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**RAPE LAWS IN INDIA**  
***(HOW EFFECTIVE IS INDIA'S JUDICIAL SYSTEM***  
***IN DEALING WITH RAPES)***

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## **ABSTRACT**

*Our country is facing many serious criminal offences in current times, out of which the most disturbing and perilous one is the sexual assault against women. These assaults include domestic violence, sexual harassment, and most commonly rape. The rising tensions of women safety in our society have left the society petrified. But the real problem is in the way these cases are treated by the concerned. Rapes also like other civil or criminal suits, are kept pending for a long time and justice isn't delivered. So, the questions which mostly arise are, Are the laws related to rapes or other sexual assaults developed and appropriate or not? Have the Anti-Rape laws evolved with time in our country? These questions hit the peak when the well-known Nirbhaya Gang Rape case came to light. Despite the herculean and constant effort of the convicts, the judgment of a 'Death Penalty to the four convicts' sprung a new sense of victory in our hearts. In this write-up the readers will know about the evolution of anti-rape laws with the context of the Nirbhaya Gang-Rape Case. You will come across all the laws or statutes and principles governing rapes and some answer to 'Whether the punishments of rapes in recent cases and otherwise are decisive, right and justified? '*

**Keywords:** law, crime, rape, women, punish, provision

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## Chapter 1

# **INTRODUCTION**

### **1.1 A BRIEF**

The crimes against women have struck an outburst in the past ten years which mainly includes domestic violence, sexual harassment by known ones or unknown ones, acid throwing, female infanticide, and rape. This problem is of mentality or whether the socio status of women in our society or what? The majority of women in our country are facing the problem of gender inequality and discrimination which gives rise to sexual harassment of women and crimes like rapes, female infanticide, domestic violence, etc. As per a report, India ranks 132nd on Gender Inequality Index (GII),<sup>1</sup> and ranks 112th on the Global Gender Gap Index (GGGI)<sup>2</sup> which is a matter of concern for the nation. It raises questions over government policies that are designed to promote equal access to opportunities and resources for both the genders.<sup>3</sup> If we look out of our houses, even the fathers and mothers of young girls feel their hearts that their daughters should not enjoy much freedom and liberty. Why? Just because they say that women here are not safe and a little carelessness would spell danger. . “We have a very male-controlled society here in India, which gives more importance to men. Women are considered second-class citizens” said Dr. Shruti Kapur.<sup>4</sup>

The problem may be that the laws made are not effective enough in dealing with such scenarios. The lawmakers and judiciary system’s efficacy comes to question. These laws may or may not be followed or implemented properly at the ground level. So apart from the reasons, the implementation of statutes needs a lot of concern as discussed subsequently.

### **1.2 A BRIEF LEGAL STUDY**

According to a report of 2018, from the National Crime Records Bureau under the Ministry of Home Affairs, there is a rape every Fifteen minutes in our nation.<sup>5</sup> Ninety women every day,

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<sup>1</sup> data.un.org ; GII

<sup>2</sup> Report of World Economic Forum

<sup>3</sup> <https://reports.weforum.org>

<sup>4</sup> Nehal Johri, 2019

<sup>5</sup> National Crime Records Bureau report, 2018(MHA)

around twenty-five hundred women in a month and about thirty-one thousand women every year which counts itself to be an enormous number. A crux of what the Indian Penal Code terms as rape is sexual intercourse with a woman against her will and without her consent. This definition under Section 375 of the Indian Penal Code, 1860 has to be carefully observed while understanding what is the offence of rape and what are the essentials when such an offense is made.

The statutes governing the crime of sexual assaults and rapes are mainly the Indian Penal Code, 1860, the Criminal Procedure Code, 1973, the Protection of Children from Sexual Offences (POCSO) Act, 2012. The criminal laws were evolved after the formation of the first Law Commission under the enactment of the Charter Act, 1933 under Lord Macaulay. The criminal laws were codified as two statutes, one is the Indian Penal Code which is the substantive aspect of criminal law and the other is the Code of Criminal Procedure which is the procedure for establishing of the substantive criminal law of India. The protection of Children from Sexual Offences Act is another statute established for the protection of children against offences which include sexual abuse, sexual harassment and pornography. Sexual Harassment of Women at Workplace Act is another Act of Parliament to provide protection against sexual harassment of women at workplaces and redressing complaints of similar nature. The Information Technology Act also prohibits the posting of any defamatory material on the internet proposing to harass a woman.<sup>6</sup>

### **1.3 RESEARCH QUESTIONS TO A HYPOTHESIS**

A woman walking back home at night was offered by four middle-aged men, a couple of whom were the rich lads and couple were the offsprings of the major political influence of the town. She had met them a couple of times at her workplace. On one such day, they offered for a weekend party to the girl. The twenty-six-year-old girl accepted in good faith. She went to the party at the weekend with her acquaintance. The parents of the girls were untroubled only till morning when they reported a case of brutal rape of two girls where their daughters had gone. After coming to the knowledge of the parents about the horrific incident that happened with their own children, the parents were left shocked and upset. The victims reported to the police in order to get the fair, speedy, and equitable redressal. The police through a special branch enquired about the matter and

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<sup>6</sup> scoopwhoop.com ; 20 laws against sexual harassment most Indians don't know : Sukanya Mukharjee : Jul 10, 2015

despite all the efforts of the victim to resist the prosecution, the honorable court punished the offender with a death sentence. The following are the questions related to the research which arise in the context of the situations.

- ✚ The victims did not fear society and what they had to comment on the incident and reported the case. Is it the case with most of the rape crimes?
- ✚ The police set up a special branch to take care of such issues. Are such special branches of police and forensics set-up for every rape crimes?
- ✚ The police responded quickly and efficiently. Do they really are speedy in delivering justice?
- ✚ The justice system held the convicts guilty of committing the offence, despite his efforts. Is the judiciary so independent from other influences?
- ✚ The court punished the culprits with a Capital punishment which seems to be a fair and equitable delivery of justice. Are the laws so capable to provide justice, in reality, these days?

#### **1.4 OBJECTIVES OF RESEARCH**

The objective of the study is to :

- ✚ To study the relevant legal provisions related to Rape crimes in India,
- ✚ To examine the loopholes of the related legal provisions,
- ✚ To go through the reasons for ambiguities in the Justice delivery system,
- ✚ To study the glitches of the police, prosecution, and court,
- ✚ To study the related relevant case laws,
- ✚ To study the pattern of the crime through statistics, and
- ✚ To offer a broad view of streamlining existing laws and execution

## Chapter 2

### **A CRUX OF THE ‘NIRBHAYA GANG RAPE’**

The laws on the crime of rapes were not strict and efficient in dealing with rape cases and other sexual offences against women and children. The punishments were not stringent enough to warn society against committing such crimes. The former system of justice wasn't adequate enough as there were no adequate and timely measures of the authorities to curb such widespread crime. The judiciary also failed to 'effectively' interpret the laws and pronounced some unfavorable judgments for the victim as well as the deeply-concerned women society of that time. The nation was left furious after a 23-year-old girl was brutally gang-raped by four men in a private bus in South Delhi.<sup>7</sup> The victim was transferred after 11 days to a hospital for urgent treatment but the girl couldn't survive and died a couple of days later. The nation was taken aback by this horrific incident. People came out on streets seeking justice for 'Nirbhaya', protests, agitations burst out on the streets of all major cities in the country. The convicts were arrested and a couple of months later, one of the accused died in police custody, possibly being a suicide but defense claimed it to be a murder. This came out to be a deep carelessness on part of the police officials. One of the accused was a minor and was charged with the maximum possible sentence of 3 years. The people were furious at the decision and claimed that the law was indeed enforced but justice wasn't delivered. In September 2013, the four remaining convicts were sentenced to the death penalty. The convicts made all possible efforts to delay the hanging and made appeals in Delhi HC. Subsequently, in March, 2014 the appeal was rejected and upheld by the Delhi High Court. On 7<sup>th</sup> January 2020, there was a death warrant issued against them by the Apex Court. The victims were trying all the possible pleas in stages so that they can delay the hanging. Soon, after '5 long years of people craving justice', it was indeed given when the Delhi High Court issued a second death warrant and the convicts were finally hanged in Tihar Jail on the morning of 20<sup>th</sup> March 2020.

As a result of an outburst of protests against the sexual crime laws in India, a judicial committee is known as the 'Justice Verma committee' was set up in Dec 2012 to study, analyze, examine what possibly can be done to improve the statutes. The committee received up to 80,000

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<sup>7</sup> Mukesh & Anr vs Stae For Nct of Delhi & Ors , SLP Criminal no. 5027-5028 of 2014, 5 May 2017

suggestions from various activists, NGOs, legal experts and others. It submitted a report to the Legislature which included all the provisions that could be amended and introduced. In 2013, the Criminal Law (Amendment) Act was introduced and given assent by the President on 2<sup>nd</sup> April 2013. There were many reforms to the law from the previous times to date which aim at making society a good one for women and their evolution specifically w.r.t. the CLA 2013 is discussed in the subsequent sections.

### Chapter 3

## **RAPE IN THE INDIAN PENAL CODE**

According to Section 375 of the Indian Penal Code, a man is said to be committing a rape, when he has sexual intercourse with a woman without her will and consent. The definition also includes all those instances where the intercourse has been consensual but the consent has been obtained by way of putting the woman in fear or there is a misconception in the woman's mind and where consent is obtained by reason of fallaciousness of mind or any type of intoxication which makes her unable to understand the consequences of the act. The definition takes account of situations where there has been sexual intercourse with a woman below the age of sixteen years irrespective of the fact that consent was present or not.<sup>8</sup>It also didn't consider marital rape as an offence.

These laws were not given an accurate interpretation by courts and had loopholes that hampered the justice delivery process. The Mathura Rape Case in 1972 ultimately led to the introduction of the Criminal Law (Second Amendment) Act of 1983, the first one which hailed a big change in the rape cases. The definition of rape after the amendment in 1983 explained that penetration of 'a man's genital' into the woman's private parts is sufficient to constitute rape. In some relevant case laws, the court further explained that it is not essential for a man to ejaculate while penetrating. It is even immaterial how deep is the penetration, and merely touching or attempting to penetrate the woman's private organs by a man with his penis is to be considered as Rape.<sup>9</sup> The statute also did not recognize marital rape as a crime. Meaning any person who has married a girl of above 15 years of age can have non-consensual sexual intercourse with his wife as the law recognizes

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<sup>8</sup> see Indian Penal Code, 1872

<sup>9</sup> see State of Uttar Pradesh v Babulnath, 1994, 6 SCC 29

marriage as a sanction to lifelong consent for sex with the partner. Prior to this amendment, the women were not safe in public custody, but after it, there was an introduction of ‘custodial rape’. Now if any public servant was found guilty of committing any sexual activity with a woman inside the custody, it would result in a Rape case against that particular person.


The Criminal Law was yet again amended in the year 2013 following a horrific incident in Delhi in the year 2012, popularly known as ‘The Nirbhaya Gang-Rape Case’. It urged the government to make the laws more harsh and strict for therapists. This amendment did consider the suggestions of the ‘Justice Verma committee’ which was made to analyze and make recommendations to the legislature. The amendment included some new recognizable offences under the following provisions of IPC:

- ✚ **Section 326A** This provision states that whoever commits an Acid attack and causes damage or hurt and burns on any person has to be punished by a minimum imprisonment of 10 years which may lengthen to a maximum of life imprisonment. The accused also has to meet the medical expenses in a reasonable way.
- ✚ **Section 326B** This provision covers the attempt to acid attack under which the accused is sentenced for a minimum of 5 years, and the same can extend to 7 years along with a fine.<sup>10</sup>
- ✚ **Section 354A** If a man committing sexual harassment by way of asking sexual favours or physical contacts or showing pornographic content to a woman without her wish will have to face 5 years of rigorous imprisonment along with a fine. If anyone passes a sexist remark to a woman has to subsequently punished with one year of imprisonment or fine or both.
- ✚ **Section 354B** If a man uses force or compels any woman to undress or get naked in public places has to face a minimum of 3 years of imprisonment, and a maximum of 7 years.
- ✚ **Section 354C** If any man watches or captures, a woman while she is engaging in a private act when she doesn’t expect anyone to encounter and come across the observation of such acts is called ‘voyeurism’, is an offence under this provision. It is punishable with one year of imprisonment extendable to 3 years and if the same person

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<sup>10</sup> See Indian Penal Code, Section 326A and 326B

is accused of the same offence for the second time may be punishable for a term of 3 years extendable to seven years along with a fine.

 **Section 354D** Any man who follows, contacts or tries to contact, monitors a woman's internet usage patterns or spies her in any manners is liable for the offence of Stalking and is punishable with one-year imprisonment extendable to 5 years with fine. The man however is protected by law if he is compelled by law to do so, or he is in the progression of protecting or detecting a crime, or if such an act is reasonably justified on his part.<sup>11</sup>

The definition of rape was specifically altered and it now included any kind of penetration from any object into any of the woman's body parts.<sup>12</sup> The amendment added four clauses 'a to d' where it clearly specifies that a man if penetrates his penis, inserts any object, compellingly controls the woman to cause such penetration, or applies his mouth or makes the woman do the same into the woman's vagina, mouth, urethra, or anus has said to commit the offence of rape. The act also added an explanation to Section 375 which defined consent as an unequivocal voluntary agreement and further provided that if a woman doesn't physically resist a sexual offence does not by any means of interpretation mean that she was consenting.<sup>13</sup> This was a very important change as the judiciary was starting to build up on affirmative consent standards where 'an absence of no cannot be considered as a yes'. The age of consent to intercourse was increased from 16 to 18 years.

The punishments were a major change in the Amendment of Criminal Law in the year 2013, under which the punishments mentioned in Section 376 was increased from a minimum of 7 years to a minimum of 10 years of rigorous imprisonment.<sup>14</sup> Under the purview of Section 376(2) which earlier accounted for situations where if a police officer, or a public servant taking benefit of his beneficiary power, or a person being part of the management of public custodies or hospitals, has committed rape shall be imprisoned from 10 years to a maximum of a life sentence. It also included situations, where the woman raped, is pregnant, or is under 12 years of age and situations where gang rape is committed. But after the 2013 amendment, rape committed by the member of armed forces and such person like a guardian, teacher, etc. who is in a relation of trust with the woman

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<sup>11</sup> See Indian Penal Code, Section 354A, 354B, 354C, and 354D

<sup>12</sup> see Indian Penal Code 1872, Section 166A and Section 166B

<sup>13</sup> see Indian Penal Code 1872, Section 375

<sup>14</sup> see Indian Penal Code 1872, Section 376(1)



were included in this provision. Following circumstances were also added under the provisions of Section 376(2) :

- ✚ Where rape is committed during public violence,
- ✚ Where rape committed results in grave bodily injuries to the woman,
- ✚ Where woman raped is incapable of giving consent
- ✚ Where woman raped is suffering from some disabilities, and
- ✚ Where rape is committed against the same woman repeatedly.<sup>15</sup>

Under the Section 376A of IPC following amendment states that if the rape committed under section 376 causes death or a position where the woman is left unresponsive to any psychological or physical stimuli, then the accused will be punished with rigorous imprisonment of a minimum of 20 years and a maximum of life imprisonment or death. The lawmakers in the latest criminal amendment of 2018<sup>16</sup> institute a minimum of 20 years of rigorous imprisonment and a maximum of life imprisonment and even the death penalty on the rape of a woman being under 12 years of age. Section 376B is substituted by the earlier Section 376A where if a person has non-consensual sexual intercourse with his wife when living separately shall be punished with the minimum imprisonment of two years with fine. The amendment has added that the term may extend up to 7 years of imprisonment. Section 376C was prolonged to include the sexual abuse by people being in dominant or fiduciary position over the woman and the management staff of the hospitals. The term of sentence post amendment can now be subject to being extended to 10 years. A special provision has been created for those who commit gang-rape under Section 376D of IPC. The offenders face rigorous imprisonment which shall be a minimum of 20 years changed from the earlier sentence of 10 years, and a maximum of imprisonment for life. The provision under Section 376E mentions a life imprisonment sentence or a capital punishment if the accused is convicted of the offences under Section 376 of IPC before.<sup>17</sup>

Clearly, the amendment aims at making the punishments harsher so as to lay a sense of fear of consequences in the minds of sexual offence culprits. Still, a layer of offenders is not treated or punished as the society wants them to be, and these offenders are the minor ones. In the Nirbhaya

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<sup>15</sup> see Indian Penal Code 1872, Section 376(2)

<sup>16</sup> Criminal Law Amendment Act, 2018

<sup>17</sup> [www.advocateskhoj.com](http://www.advocateskhoj.com) ; Substitution of Section 375, 376, 376A, 376B, 376C, and 376D post Criminal Law (Amendment) Act, 2013

gang-rape case, amongst the accused was a minor also who was trialed in the juvenile courts and was sentenced for 3 years of imprisonment according to the Juvenile Justice Act of 2000.<sup>18</sup> Such a feeble punishment to a person who caused the most brutal damages and injuries to the victim is not justifiable and justice wasn't delivered. Soon after the incident, the legislature came up with the Juvenile Justice (Care and Protection) Act on January 1, 2016, which significantly changed the provisions for the trial of offenders under 18 years of age. According to this act, a child above 16 years of age would be treated as an adult and be subject to criminal proceedings against him. This was a big step taken in the right direction by the policymakers to provide fair and equitable justice to the victims and society.

## Chapter 4

### **PROCEDURAL LAWS IN RAPE CASES**

The procedures to be followed in case of rape crimes were not victim-friendly where a woman has faced serious mental traumas and suffered a lot physically. In these circumstances, the procedures were to be made very consciously keeping in mind the state of the victim. The procedural statutes were effective even before but had some escapes which were rectified in the Criminal Law (Amendment) Act, 2013. The provision related to the information of a cognizable offence is to be recorded under Section 154 of CrPC which was altered and Section 154(1) dealing with the recording of FIR was amended to include that if a woman comes up to report any offence related to Section 375 and other related provisions,<sup>19</sup> then the FIR has to be recorded by a woman police officer or any woman official permitted to do so. It further provides that when the woman who is mentally or physically disabled, has to report any sexual offence then the police officer has to report the FIR at the victim's residence or any such place which is easily accessible by her. The information by the victim in these cases has to be camera recorded.<sup>20</sup> Any confession or statements made by the victim to the Magistrate shall be video graphed under Section 164 of CrPC. Further Section 164(5A) was inserted by the amendment act which makes it compulsory for the judicial

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<sup>18</sup> Mukesh & Anr vs Stae For Nct of Delhi & Ors , SLP Criminal no. 5027-5028 of 2014, 5 May 2017

<sup>19</sup> See Chapter 3 'Rape in Indian Penal Code' which discusses all the penal provisions related to rape cases

<sup>20</sup> See Code of Criminal Procedure, Section 154(1)

magistrate to video record victim statements as soon as the offence committed comes to the knowledge of the police.<sup>21</sup>

Another problem was that these cases were not immediate and prompt in delivering justice. The trial system was very timid and a rape case like any other case in the justice delivery courts kept pending for years. Section 166A was inserted which describes the responsibility of public servants or police officials and for punishing public servants who refuse to register FIR in such sexual offences including rapes which would lead to imprisonment of six months and up to 2 years. The amendment also introduced Section 166B which stated a punishment to the private or public hospitals who refuse to give free aid to rape victims. Under Section 309 of CrPC which provides for a day to day inquiry of proceedings, an explanation has been added which states that in case of inquiry and trials under any of the sexual offences, the trial should be completed within 2 months from the date when charge sheet has been filed. This change has been effective in case of trials and carrying out the investigation speedily but the cases have been pending for a really long time. In cases of appeals in the higher courts under Section 374(3), appeals in matters where a person rapes a woman, rapes, or gang-rapes a child of 12 to 16 years, such trial must be disposed of within 6 months after the filing of such appeal.<sup>22</sup> There has been an immense effort on part of the legislature and the judiciary on the problem of pendency of cases and unnecessary delays in the judicial sector, but still, the systems fails to provide effective relief to victims.

Section 197 specifically dealt with the public servants being maliciously prosecuted and provided them with a shield in which no courts were allowed to claim such knowledge of some specific offence committed by a public servant in discharge of his duty. Moreover, prior permission had to be sought from the concerned government to prosecute a public officer. After the amendment, an explanation was added under Section 197(1) which clarified that in cases where a public official has committed offence covered under section 375 and related sexual offenses of the IPC<sup>23</sup>, no such prior sanction is needed. This was an obvious change as no sexual offence can be possibly allowed to be committed for discharge of any duty or law. Finally Section 375C was inserted under which

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<sup>21</sup> See Code of Criminal Procedure, Section 164

<sup>22</sup> According to the Criminal Law (Amendment) Act, 2018

<sup>23</sup> Refer note 16

any public or private hospital has to provide medical assistance to the rape or acid attack victim and report it to police as soon as possible.<sup>24</sup>

## Chapter 5

### **HOW RAPE CASES ARE GOVERNED UNDER THE INDIAN EVIDENCE ACT?**

In 1972, what happened was the igniting cause of the reform in rape laws. A girl named, Mathura was raped by policemen in police custody and the Supreme Court decided that the girl was 'habitual to sex' and as there were no marks of resistance which concludes that the sex was consensual. This led to outrage amongst women activists in the country, women marched and protested to this decision. This ultimately led to the introduction of the Criminal Law (Second Amendment) Act of 1983, the first one which hailed a big change in the rape cases. This amendment instituted a change in Section 114-A of The Indian Evidence Act, shifting the former burden of proof on women to a man. Aftermath the court assumed that the consent was absent and now, the man has to prove that the sexual intercourse was consensual.<sup>25</sup> This act also prohibited the publication of the victim's real name and was the reason for using replica names instead. The law now considered the publication of real names of victims as 'Character Assassination'.

Another amendment to The Indian Evidence Act of 2002 was an integral one in case of the reasons for under-complaints of rape cases in India which is a very grave issue when we talk about the adequacy of the justice system in rape cases. How can the authorities resolve the matter without even knowing about it? According to NCRB data of 2014-16, 24,772 women have faced sexual assaults which include their husbands and a total of 1432 women have reported sexual crimes from people other than their husbands. Approximately only 226 women have reported the same. This means that about 99.1% of cases of sexual violence go unreported.<sup>26</sup> After a PIL filed by an NGO Sakshi related to the provision of cross-examination, the Indian Evidence Act was changed for a really good. Earlier the provisions allowed cross-examination of witnesses according to which the

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<sup>24</sup> See Code of Criminal Procedure, Section 375C

<sup>25</sup> Refer to page for detailed study.

<sup>26</sup> NCRB data 2014-16, Census 2001

women were questioned by the defense on matters of their past sexual and personal lives and sexual integrity and morality. This was one of the main reasons for under-reported rape cases as the women felt that the trial would put them into an undesired situation which would question their personal stuff and space. After the Amendment in 2002, the cross-examination of victims in rape cases according to Section 155(4) of the Indian Evidence Act<sup>27</sup> was banned and was provided that in Section 146 of IEA.<sup>28</sup> There was also a question on the two-finger test where the medical examiner inserted two of his fingers into the victim's vagina to check its laxity. The women considered it to be immoral and it infringes on their privacy. But after the removal of the cross-examination method, the medical examination was the foremost important evidence in dealing with Rape cases.

Soon after the Criminal Law (Amendment) Act of 2013, Section 146 pertaining to the impermissibility of questions in the cross-examination of the victim w.r.t. her immoral character was altered to include questions of her previous sexual experiences with any person. A new specific provision Section 53 A was added which dealt with evidence of the character of the victim and past sexual behavior being irrelevant on the interrogation of permission.

## Chapter 6

### **HOW SAFE ARE CHILDREN AGAINST SEXUAL OFFENCES?**

There were no specific specialized laws in India for the exclusive safety of children against Child sexual abuses. There was a need for fast track solutions specified for these crimes. Criminalities against children have increased by six times in the years 2008-2018, from 22,500 cases in 2008 to 1,41,764 cases in 2018. In 2017, 1,29,032 cases of child sexual abuse were logged.<sup>29</sup> Considering the rising incidents against children and only a bleak mention of 'Statutory Rape' in definitions of rape, The Protection of Children from Sexual Offences Act (POCSO) was passed in June 2002 for the protection of children against any sexual assaults and offences. This act like Section 375 of IPC protected only female-gendered victims against sexual offences. About 21,605 child rapes

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<sup>27</sup> Sakshi v Union of India , 26<sup>th</sup> May 2004 SC

<sup>28</sup> see Indian Evidence Act 1872, Section 146

<sup>29</sup> NCRB data ; 2008-2018s

were recorded in 2018 which involved 21,401 rapes of girls and 204 boys.<sup>30</sup> This aspect was very important as the Indian Criminal Law largely ignored the protection of men against these issues and was highly gendered. According to this act, a child is any person below 18 years of age. The act was a very effective legal framework which made the process of prosecution child-friendly, made the punishments against child rapes stringent and the trial more faster. The offences were categorized as under

- ✚ Sexual Assault i.e. when a person touches a child's intimate parts without penetration,
- ✚ Penetrative Sexual Assault i.e. when a person inserts an object or penis into child's moth or intimate parts,
- ✚ Sexual Harassment i.e. passing sexual remarks, gestures, flashing or stalking, etc.
- ✚ Aggravated Sexual Assault i.e. all sexual offences committed against child if he/she is mentally ill or the offence is committed by a member of armed forces, public service, or a person which is known or has trust factor with the child, and
- ✚ Child Pornography.

In the year 2012, the amendment to this Act brought a change in the nature of this act from gendered to gender-neutral. Now the act is also considered a sexual assault against young boys as a crime. This aspect was very important as the Indian Criminal Law largely ignored the protection of men against these issues and was highly gendered.

After the Criminal Law (Amendment) Act of 2018, the legislature decided to have more strict punishments for those who commit crimes against children. As a result, the minimum punishment for Penetrative Sexual Assaults was increased from 7 years to 10 years. It also stated that if any such offence is committed with a child of below 16 years of age, the accused will be punished with imprisonment of 20 years to a maximum of life imprisonment along with a fine. The act also added (1) offence resulting in the death of a child, and (2) assault committed during a natural calamity as two more grounds to the offence of aggravated 'penetrative' sexual offence. It increased sentence of such nature from earlier 10 years to life imprisonment along with fine, to now, a minimum of 20 years of jail to capital punishment with fine. In the case of Aggravated sexual offences, the law

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<sup>30</sup> NCRB data ; 2018

added two more grounds, the first one being the above-mentioned offence made during a natural calamity and the second one being any injection or help in the injection of any such hormones which result in early sexual maturity. The act also strictly focuses on the prohibition of indulgence of children in pornographic content by any means of sexual acts mentioned above and also bans the storage of child pornographic content. The punishments for the same have been relatively greater than before.<sup>31</sup>

The only aspect that this act ignores is consensual sexual intercourse between two children. The act considers any sexual act against the children whether consensual or not as an offence. This provision ignores the philosophy of the developing child mentalities in India and therefore, becomes a cause for many misunderstandings and mishappenings. Indeed, children should be given proper knowledge of these theories at an early age and they should get to know what's right and wrong for themselves as well as others.

## Chapter 7

### **SEXUAL HARASSMENT OF WOMEN AT WORKPLACES**

The cases of sexual offences at workplaces have significantly increased by 54% from 2014 till 2017 and a total of 823 cases were recorded in 2019 which has also increased by 15% from 2018.<sup>32</sup> Women from various working industries like films, television, media, music, politics, sports, and other administrative services have reported cases of sexual harassment and rapes.

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<sup>31</sup> prsindia.org ; The Protection of Children from Sexual Offences (Amendment) Bill, 2019 ; Ministry of Women and Child development

<sup>32</sup> Data under Government of India(MWCD), Lok Sabha unstarred Q. no. 1763

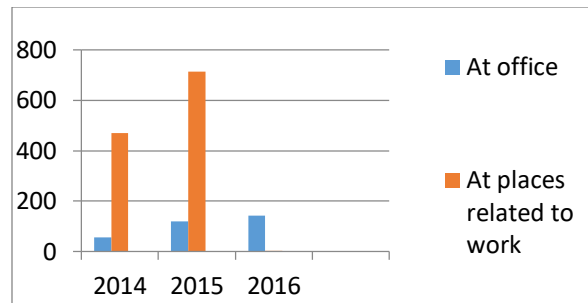


Figure 1<sup>33</sup>

From the above table, it is clear that women have faced a large number of sexual offences at their workplaces or other places where they visit for work. From a large number of cases, women have hardly reported them by fear of repercussions of their jobs and work. Some women are highly dependent on the work they do to earn a living for their family and in such cases, the sexual offences, if any, against them usually go unreported. There have been a large number of cases of sexual harassment by superiors or people who are in a dominant position over the women who work for them. In such cases also, almost 70% of cases go unreported because of fear of suppression by the superiors.<sup>34</sup>

Considering the rising cases of sexual offences at workplaces, the legislature enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act on December 9<sup>th</sup>, 2013 which aimed to provide protection to women at their workplaces. Sexual harassment against women at the places where they work is considered to be an infringement of their rights to equality and life. It is the duty of the state to make such provisions for providing just, safe and humane conditions of work.<sup>35</sup> In the absence of a safe working environment, the women often hamper or hesitate to work, thereby causing a loss in the economic or social goal of the nation.

The legislation has provided many effective features for the protection, redressal and prohibition of sexual offences against women. The act has provided various implied or expressed circumstances such as preferential treatment in the job, the demand of sexual favors in exchange of promotion, salary hike, threats to cause harm in the job, threats of future employment status, any humiliating treatment or interference with her work which would amount to sexual

<sup>33</sup> Figure 1 states a comparison of the sexual harassments faced by women at work as compared to other places

<sup>34</sup> Figures according to a survey by Indian Bar Association in 2017

<sup>35</sup> See Article 42 of the Constitution of India (DPSP)



harassment.<sup>36</sup>As a way out the most important part of the act is an order of setting up an Internal Complaints Committee in every office which has more than 10 employees. This committee would hear and address all the grievances and fears of sexual harassment at the particular workplace.<sup>37</sup> If any such complaint is made to this redressal committee, the inquiry made into it must be completed within 90 days.<sup>38</sup> The committee also takes account of the false or malicious cases being registered. There are duties and obligations for the employers to provide a safe working environment for women and if they don't comply with these instructions, they are imposed fines which would include cancellation of license.<sup>39</sup> The sexual offences committed in the transport facility provided by the work and against domestic help in houses are also covered under the ambit of this law.

## Chapter 8

### **RAPE LAWS ARE GENDER-SPECIFIC**

It is a loophole indeed where the definition of the offence begins with 'If a man commits intercourse against a woman' meaning it is a pre-decided offence where the genders of both, the victim and the perpetrator are pre-fixed. This statement or definition of rape does not take into consideration situations, where a woman could rape a man or the rape crimes committed against the same gender. Answered partially, the substitution for Section 375 of IPC according to the Criminal Law (Amendment) Act, where it is necessary for the man to penetrate his penis or any other object into the vagina, mouth, urethra, or anus of a woman.

Although any kind of sexual assaults against both women as well as men of minor ages are covered and protected under the POCSO Act<sup>40</sup>, the law does not include any sexual assaults against men by women. In the case of rape, as defined by the latest amendments, there are many essentials of rape which fail to accuse a woman of committing a rape due to her physical incapacities. This clearly rules out any case of women committing rape against men. But the sexual offences against men must be taken into consideration. In looking at child sexual abuse, the Indian government did

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<sup>36</sup> Sec 3(2) of the Act

<sup>37</sup> Sec 4 of the Act

<sup>38</sup> Sec 11 of the Act

<sup>39</sup> Sec 26 of the Act

<sup>40</sup> <https://indiacode.nic.in>

find in 2007 that, of surveyed children who reported experiencing severe sexual abuse, including rape or sodomy, 57.3% were boys and 42.7% were girls.<sup>41</sup> This data gives us an indication that men can be raped or sexually abused and they suffer from the same acts or atrocities like women.

Another issue arises with the transgendered people being excluded both as victims and as perpetrator from the definition of Rape under Section 375 of IPC which provides no such protection against sexual violence faced by the transgendered society. Although the sexual offences against transgendered people may be prosecuted under the provisions of Section 377 of IPC which focuses on sexual activities of unnatural nature. But the constitutionality of Section 377 is itself questionable, uncertain and the human rights of the transgendered section are still infringed. It is to be noted that a Rape crime committed against any person infringes her right to life under Article 21, and is considered as a human rights violation. Human rights violations are in fact a violation of any human rights not only including women but also men and transgendered people. On contrary, Article 14 which states ‘Equality before the law and equal protection of law’ and the Article 15(1) stating that ‘the State shall not discriminate any citizen on the basis of religion, race, caste, gender, creed, place of birth, etc.’ creates a divergent view of the gender neutrality of our Rape laws.

Why aren’t the laws strong enough on sexual assaults against men and transgendered society? The 172nd Law Commission Report submitted in 2000, recommended gender-neutral definitions of rape, substituting the word ‘rape’ form ‘sexual offences’. The Law Commission intended to say that not only women but boys are being increasingly exposed to forced sexual attacks. Involuntary sexual assault causes no less disturbance and mental harm to a boy than to a girl exposed to such offence. The commission’s observations were so correct but the substitutions of the words “sexual assault” for “rape” and “person” instead of “a male or a female”, were not very resounding to the legislators and this suggestion was struck down in light of the Nirbhaya incident in 2012. Later, as per the JS Verma Committee, set up after the incident in 2013, recommended the use of the word ‘person’ instead of ‘woman’ which would cover all the victims of this offence. The government in 2013 by notifying the Criminal Law (Amendment) Ordinance, proposed to change the definition of rape as gender-neutral. The Women Right’s Activists argued that Gender-neutral laws on sexual violence in the background of a male-dominated legal system and police machinery, and it would

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<sup>41</sup> [ccs.in ;//indias-law-should-recognise-men-can-be-raped-too](https://ccs.in/indias-law-should-recognise-men-can-be-raped-too)

result in restraining women’s ability to file complaints and would lead to counter-complaints against women to get them to withdraw. Considering the criticism, the Central Government passed the Criminal Law (Amendment) Act on, March 21, 2013, which reverted to the gender-specific definition of Rape of both the offender and the victim. Justice Leila Seth, a member of the Verma Committee, stated that “this was a serious mistake, and Parliament failed to understand the injustice done to so many men and transgender people”

Subsequently, there was a PIL filed at the Delhi High Court by advocate Sanjjiiv Kkumaar in 2017, which challenged the constitutionality of the rape laws under the Indian Penal Code (IPC).<sup>42</sup> Kumar in his petition stated that “Gender neutrality is a simple recognition of reality, men sometimes fall victim to the same or at least very similar acts to those suffered by women.” The amicus curiae appointed by the court also stated that the international status of this crime is gender-neutral. In the case of the United Kingdom, under the Sexual Offences Act 2003, male rape became recognized in law in 1994 but the 2003 legislation made victims of rape gender-neutral. On the contrary, the Central Government opposed this PIL and replied that the Section 375, 376 of IPC is enacted to protect and keep a check on rising levels of crime against women exclusively as women are predominant victims. It further clarified that there are even laws protecting child sexual abuses and Section 377 for the protection of sexual offences against the order of nature. The Centre confessed that the 2012 Nirbhaya Case, where a young woman was gang-raped in a moving bus, made it relinquish the legislative effort to make the rape laws gender-neutral. The Centre says that these legislations are efficient and effective and the definition of Section 375 should remain untouched.<sup>43</sup>

Another PIL filed with similar circumstances relating to the constitutionality of Section 354A, 354B, 354C, 354D and Section 375 and the PIL sought to make laws pertaining to rape, sexual assault, stalking, infuriating modesty, etc. gender-neutral.<sup>44</sup> The petition argued that since these provisions do not protect men from any sexual offences and in cases, allow accused female to go unprosecuted, they are in violation of Article 14 (Right to Equality) and Article 15 (Right against discrimination on grounds of sex ‘as in this case’) of the Constitution. The petition was quashed

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<sup>42</sup> Sanjjiiv Kkumaar v. Union of India, 2017, Writ P. (Cr.) no. 8745

<sup>43</sup> [www.indiatoday.com](http://www.indiatoday.com) ; Men victims too: PIL IN Supreme Court wants women punished for Rape ; Harish Nair; Jan 12, 2018

<sup>44</sup> Rishi Malhotra v. Union of India, Writ P. (Cr.) No. 7/ 2018

and the bench observed that these sections of IPC are favorable for the protection of women only. The bench headed by Justice Deepak Mishra, constituting Justice Chandrachud and Justice Khanwilkar observed that it is the duty of the Parliament to feel whether the issue of the Rape laws being made gender-neutral requires urgent attention or not and it is entirely up to the parliament. The judiciary cannot direct strictly to the Parliament to amend the subjected provisions nor it can amend on their own.<sup>45</sup> So this matter as observed directly rests with the Parliament to which there has been no change to date.

Another issue arises with the transgendered people being excluded both as victims and as perpetrator from the definition of Rape under Section 375 of IPC which provides no such protection against sexual violence faced by the transgendered society. Although the sexual offenses against transgendered people may be prosecuted under the provisions of Section 377 of IPC which focuses on sexual activities of unnatural nature. But the constitutionality of Section 377 is itself questionable, uncertain and the human rights of the transgendered section are still infringed.

## Chapter 9

### **CONSENT AND WILL OF THE VICTIM**

The two descriptive circumstances (1) against the will and (2) against the consent labels the importance of consent to sexual intercourse which has to be studied by Section 375 of IPC<sup>46</sup> read with Section 90 of IPC.<sup>47</sup> To observe, let us look at a situation where consent becomes a real clutter in judicial proceedings. A girl named X had sexual intercourse with a man Y on a given date. She reported it as rape with the police. On examining the DNA and other related tests, it was concluded that there was sexual intercourse between the two. Now as the court knows that the two had sexual intercourse, the only question was whether it was consensual or not. Now imagine two occasions, First, when the burden to prove the consent is on the woman, and, second where the burden of proof of consent is on the man. Now, if the burden to prove the consent was on the woman the court could very well question the women on her efforts to get rid of and to resist such intercourse.

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<sup>45</sup> Indiatoday.in; Parliament can make law on rape gender-neutral, says Supreme Court; Harish Nair; Feb 3, 2018

<sup>46</sup> see Indian Penal Code, 1872 ; Section 375 Explanation 2

<sup>47</sup> see Indian Penal Code, 1872 ; Section 90

The court could also question that if the woman didn't want to have sex, then why didn't she say no or fight the man as in a similar case is popularly known, the Mathura Rape Case, 1972.<sup>48</sup> The court could also question whether there were any bruises on the man's body or any proof of resistance on part of the woman. There are two sides to a coin as in this situation. Firstly, the woman may not have told the man to stop, may not have tried to resist because of fear of any hurt which he may have caused, him being a strong-built man. It may be any other circumstance like if the man had some previous issues with the woman and in anger, he may have caused her some harm. On the contrary, the man may be on the reliance of the woman's disapproval. He may on good faith have stopped if the woman had said 'no'. There may be another situation where a woman may be having a relationship with the man but alleging a false rape case against him. The court may assume the man as a rapist when referred to the first instance and innocent on the second. As in this case, if the burden of proof is on the woman, the court will presume the consent was present and the woman has to prove that it was not present. It is indeed very difficult to prove a thing which wasn't present. As on the other side, if the burden of prove the consent is on the man then the court presumes that the consent was not there and he has to prove that he continued to have intercourse only as the woman had consented. Now here is where the consent becomes really ambiguous and challenging to prove and it is indeed very difficult to prove when none of them has conclusive evidence of the same. Thus, according to The Indian Evidence Act, the judiciary before the Mathura Rape case in 1978 assumed that the consent was present and the burden of proof was on the woman which was really tough to prove. The feminist activists and society argued that therapists could run away free by just claiming that the consent was present. The principle relating to consent post-1983 changed the burden of proof to a man and has been the same till date. The Supreme Court of India also inferred that it cannot ignore the possibility of false cases and thus the court observed that the sole testimony of the victim cannot be considered as absolute truth and required the testimony to be trustworthy and of genuine eminence in absence of any strong evidence.<sup>49</sup> This has been a proficient step of the judiciary as the victims of these cases ultimately suffer a lot and then shifting the burden of proof on them is really unfair.

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<sup>48</sup> Tukaram and Anr v State of Maharashtra, SC ;15<sup>th</sup> September, 1978

<sup>49</sup> Santosh Prasad @ Santosh Kumar vs The State of Bihar, SLP (criminal) no. 3780/2018

Now, there are many densities of the definition of consent in rape cases also. First, the definitions of Consent in both Section 375 and Section 90 of the IPC<sup>50</sup>, does not inform any basic degree of consent. In a matter in front of Delhi High Court, the court did not consider ‘a feeble no’ of the victim as a sufficient unwillingness. The court by way of misinterpreting Section 375 and Section 90 of IPC, shifted the responsibility of offence to the victim rather than the accused. The court commented that instances of women's behavior are known to everyone that a frail no may mean yes.<sup>51</sup> The judiciary instituted an ‘affirmative consent’ standard which supposed and adopted ‘Yes means Yes’ instead of earlier adopted ‘No means No’. In the case of an earlier ‘no means no’, there could be uncertainties and ambiguities to that no and this could mean that the disagreement was a result of fear or pressure of some kind. There was a clear misconception that if the woman did not say no, it meant that she approved, which was wrong. But now the ‘affirmative standard of consent’ being established in judicial proceedings meant that now, a knowing, intended, enthusiastic and the mutual decision has to be present for sexual intercourse.<sup>52</sup> Now, if there are no such signs of resistance, it does not mean that there was consent.

Second, the consent in these cases is for a specific sexual act and has to be withdrawn subsequently. It means that the consent in these cases is revocable. A woman can withdraw her consent at any point in time during intercourse and after the completion of such an act. The act will be considered to be a rape from the moment the woman has withdrawn her consent. For instance, if a woman resists or withdraws her consent during intercourse, any act or intercourse subsequent to that revocation will constitute a rape. And if a woman withdraws her consent after the completion of the intercourse, it will not constitute a rape except in the case of Section 90 of the code. Certainly, there is a lot of vagueness under these principles of law.

Thirdly, the age of consent which never has been certain in Indian laws. In India, the law considers a person to be eligible enough to vote for a candidate to represent him at 18 years, drive at 16 or 18 years, drink when he attains 18, 21, 23, 25 years of age, adopt a child at 21 years, work for living at 14 years, marry at 18 years for girls and 21 years for boys and so on. It also recognizes the legal age of giving consent to sexual intercourse as 18 years which simply means that a person who is below 18 years of age cannot even have consensual sexual intercourse. The law clearly

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<sup>50</sup> See Indian Penal Code, 1872

<sup>51</sup> Mahmood Farooqui, Criminal Law Appeal 944/2016 ; Delhi HC, 2017)

<sup>52</sup> theprint.in ; ‘Yes means Yes’: Delhi HC says it’s time to move beyond no-means-no rule on sexual consent

states that any sexual activity with a minor will constitute a rape irrespective of the fact that the sexual activity was consensual or non-consensual.<sup>53</sup> If a minor is found having sexual indulgence with a third person, the parents quite frequently turn up to the police, as expected. In the developing realm, society often ignores the changing children's mindset or their readiness to be sexually active or indulge in sexual intercourses with those whom they want to. It is a situation where two minors cannot be sexually active even if there are consent and willingness too. The least to be done is that the minor accused of such offence will be prosecuted under juvenile context and if the accused is a major, he has a tough time ahead where he will have to face strict sentences which are rigorous in nature, which seems to be too unfair. Therefore, this aspect of the ruling also needs careful observation.

## Chapter 10

### **CONCEPT OF MARITAL RAPE**

The loopholes in Indian legal frameworks for Rape crimes have seen many amendments made for good. But, still there are some cracks and gaps which have not been cemented by the concerned legislative authorities and nor by the judiciary. Though being looked at and considered by the legislature, the exception 'Marital Rape' to the offence of Rape under Section 375 still remains a flaw in the laws of rape.<sup>54</sup> The Indian Lawmakers believed that marriage is a lifelong consent of a woman to have sexual intercourse with her husband.<sup>55</sup> Under this concept of marital rape, if a man has non-consensual sexual intercourse with his wife it is not an offence. An exception to this exception is that the wife, in this case, should not be less than 15 years of age.<sup>56</sup>

The concept of marital rape is based on a previously adopted patriarchal approach of the Britishers whereby they didn't consider men and women to be equal. At these times a married woman was not considered to possess a legal identity and was considered just as a representative of her husband. Adopting this concept, although in later times women and men have been provided independent legal status but, still, a married woman has been denied the 'Right to Equality' as she

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<sup>53</sup> See Section 375 of IPC

<sup>54</sup> See exception 2 under Section 375 of IPC

<sup>55</sup> Marital Rape and the Indian Legal Scenario, By- Priyanka Rath, <https://www.indialawjournal.org>

<sup>56</sup> See Section 375 in Indian Penal Code, 1872 ; Exception 2



has been treated differently from unmarried women. The exception under Section 375 has no real difference and implication for a married woman. The lawmakers should realize that she would suffer the same harm mentally and emotionally as any other woman would. An unwilling and non-consensual sexual intercourse with a woman being married or not is considered to be an infringement of the Right to privacy covered under the purview of the Right to life and personal liberty, held SC.<sup>57</sup> The Supreme Court also held that the right to Privacy includes the Right to make choices concerning intimate relationships or acts.<sup>58</sup> So don't the married women have the right to be protected under these provisions? Surely the legislatures have ignored this sphere as marital rape being considered as not a crime, invades the right to a healthy environment and right to privacy. It also overruns the right to equality as it divides women into two groups solely because of the reason of them being married or not.<sup>59</sup>

The marital rape problem is very deep in a country like India where the women are not considered to be safe at all. Besides the stringency of rape laws after the infamous Nirbhaya Gang-rape case, married women are still not protected from rapes and sexual harassment. According to the International Center for Research on Women, about one-third of men confess having forced their wives for a sexual favor.<sup>60</sup> As much as 52 countries, the first one being Australia followed by US, UK, Canada and others had marital rape as an exception to the offence of rape or didn't in any form consider it to be a crime, have amended their legislation to make spousal rape as an offense. But India is still amongst those countries where a man can legally rape his wife, the woman only being able to register minor complaints and charges of these complaints are very meek as against those of rape offenses. Although law prevails still justice isn't delivered in these cases. The lawmakers thus infer from their legislations that the offence of rape committed against a wife is less serious than against any other woman. This clearly isn't understandable and leaves a vague picture in our minds.

Although the legal age to marry in India according to the Prohibition of Child Marriage Act is 18 years, another observation which comes to mind is the exception to this exception which states that if a man has forced sexual intercourse with his wife, her being under 15 years of age is said to

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<sup>57</sup> The State of Karnataka v. Krishnappa SC 4 SCC 75, 2000

<sup>58</sup> Justice K.S. Puttuswamy (Retd.) v. Union of India, (2017) AIR 2017 SC 4161 (India).

<sup>59</sup> Marital Rape : A non-criminalized Crime in India, By: Sarthak Mehta, [www.harvardhrj.com](http://www.harvardhrj.com)

<sup>60</sup> [www.icrw.org](http://www.icrw.org)



commit the offence of rape. This means that a girl under 15 to 18 years of age has no protection against any sexual abuse by her husband. Her willingness or consent in such intercourse with her husband hardly matters and is immaterial in the eyes of law. The law itself was full of ambiguities and confusions as Section 375 itself stated that any sexual intercourse with a girl below 18 years of age irrespective of her consent is rape. It is meaningless that if a girl below 18 years of age is raped, she can report and file a suit against the rapist, but the girl of the same age if married, can do nothing. Child marriage is prohibited or is voidable at the option of the underage wife and continues if she doesn't disagree. Considering this, the government focused on sexual acts in subjects of child marriages that still exist in our country. The court clarified the same and held that the rights of a child cannot be taken away whether she is married or not. A child under every aspect of legal frameworks needs protection against sexual abuses and it is referred that by instilling this exception the government is after all making child marriage legitimate indirectly.<sup>61</sup> Consequently, exception 2 of Section 375 of IPC was held as "Meaningless" as the court held that it only created confusion and chaos in the minds of the judiciary and the same had no real applicable and reasonable implications.<sup>62</sup>

Another ambit to be deliberated is where the law provides for a situation where there has been sexual intercourse on a promise on the pretext of marriage. The Bombay High Court clarified that "Any intercourse subsequent to a promise of marriage is not to be considered as rape if the man fails to fulfill such promise."<sup>63</sup> The court further explained that the two persons may make love and have sex on the pretext to a promise of marriage, and eventually it is the women who are left pregnant and suffer harm physically or emotionally. But this context does not specify such acts as rape. For such acts to be specified as rape the court was very clear, the prosecution had to prove that the man had no intentions to marry when such intercourse was occurred on the grounds of promise to marry.

A woman, married as well as unmarried, faces the same level of traumas and depressions after going through a sexual offence. A married woman faces the same physical discomforts, injuries, pain as a normal woman would. So why is this offence not criminalized even after being of the same nature? Surely, this aspect of the legal framework needs to be deleted from the statute to

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<sup>61</sup> Sex with minor wife, despite consent, is rape : Supreme Court, [www.thehindu.com](http://www.thehindu.com)

<sup>62</sup> Independent Thought vs Union of India, WP (C) 382/ 2013

<sup>63</sup> Akshay Manoj Jaisinghani v State of Maharashtra, Anticipatory Bail Appl. No. 2221/2016

provide equal protection to all women whether they are married or not. Women have to feel safe even in their homes and they have to be provided with every right of protection against sexual crimes so that these offences do not rise.

## Chapter 12

### **SUGGESTIONS AND CONCLUSION**

As per our hypothesis is concerned<sup>64</sup>, some questions are answered as per my keen observation on the issue. *Firstly*. Are the rape cases reported without hesitation? This is a major concern and a cause for the increase in rape cases in our country. If these cases are not reported, then the culprits will run free as if they haven't done anything wrong. Despite some changes introduced to make the process victim-friendly, still, there are more or less cases which go unreported due to some reason or the other. *Secondly*, are there any specialized fast track courts to deal with rape cases. So, the government has proposed in the Parliament to open 1023 fast track courts to deal with rape cases and cases covered under POCSO Act which would cost up to 767.25 cr. Rupees.<sup>65</sup> *Thirdly*, are the police authorities quick enough to respond in these cases? So, the amendments have led to fast investigations and trials by the police authorities and also have proposed an increase in the volume of manpower to investigate the rape issues. *Fourthly*, Is the judiciary independent enough from other influences? The judiciary has been formed as an independent organization to deliver justice in a fair, equitable and impartial manner. Moreover, the introduction of fast track courts may be a good response and help to lessen this problem. *Fifthly*, Are the regulations fair enough to provide justice? Surely the amendments made in the earlier sections, have been in the right direction and are austere in the following ways.

As discussed in the earlier chapters, the legal statutes in our country which govern the sexual offences have been more or less ineffective despite the drastic amendments of 2013 and 2018. The amendment after the horrific Nirbhaya Gang-rape case saw a change in the definition of rape to introduce some non-penetrative sexual offences and saw a rise in punishment for the offence of

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<sup>64</sup> See Chapter 1 , 1.4 page no. 3

<sup>65</sup> A report of the Press Information Bureau ; <https://timesofindia.indiatimes.com/india/over-1000-fast-track-courts-to-be-set-up-for-rape-cases/articleshow/72402934.cms>

rape and other sexual offences which now includes the death penalty in some cases also. Apart from these changes, the lawmakers intend to make the trial of these sexual abuse cases more victim-friendly. There was an effort to speed up the justice delivery process. Considering the mental traumas and complexities a victim has to suffer, various changes were instituted to protect her rights. Despite of the changes, there are still some loopholes including marital rape and gender neutrality of rape laws which need to be addressed.<sup>66</sup>

Apart from the change in-laws, The government and also the private NGO institutions should come with steps of gender equality educational programs. These educational programs should be conducted in schools for both boys and girls so that they know how to respect relationships and prevent violence in related cases. Not only at the schools but also at our homes we can educate ourselves by discussing these grave issues with our family and friends to break this standardized thought that we possess. Also, there needs to be workshops on this issue for the benighted society including auto-rickshaw drivers, delivery boys, and others so that they do not indulge in committing any of these crimes. The women's participation should also increase in every sector and every level including the decision making processes so that they feel more confident and possibly give effective suggestions for the related laws. Victim's character assassination was both used and was an aftermath of the trial of such rape cases. The victim during the trial process was repeatedly required to re-encounter or revisit the horrific incident in her mind. So, a victim who has already suffered emotionally and physically because of the exploitation is yet again agonized by the process of trial.

Rape although being a non-bailable offense under our penal code is far more away from its categorization. People often get bail because of an absence of evidence in some instances or political interference with the judiciary or police system, or instances where defense has hired 'the most expensive and best lawyer of town' as against the state advocate. Considering these possible situations the victim should be immediate- at the time of registration of complaint be provided with an advocate of state "specialized" in these matters. The proceedings are held inactive for a long period of time due to the pendency of other cases, the burden of work on higher courts, the fewer number of judges on each case and many other administrative reasons. By the rights given to the accused against his conviction, there are endless efforts by the accused to minimize or delay

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<sup>66</sup> See Chapters 6 and 8

the sentence. As a result of the observation, the government should come up with the constitution of such specialized, free from any involvement fast track courts which exclusively prioritize the hearing and disposal of rape and sexual offence cases. This way the victim could get immediate relief and justice. By these fast track courts, the system could also be specialized in dealing with such cases. Considering the delays in investigation of trial by the police system, there has to be a specialized branch which deals with these cases. Special forensics and a medical branch consisting of female staff should be constituted to thoroughly look into these cases as these cases being in lack of evidence many times loose the efficacy of the justice delivery process.

Thus, apart from the laws, it is the special units which need to be developed and evolved. "People often say a tough law can bring about change. But what is a tough law? Law needs to be effective and the investigating agency and prosecution more proficient and efficient. That is a dire need," said Seema Misra, a lawyer who works on women's rights issues.

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