anr vs State of Maharashtra (Mathura Rape Case)*⁷ an Article by Nikita Jain in the Law Times Journal is a detailed analysis of the case which lead to the amendment of Section 114-A of the IPC. The writer has given an in-depth analysis of the case. A detailed explanation of the events had occurred in the Sessions Court, High Court and The Supreme Court have been given, this helps the reader to understand the reason behind this case being responsible for amending the above section. However, an analysis of whether the amendment to section 114-A has not been done. The researcher aims to the analysis of the same in this paper.

⁴ Dipa Dube, *Rape Laws in India* (Lexis Nexis 2008)

⁵ James Fitzjames Stephen, *The Indian Evidence Act (1. Of 1872)* (Macmillan and Company 2013)

⁶ Chintan Chandrachud, *The Cases That Shook India* (Juggernaut Books 2019)

⁷ Nikita Jain, *Tukaram and Anr vs State of Maharashtra (Mathura Rape Case)*, Law Times Journal(18th January 2021, 8:00 PM), <http://lawtimesjournal.in/tuka-ram-anr-vs-state-of-maharashtra-mathura-rape-case/>

PART 2

2.1 What constitutes rape under section 375 of IPC?

Rape means ravishing a woman. Rape laws are given in section 375 of the Indian Penal Code. It is a heinous crime, which has a devastating effect on the victim. In some cases, it has been described as the ‘beginning of a nightmare’⁸

Section 375 of IPC provides that a man commits rape when he has sexual intercourse with a woman under the following situations:

- 1) Against the woman’s will or without her consent;
- 2) With her consent, when the consent has been taken by putting her or any of her dear ones in fear of causing hurt or death.
- 3) When the man knows that he is not the woman’s husband but the woman believes that she lawfully married to him.
- 4) When the woman is of unsound mind or she has been administered any intoxicating substance to obtain consent.
- 5) When the woman’s age is less than 16 years.

The case of *Anurag Soni vs The State of Chhattisgarh*⁹ held that if the man and woman later get married it is no excuse for acquittal of the accused. Rape is a crime that is against the society

However, there are certain exceptions under Section 375:

- 1) A Medical intervention or procedure does not constitute rape.
- 2) The sexual act by a man with his wife, if she is not below 15 years does not constitute rape.

⁸ Anurag Goel, *Rape Laws in India Appropriate or Not?* Legal Services India (17th January 2021, 9:00 AM) <http://www.legalservicesindia.com/article/471/Rape-Laws-In-India-Appropriate-or-not?.html>

⁹ Anurag Soni v State of Chhattisgarh, AIR 2019 SC 1857.

2.2 The Punishments Stated in Section 376 of the IPC

Section 376 of the Indian Penal Code states the punishments for rape. The punishments are also categorised according to the person who commits rape.

1. Whoever commits rape, that is the man who has done any act which is listed in Section 375 of IPC as amounting to rape, is given imprisonment for not less than 7 years. Apart from being liable for a fine, the imprisonment may also last or extend to imprisonment for life.

2. Section 376 (2)¹⁰ a, b, c, d: Deals with the punishment for Custodial Rape.

Custodial rape is said to be taken place when:

Police officer

- Within the premises (Limits of the police station) in which he is appointed¹¹.
- Premises not situated in the police station, but he is on duty.
- On a woman who is in the custody of another officer.

b) A Public Servant

c) Staff or management of Jail, remand home, or any other place of custody such as women's or children's institutions.

d) Staff or management of Hospital.

The punishment given for the offence of rape committed by any of the above authorities in any of the situation mentioned above is imprisonment not less than ten years, which may extend to lifetime imprisonment and also the fine which is ordered by the Court.

3. Section 376 (2) e¹²: When a man rapes a woman knowing that she is pregnant, the punishment is imprisonment is for not less than 10 years which may then extend to life imprisonment and the man shall also be made liable for a fine. In special case, the court may allow imprisonment for less than 10 years. In such cases, it is assumed that the woman did not consent.

¹⁰ Indian Penal Code, § 376 (2)

¹¹ *Supra* Note 7.

¹² *Supra* Note 10.

4. Section 376 (2) f: When the offence of Rape has been committed on a girl who is below the age of 12 years, Imprisonment for not less than ten years is given and the person is also made liable for a fine.

There is no special provision stating the concession given to the child who has faced this crime.

5. Section 376 D¹³: Gang Rape: when A girl is raped by a group of persons having one common intention, each person is liable for gang rape.

The punishment, in this case, is not less than ten years which may extend to lifetime. The burden of proof exists on the accused.

2.3 Section 114-A of the Evidence Act

Section of 114-A of the Indian Evidence Act, 1872 deals with the presumption in favour of the victim. It requires the court to assume that there was no consent. This section was added in 1983.

Why was this Section Amended?

Section 114-A¹⁴ was added after the landmark case of *Tukaram v State of Maharashtra*¹⁵. In this case Mathura, an orphan worked at the house of Nushi as a labourer. She got married to the son of Nushi's son. Her Gama who lived with her filed a complaint that she was kidnapped.

When she meets her family at the police station and the statements were recorded, the first appellant asked her to wait. Thereafter he raped her despite of her resistance. The second appellant Tukaram tries to rape her but he failed due to being heavily drunk.

The Sessions court judge held that the offence of rape was not committed. Mathura had consented. Moreover, due to lack of evidence justifying her age being between 14 to 16 years nothing could be concluded.

Further because of the proceedings in the Bombay High Court and the Supreme court and no stress being given to the fact that these men were unknown to her and her age was between 14 to 16 there was a need for a provision that protected the dignity. It further lead to amending

¹³ Indian Penal Code, § 376 D

¹⁴ Indian Evidence Act (Act 1 of 1872), § 114-A

¹⁵ *Supra* Note, 2

Section 114-A, which says that the court must presume that there was no consent by the victim. Section 376 was also amended and made custodial death an offence with a punishment of not less than 7 years.

2.4 What is the Significance of Amending Section 114-A?

Before amending Section 114-A of the Indian Evidence Act, 1872, in most of the cases a woman who was habitual to sex, it was assumed that she had the consent. This was a wrong assumption which led to the accused being discharged without any penalty. If there were no marks on the private parts of the one who committed rape then it was seen that there was no resistance.

This happened in 2 of the landmark cases:

*Mohd Habib vs State*¹⁶: In this case, the accused was left free because there were no marks on his private parts which indicated no resistance. Moreover, the age of the victim and the harm done to her could not lead to any conclusion.

*Tukaram vs The State of Maharashtra*¹⁷: This was the heinous rape case after which the amendment was made to the above section. In this case, the accused were left free because it could not be proved that the victim had not consented.

In the case of *Gurmit Singh v State of Punjab*, the Supreme Court advised the judiciary that the girl should not be shown to lose character even if she is habituated to sex.

Due to such incidence's presumption in favour of victim (that is to assume that she has not consented is a must). If this assumption is not taken into account then, many of the victims who have gone through terrible trauma will not be given justice.

2.5 Is the presumption of innocence an infringement of the moral rights of the accused?

Every coin has two sides. This presumption if misused by women can prove to be an infringement of the moral rights of the accused. If rape has not been committed the woman is successful in showing the harm that has been caused then the person might face consequences for no reason.

¹⁶ *Mohd Habib v State*, 1989. CR. LJ 137 Delhi

¹⁷ *Supra* Note, 2

This presumption is more of a gain. It will help the women who have faced terrible trauma secure justice. In the cases which have been mentioned above the lack of this presumption has been felt and has led to the discharge of the accused without any penalty.

PART 3

3.1 Conclusion

Rape is a heinous crime that must be eliminated from the society. Amendments to Section 114-A provided some relief but is not a permanent solution. A step towards eliminating the crime would be appreciated. This can be done by implementing and making more stringent laws and making harsh punishments. The punishments now are not enough to eliminate this crime. The dignity and modesty of a woman should be respected and those who outrage this modesty should be fined with the harshest of punishments. When rape is said to be done, at least 5 doctors should be consulted to take the samples, this needs to be done to get definite proof that the person accused has committed rape. In the above-mentioned cases, the lack of proof lead to the accused being left free. The laws and their implementation should be in such a way that the person should think twice even before committing the crime.

Punishments like Death Penalty for any category of rape would be an effective solution. Only making laws is also not sufficient, efficiently implementing them would help in making some difference.

3.2 References

Statutes

- 1) Indian Penal Code, 1860
- 2) Indian Evidence Act, 1872 (Act 1 of 1872)

Books

- 1) James Fitzames Stephen, The Indian Evidence Act (1. Of 1872) (Macmillan and Company 2013)
- 2) Chintan Chandrachud, The Cases That Shook India (Juggernaut Books 2019)
- 3) Dr T. Padma and K P C Rao, Legal Research Methodology, 31(1st ed. Asia Law House, Hyderabad 2011)

Online websites

- 1) Legal Services India
- 2) Law times Journal

Databases

- 1) J Stor
- 2) SCC Online