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**A CRITICAL ANALYSIS OF THE PROVISIONS
RELATING TO RAPE IN THE CODE OF
CRIMINAL PROCEDURE, 1973**

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ABSTRACT

In India, a rape is reported in every 15 minutes¹. However, this is only the number of the cases reported, the numbers for the crime being committed is actually much more. One of the key issues that plagues our justice delivery system is that the victims of rape do not actually want to report the crime, and adding to this is the increasing number of pending cases and the sluggish procedure that follows after you report a crime. While the problem of less stringent punishments for rape and the narrow definition of rape in the substantive law was solved by amending the Indian Penal Code, there was a need to look at the procedural aspects as well, because it is through the due process of law that justice prevails. The concentrated efforts of the courts, the legislature, the Law Commission of India², NGO's³ and women's activists' groups⁴ have led to important steps forward in the delivery of justice to victims of rape. Taking note of the inadequacy of law of rape and its failure to safeguard the rights of the innocent victims against the heinous crime, the Parliament in 1983⁵ and 2013⁶ extensively amended the law of rape so as to make the law more realistic. Both these amendments came in the aftermath of two horrific rapes which were the Mathura rape case and the Nirbhaya gangrape case. Between these two cases as well, the CrPC has undergone various changes. Since the 1980's the provisions relating to rape in the CrPC have evolved through constant changes due to various judgments by the Supreme Court and the High Courts interpreting the provisions and expanding their scope, and through numerable Criminal Law Amendments and various amendments to the Act itself which sought to make the laws relating to rape more stringent and victim-friendly, as in the past, the law suffered from several infirmities like low conviction rates, character assassination of rape victims, delayed and lack of proper evidence collection. While most of these amendments introduced new offences in the Indian Penal Code or enhanced the punishment for rape and amended the Indian Evidence Act, the most significant amendments to the CrPC were relating to medical examination of rape victims, also of those accused of rape and for making the entire process victim-friendly.

¹ Reuters News Agency (January 2020) One woman reports a rape every 15 minutes in India. *Al Jazeera*. Retrieved from <https://www.aljazeera.com/news/2020/01/woman-reports-rape-15-minutes-india-200110032323608.html>

² 172nd Report of The Law Commission of India on Review of Rape Laws, March 2000.

³ Sakshi, an NGO filed Writ Petition (Crl.) No.33 of 1997 in the Supreme Court.

⁴ Delhi Commission for Women v. Delhi Police, W.P(CRL)696/2008

⁵ Criminal Law (Amendment) Act, 1983

⁶ Criminal Law (Amendment) Act, 2013

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THE EVOLUTION OF THE PROVISIONS RELATING TO RAPE IN THE CRPC THROUGH THE YEARS: A DETAILED CHRONOLOGICAL TIMELINE

The Code of Criminal Procedure, as stated earlier, has evolved into what it's today due to various amendments and landmark judgments. The following is a chronological list of the Amending Acts and landmark judgments that led to significant changes in the provisions relating to the procedure for cases of rape and other sexual offences in the CrPC:

1. **1983** – In the aftermath of the infamous Mathura Rape Case, the Parliament passed the Criminal Law (2nd Amendment Act), 1983. In Section 327, sub sections (2) and (3) were inserted by the amendment.
 - S.327(2) - Court to be open, provided that in cases of rape trial, *in camera* proceedings to be conducted;
 - S.327(3) – For any proceedings held under sub section (2), it shall not be lawful for any person to print or publish any matter regarding proceeding.

Therefore, this amendment has taken into consideration the sensitive nature of rape trials and has mandated in-camera proceedings for such trials. Secondly, for putting an end to media trials and victim shaming by the media, the amendment has made publication of any matter regarding the proceedings as a punishable offence. Further, section 327(2) also gives the discretion to the judge to allow persons to remain in the courtroom upon an application made by either of the parties. Thus, this proviso ensures that people who aren't connected to the case, will not be allowed to witness the proceedings.

The second proviso provides that the *in-camera* trial shall be conducted by a woman Judge or Magistrate, as far as practicable. This was the first step taken by the legislature to make the trial procedure in rape cases more friendly towards the victim.

2. **2000** – In a landmark judgment by the Supreme Court in *State of Karnataka v. Manjanna*⁷(**Manjanna**), the SC recognised that the rape victim's need for a medical examination constituted a "medicolegal emergency", and also put a mandatory obligation

⁷ 2000 (6) SCC 188.

on the hospital to examine a rape victim straightaway⁸. The SC also held that medical examination of a rape victim doesn't necessarily have to be conducted only after requisition from the police. Secondly, it was also the right of the victim of rape to approach medical services first before legally registering a complaint in a police station⁹. Therefore, if a rape victim goes to a hospital, the hospital is required to examine her straightaway and subsequently at the request of the victim, they can inform the police to lodge a complaint. This was a welcome and landmark judgment for rape victims as before this judgment, doctors only examined rape victims if a police complaint was registered. And in a country like India, women hesitate from lodging complaints due to the harassment and ostracization and the other societal obstacles faced by them. These factors were contrary to the interest of justice as crucial medical evidence would be lost due to the delay in collecting them. This would result in acquittal of the accused in many cases, due to the lack of evidence to implicate the accused or link him to the offence. The benefit of doubt was awarded to the accused, denying justice to the already traumatised victim¹⁰. Thus, the judgment in **Manjanna**(supra), has solved the problem of refusal of medical assistance and examination to rape victims and has removed some of the obstacles in quick evidence collection.

3. **2003** - The Malimath Committee Recommendations is prepared by retired HC judge, Justice V.S. Malimath on Reforms in the Criminal Justice System. The report of the committee is published. The report's recommendation for rape cases was that the trial of rape cases should be done with most expeditiously, within four months, and with a high degree of sensitivity¹¹. The Malimath Committee also recommended the following to make the Criminal Justice System more victim-friendly:

⁸ JAGADEESH, N. (2016). Legal changes towards justice for sexual assault victims. *Indian Journal of Medical Ethics*, 7 (2), 108.

⁹ Ibid.

¹⁰ JAGADEESH, N. (2016). Legal changes towards justice for sexual assault victims. *Indian Journal of Medical Ethics*, 7 (2), 108. Retrieved from <https://ijme.in/articles/legal-changes-towards-justice-for-sexual-assault-victims/>

¹¹ K Deepalakshmi(January 2018) The Malimath Committee's recommendations on reforms in the criminal justice system in 20 points. *The Hindu*. <https://www.thehindu.com/news/national/the-malimath-committees-recommendations-on-reforms-in-the-criminal-justice-system-in-20-points/article22457589.ece>

- During investigation and prosecution, victims of rape and domestic violence etc. require trauma counselling, psychiatric and rehabilitative services apart from legal aid.
- At the police station level, with or without the assistance of voluntary organizations, victim support services need to be organised systematically if the system were to redeem its credibility in society.
- Specialised training should be imparted to the Magistrates in regard to trial of cases of rape and other sexual offences to instill in them sensitivity to the feelings, image, dignity and reputation etc of the victim.

Other than these, the committee also made a recommendation that in cases of grave offences such as rape and murder, it is the duty of the supervisory officers to properly guide the investigations right from the beginning so as to ensure that innocent persons are exculpated and the real guilty ones brought to justice. The committee felt that the lowly-ranked Investigating Officer alone cannot do proper investigation and needs the help of seniors.

4. 2005 - The Code of Criminal Procedure (Amendment) Act of 2005 introduced specific sections for medical examination of victims of rape (section 164(A) CrPC), medical examination of those accused of rape (section 53 (A) CrPC) and investigation by judicial magistrates of custodial rape and deaths (section 176(1A) (a)(b) CrPC).

- S. 164(A) – Section 164(A) CrPC explains the legal requirements for medical examination of a victim of rape. One of the main elements of this is that the consent of the victim is mandatory and should be part of the report. Only with the consent of the victim (and in the case of a minor by the parent or guardian) may the examination be conducted by any registered medical practitioner (only allopathic doctors registered under the Medical Council of India (MCI)) employed in a hospital run by the government or a local authority, and, in the absence of such a practitioner, by any other registered medical practitioner. Thus, this explicit provision mandates that any registered medical practitioner with the consent of the victim may do the examination, solving the difficulties caused by the requirement that only government doctors should do this examination. It also provides that when no woman doctor is available, there is

no bar against a male doctor carrying out the examination, if the victim consents. Though getting the examination done by a woman doctor is ideal, the law does not mandate it, keeping in mind that a medical examination should not be postponed because of an extreme situation such as the want of a lady doctor.

- S. 53A – Section 53A lays down the procedure and requirements of medical examination for those who are accused of rape. While medical examination of victims of rape was mandated earlier, prior to this amendment, there was no explicit law defining the details of medical examination. There were no guidelines on whether age estimation had to be done, whether a potency examination was sufficient, whether evidence of injuries, stains, trace evidence or DNA evidence was required to be collected, etc. So, there was confusion on whether to take samples of blood, hair, stains, nail clippings, etc. The explanation to this section now clearly states what must be included in this medical examination. A detailed medical examination is to be carried out by a registered medical practitioner (only allopathic doctors registered under the MCI) employed in a hospital run by government or local authority – and in the absence of such a practitioner within the radius of 16 km from the place where the offence has been committed, by any registered medical practitioner acting on the request of a police officer not below the rank of a sub inspector.

- Section 176 (1A) – Amendments were also made to section 176 CrPC regarding an inquiry by a magistrate into the cause of death, by adding section (1A) by which if
 - “(a) any person dies or disappears, or
 - (b) rape is alleged to have been committed on any woman,while such person or woman is in the custody of police or in any other custody authorized by the Magistrate or the Court under this Code, in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed.” This amendment now mandates that a judicial magistrate must investigate all cases of custodial rape and deaths in custody.

4. CrPC Amendment Act, 2008 - A provision was added to section 157 CrPC, the amendment to section 173 CrPC, and the amendment to section 309 CrPC were done.

- S. 157 CrPC - In section 157 of the principal Act, in sub-section (/), after the proviso, the following proviso shall be inserted, namely: —

“Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.”

- S. 173 CrPC - The amendment to section 173 CrPC (7) now mandates that investigation in relation to rape of a child must be completed within three months of the date on which the information was recorded by the officer in charge of the police station.¹²
- Also, when the report is forwarded to a magistrate it should contain the report of the medical examination of the woman where an investigation relates to an offence under sections 376, 376A, 376B, 376C, and 376D IPC.

Similarly, the amendment to Section 309 mandated that if an inquiry or trial takes place offence under sections 376 to 376D of the Indian Penal Code, the inquiry or trial shall, as far as possible, be completed within a period of two months from the date of commencement of the examination of witnesses.”¹³

5. 2013 – In the aftermath of the horrific and shocking 2012 Nirbhaya Rape Case, the legislature passed the Criminal Law Amendment Act, 2013. The amendment amended Sections 26, 160, 173 and 327. It also inserted new clauses and provisos (relating to sexual offences) in Sections 154, 164, 198B, 273, 357B, 376C of CrPC.

- 154 - If the information is given by the woman against whom a sexual offence is alleged have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer.
- 164 - In cases relating to sexual offences, the Judicial Magistrate shall record the statement of the person against whom such offence has been committed as soon as the commission of the offence is brought to the notice of the police.

¹² Section 173(1) 1A of the Code of Criminal Procedure 1973.

¹³ Paragraph 21, THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) ACT, 2008 No. 5 of 2009

- 357B – This section provided that in addition to the Compensation given to the rape victim under the VCS, the amount of fine payable by the convict shall also be given to the victim.

6. 2018 – In the aftermath of the brutal and diabolic Kathua Rape case and the substantial increase in the number of child rape incidents, the parliament passed Criminal Law Amendment Act, 2018.

- Through this amendment, S. 439 of the CrPC was amended to make it imperative for the Courts in cases of grant of bail to an accused under sexual offences of the IPC to give notice of the application for bail to the Public Prosecutor.
- It has prescribed the time limit for investigation of all cases of rape, saying it has to be mandatorily completed within two months.
- The deadline for the completion of trial in all rape cases will be two months.
- A six-month time limit for the disposal of appeals in rape cases has also been prescribed.
- There will also be no provision for anticipatory bail for a person accused of rape or gang rape of a girl below the age of 12 years.

VICTIM COMPENSATION SCHEME FOR RAPE VICTIMS UNDER CrPC

The Code of Criminal Procedure (Amendment) Act, 2008, inserted Section 357A in the CrPC which provides for compensation to victims of the crime.

It is the first and the only provision that has identified the need for monetary support towards the immediate and long-term rehabilitation of the already shattered victim of rape. Under this section, a Victim Compensation Scheme (VCS) is required to be framed by the state governments/union territories in coordination with the central government. The central government launched the Central Victim Compensation Fund (CVCF) Scheme for women with one-time grant of Rs 200 crore under the Nirbhaya Fund to bring uniformity in existing schemes notified by the states. It is to encourage states/UTs to effectively implement the Victim Compensation Schemes (VCS) notified by them under the provisions of section 357A of CrPC

and provide financial support to victims of various crimes like sexual offences including rape, acid attacks, crime against children, human trafficking etc.¹⁴

On recommendation by the court for compensation, the district legal service authority or state legal service authority must decide on the quantum of compensation. There is also a provision for relief after inquiry by the state or district legal service authority in those cases where no trial takes place because the offender cannot be traced or identified¹⁵.

However, in the past few years, there has been a recent splurge in the rising number of false rape cases being filed. While most of these were filed to settle personal scores and to cause harassment to the victim, after the introduction of Section 357A, many frivolous FIR's were also filed for getting monetary compensation under the scheme. Therefore, in one such case, the Delhi HC has expressed concern over misuse of victim compensation fund which is provided to rape victims and ordered reopening of cases wherein compensation was paid despite the finding that no offence was committed.¹⁶

CONCLUSION AND SUGGESTIONS

The provisions relating to rape and other sexual offences have evolved invariably in the past four decades. Due to active legislative and judicial actions, major changes have been made in the approach to be taken by investigative officers, healthcare providers, trial judges and magistrates and in the process of trial or rehabilitation, in a case of sexual assault. The procedural law relating to rape had several lapses in it which were corrected by various amendments and recommendations. The judiciary and the legislature both have had an active role to play in this. However, some problems and loopholes are still lingering around in the justice delivery system when it comes to sexual offences. For example, low conviction rates and pendency of are some important issues that are looming at large. Secondly, though the legislature has put in efforts to make the procedure victim-friendly, it has failed to become so. The author feels that this is due to the insensitivity of Police officials, Judges and Magistrates in handling such cases. Thirdly, even though the legislature has introduced time-bound trials

¹⁴ JAGADEESH, N. (2016). Legal changes towards justice for sexual assault victims. *Indian Journal of Medical Ethics*, 7 (2), 108.

¹⁵ Ibid.

¹⁶ ANI (December, 2019) Delhi HC expresses concern over misuse of victim compensation fund, orders reopening of cases. *Business Standard*. Retrieved from https://www.business-standard.com/article/news-ani/delhi-hc-expresses-concern-over-misuse-of-victim-compensation-fund-orders-reopening-of-cases-119120501438_1.html

for rape cases, it hasn't looked at the delays in investigation by the investigating authorities and the shoddy manner in which they conduct investigation. Fourthly, at present, "When a sexual assault victim or an accused is brought to a doctor or hospital, only evidence is collected. The victim is not provided with mental health aid but only physical. Lastly, in India, if a rape accused is a prominent person in a position of advantage, he can harass and threaten the victim or the witnesses which may lead to the victim taking the complaint back or the witness turning hostile. The following suggestions are provided to deal with these 5 issues

- The Investigating Officer should be mandated to complete the Investigation at the earliest.
- Periodical training should be provided to deal with rape cases to police officers, juvenile police officers, Welfare Officers, Probationary Officers and Support persons.
- Trauma counselling, advice on pregnancy and contraception and psychological assessment should be given to the victim free of cost.
- If the victim informs the police about any threats received by the accused or his family, a high-ranking police officer should look into the matter and fresh FIR must be registered.

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