



## RAPE

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### ABSTRACT

A four letter, single syllable word that can destroy the life of women. Rape is when a sexual intercourse is non-consensual, when a person forces himself on any woman to have sex can be termed as rape. Rape is a heinous offence and is defined in Indian Penal Code. Section 375 of Indian Penal Code defines rape and the punishment that would be given to the offender is defined under section 376. Section 375 further defines the consent of a woman. Without the will or consent<sup>1</sup> of a woman, she cannot even be touched; the consent is necessary to show her will and if it is not granted than any move sexually towards her is punishable under Indian Penal Code.

This offence has given birth to an environment of rape culture. The rape culture is prevalent in the society where the tolerance against the women is normalized. The rape culture is perpetuated through the continuous use of misogynistic language and objectification of women body and is driven by the fear in women's heart.

This article will focus on the scenario of Indian women in the society and the statistics and figures that demonstrate the rate of rape victims and how it is increasing every year. We will also emphasis on the acts and laws that are made to prevent this offence and severe punishments which are made to punish the offenders. We will also state some of the cases that were abominable and

monstrous to be called as a human act and the amendments which were made in the Indian Penal Code due to such acts to reduce the ambiguity in the sections and many more sections were inserted to cover all possible crimes that could be done by the human kind.

Given the fact that rape and sexual assault cases, registered and unregistered, have increased with time and India is a country where rape convicts are not given strict punishments, we believe that the topics and issues covered in our article will make a difference in the minds of the readers and the society in general.

### Rape: A Deadly Crime

Crimes have been a part of the society since the human kind came to its existence. Rape is one of the most serious offences which are being committed since many ages and India has a long history of brutal and spine killing rapes. Rape is a crime that can never be justified in any way if committed. It has been prevalent in Indian society from a long time now. It is the fourth most common crime against women in India. The women are not confident out there because the fear keeps eating them that if they are safe or not, whether they can move out alone or not, whether they can work late at night or not and this graph is not going down, rather is increasing at an alarming rate. Rape has become a crime that is not only against the women but it has also engulfed little girls and babies. They have become the prey of these offenders and the age does not bar a rapist anymore. In every 60 minutes two women are raped and in India an average of 106 cases are

<sup>1</sup> consent is defined as clear, voluntary communication that the woman gives for a certain sexual act.



reported on a daily basis and approximately 32,559 cases are reported annually in police stations. This number has rapidly increased over the years and is still not anywhere near to slow down. The **National Crime Records Bureau**<sup>2</sup> (NCRB) is a body that keeps the record of information about the crimes and the criminals. It is a governmental body that releases annual reports about the crimes and its rate in the country. It maintains the figures of cases reported in the police station and the statistical change in the rate of crime over the years. According to NCRB the report that is made by the organisation is solely based on the cases which are reported, there are many more cases which are not reported because of the fear and threat caused by the criminal. The data by the NCRB reveals that the rape against the women in India is on the rise. According to the reports it has also been seen that in 95% of the cases the offender is known to the victim this means that a woman is not even safe in her own surroundings. In India the most unsafe place for women has been recorded according to the cases reported which is Madhya Pradesh with

approximately 5000 cases followed by Maharashtra with approximately 4000 cases. The rapes which are happening in the nation prove that the country is no more a safe place to live.

### Definition and Amendments

Rape is a crime that needs to be severely punished with no mercy. Rape in India is a cognizable offence. It is precisely defined in section 375<sup>3</sup> of Indian Penal Code, 1862 which briefly states all the essentials and its provisions. Penetration of a penis or any object to any extent into the vagina, urethra or anus of a woman will constitute the offence of rape and the insertion of penis to any extent is sufficient to call it rape, how far the penis has gone into the vagina is immaterial. The rape law in India has gone through many amendments and the most recent amendment was made after the Nirbhaya rape case<sup>4</sup>, where a 23 year old woman Jyoti Singh was tortured, beaten and brutally raped by six men in the bus at night and was thrown out to rot on the road, naked in very severe condition. Jyoti was gang

<sup>2</sup> established in year 1986.

<sup>3</sup>The section reads as A man is said to commit "rape" if he—

- a. penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- b. inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- c. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any ~ of body of such woman or makes her to do so with him or any other person; or
- d. applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven description.

First.—Against her will.

Secondly.— Without her consent.

Third/y.— With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourth/y.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifth/y.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.

<sup>4</sup> December 16, 2012, New Delhi



raped, where a woman is raped by one or more persons and back then in 2012, the Indian Penal Code did not have any provision related to gang rape and the previous section of rape was highly ambiguous. The rape was so inhumane, they pulled out the organs of the girl and inserted an iron rod through her vagina after repeatedly raping her, that Nirbhaya case shook the whole nation. The section was then amended in year 2013, which gave it a broader and a clearer view. The section defining gang rape was inserted (sec 376D of IPC) where a woman is raped by one or more persons who constitutes a group or persons acting upon a common intention, each and every person shall be deemed to have committed the offence and is punishable under this section. The punishment should be rigorous and shall be for term not less than 20 years which may extend to life imprisonment. The six culprits were under trial where the court pronounced them guilty of such barbaric crime, out of whom one was a minor<sup>5</sup> who did not face any severe charges and for the rest a judgement of death sentence was passed in year 2017. The amendment of 2013 also inserted some new sections which were 376A<sup>6</sup>, 376B<sup>7</sup>, 376C<sup>8</sup>, 376D<sup>9</sup>. These sections were inserted in order to cover all possible situations under which an offender can be severely punished for its commission of the crime according to the

provisions stated in these sections. The act of rape is punishable under section 376 of Indian Penal Code. Any person who commits rape irrespective of his position, designation, will be punished for imprisonment of either description<sup>10</sup> for a term not less than 7 years which may extend to life imprisonment and will also be liable to fine. Over the years many cases have come forward where the victim ended up dying or resulting in persistent vegetative state because of continuous torture caused by the offender. Another case that remained in light for years was the case of Aruna Ramchandra Shanbaug, 1973; she was a nurse at a hospital where she was attacked by a ward boy in hospital. He wrapped a dog chain around her neck and tried to rape her but when he found out she was menstruating, he sodomized her. The chain was tightly twisted around her neck and she was found unconscious lying on the floor the next day. This led her to a vegetative state<sup>11</sup>. The ward boy was punished under section 307 of attempted murder and robbery under section 392 of Indian Penal Code for an imprisonment for the term of 7 years. It was never reported by the authorities that she was sodomized by him so he was not punished for rape. She was in vegetative state for 42 years and was granted passive euthanasia in year 2015. This

<sup>5</sup> The minor in Nirbhaya case was punished with the imprisonment of 3 years.

<sup>6</sup> Punishment for causing death or resulting in persistent vegetative state of victim.

<sup>7</sup> Sexual intercourse by husband upon his wife during separation.

<sup>8</sup> Sexual intercourse by person in authority.

<sup>9</sup> Gang rape: Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a

term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine.

<sup>10</sup> Either rigorous imprisonment or simple imprisonment.

<sup>11</sup> A vegetative state is absence of responsiveness and awareness due to overwhelming dysfunction of the cerebral hemispheres, with sufficient sparing of the diencephalon and brain stem to preserve autonomic and motor reflexes and sleep-wake cycles.



case is also known as the incomplete case of Aruna Shanbaug.

In the cases where the victim dies or lands in a vegetative state, the offender is punished with rigorous imprisonment for a term which shall not be less than 20 years, which may extend to life imprisonment which is stated under section 376A of the Indian Penal Code.

### **Victims of Rape**

Why is rape prevalent in India? What is it that drives men to rape women? Why women are the victim of such offences?....There are such endless questions that pops up in the head but the answers are difficult to find. A rapist can give numerous excuses and justifications but can it reverse back his heartless act. No, rape is prevalent in India because here they consider that the judicial system can do no wrong to the offender. The trials go on and on for years and justice is delayed to the victim. The offenders try to have control over women and if they lose the control they forcefully gain in by sexually assaulting them, this is the reason that consent has been defined in Indian Penal Code under section 375. It has to be a clear communication by a woman that she voluntarily agrees to a specific sexual act. Consent is not something which a person can forcibly obtain. A man cannot go against the will of a woman; her consent is required to get involve with a man sexually. The offenders live with a presumption that they have a right over person's body and do not consider it a crime to use a woman's body for their sexual pleasure without their consent. Therefore, a person is obligated to obtain the consent without any force or threat. The

consent if obtained by coercion, fear of hurt or death or by putting any person under a fear of hurt, whom she is interested in, under such circumstances the consent obtained would be unlawful. The consent of a minor or of an unsound mind will also be not considered valid. Any sexual act done against the consent of a woman is punishable under this code. With the existence of these kinds of people it has become difficult for women to survive in the society. The most common offenders of this crime are men since the maximum number of cases is reported against men and the victim of such offences are women. Women are constantly becoming the prey of such sexual predators who ruthlessly exploits them.

### **Other Laws related to Rape**

Many laws are made and amended from time to time due to the increasing severity of crime in the nation. There are provisions made for Custodial Rape which is defined under section 376(2) of IPC where it is punishable when a person who is held in the custody of any public servant is sexually exploited. If the rape is committed in the custody than the person shall be imprisoned with a term which shall not be less than 10 years which may extend to life imprisonment, which means that he will be imprisoned for the remainder of the person's natural life. There were many cases of custodial rape where a woman went to the police station to file an F.I.R against a person and return back with bruises and sexual assault. Therefore, the punishment in such cases is rigorous. The law also protects the women who are the rape victim under section 228A<sup>12</sup> of Indian Penal Code where

<sup>12</sup> Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376B, section 376C or section 376D is

alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term



the name of the victim cannot be disclosed in public and if that happens, he shall be liable to fine and an imprisonment that may extend to a term of two years.

The rape victim can file a complaint against the offender and the police are bound to take actions against the complaint. The police can collect the evidence from the crime scene and all possible witnesses and can arrest the accused for examination. According to section 53<sup>13</sup> of to the Code of Criminal Procedure, the police officer can request a medical examination of the alleged accused if there is a reasonable ground to believe that such examination will produce significant evidence against the accused. Medical examination plays an important role in collection of forensic evidence; therefore, the examination of the victim is as necessary as the examination of the accused. The medical examination of the victim is also important to assess and treat the injuries and also prevent pregnancy. The medical examination will also help in collection of forensic evidence which can further be used to penalise the offender. This provision is covered under section 164A<sup>14</sup> of Criminal Procedure Code

which may extend to two years and shall also be liable to fine.

<sup>13</sup> When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose.

<sup>14</sup> Where during the stage when an offence of committing rape or attempt to commit rape is under

where a medical examination of the victim should be done within 24 hours of the receiving the information about the commencement of the offence of rape so that the traces are still present on the body. Any delay in the examination will result in demolition of such traces from the body of the victim. The medical examination should be done by the medical practitioner of a hospital of a government or local authority and the exact date and time of the examination should be recorded in the report<sup>15</sup> which will be counted as evidence.

The law safeguards the women against whom such offences are committed and have the right for their trial to be recorded in court. The trials which are conducted in court are required to be recorded in the camera which is defined under section 327(2)<sup>16</sup> of Code of Criminal Procedure.

#### **Juvenile offenders**

Rape is a crime which is committed by the men of the society and each and every rape case should be acknowledged with utmost responsibility and strictness. There are a lot of cases where accused are juveniles which is

investigation, it is proposed to get the person of a woman with whom the rape is alleged or attempted to have been committed, examined by a medical expert, such examination shall be conducted by a registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

<sup>15</sup> Section 164A [5] of the Criminal procedure Code.

<sup>16</sup> The inquiry into and trial of rape or an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code shall be conducted in camera.



why they are set free after a short period of time which is completely unacceptable. A rapist in all means is a rapist if found guilty and should not be treated differently if they are under 18 years of age.

Numerous cases that have surfaced up over the years has shown that the juveniles have equally been a part of such offences constituting rape, sexual assault and violence against women. The juveniles in most of the previous cases were set free even after committing such heinous crimes. If they have knowledge of how to commit a crime then they shall be punished as an adult. If they are committing rape then they shall be prepared for the consequences that come along. Same amount of rigorous punishment should be awarded to the juvenile so that such crimes are repeated neither by him nor by any juvenile offender.

The New Juvenile Justice Act of 2016 was enacted by parliament of India by considering the number of offences of rape and sexual assault committed by juveniles were rapidly increasing. It replaced the previous Juvenile Justice Delinquency Act of year 2000. The act stated that the juveniles between the age group of 16 to 18 who are indulge in commission of such heinous crimes like rape, will be treated as adult in the eyes of law and will be punished as a major person in punished for such offences. For the cases where juvenile is an offender, the panel must contain a psychologist and a sociologist to study about the offender and the cause of his actions.

### **Violence against Women**

Violence is any physical force exerted on any person in order to cause hurt and pain to the

person. Violence is used against women when a person intends to commit rape. Violence includes both physical and sexual violence. In the cases of rape, the offenders feel powerful when they use violence against woman, when they take the control over their body by strangulating them. Rape does not stop after the non-consensual intercourse; it extends to the beating, torture, and thrashing to the victim. Such offenders want women to be submissive so that they can use their power against them, they do not consider them a human rather consider their property which they can use in whichever way they want. The sexual and physical violence against the women is increasing day by day and the cases which are nowadays reported are of rape with grievous hurt<sup>17</sup> or attempt to murder<sup>18</sup> accompanied with acid attacks<sup>19</sup> etc. These cases are increasing against women which have created an environment where women and children are not safe to live in. Women's lives are shattered by beatings and sexual assaults against them.

### **Recent Cases**

- A gut-wrenching incident took place in Hyderabad on 27<sup>th</sup> of November, 2019 where a 27 year old veterinarian Dr. Potula Priyanka Reddy was brutally raped, smothered and completely burned by the offenders. Priyanka was scared that day because she felt that 4 men were there who were standing waiting for her, she called her sister to tell her that she was afraid to go out there and since her scooter was also punctured. She hung up the phone and was then returning from her clinic at night when 4 men of 20 years of age brutally raped her and these monsters did not

<sup>17</sup> Section 320 of Indian Penal Code.

<sup>18</sup> Section 307 of Indian Penal Code.

<sup>19</sup> Section 326A of Indian Penal Code.



stop there, they smothered and burnt her. They even tried to get her drunk before raping her. She was found dead the next day with half burnt body by the police. The police arrested all four accused within two days of the incident and the trial went to the court. This case again shook the nation to its core and reminded everybody about the Nirbhaya gang rape case of 2012.

- The Kathua rape case is an abduction, rape and murder of an 8 year old girl named Asifa Bano in January 2018. The case was very disturbing to hear since the victim was an 8 year old kid. The little girl was abducted by 8 men out of whom one was a juvenile. The men were arrested by the police out of whom one was a temple priest; four of them were the police officers. The post mortem report of the forensic scientists revealed that the little girl was drugged i.e. she was on a sedative before she was raped. The main accused of the case was the temple priest who was accompanied by his son and his nephew (juvenile). The trial of the case began in Jammu and Kashmir after the police caught the accused of the rape and murder case. The court found all the accused guilty and pronounced the judgement against them and were convicted according to their commission of crime. The three accused were sentenced to imprisonment for a term of 25 years; the other three accused were sentenced to imprisonment for a period of 5 years for destroying the evidence. It was also held that the juvenile will be tried in the juvenile court and the last accused was acquitted because of lack of evidence against them.

The case remained in the news for a long time; it filled the headlines with distress and widespread condemnation. People were out on roads in Jammu and Kashmir soon after the dead body of the girl was found which

also speeded the trial in the court and the convictions were pronounced in the subsequent year.

- The Unnao rape case of 2017 was again very terrifying and terror- struck case where a 17 year old girl was gang raped in Unnao, Uttar Pradesh. She was a minor. The girl was kidnapped and raped and one of the accused was a former leader and Member of the Legislative Assembly of the political party, BJP. The politician was convicted for the offence of rape on 16 December 2019 and was sentenced to imprisonment for a term of 20 years on 20 December 2019.

- Shakti Mills gang rape case was a Mumbai gang rape which refers to the incident in which a 22 year old photo journalist was gang rape in August, 2013 by five people out of whom one was a juvenile. She and her colleague were in Shakti Mills compound for an assignment. The accused there tied her colleague with a belt and then raped her in front of him and took pictures of her during the sexual assault and threatened them to leak them in public if they tried to file a complaint against them. On 20 March, 2014, a Mumbai Sessions court convicted all the five accused. The court awarded death penalty to the three repeat offenders, the other offender was given the punishment of life imprisonment, the juvenile gets a punishment of a term which extended to 3 years in a reform school.

When such events happen, the belief of a person on humanity shakes from its ground. There are many cases which happen on the daily basis. The number has increased so much that it is difficult to even keep a count of it. Some of the cases draw national interest while others remain covered and suppressed. The cases trembles the victim and shatter



them to the ground and they are unable to revive from this pain if they survived through such heinous offence. There are many more cases which are recent, the counting is endless.

### **Conclusion**

We live in a patriarchal society where male desire to dominate. It has now become their nature to dominate and suppress women and as a result, this narcissist behaviour directs them towards the commission of sexual assault. Men are not raised to hear no as an answer and when women resist them, they overpower them sexually without their consent. This sexual assault traumatises them badly from which they are never able to recover. We live in a society where women are considered as a weak object that needs a support of men to govern them. The mentality of the people of our nation is so narrow that they cannot see women standing alongside them and marching together with them. Most of the men want women behind them, working under and in accordance to their orders and when women rebel against this they are frustrated and cannot take this in. As a result they rape women to show that they have regained their control over them. The women, minors, kids have all come in the category where the equal number of cases are filed where the victims are the female of all the ages.

The courts should increase speedy trials so that the justice is not delayed to the victim and the family. Rape cases should be severely punished without any mercy, the same way he committed the crime. The biggest drawback in our system where we are lacking is that the laws are not as strict as they should be. International laws are so illiberal and unbending that the all the criminals get a

shiver down their spine seeing the punishment for crimes that the crime rate is low. The crime is spreading in our society like a disease which if not treated will bring a state of complete devastation. We should adopt the deterrence theory of punishment where the criminals resist from committing the crime because of the threat of the punishment. For rape offenders deterrence punishment should be given so that it can be rooted out of the society.

We should make a nation which is safe and secure for a woman to live in. They should be respected and should be regarded a place in the society. The crimes of sexual assault kill the soul of a woman which makes it difficult for them to live with it. Rape and all sexual offences against the women should be stopped. Women have lived with all this from decades and now these crimes against them should be severely punished in equivalence to the pain they have suffered.

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