



DELINEATING RAPE LAWS IN INDIA: EVOLUTION, ISSUES AND RESPONSES

By *Sarthak Mehta and Apoorva Maheshwari*
From *DES Law College, Pune*

Abstract:

Our nation designates the women as 'Goddess' which implies that the society must respect them and its norms must protect them, whenever the need arises. On the failure of such protection whereby the dignity of the woman is crushed by the means of rape and other forms of sexual abuse, law becomes the saviour. The evolution of rape laws in India has been rapid and substantial and has passed through the brutal period of the Sultanate to the progressive British Raj which eventually settles in the text of Indian Penal Code.

However, there are times when the law fails as the defender and then the need of another renaissance arises. Despite of enhancement in the Indian rape laws, the loopholes are still persistent. In presence of such lacunae, provision of justice to every individual is a mere dream.

This research article deals in redefining the Indian rape laws. It highlights the meaning and definition of rape and the history and evolution of rape laws in India. Further, it emphasises on the grey areas like consent to intercourse, marital rape, same sex rape, etc. along with suitable case laws and lastly, it

provides enumerated suggestions to improve the situation in India.

1. Introduction

The Republic of India in the nature of existence is an Independent nation. Denoting the principles of its great constitution, the citizens here enjoy the liberty and other imperative freedoms too. With the advancement of time, the nation as a whole grew significantly, but also witnessed an amplified rate of crimes. One of the most heinous crimes is rape, whereby for the satisfaction of lust within, the human being torments and agonizes the other being and ends up doing an inhuman act, thereby devastating the life of the sufferer. A total of 38,947 rape cases across the nation were reported to Rajya Sabha in its recent session of 2016 by the National Crime Records Bureau¹, keeping aside the unreported ones.

The problem related to enforcement of laws, disposal of the cases and implementation of the court verdicts is increasing which is affecting the rape statistics of the country. As a result, India was most recently ranked as the most dangerous country for women in a study conducted by the Thomson Reuters Foundation², however the same was rejected by the National Commission for Women stating that the sample size taken for the

¹ India's Rape Crisis: 106 Rapes Per Day, 4 in 10 Victims Minors, The Quint (April 16, 2018), <https://www.thequint.com/news/india/india-rape-data-106-rapes-per-day-4-in-10-victims-minors>.

² The world's most dangerous countries for women 2018, Thomson Reuters Foundation Annual Poll, Thomson Reuters Foundation, <http://poll2018.trust.org/>.



study was too small to represent a large country like India³.

This research paper makes a deep analysis of the ancient legal practices, definitional ambiguity, comparative statistics, legislative evolutions, judicial analysis, evaluation with global legislations, and lastly, the need for changes.

2. Definition and Scope

The Indian Penal Code, 1860, defines rape u/s 375 of Indian Penal Code and punishment to which is mentioned in the subsequent section.

As per the cumulative meanings of various general lexicons, rape is the sexual intercourse between a man/men and a woman whereby the consent of the woman doesn't exist.

Rape can also mean to plunder or strip something of resources. It is the act of coercive sexual intercourse by one person with another against his/her will.

As per the definition of Black's Law Dictionary rape means, 'The unlawful carnal knowledge of a woman by a man forcibly and against her will.'

But the scope of rape is not only limited to such unwelcomed intercourse and it has a broader facet to it. The definitional flaws of rape in the Indian law and the vague approach by the legislature increase the number of unreported rape cases across the country which include rape of man, marital rape, rape of a sex worker etc.

³ NCW rejects 'most dangerous country' survey, Times of India (June 27, 2018, 7:38 IST), <https://timesofindia.indiatimes.com/india/ncw-rejects-most-dangerous-country-survey/articleshow/64756822.cms>.

3. History

Prior to the independent India, when the Akhand Bharat was under the rule of the Sultanate and thereafter the British, the Muslim criminal law was followed in the Moffusil and Sadar Adalats. Ours being a patriarchal society, made it quite difficult for women to report and prove this odious crime.

Ancient Muslim Criminal Law, in the Rule of the Sultanate:

Rape was completely forbidden in Islamic law, and was a crime punishable by death. In Islam, capital punishment is still reserved for the most extreme crimes which not only harms individual but also destabilizes the society. Rape falls in this category.

Islam takes very seriously the honour and protection of women. The Quran repeatedly reminds men to treat women with kindness and fairness. During the lifetime of the Prophet Muhammad, a rapist was punished based on only the testimony of the victim.

There have been various historical interpretations of Islamic law, but the most common legal practices followed in earlier times were that the crime of rape may be proven by:

- **Witness testimony** - The testimony of four eye witnesses to the act itself is traditionally the requirement to prove rape under Islamic law. Also, the testimony of two females was considered to be equal to that of one male.
- **Confession** - The full and complete confession of the perpetrator is accepted as evidence under Islamic law.
- **Physical evidence** - Even in early Islamic history, many Islamic jurists accepted



physical evidence to prove a woman's lack of consent. As forensic science becomes more adept at providing physical evidence of sexual assault, such evidence has become commonly accepted in Islamic courts.⁴

Under British rule:

Before the codification of colonial laws, Muslim criminal law was followed even under the British rule. But after the codification and consolidation began in 1833, the draft of the IPC was prepared by the First Law Commission chaired by Lord Macaulay in 1835 and was submitted to Governor-General subsequently in 1837. However, it was passed in 1860. Since then, the offence of rape got a definition and punishment thereof.

4. Evolutions in the Indian law

The laws relating to rape and sexual assault have gone through various reforms and amendments over the time as per the needs of the society. These reforms were much needed due to lacunae in the existing laws, which were more than 150 years old. The judgments on the basis of which the contemporary strict and appropriate law has evolved are as follows -

- In *Tuka Ram v. State of Maharashtra*⁵, In March 1972, a 16-year-old tribal girl was raped by two policemen in the compound of Desai Ganj police chowky in

Chandrapur. Her relatives, who had come to register a complaint, were patiently waiting outside meanwhile the heinous act was being perpetrated in the police station. The rationale for acquittal was that the victim had *not raised an alarm and there were no visible marks of injury on her body. The judgment did not distinguish between consent and forcible submission.*

- In *Mohd. Habib v. State*⁶, the Delhi HC allowed a rapist to go scot-free merely because there were no marks of injury on his penis- which the Court presumed was an indication of no resistance. The most important facts such as the age of the victim (being seven years) and that she had suffered a ruptured hymen and the bite marks on her body were not considered by the HC. Even the eye-witnesses, who witnessed this ghastly act, could not sway the High Court's judgment.

Resultant to such judgements, the first major reforms came in the year 1983, whereby the Legislature indicated that it considers aggravated rape (including gang rape) deserving of higher punishment. The change in rape laws in 1983 improved the law significantly. The four step evolution of rape laws have been discussed below-

FIRST STEP:

Earlier, the punishment prescribed u/s 376 of the IPC, provided for no least amount of punishment for the wrongdoer. Though the legislature failed to increase the maximum sentence to capital punishment as was vehemently demanded, it prescribed a

⁴ Understanding the punishment for Rape in Islamic Law, ThoughtCo (April 28, 2018), <https://www.thoughtco.com/what-does-islamic-law-say-about-rape-2004208>.

⁵ *Tukaram v. State of Maharashtra*, AIR 1979 SC 185.

⁶ *Mohd. Habib v. State*, (1989) CriLJ 137.



minimum sentence of seven years imprisonment in it.

Besides, an important provision, section 376(2) was added to the IPC which introduced the concept of some special kinds of rape and prescribed a minimum of ten years imprisonment for these cases.

SECOND STEP:

Later, in 2000, the law commission released its 172nd report on 'Review of Rape Laws'. The report came after the PIL filed in the case of *Sakshi v. Union of India*⁷. This report recommended replacing the word 'rape' with the term 'sexual assault' which levied on the fact that in case of happening of such an atrocious act on any part of the body should be construed as rape. The commission also recommended altering the existing laws and making them gender neutral. Another approval to seek punishment for 'unlawful sexual conduct' under Section 375E and Section 509 whereby the occurrence of the offence is related to the sexual intent was also solicited. An additional suggestion was to consider marital rape equally as an offence just as any physical violence by a husband against his wife was also sought.

The majority of the above suggestions was duly accepted and was adjoined to the existing definition.

THIRD STEP:

The gruesome 'Nirbhaya' gang rape case was the driving force behind the passing of the biggest reform in the criminal legislation, i.e., Criminal Law Amendment

Act, 2013⁸. The offences of voluntarily causing grievous hurt by use of acid or its attempt (S.326A and S.326B) were incorporated by the Act. The offence of Sexual Harassment against a woman was added under Sec. 354A with alike sub-sections covering offences of voyeurism, stalking and disrobing. Another provision under Sec. 370A dealing with trafficking of persons for exploitation was inserted.

Definition of rape in Sec 375 was modified covering the themes which were covered by the dark loop for long⁹, the word 'consent' to sexual intercourse was elucidated and the 'age' of consent was also raised from 16 to 18 years. Other changes included:

Death penalty was added as the punishment for rape but only in two provisions, namely, 376A (punishment of

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<http://www.manupatra.com/manufeed/contents/PDF/634953350808963007.pdf>

- (a) The introduction (to any extent) by a man of his penis, into the vagina (which term shall include the labia majora), the anus or urethra or mouth of any woman or child
- (b) the introduction to any extent by a man of an object or a part of the body (other than the penis) into the vagina (which term shall include the labia majora) or anus or urethra of a woman
- (c) the introduction to any extent by a person of an object or a part of the body other than the penis) into the vagina (which term shall include the labia majora) or anus or urethra of a child.
- (d) manipulating any part of the body of a child so as to cause penetration of the vagina (which term shall include labia majora) anus or the urethra of the offender by any part of the child's body.

⁷ *Sakshi v. Union of India*, (2004) 5 S.C.C. 518.



causing death or resulting in persistent vegetative state of woman) and 376E (punishment for repeat offenders previously convicted u/s 376 or 376A or 376D).

- Separate provision Sec 376D for gang rape was incorporated providing minimum imprisonment of twenty years extending to life.
- The judicial discretion available to impose a reduced sentence (lesser than the required minimum) was deleted by the Amendment.

FOURTH STEP:

A series of inopportune events towards the women led to the most recent amendment in the rape laws in India. The Criminal Law Amendment Act, 2018 is an outcome of the crashing of the humanity whereby a number of cases subsisted to the sin of lust. These cases mainly included the Kathua rape case wherein the girl child of 8 years was abducted, sedated, gang raped for days and murdered. In another case in the state of Uttar Pradesh wherein an MLA was accused of raping a 17-year old minor alarmed the situation leading to the mass agitation across the nation. Thereafter, recently, Chennai witnessed the gang rape of an 11 year old girl by 22 men for seven months.

Resultantly, The Amendment Act of 2018 brought an imperative change in the quantum of punishment and inserted death penalty as the punishment for rape of girl less than 12 years of age with minimum imprisonment of twenty years u/s 376AB. The Act also enhances the punishment of rape u/s 376 (1), rape of girl less than 16 years of age u/s 376 (3) and gang rape u/s 376DA and 376DB.

5. The Ambiguous Areas: Need of change

The Indian law has evolved multiple times and so have the provisions of rape. However, even after 70 years of independence, there are few vital areas concerning rape laws which are still ambiguous. Such legislative vagueness is discussed below:

a. Consent and Not Consent

Consent can either be implied or express. In a case, when such consent doesn't fall under the above two kinds and the derived consent is subjected to any form of fraud, coercion, or misconception, the act of sexual intercourse is concluded as a non-consensual act.

Explanation 2 to the Sec 375 IPC states, "Consent means an unequivocal agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by reason only of the fact, be regarded as consenting to the sexual act."

Additionally, Sec 90 of the Code also defines consent negatively. It states that a consent is not a consent if it is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception.

Consent on promise of marriage:

Consent to sexual intercourse may be derived through making a false promise of marriage and if it is obtained through 'misconception of fact', 'fraud' or



‘coercion’, then Sec. 90 IPC is attracted, i.e., it amounts to no consent.

However, this *general rule is not absolute*. Reliance is placed on the SC judgment in *Uday v. State of Karnataka*¹⁰. The court observed:

“If a full grown girl consents to sexual intercourse on a promise of marriage and continues in the activity it is an act of promiscuity on her part and not an act induced by misconception of fact. S. 90 IPC cannot be called in aid in such a case to pardon the girl and fasten criminal liability on the other, unless the Court can be assured that from the very inception the accused never really intended to marry her.”

The ruling has been held unanimously by various courts and recently in the case of *Akshay Jaisinghani*¹¹, the Bombay HC observed that if girl is major, educated and has a choice of saying no and she doesn’t say no at the time of sexual intercourse, then it would be considered as mutual consent. Therefore, the courts have taken into consideration prudence and maturity of the woman giving consent. The malicious intention of the man, if any, has to be gathered from different evidences varying in each case. Conclusively, the courts have been cautious enough in preventing false allegations of rape and hence have taken a neutral stand.

b. Marital Rape

Marital Rape refers to unwanted intercourse by a man with his wife obtained by force, threat of force, or physical violence, or in any other condition when she does not

consents to the act of sexual intercourse. It is a non-consensual act of violent perversion by a husband against the wife where she is physically and mentally abused.

Why should it be criminalized?

The wedlock of two individuals doesn’t imply that either of the spouses is enslaved in the vault of other. Marriage is a sacred bond of love, even when it is a contract. Though one of the main objects of marriage is procreation of children, it doesn’t implicate that someone under the veil of marriage, imposes his sexual desire upon the other. Wedding a person does not signify losing one’s own personal identity and right of choice because before being a ‘spouse’, a person is a man/woman and before that a ‘human’. Thus, a forced sexual intercourse shall not only mean commission of rape, but also infringement of a person’s ‘right to life’.

The holy text like the Quran condemns rape and states that relationship between husband and wife should be based on love and affection (2:187, 30:21 and others).

Some jurists have argued that there is a standing ‘consent’ given at the time of marriage while other scholars have argued that rape is a non-consensual and violent act, which can happen within a marriage as well.

Criminalizing marital rape:

Originally, the exception 2 to Sec 375 stated that sexual intercourse by a man with his wife, the wife not being under the age of 15 years, is not rape.

The Criminal Law Amendment Act, 2013 brought a small change and penalised marital rape in cases when wife is less than 12 years of age and if she is between 12 to

¹⁰ *Uday v. State of Karnataka*, (2003) 4 S.C.C. 46.

¹¹ *Akshay Jaisinghani v. State of Maharashtra*, (2017) 1 R.C.R. (Cri) 715.



15 years, then a less serious offence, with milder punishment, was considered to be committed. This made it conducive for child marriages and allowed husbands of illegal child marriages to force themselves on their wives, if they belong to age group of 15 to 18 years. On the same lines, a PIL was filed in the Supreme Court and subsequently, exception 2 to Sec. 375 was read down in the case of *Independent Thought v. UOI*¹² whereby sexual intercourse by a man with his wife, the wife being less than 18 years of age, is rape. This ruling observed that the Exception needs to be struck down because:

- (i) it is arbitrary, capricious, whimsical and violative of the rights of the girl child and not fair, just and reasonable and, therefore, violative of Article 14, 15 and 21 of the Constitution of India;
- (ii) it is discriminatory and violative of Article 14 of the Constitution of India and;
- (iii) it is inconsistent with the provisions of POCSO, which must prevail.

Arguments: The lawmakers argued that deleting marital rape exception will potentially destroy the institution of marriage due to the factors like poverty, illiteracy and the perception of marriage being a sacrosanct. There may also be a number of false cases in the same regard, however, better implementation of such laws not only would decrease the number of false cases, but also would protect the interest of true victims.

Present condition: Therefore, based on the present circumstances, the wives who are

sexually assaulted by their husbands are left with only two options of either filing a suit under Domestic Violence Act for protection and a restraining order or under Sec 498-A for charges of cruelty. However, the Delhi HC recently observed that marriage doesn't mean that wife is always consenting for physical relation with her husband¹³.

c. Rape of Sex Worker

The history regarding rape of a sex worker can be traced back to the 18th century whereby the British law recognized that a prostitute could be the victim of rape. From 1829, evidence of the complainant's actual or rumored occupation in prostitution was accepted as relevant evidence in a rape trial. Rules of evidence reflected the widely held assumption that unchaste women were untrustworthy. Thus in rape trials, the complainants' sexual reputation and past sexual experiences were deemed to be relevant to her veracity and reliability as a witness.¹⁴ India, being a colony to British, followed the same set of rules.

Because of the lack of credibility of complainants, it became difficult for the prosecution to prove sexual assault beyond reasonable doubt. This is an important development the implications of which remain largely unaddressed in the fields of law and public policy.

Global position:

In Britain, Canada and Australia, there have been numerous examples when the past sexual experience of the complainant has

¹² *Independent Thought v. Union of India*, (2017) 10 SCALE 1.

¹³ *Marriage doesn't mean consent for sex*: Delhi High Court on marital rape, *The Economic Times*, July 18, 2018.

¹⁴ Henning and Bronitt, 1998, p. 77.



been taken into evidence in the rape trials thereby leaving the accused unpunished and the justice unserved.

In *R v Krausz*¹⁵, the complainant was a 22-year-old woman who said she had been assaulted and raped by a man she met in a public house. The accused claimed the woman had consented to sex, demanded money after the sexual intercourse and then refused to leave the flat until she had been paid. Krausz's conviction for rape was subsequently quashed by the Court of Appeals.

However, it would appear that this situation has changed significantly in the last 20 years. In the United Kingdom, Australia, New Zealand and Canada rape law reform has at least limited the admissibility of evidence relating to a complainant's sexual reputation and past sexual history.

Condition in India:

Sex workers remain in the twilight of legal policies and legislation in India, wherein the silence of law on their identities has resulted in more violence. In addition to this, societal standards that forcefully fit women into a binary system, in which women are either idolised or demonised pervade through all structures and institutions with the judiciary writing them off as "women of loose morals". Unfortunately, this thinking leaves sex workers no representation.

Section 114-A Evidence Act that deals with prosecution of rape cases under clauses (a), (b), (c), (d), (e) or (g) of S. 376(2) of the IPC, where sexual intercourse by the accused is proved, and the question before the Court is whether such intercourse was

with or without the woman's consent. In such cases, if the woman, in her evidence, states before the Court that she did not consent, the Court must presume that she did not so consent.

However, the SC very recently pronounced a verdict in a case¹⁶ whereby it neither considered nor debated the above provision. The Bench seems to have removed the issue of presumption of consent from this gang rape because the woman was of "questionable character".

In *Budhadev Karmaskar v. State*¹⁷, the apex court stated that sex workers have a right to live with dignity under Article 21 of the Constitution of India "since they are also human beings and their problems also needed to be addressed".

The plight of the sex workers in rape cases, hence, remains baffling. It is high time that the country recognises rights of sex workers, and devises policies to systematically address the problem of growing sexual violence against them instead of brushing the issue under the carpet.

d. Sexual harassment at workplace:

The brutal rape of Bhanwari Devi in 1992 led to the filing of several PILs in the Supreme Court under the banner of 'Vishakha' to champion the cause of working women of the country. The Supreme Court then framed the guidelines while acknowledging legislative inadequacy in regard to laws protecting women and

¹⁵ *R v. Krausz*, (1973) 57 Cr App R 466.

¹⁶ *Raja & Ors. v. State of Karnataka*, (2016) 10 S.C.C. 506.

¹⁷ *Budhadev Karmaskar v. State*, (2011) 11 S.C.C. 538.



preventing sexual harassment at workplace. The Court defined sexual harassment while laying down the duties of the employer, preventive steps and procedural mechanism for filing complaints and disciplinary action. The legislation was brought in force in the year 2013 in the name of 'Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013'. The Act deals with the concerned issue in detail but Sec. 14 of the Act provides for action to be taken against the complainant if the complaint is found to be false. Such provision deters women to report the harassment faced by them.

The number of reported cases has increased significantly after the Act has come into force but it also shows that women are not safe at workplaces. Recently, in Saket District Court chamber, New Delhi, a Senior Advocate was accused of committing rape of his junior lady lawyer.¹⁸ It is unimaginable that the guards of law are involved in such offenses. Hence, it is the immediate need of the country to have better implementation of the laws because the time when women were used to be confined to their households has been long gone.

e. Rape of a Man:

The numerous cases, stories and myths surrounding female penetrative and non-penetrative rape result in dismissal and even mockery of male victims of rape. The general perception in the society pictures men only as the perpetrators of rape and not the victim. But in realism, a man can also be

¹⁸ Woman advocate raped by senior inside Saket court, The Hindu, (July 16, 2018 07:32 IST), <https://www.thehindu.com/news/cities/Delhi/woman-advocate-raped-by-senior-inside-saket-court/article24428660.ece>.

raped. The rape of a male is not limited to him being raped by the opposite gender but also includes sexual abuse by other males. The Indian law is silent on rape of man but an inclination towards the unnatural intercourse is made u/s 377 of IPC.

A presumption as to the mind of the society has been developed that for the lawful sexual intercourse, only the consent and desire of the woman is necessary. Consent of a man in any sexual activity is taken as implied from the inception which in a sense results in the violation of right to choose to have/ have not sex, of the male gender. Recently, three women raped a 23 years old man in South Africa after kidnapping and drugging him. He was made to drink an energy drink before raping and was raped continuously for three days.¹⁹

While the POCSO Act, 2012 protects children of both genders from sexual abuse, rape law doesn't. This scenario results in miscarriage of justice and hence male victims of rape in India are still searching for justice.

f. Rape by Women:

Sexual assault is perceived as a straight issue, perpetrated by men against women. But there exists a scenario, which is less frequent, but equally damaging to the victims- rape between women. There are numerous cases in which the offender of rape is a female, however, very few (almost nil) are reported because of picturing a male as a rapist always.

¹⁹ Luke Barnes, Daily Mail (May 29, 2017), <http://www.dailymail.co.uk/news/article-4551652/Three-women-rape-man-23-THREE-days.html>.



This picturization is the result of definitional flaws of rape of various countries which define rape as penile penetration. But, when the statistics are given a closer look, it is found that women are committing sexual assault and rape and are roaming scot-free because there is no law to charge them with. According to the National Crime Victimization Survey (USA), 35 percent of male victims who experienced rape or sexual assault reported at least one female perpetrator.²⁰ Not only this, a 2005 survey by the California Coalition Against Sexual Assault (CALCASA) concluded that one in three lesbian-identified participants had been sexually assaulted by a woman, and one in four had experienced violence within a lesbian relationship. It was also found that lesbians and gay men experience higher rates of partner violence than straight-identified population.²¹

India: Sec. 375 of the Indian Penal Code starts with words “A man is said to commit rape if...”. The drafters of the Penal Code have completely neglected the point that except of the penetration of the penis the rest, which includes the penetration of any object in any of the mentioned body parts of a woman, manipulation for the occurrence of any such penetration and oral stimulation can also be preceded by another woman.

Sadly, India’s condition is no different than the rest of the world. Rapes and sexual assaults by women on men as well as women go unreported because of the flawed laws. There have been cases where a woman (e) is involved in gang rape in enticing or threatening the victim or filming the act but she is not considered as the accomplice in commission of rape and gets done with mere charges of assault or harassment.

Law enforcement and others usually refer to women raping women as "lesbian rape" even though one or both parties involved might not consider their sexual orientation as lesbian. Women raped by other females report perpetrators forcing digit (finger) masturbation, digital penetration, and stimulation of clitoris and vulva using the tongue or inserting foreign devices, such as vibrators, into the vagina or anus.

Regardless of the genders involved or the setting in which the rape occurred, it is still rape – a violent, brutal crime centred on the perpetrator’s need for power and control and satisfaction of the lust. Rape is never the fault of the victim, regardless of sexual orientation or circumstances.

6. Suggestions

Enhancement of Punishments:

- Even after recommendations by the Law Commission numerous times, the legislature has failed to increase the maximum punishment for the offence of rape to death penalty. Rape is punishable with death only u/s 376A, AB, DB and 376E, after the Criminal Law Amendment Act, 2018. While countries like Iran,

²⁰ Sexual Victimization by Women is more Common than previously known, Scientific American, (Oct 10, 2017),

<https://www.scientificamerican.com/article/sexual-victimization-by-women-is-more-common-than-previously-known/>.

²¹ When your Rapist is a Woman, Marie Claire, (Mar 30, 2016), <https://www.marieclaire.com/culture/a19495/women-raped-by-women/>.



China, and Saudi Arabia punish rapists with death, India falls short of this provision despite of the increasing crime rate.

- Gang rape of a girl under sixteen years of age cannot be punished with death, howsoever gruesome it is. Gang rape must be made punishable with death.

Validity of consent to sexual intercourse:

The Indian judiciary has not taken a uniform stand in the cases dealing with ‘consent on promise of marriage’. The courts have sometimes ruled that consent on false promise of marriage shall be counted as no consent. Contrarily, in other cases, it has been observed that if the girl is educated and mature, then consent on promise of marriage would be a valid consent.

Hence, the judiciary must come up with a precedent which provides for guidelines as to when the consent would be valid and when not, in such cases.

Criminalisation of Marital Rape:

A legislature must be established which must criminalise marital rape with proper guidelines dealing with the admissibility of evidence in such cases. The guidelines should also deal with the misuse of law so as to prevent frivolous and malicious complaints.

Reliance upon the methods followed by countries like Australia, USA, UK, South Africa, Norway, etc. which have already criminalised marital rape shall be sought which include circumstantial and medical evidence, testimony of victim plus witness (if available) and admission by husband through electronic means.

Rape of sex workers:

Previously, the SC has stressed upon the rights and dignity of the sex workers but, disappointingly, the judiciary has failed to comply with the said rules. No matter what the profession of an individual is, the definition as to ‘consent’, ‘rape’ and ‘victim’ cannot be changed. The past sexual history of a woman must not be considered or even admitted as evidence in cases dealing with rape and sexual assault.

Gender neutralisation of rape laws:

Due consideration should be given to the male’s right to live with dignity and his consent should be examined. Though, the POCSO Act, 2012 protects the children of both the genders from sexual assault, but the IPC fails to do so. The legislature should take inspiration from countries like South Africa, China, USA, etc. which criminalise rape of man and make the offence gender neutral.

Rape by women:

Lastly, Sec 375 of IPC criminalises rape only when committed by a man on a woman. It forgets to take woman into the ambit as the perpetrator of rape and sexual assault. There are several experiences of being sexually assaulted by women and they need to be reported. Society and the law, need to catch up with reality.

7. Conclusion

The world has evolved to this day where the whole universe is accessible in a single touch, but what hasn’t changed is the greed and lust of the human. Rape is another way to satisfy a part of this long perpetual greed, in way of which the rules and regulations of



the society become vague. The crime of such ghastly nature shall in all possibilities be punished. The consequences, conditions and other factors which lead to the crime shall be on the back seat and the sole fact that the rape was committed shall be of primary concern.

Therefore, in the light of the above raised issues and the solutions thereafter provided, it would be unjust to say that Indian law regarding rape is flawed. Society as an impediment has just slowed down the wave of enhancement of the laws, but it is the judiciary which has, time and again reminded the nation that a crime can never go unpunished. This duty shall be continued by the judiciary and if not perfect but the better laws shall be brought before the service of the nation. Legislation is the ruler, Democracy is the rule and judiciary is the saviour.

