
RAPE LAWS VIS A VIS DEATH PENALTY IN INDIA - A STUDY

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1. ABSTRACT

The problem of rape and sexual assault is still a serious issue in India, with great popular outcry and public debates on the effectiveness of legal measures. The proposal to introduce the death penalty for rape, especially on children and in grotesque cases, has opened up a controversial debate on whether it is an effective deterrent or morally and ethically wrong. This dissertation "Rape Laws vis-à-vis Death Penalty in India - A Study" critically analyzes the nexus between rape laws and death penalty, analyzing whether the application of the death penalty is deterrent or retributive.

The study examines the historical development of rape law in India from the pre-Nirbhaya to the contemporary era through judicial interpretation and legislative evolution. The study examines legislative evolution through Criminal Law (Amendment) Acts of 2013 and 2018. The study also examines influential judicial dicta in an effort to comprehend the judiciary's position on capital punishment for rape offenses and how the judiciary tries retributive and reformative justice.

In addition to a critical legal analysis, the dissertation also undertakes a comparative examination of rape-induced death in India and other countries like the USA, UK, and Middle Eastern countries. The comparative examination attempts to find best practices and lessons that India can borrow to develop an effective and balanced legal system.

In addition, the dissertation also critically explores the socio-legal aspects of applying the death penalty against rape, bearing in mind its utility in deterring crime, public sentiments, and psychological effects on rape victims and their kin. Based on qualitative and quantitative data, such as empirical studies and public opinion polls, the research critically examines whether capital punishment really deters crime or only fulfills the public's urge for severe vengeance.

Lastly, the dissertation suggests radical recommendations for the reform of rape laws but in favor of victim-centered policies and enhancing criminal justice systems. The research concludes by recommending a wellbalanced

strategy that balances punitive measures with rehabilitative justice to build a more humane and equitable legal system.

2. Legal Framework and Evolution of Rape Laws in India

2.1 Historical Evolution of Rape Laws in India

Evolution of rape laws in India has been influenced by an intricate nexus of socio-cultural forces, judicial interpretations and amendments in the law. The theory of sexual violence and the connected legal provisions have evolved drastically over centuries as per the change in attitude in society towards women's rights and possession of one's body. Historical development of rape laws has to be examined to comprehend and valorize the present legal provision and the issues that still plague the justice system.

Ancient and Medieval

Sexual violence in ancient India was treated in the context of customary norms and traditions and not codified law. Ancient works of law such as the Manusmriti, Narada Smriti, and Arthashastra offered reference to sexual offenses, albeit class, caste, and patriarchal in nature.

The Manusmriti ordained harsh punishments for sexual crimes, especially if they had been committed against women of higher castes, a manifestation of the ingrained caste-based prejudice prevalent then. The emphasis was not on the dignity or independence of the victim but on the shame brought to the family or community.¹ Likewise, in the Arthashastra of Kautilya, rape was instituted as a grievous offence and was subject to fines and corporal punishment, but the independence and initiative of the victim were not given much importance.

In the medieval period, India saw customary law prevalent in the region, and concepts of Islamic law and Hindu would intersect on multiple occasions. It was more related to social practices than to individuals' rights, and women were treated as commodities. Thus, offenses against women, such as rape, would be dealt with erratically and non-victim-oriented.

Colonial Period and introduction of the Indian Penal Code (1860)

Codification of Indian rape law came into effect during British rule when the Indian Penal Code

¹ *Manusmriti**, Chapter 8, Verse 367, (c. 200 BCE - 200 CE).

(IPC) was passed in 1860. Formulated by Lord Macaulay, the IPC explained rape under Section 375 as sexual intercourse with a woman against or without her consent. It also specified the conditions when consent was assumed to be lacking, e.g., force, threat, or fraud.

But the colonial thinking influenced the making of the IPC, and its response to sexual violence was based on Victorian ethics and patriarchal principles. The most glaring failure of the IPC was the marital rape exception, which provided that sexual intercourse by a man with his own wife, not under fifteen years of age, was not rape. This legal provision de facto legalized marital rape and was not altered for more than a century, indicative of the belief that a wife belonged to her husband.

Further, colonial rule was more concerned with upholding social order than with women's freedom, and the criminal justice system tended to suspect rape victims. Victim-blaming culture, social stigma, and poor protection for survivors facilitated underreporting and ineffective enforcement of rape legislation.²

Post-Independence Reforms (1950-1980)

Following Indian independence in 1947, the necessity for sweeping legal reforms was realized. The rape laws, however, escaped significant revision during the initial decades of independence due to the fact that social attitudes still promoted victim-blaming and patriarchal handling of women.

In 1972, the Mathura rape case, which was infamous, brought to the fore the weaknesses of rape legislation. Mathura, a teenage tribal girl, was raped by two policemen in a police station. The accused were acquitted by the Supreme Court on the basis of the alleged "consent" of the victim despite apparent evidence of coercion and intimidation. This judgment resulted in mass demonstrations and public indignation.

Abnormally, women activists and civil society bodies mobilized on reform and justice when legal brains took cognizance. Relentlessly urged by citizens, the government made history with

² Tandon, S. "Colonial Legacies and the Criminalization of Marital Rape in India", *Journal of Legal History*, Vol. 24, No. 3 (2018): 87.

the passage of Criminal Law (Amendment) Act, 1983.³ The groundbreaking amendment implemented drastic changes in the law relating to rape:

- Punishments Galore: Severe penalties for custodial rape and special provisions to prosecute public officials.
- Presumption of Guilt in Custodial Rape: The onus of proof was put on the accused in custodial rape, thus lending credence to the victim's account.
- Prohibition of Character Assassination: The amendment forbade interrogation of the moral character of the victim of rape at trial.
- Though the 1983 amendment was a step in the right direction, it did not cover all the questions involving sexual violence, and the victim's attitudes were still problematic in society.

The Nirbhaya Case and Its Consequences (2012)

The tide in India's rape law turned with the gang rape and killing of a young woman in Delhi in December 2012, commonly known as the Nirbhaya case. The incident triggered record levels of public outrage and led to nationwide protests demanding harsh punishment for sex offenses.⁴

The government responded to this by commissioning the Justice Verma Committee to review the rape laws and recommend change. In its report published in January of 2013, the committee made far-reaching recommendations that included:

- Expanded Definition of Rape: Elaborating what rape includes to go beyond penetrative violence.
- Fast-Track Courts: Providing separate fast-track courts to conduct the trials within speedy time.
- Death Penalty for Aggravated Rape: Suggesting the imposition of the death penalty

³ *Criminal Law (Amendment) Act, 1983, No. 43, Acts of Parliament, 1983 (India).*

⁴ *Agnes, Flavia, "Law and Gender Inequality: The Politics of Women's Rights in India", Oxford University Press, 1999, p. 112.*

when rape resulted in death or left the victim in a vegetative state.

- Criminalizing Stalking and Voyeurism: Adding new crimes under sexual violence and harassment.
- The Criminal Law (Amendment) Act, 2013, had adopted several of the Justice Verma Committee recommendations, but with some significant exceptions, like not criminalizing marital rape.

Recent Amendments and the POCSO Act (2012)

With the increasing incidents of child sexual abuse, the Protection of Children from Sexual Offences (POCSO) Act, 2012, was enacted. It created a complete legal framework for dealing with child sexual abuse and imposed severe punishments, including the death penalty for sexual assault in the aggravated form.⁵

Additional amendments to the IPC, CrPC, and POCSO Act in 2018 added death penalty for child rape under the age of 12 years as an expression of state determination to curb heinous child abuse. The amendments once again raised the issue of whether the death penalty acts as a deterrent or a remedy for public anger.

Contemporary Perspective and Ongoing Challenges

In spite of serial reforms, India's rape law remains quite far from being functional. Marital rape exception still denies justice to millions of women who are raped within marriage. Non-uniform application of legal provisions and sexual violence stigma at the societal level also renders legal provisions ineffective.

Besides, despite the introduction of capital punishment for rape to make a strong statement, there remain concerns regarding its deterrent effect and misuse. Human rights campaigners and lawyers continue to demand a victim-friendly approach and addressing the socio-cultural causes of sexual violence.

⁵ *Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India).*

The history of India's evolution of rape law mirrors the difficult journey from patriarchal traditions to modern reforms. Strides have indeed been made, but even more needs to be done to ensure legal provisions provide protection and dignity and autonomy of survivors.

2.2 Major Legislative Amendments and Reforms

The legislative journey of rape laws in India has been marked by significant amendments aimed at strengthening the criminal justice system and ensuring justice for survivors. The amendments primarily focused on addressing public outrage, judicial inadequacies, and the evolving societal perception of sexual violence. Among the key legislative reforms are the Criminal Law (Amendment) Acts of 1983, 2013, and 2018. Each amendment emerged as a response to particular incidents or shortcomings in the existing legal framework, thereby reflecting the dynamic and evolving nature of criminal jurisprudence in India.

Criminal Law (Amendment) Act, 1983

The Criminal Law (Amendment) Act of 1983 marked a crucial milestone in the evolution of rape laws in India. This amendment was primarily introduced in the aftermath of the Mathura rape case (Tuka Ram and Anr v. State of Maharashtra, AIR 1979 SC 185),⁶ which shocked the nation and sparked widespread protests. In this case, Mathura, a young tribal girl, was raped by two policemen in custody. The Supreme Court acquitted the accused on the grounds that Mathura had not raised an alarm and displayed no physical injury, thereby implying consent. The judgment was widely criticised for its patriarchal and victim-blaming approach, leading to a massive public outcry and demands for reform.

In response, the Criminal Law (Amendment) Act of 1983 introduced substantial changes to protect survivors and ensure accountability for perpetrators, especially those in positions of power. One of the most significant changes was the introduction of stringent provisions for custodial rape. Section 376 of the Indian Penal Code (IPC) was amended to include provisions that specifically addressed rape committed by police officers, public servants, and staff of remand homes or jails. The amendment aimed to address the unique vulnerability of women in custody and held the accused to higher standards of accountability.

⁶ *Tuka Ram and Anr v. State of Maharashtra*, AIR 1979 SC 185.

Additionally, the amendment introduced the concept of "presumption of guilt" in custodial rape cases, where the burden of proof shifted to the accused if the victim could demonstrate that sexual intercourse had taken place while in custody. This provision was crucial in addressing the power dynamics inherent in custodial settings. Furthermore, the amendment also prohibited questioning the character of the survivor, thereby preventing defense lawyers from using the victim's past conduct as a means to discredit her testimony.

The Criminal Law (Amendment) Act, 1983, was a landmark reform that laid the groundwork for more survivor-centric laws. Despite its significance, however, the implementation of these provisions remained a challenge, and cases of custodial rape continued to emerge, reflecting the need for stricter enforcement mechanisms.⁷

Criminal Law (Amendment) Act, 2013

The Criminal Law (Amendment) Act of 2013 was a watershed moment in the Indian legal system, introduced in the aftermath of the gruesome Delhi gang rape case of December 2012. Popularly known as the Nirbhaya case, this brutal crime shook the conscience of the nation and led to unprecedented protests demanding stronger laws to protect women from sexual violence. In response, the government set up the Justice Verma Committee, which made comprehensive recommendations to overhaul existing rape laws and address loopholes.

Based on the committee's recommendations, the Criminal Law (Amendment) Act of 2013 introduced several progressive changes to the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC), and the Indian Evidence Act. One of the most significant aspects of this amendment was the expansion of the legal definition of rape under Section 375 of the IPC. The amended definition encompassed not only penile-vaginal penetration but also oral, anal, and object penetration. This broader interpretation of rape aimed to recognize the diverse forms of sexual violence and eliminate loopholes exploited by perpetrators.⁸

Moreover, the amendment introduced new offenses such as stalking, voyeurism, acid attacks, and sexual harassment, which were previously not explicitly covered under criminal law. The inclusion of these offenses recognized the varied forms of violence that women experience and

⁷ Ratna Kapur and Brenda Cossman, *Subversive Sites: Feminist Engagements with Law in India* (Sage Publications 1996).

⁸ Criminal Law (Amendment) Act, 2013, No. 13 of 2013.

addressed emerging threats in society. The amendment also enhanced the punishments for rape, including life imprisonment and even the death penalty in cases where the offense led to the victim's death or left her in a persistent vegetative state.

An important procedural reform introduced by the 2013 amendment was the establishment of fast-track courts to expedite trials related to sexual offenses. This step was intended to address the widespread criticism of judicial delays that often led to prolonged trauma for survivors. Additionally, the amendment mandated mandatory reporting by hospitals and made it punishable for medical authorities to refuse treatment to survivors.

Despite its progressive approach, the 2013 amendment faced criticism for not criminalizing marital rape, a recommendation that the Justice Verma Committee had strongly advocated. Nonetheless, it marked a substantial step forward in ensuring justice for survivors and promoting a more victim-centric approach to legal redress.

Criminal Law (Amendment) Act, 2018

The Criminal Law (Amendment) Act of 2018 was introduced in response to growing incidents of sexual violence against children, including the heinous Kathua rape and murder case of 2018. This incident, involving the brutal rape and murder of an eight-year-old girl, sparked national outrage and reignited debates on the adequacy of existing rape laws. Consequently, the government enacted the 2018 amendment to impose stricter penalties and address the urgent need for legal reforms to protect minors from sexual violence.⁹

The 2018 amendment primarily aimed at deterring crimes against children by introducing stringent punishments, including the death penalty for the rape of girls below the age of 12. The minimum punishment for the rape of a woman was also increased from seven to ten years, reflecting the growing recognition of the need for severe penalties to deter potential offenders. Additionally, the amendment made the granting of anticipatory bail in cases of child rape practically impossible, thereby reinforcing the seriousness of the crime and prioritizing the safety of minors.

Another notable aspect of the 2018 amendment was the provision for timebound investigation and trial. The amendment mandated that investigations be completed within two months, while

⁹ *Criminal Law (Amendment) Act, 2018, No. 22 of 2018.*

the trial itself was to be concluded within six months from the date of filing the chargesheet. This provision aimed at reducing the long delays often associated with the criminal justice system, which in many cases exacerbated the trauma suffered by survivors and their families.

The amendment also addressed procedural aspects by making it mandatory for the police to complete their investigations promptly and file the chargesheet within a specific time frame. This step was seen as a crucial measure to fasttrack the delivery of justice and reduce pendency rates in sexual offense cases.¹⁰

However, the introduction of the death penalty for child rape reignited the debate on whether capital punishment serves as an effective deterrent. Human rights activists and legal experts argued that the death penalty might result in underreporting, as perpetrators could belong to the victim's family or close circle. Despite such criticisms, the amendment underscored the government's commitment to addressing sexual violence with a zero-tolerance approach.

The amendments of 1983, 2013, and 2018 have collectively transformed rape laws in India by expanding definitions, introducing stringent penalties, and ensuring speedy trials. While these amendments represent progressive steps toward survivor-centric justice, the practical challenges of implementation, social stigma, and inadequate awareness continue to hinder their full potential.

CONCLUSION

The legal framework surrounding rape in India has undergone significant reforms, especially in the wake of major incidents like the Nirbhaya case. However, despite these reforms, challenges persist, including inconsistent application of laws, delays in the judicial process, and societal attitudes towards sexual violence. This section proposes policy recommendations for strengthening rape laws in India, ensuring justice for victims, and addressing the root causes of sexual violence.

1. Strengthening the Criminal Justice System

The implementation of stricter laws, such as the introduction of the death penalty for certain types of rape, has been a significant step forward. However, it is equally important to ensure

¹⁰ VR Krishna Iyer, 'The Problem of Rape Law Reform' (1984) 1 J Indian Soc Crim Law 45.

that these laws are applied consistently and effectively. To this end, India should prioritize judicial reforms that reduce delays in rape trials. Fast-track courts dedicated solely to sexual violence cases could be expanded, ensuring timely justice for victims. Additionally, there needs to be a concerted effort to train judges, police officers, and legal professionals in handling sensitive rape cases with the necessary care and expertise.

2. Enhanced Victim Support and Protection

A comprehensive victim support system is essential to ensure that survivors of rape receive adequate care and assistance. This includes both physical and emotional support services, such as counseling, shelter, and financial compensation. The government should increase funding for victim assistance programs, including those for legal aid, medical care, and psychological counseling. Victims should also be provided with a secure and supportive environment to report the crime, without the fear of retaliation or social stigma.

3. Prevention through Education and Gender Sensitization

Rape laws in India can be significantly strengthened by focusing on prevention, which is often the most effective approach to tackling sexual violence. Education campaigns should be expanded to address issues of consent, gender equality, and respect for women. Comprehensive sex education programs that focus on mutual respect, consent, and healthy relationships should be introduced at schools and colleges. Additionally, gender sensitization training should be mandatory for all law enforcement agencies, ensuring that officers handle rape cases with sensitivity and respect.

4. Rehabilitation Programs for Offenders

While punishment is necessary to ensure accountability, rehabilitation of offenders is crucial to reduce recidivism. The government should invest in programs that focus on the psychological rehabilitation of sex offenders, including education on gender sensitivity, anger management, and emotional intelligence. Such programs can be offered within prisons and as part of probation for those sentenced to life imprisonment, ensuring that offenders are less likely to commit future crimes.

5. Adoption of Technological Tools for Evidence Collection

In cases of sexual violence, collecting physical evidence is crucial to securing convictions. The

use of technology in evidence collection, such as digital forensics, DNA testing, and video recordings of victim testimonies, can help improve the accuracy and speed of investigations. Expanding the use of these tools can lead to more efficient trials and reduce the likelihood of perpetrators escaping justice.

6. Regular Monitoring and Review of Laws

To ensure the effectiveness of rape laws, regular monitoring and review mechanisms should be established. This would allow policymakers to assess the impact of existing laws, identify gaps in implementation, and make necessary adjustments. The involvement of civil society organizations, legal experts, and women's rights groups in this process will help ensure that the laws continue to evolve in response to emerging challenges and societal changes.

Strengthening rape laws in India requires a multi-faceted approach that addresses both legal reforms and societal attitudes towards sexual violence. By prioritizing timely justice, victim support, offender rehabilitation, and prevention through education, India can work towards creating a more just and equitable society where sexual violence is significantly reduced. These policy recommendations are not only critical for strengthening rape laws but also essential for creating a culture of respect, equality, and dignity for all citizens, especially women

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