



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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AN EXTENSIVE STUDY OF RAPE LAWS IN INDIA AND SOCIAL TRANSFORMATION: A COMPARATIVE STUDY

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ABSTRACT

This paper provides a theoretical analysis of anti-rape legislation and their transition from being a criminal against property to a crime against a woman's bodily integrity. This paper discusses how the Indian Penal Code's anti-rape laws evolved over time, starting with the Mathura rape case and ending with the most recent Kathua rape case. It traces its roots back to the English common law. It goes into great detail about the changes brought about by the 2013 and 2018 criminal law amendment acts. It examines the suggestions put out by the Justice Verma Committee regarding contentious issues like gender neutrality and capital punishment, among others. It examines a number of rulings exposing the misogynistic stance taken by courts that hinder.

I've organized this paper into six chapters for this reason. An introduction is covered under Chapter 1. The definition and types of rape are covered in Chapter 2. I conducted an analytical analysis of rape law in India in chapter 3. Examined the evolution of rape legislation in India and social change in chapter 4. In chapter 5, examined the Criminal Law (Amendment) Act of 2013. In the final chapter, I came to a conclusion.

Keywords: Rape laws, Criminal law amendment act, rape, criminal law

CHAPTER-1

INTRODUCTION

Even though rape is one of the worst and most heinous crimes in history, it has taken a long battle for it to be identified as an offense against the bodily integrity and sexual freedom of women. Women had no rights and were treated like mere property for most of history, hence rape is only considered a crime.

The concept of rape as a crime underwent a major modification with the passage of time due to changes in cultural norms and beliefs. The anti-rape laws were first mentioned in the IPC in 1860. The Indian rape laws have their roots in English common law. Sir Matthew Hale, a lawyer from the seventeenth century, described rape as "an accusation readily to be made and hard to prove, and harder to be defended by the party accused, though never so innocent", which highlights the prejudiced attitude of colonial courts towards the victims. Because it was thought that the ladies might be lying, the trial courts focused more on establishing the victim's innocence than on establishing the accused's guilt. Focusing on her past sexual relationships or her virginity was what ultimately decided how the case turned out.

The Criminal Law Amendment Act of 2013, which not only created numerous new sexual offences but also toughened fines and penalties in an effort to reduce the incidence of rape, is compared and critically analyzed in this study. There are more and more incidents of sexual assaults on women in Indian cities. Though on a Personal observation: Some provisions really don't support giving the most comprehensive care.

The victims of this horrific act should receive in terms of justice.

CHAPTER-2

RAPE: THE HEINOUS CRIME: AN ANALYSIS

In this chapter, I will examine what rape is, what it means, and attempt to understand the many sorts of rape. Rape, in a very broad sense, refers to any act of violence without the consent of the victim. The Oxford Dictionary defines rape as "to force somebody to have sex with you when they don't want to, either by provoking them or resorting to violence"

Rape is defined in Section 375 of the Indian Penal Code.¹ In accordance with Indian Penal Code section 375, it is possible to say that : A man raped a woman under specific circumstances. The following are:

1. Without the concern woman's consent (in the time of intercourse)
2. Without the concerned women's consent.
3. If consent was given, but it was revoked because she was threatened and intimidated.
4. If the girl gives her consent even though the man is well aware that she is not his wife because she believes he is her legal husband.
5. If the girl gives her consent but is inebriated or has a compromised mental state at the time.
6. If a girl is 16 years old, she may be sexually assaulted with or without her consent.

Any sexual encounter is regarded as rape if it occurred. In accordance with A. Nicholas' book "Men Who Raped: The Psychology of the Offender," According to the criminal psychology perspective, there are three different types of rape which are the following:

1. Anger rapist
2. Power rapist
3. Sadist rapist
4. In general rape can be categorized into seven categories. Those are following below:
5. Date rape
6. Gang rape
7. Spousal rape
8. Rape of children
9. Statutory rape
10. Prison rape
11. War rape
12. Rape by deception
13. Corrective rape

¹ <https://ijalr.in/volume-3/issue-2/the-significance-of-judiciary-during-rape-case-verdicts-tisha-pattnaik/>

CHAPTER-3

RAPE LAWS IN INDIA: AN ANALYTICAL STUDY

I shall conduct a thorough analysis of India's rape law in this chapter. The Indian penal code contains an anti-rape provision. The Indian Penal Code's Section 375 outlines what constitutes rape. On the other hand, Section 376 of the Indian Penal Code lists the punishment of rape. According to the justification provided in section 375 of the Indian Penal Code, It only takes "penetration" to engage in "sexual intercourse," which is required for the crime of rape.² In the case of rape, complete penetration is not necessary; "if any part of the male organ passes the woman's labium of the pudendum, regardless of how slight, has occurred within, amounts to rape. "The one and only crucial factor is whether the male organ enters the person of the lady to determine whether it is rape or not."

In accordance with current law, it is not crucial that the "hymen" be ruptured. In the well-known R. V. Furroll case, a youngster who was six years older was sexually assaulted yet suffered no bodily harm and had no damage to her private parts. But she developed "gonorrhoea" following that incident, much like the accused. In this instance, it was decided that the defendant had committed rape.³

Therefore, it is crucial to demonstrate whether or not a particular encounter was raped. It is not a rape if there is consent. However, it is crucial that consent be given voluntarily. In contrast to the Indian Contract Act of 1872, the definition of "free consent" in this context is different. Misrepresentation is not a necessary component to the application of the criminal law in cases of rape.

The stigma of rape has been present in society for a very long time. The definition of "the ravishing or violation of a woman" in the dictionary is "rape." Due to biological limitations, a woman who has been raped cannot perpetrate another rape. After the incident, she is traumatized, and it is very challenging for a woman to recover from this trauma. In India, rape is a punishable offense. The several Acts contain numerous provisions. The Indian Penal Code, 1860 provides a legal definition of rape under section 375. It outlines the crime of rape as well as its penalty. Anytime a male

² <https://ijalr.in/volume-3/issue-2/the-significance-of-judiciary-during-rape-case-verbatim-tisha-pattnaik/>

³ <https://www.rainn.org/resources>

approaches or engages in sexual activity with a woman without her knowledge or permission, it constitutes rape

The concept behind the term "penetration" in this context is that even the tiniest amount of interaction involving the penis and the female reproductive organs qualifies as rape; an intact hymen in a woman does not necessarily disprove rape. There are exceptions to it as well, such as when a man engages in sexual activity with his wife who is older than 15 years old. The Indian Penal Code's rape law has undergone numerous revisions. S. 376(2), also known as custody rape, S. 376(A), also known as marital rape, and S. 376(B to D), also known as sexual conduct not amounting to rape, were added as part of an amendment in 1983.

According to section 228A of the Indian Penal Code, it is illegal for anyone to reveal the identity of a rape victim. If they do, risk receiving one of the two possible, punishments as well as a fine. A presumption regarding the absence of consent may be made under section 114-A of the Indian Evidence Act in some rape proceedings Code of Criminal Procedure, Section 53(1)⁴, It is legal for a registered physician acting at the request of a police officer, not below the rank of sub-inspector, and for any person acting in good faith in his aid and assistance when a person is arrested on a charge of committing an offense of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will provide evidence as to the commission of an offense.

Provisions for the medical examination of a rape victim are provided by Section 164A of the Code of Criminal Procedure.

All rape victims should get an in-camera trial pursuant to Section 327(2) of the Code of Criminal Procedure.

Due to the overwhelming workload of the Indian judiciary, decisions in rape cases are rendered very slowly. Sometimes it arrives so late that one or both people has already passed away. Since it is true that "Justice delayed is justice denied," there should be prompt trials in rape cases so that the victim receives justice.

⁴ https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_000010_197402_1517807320555

In this instance, there are two sides, just like on a coin. Sometimes a girl's parents force her to register a complaint against the male she loves because the law is very sympathetic to the girl, but many times girls also file fictitious complaints in an effort to ruin a boy's life. The accused has nothing left after the complaint is filed; whether or not he is found guilty, his life is ruined. Therefore, in my opinion, a change that makes the law operate properly and equalises the burden of proof for all parties is necessary. The remark, "Law is there for vigilant," should be directly contradicted by the phrase in question.

Rape is a crime that has a terrible impact on the survivors and has been called the "start of a nightmare." Depression, fear, guilt-complex, suicidal ideation, decreased sexual interest, etc. are some of the aftershocks. "One becomes afraid of"... "Half the human race," one victim writes. Regarding the plight of women in society, Mr. Justice S. Ahmad stated, "Unluckily, a woman in our nation pertains to a category or subsection in society who are in an untenable situation due to several social barriers and impediments and have, therefore, been victims of oppression at the hands of men with whom they, regrettably, under the Constitution of India "enjoy equivalent status."⁵

Women also have the right to life, liberty, and treatment as equal citizens, as well as the right to be respected. They cannot have their honour or dignity compromised or infringed upon. Additionally, they have the right to live a moral and tranquil existence. In addition to violating the victim's most prized fundamental rights, usually the right to life outlined in Article 21, rape is a crime against basic human rights.

A rapist damages and defiles the soul of a vulnerable girl, as Justice Arjit Pasayat noted: "While a murderer destroys the bodily frame of the victim."

In the well-known case of Rafiq v. State, Justice Krishna Iyer famously said: "A murderer destroys the body but a rapist kills the spirit."

SPECIAL CASES OF RAPE, such as definitions of gang rape and rape committed on a female under the age of twelve or while the victim is pregnant, Specific (and occasionally augmented) (and sometimes increased) In some of these situations, punishment in some of these cases, the defendant is given the burden of proof instead of the victim. (Indian Penal Code, Section 376, Subsections 2(a) through 2(g)).

⁵ <https://www.amazon.com/Law-4-Layman-Kush-Kalra/dp/9382652329>

CHAPTER-4

DEVELOPMENT OF RAPE LAWS IN INDIA AND SOCIAL TRANSFORMATION: AN ANALYSIS

I will go into the evolution of rape laws in India as well as the societal upheaval in this chapter. This chapter will begin with the well-known *Tukaram v. State of Maharashtra* case, also referred to as the "MATHURA RAPE CASE." This is a good cause to discuss from the standpoint of social transformation because this is the first instance that led to public outcry, and as a result of the demonstration, changes have been made to the current law. In this instance, a 16-year-old girl from a tribal group was involved. Mathura was sexually assaulted in a police station. Afterwards, Mathura's family members filed a criminal complaint against the two police officers.

However, the Indian Supreme Court dismissed this case and provided a justification. Mathura's body "bared no visible indication of rape," according to the statement, which explained why the case was dismissed. This decision results in a massive nationwide movement led by numerous women's organisations. Four prominent figures in the field of Professors of law objected to this and sent a letter of open complaint to the Chief Justice of India judgment. In 1983, the criminal code was amended in response to the entire incident.

Therefore, the 1983 Criminal Law Amendment was created in response to the Mathura Rape Case.

1. Custodial rape has been recognized for the first time thanks to the criminal law amendment of 1983.
2. The rape trials' closed proceedings.
3. Publication of victims' names is also prohibited.

Another well-known instance In this regard, *Sakshi v. Union of India* is crucial. NGOs called Sakshi filed a public interest lawsuit to reinterpret the definition of rape. The Supreme Court of India ordered the Indian commission to address the specific problem brought up in the petition. The law commission of India published its 172 reports on the revision of rape law in 2000 after holding multiple conversations and meetings with Sakshi. ⁶

⁶ <https://www.latestlaws.com/wp-content/uploads/2018/08/Critical-Analysis-of-Rape-Laws-in-India-and-Judicial-Opinion-By-Sakshi-Rewaria.pdf>

The following list summarises the 172 Law Commission report:

- Sexual assault should be used in place of rape.
- Sexual contact should be considered to be a kind of penetration in all situations found in Indian Penal Code Section 375.

Section 146 of the Indian Evidence Act was amended in the year 2002. Additionally important in this sense. This amendment states that it is not permitted that cross-examination of rape victims that highlighted issues either directly or indirectly considering the rape victim's moral character as well as any inquiries about the the victims' prior sexual history.

The force of the crowd has been felt in India after the Delhi gang rape case in December 2012. People are starting to protest against this occurrence throughout India. They battle for justice, a new legislation, and, most crucially, a safe environment. Although social revolution and modifying the legislation are very different things. The words "transformation" literally imply "inspiration, invention, and appropriate execution. I'll now go over the reasons why rape legislation has to be changed. It serves this purpose. is significant to note that the National Commission for Women Act was passed in 1990. In 1992, the panel was established after two years. Since that time, the national commission for women has been working to recommend and advise numerous crucial changes to the rape statute in order to improve its effectiveness.

The cause is likely our ingrained mentalities, which lead us to believe that rape is a problem primarily affecting women. Rape, however, is never a female issue. It is the flaw in our culture and a source of great shame. There are a fixed number of reserved seats for women in the parliament. There are extremely few amendments to laws relating to women. So, even though a certain percentage of seats in Parliament are reserved for women, they should devote a certain amount of time for discussion and discussion of issues relating to women, such as strengthening rape legislation. Only then would it be beneficial to our society.

CHAPTER-5

THE CRIMINAL LAW AMENDMENT ACT, 2013 AND

2018: AN ANALYTICAL STUDY

People began protesting following the Delhi Gang Rape crime, and many public protection actions were taken. It becomes the nation's most urgent issue. People join this demonstration from all throughout India, both physically and digitally. Several people speak out against this occurrence on numerous social media platforms. They only seek a safer and better nation for women. These Protests are not just limited to our nation but also have an international reach. It turns into the breaking news from across the globe. Following that, the UN organisation for gender equality and Women's empowerment representatives met with the Indian government and the Delhi government will take all necessary measures to ensure the safety of women.

The government then creates a committee to provide recommendations for both legal changes and additional measures to end sexual violence. Justice Verma serves as the chair of this committee. More than 80,000 recommendations are sent to the justice Verma committee from all across the world. The committee's primary goals are to develop a strict anti-rape law and to promote a safer society.

Justice Verma's report was submitted after 29 days. In addition to calling for a stronger and better anti-rape law the committee attempts to determine why it is happening. The Justice Verma committee's report made several critical recommendations that can contribute significantly to gender equality and societal change in addition to calling for stricter laws against crimes against women. There are various items in it, including the following described below:

- Policing changes
- Reforms in education
- Boys receive special training.
- Special training for law enforcement personnel working in the criminal justice system
- Opening of rape crisis centres

Finally, the bill was approved by both the Lok Sabha and the Rajya Sabha on March 19 and 21, 2013, respectively. The president gave the law his assent on April 2, 2013. The phrase "sexual assault" has been changed back to rape under this new law. The criminal (amendment) act of 2013 states that marital rape is not considered to be rape. Several legal experts, women's organisations, and NGOs have criticised this.

THE CRIMINAL LAW AMENDMENT ACT, 2018

The Indian Evidence Act of 1872, the Code of Criminal Procedure of 1973, and the Protection of Children from Sexual Offences Act of 2012 all underwent revisions as a result of the Criminal Amendment Act of 2018.

Sections 166A, 228A, and 376 of the IPC were revised, and three new sections, 376AB, 376DA, and 376DB, were added. The term of punishment for rape has been increased in sub-section 1 of section 376 to include a fine in addition to an imprisonment term of a minimum of ten years with a potential life sentence.⁷

The addition of sub-section 3 further specifies the punishment for rape of a woman under the age of sixteen, which includes strict imprisonment for a term that must not be less than twenty years but may extend to life in prison and is also punishable by a fine.

In cases where a woman who is raped is under the age of 12, section 376AB has been added after section 376A, which calls for strict imprisonment for a term of not less than twenty years, but which may extend to life imprisonment, with a fine, or with death.

A woman under the age of sixteen who is raped by one or more individuals who form a group or who act in support of a common goal is punishable by life in prison and a fine under Section 376DA, which was added after Section 376D and deals with the punishment for gang rape. According to Section 376 DB, each of those responsible for a gang rape of a lady under the age of twelve shall be punished with life imprisonment, a fine, or death.

⁷ https://www.prisonpolicy.org/scans/sp/s_ssr2009Update.pdf

CONCLUSION

We can conclude from the above study that law is meaningless without correct implication. For this reason, police reforms are crucial in putting an end to violence against women. Police reforms are also required because rape victims typically go to the police in the majority of cases. It's important to alter people's mindsets and provide them with the right training for handling such a delicate circumstance. Boys should also need education starting in the elementary grades. They ought to receive instruction on how to respect women. The most important thing to do in order to eradicate rape from our culture in the future is to eliminate gender bias. Nevertheless, we should speak up whenever we discover an injustice against women because social transformation begin with us, since we are society and power, and since we have seen in the past that our voice can make a distinction.

