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AN ANALYTICAL STUDY OF ANTI – RAPE LAWS IN INDIA: LEGAL FRAMEWORK AND SOCIETAL IMPACT¹

AUTHORED BY - AADYA RASTOGI

ABSTRACT

The insidious act of rape has become alarmingly prevalent in the contemporary times. With each passing day, the statistics rise relentlessly, revealing a spectrum of victims that includes a mere three- months-old infant to a venerable age of 80. Each statistic represents the threat that has posed over the individuals of all ages. However, the one constant element in this is the backward mindset of society and the stigma of shame and loss of reputation that accompany these heinous acts that continues to veil the victims. This cycle of shame and unsupportiveness often make the victim feel isolated and surrounded by a blanket of guilt, as society prioritizes the culture of victim blaming and silence rather than addressing the atrocious crime itself.

The obstacles do not cease to this point. When a victim and their family does take a courageous step to seek justice and approach the judicial system, the authorities themselves act as substantial impediments. The pronounced inequalities in power dynamics between the politically powerful and the common citizens are also well portrayed by cases like the Unnao and Ajmer rape cases.

While the legislature has acknowledged the growing number of rape cases And has initiated the implementation of stricter laws, there is still a considerable distance to cover before victims can attain the justice they deserve.

¹ Aadya Rastogi

INTRODUCTION

Rape, as defined under Sec. 375², is the fourth common crime against women, and despite the existing taboo against the rape of men, one in six men is raped in India. Rape is an evil that exists in this society and takes place in every few minutes. The victims of this heinous crime have to deal not only with the physical and psychological trauma but also with the shame that the society has brought upon them. The male dominated society regards the female victims as impure, disregards them and treats them like accused. Moreover, their future generations also face criticism from the society. Instead of getting support from family and authorities, they get disrespect, as for the society it is the female's fault for wearing short clothes or staying outside late. The girls are taught from a young age to keep their distance, dress properly while ignoring the fact that it should be the accused who have gotten educated about respecting women. According to the national crime record bureau, 88 rapes occur on average per day in India. The conviction rate in India is as low as 27.8%. This indicates that fewer than 28 people out of 100 were found guilty. The punishment for rape in India is either life imprisonment or imprisonment for more than 7 years with a fine.³ Are the Indian authorities and laws stringent enough to reduce this gruesome crime? An investigation has shown that due to poor investigation by the police and family pressure on most of the victim, the offence often goes unreported. Only 310 out of 1000 sexual assaults are reported to the police. Research was conducted by Rainn in which the victims were asked the reason to not report the case to police. Among them, 13% believed that the police would not do anything to help them.

The aim of this research paper is to give a clear understanding of rape and to analyze the anti-rape laws of India. Anti-rape laws are an essential part of the Indian legal system yet the issue of sexual assault exists. The objective is to assess the effectiveness of these laws and evaluate their impact on reducing sexual violence.

DEFINING RAPE

It is an unlawful sexual activity, involving sexual intercourse against the will of victim. The act maybe carried out by physical force, coercion or abuse of authority

The term rape originates from the Latin word *rapere* which means to “to snatch, to grab or to carry off”

² IPC, No. 45, Acts of Parliament, 1860

³Debshankar(2021)<https://www.lawhousekolkata.com/section-376-indian-penal-code-1860-ipc-punishment-for-rape/> Section 376 Indian Penal Code 1860 (IPC) Punishment for Rape.

Sec. 375 of Indian penal code, 1860 defines **rape** as a man is said to commit “rape” if he –

- a. Penetrates his penis, to any extent, into the vagina, mouth, urethra or an anus of a woman or makes her to do so with him or any other person;
- b. Inserts, to any extent, any object or any part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person;
- c. Manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person;
- d. Applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

Under the circumstances falling under any of the following seven descriptions: -

- i. Against her will
- ii. Without her consent
- iii. 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
- iv. 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.
- v. 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 the act to which she gives consent.
- vi. With or without her consent, when she is under 18 years of age.
- vii. When she is unable to communicate consent.

RAPE IN INDIA

In 2019, one rape was reported in every 16 minutes on average every day. The national average rape rate was 4.9%. A total of 32033 cases were registered to the police out of which 27093 cases were reported by people who were 18 years and above and 4940 cases were reported by minors.

Rajasthan recorded 5997 cases making it the state with most rape cases. While Nagaland, Tamil

Nadu and Bihar had the lowest rape rates.⁴

A survey was conducted by the human rights watch project, according to which, more than 7,200 minors are raped each year in India. The victims who report to the police were often mistreated and suffered humiliation.

REASONS FOR INCREASED RAPE CASES IN INDIA

1. There are very fewer female officers. Statically, 161 district police station in Delhi has only one female officer. Women will more likely report the rape case to a female officer
2. The Indian society often blames the victim for dressing up inappropriately
3. Most families discourage the rape victims to report to the police because of the shame followed after it. They often times criticize the victim itself

RAPE CASES IN INDIA

AJMER RAPE CASE

This case involved serial rapes and blackmailing of girls by a local gang in Ajmer, Rajasthan in 1992. The scandal involved new girls A specific group of influential men were targeting young girls. First, they tapped a girl from Sophia secondary school and took obscene pictures of her. Then they blackmailed her to introduce her classmates and friends to them. Eventually the other girls were raped and sexually exploited.

This scandal was exposed when the local newspaper dainik navajyoti published some nude images and a story about school students being blackmailed by a local gang.

When the investigation was carried, it turned out that the police was already aware of the scandal since a year but they allowed the politicians to stall the investigations⁵

The main accused Farooq chistee was president of Ajmer Indian youth congress and therefore the politicians had stopped this investigation to be carried out further. In 2007, a fast-track court in Ajmer convicted Farooq, but in 2013, Rajasthan high court released him on time served

⁴ Diya Vig (2024) www.jaagrukbharat.com Rape Cases in India - Statistics & State Wise Cases 2024

⁵ Kartik Kanodia(2024) <https://lawfullegal.in/seeking-justice-the-1992-ajmer-rape-scandal-case/> Seeking Justice: The 1992 Ajmer Rape Scandal Case.

RAJKUMAR SAHU VS STATE OF MADHYA PRADESH, 2014 ⁶

The appellant came to visit the house of his neighbor and stayed the night. He had consumed alcohol and a meal at his neighbor's house and later, asked the eldest daughter to sleep at a distance from her siblings. Around midnight, he raped her and caused some grievous injuries and consequently she died.

The accused was convicted for a minimum of 35 years of jail without remission.⁷

2012 DELHI GANG RAPE CASE ⁸

This is also known as the Nirbhaya case. The incident took place when a 22-year-old girl was beaten, gang raped and tortured in a private bus.

All the accused were arrested and charged with murder and sexual assault. The four adult defendants were found guilty of rape and murder and three days later were sentenced to death

NEEL KUMAR VS STATE OF HARYANA ⁹

Neel Kumar was alone at home with his 4-year-old daughter and 2-year-old son while his wife had gone to her parental home. Later the wife received a call from her brother-in-law stating that her husband had raped her 4-year-old daughter. She went to take her daughter but because of panchayats decision she had to leave her son and daughter in the custody of her husband. The appellant and his family members did not take the victim to get her injuries wounded and later the appellant killed his 4-year-old daughter.

The accused was sentenced to life imprisonment in jail for 30 years without remissions. ¹⁰

EVOLUTION OF ANTI – RAPE LAWS IN INDIA**CRIMINAL LAW (AMENDMENT) ACT, 1983**

The Mathura rape case¹¹ resulted in the formation of new category of rape known as 'custodial rape'. In this case, a 16-year-old tribal girl named Mathura was raped in the police station in 1972.

⁶ 2014 AIR SCW 1795

⁷ <https://indiankanoon.org/doc/46587735/> (last visited June 30, 2024)

⁸ Mukesh and Anrs. Vs NCT Delhi (Nirbhaya Case)(2017) 6 SCC 1

⁹ 2012 268 SC

¹⁰ <https://indiankanoon.org/doc/78732952/> (last visited June 30, 2024)

¹¹ Tukaram and others Vs. State of Maharashtra, AIR 1979 SC 185

The sessions court held that policemen were not guilty of the offence of rape as the girl did not raise any objections and was habituated with the sexual intercourse.¹² This judgement led to an upheaval and protests and led to criminal law (amendment) act, 1983

The sections 376 – B¹³, 386 – C¹⁴ and 376 – D¹⁵ were inserted to deal with custodial rape.

CRIMINAL LAW (AMENDMENT) ACT, 2013

The criminal law (amendment) act, 2013 was the aftermath of the Nirbhaya case or the Delhi gang rape case. The Nirbhaya case generated international coverage and, public protests took place and a candle march was carried out.

After 6 days of incident, a committee of judges was set up to make amendments in the criminal law dealing with cases of sexual assault. The committee submitted a report that stated failures on the part of government and police was the major reason for the crime against women.

This new act incorporated new offences like harassment, voyeurism, stalking have been incorporated in Indian penal code.

The sections 326 A and 326 B were also inserted in the IPC that had provisions related to acid attack and attempt to acid attack.

Section 326 A – *voluntarily causing grievous hurt by use of acid, etc.*

Whoever causes permanent or partial damage or deformity to, body of a person or causes grievous hurt by throwing acid on or administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description of a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine.

Section 326 B – *voluntarily throwing or attempting to throw acid*

Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial

¹² Aishwarya Agrawal (2024) <https://lawbhoomi.com/mathura-rape-case/> Mathura Rape Case [Tukaram and Another vs State of Maharashtra]

¹³ IPC, No. 45, Acts of Parliament, 1860

¹⁴ *Ibid.*

¹⁵ *Ibid.*

damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Section 354 was amended and section 354A (*sexual harassment*), 354B (*act with intent to disrobe a women*), 354C (*voyeurism*) and 354D (*stalking*) was introduced.

Section 370 of the IPC was also substituted with new sections, 370 and 370A which deals with trafficking of person for exploitation.

Substitution of new sections for sections 375 (*rape*), 376 (*punishment for rape*), 376A (*punishment for causing death or resulting in persistent vegetative state of victim*), 376B (*sexual intercourse by husband upon his wife during separation*), 376C (*sexual intercourse by a person in authority*) and 376D (*gang rape*)

CRIMINAL LAW (AMENDMENT) ACT, 2018

A report by “Thomas Reuters foundation” ranked India as the most dangerous country for women due to sexual violence, human trafficking, child marriage, etc¹⁶. The kathua rape case¹⁷ which involved the abduction, gang – rape and murder of an eight-year-old Muslim girl by six men and a juvenile and the Unnao rape case that involves gang rape of a 17-year-old girl by a former BJP MLA triggered the public and led to an indispensable needs for this criminal amendment act.

This amendment introduced three new sections in the IPC – 376AB (*punishment for rape on women under twelve years of age*), 376DA (*punishment for gang on women under sixteen years of age*), 376DB (*punishment for gang rape on women under twelve years of age*)

PUNISHMENT FOR RAPE IN INDIA

Section 376 of IPC defines punishment for rape

¹⁶ Akash R. Goswami(2019) <https://blog.ipleaders.in/criminal-law-amendment-act-2018-2/> *Criminal Law Amendment Act, 2018*

¹⁷ Mohd. Akhtar vs The State Of Jammu And Kashmir AIR 2018 SC

- 1) Whoever, except in the cases provided for in sub- section (2), commits rape shall be punished with rigorous imprisonment of either description for a term which 1 [shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine].
- 2) Whoever,
 - (a) being a police officer, commits rape—
 - (i) within the limits of the police station to which such police officer is appointed; or
 - (ii) in the premises of any station house; or
 - (iii) on a woman in such police officer’s custody or in the custody of a police officer subordinate to such police officer; or
 - (b) being a public servant, commits rape on a woman in such public servant’s custody or in the custody of a public servant subordinate to such public servant; or
 - (c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or
 - (d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women’s or children’s institution, commits rape on any inmate of such jail, remand home, place or institution; or
 - (e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
 - (f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
 - (g) commits rape during communal or sectarian violence; or
 - (h) commits rape on a woman knowing her to be pregnant; or
 - (j) commits rape, on a woman incapable of giving consent; or
 - (k) being in a position of control or dominance over a woman, commits rape on such woman; or
 - (l) commits rape on a woman suffering from mental or physical disability; or
 - (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
 - (n) commits rape repeatedly on the same woman,shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine.\

CONCLUSION

Cases of harassment of women are on the rise in India. Men's attitudes towards women have not changed much. There are few court cases against such sexual harassment that are not considered human rights issues. Its victims would rather resign than seek justice. However, it is extremely difficult for female plaintiffs to succeed in such cases. There are many difficulties in proving such harassment. It's easy to justify in the form of direct retaliation.

In the recent times, the authorities have taken steps to make the rape laws more stringent but forming and executing are two different scenarios. The poor execution of these laws and delaying in hearing the cases make the victims hesitant towards approaching the judicial system. Further, criticizing the victim and blaming them for something out of their control is a common practice taken up by the society, followed by the shame and loss of reputation that filing of case would bring to the family.

