



RAPE ADJUDICATION IN INDIA

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ABSTRACT

This research aims to contribute an analysis to the existing literature. It aims to add to the prior state of art on the rape laws of India. Keeping in view this general principle of analysis to make present research more focused the already available literature on insanity will be analyzed by researchers by going through the contents and observation of the various works done on the relevant subject. A review of theoretical perspectives, research studies, reports and reviews of government, national and international organizations indicate that offence of rape is multi-factorial and multi-dimensional. There are numerous studies pertaining to sections of laws relating to rape. Laws pertaining to rape and protection of women. International instruments relating to rape and protection of women.

RESEARCH QUESTIONS AND METHODOLOGY

- Defining the term ‘rape’?
- What are the relevant statutory and constitutional provisions regarding the crime of rape?
- What is the judicial perspective pertaining to sexual violence?

- State the comparative study of rape law before and after the Criminal Amendment Act, 2013.

Methodology applied to conduct this research is content analysis and descriptive method. The present study is a doctrinal, non-empirical, descriptive and analytical which includes perusal of mostly published work like researching through archives of public libraries, published academic journals.¹ The judgments of the different law courts of India and foreign nations, statues and codes of different countries including India would constitute the primary source of the research material. Research articles and research papers uploaded online by individual, online blogs and debates, research work presented in national and international seminars and debates but not published, political administrative and private papers will be used as secondary research materials. The different manuals, journals, commentaries and digests, observations of the court judgments, parliamentary debates will also be used as secondary sources for the purpose of this research work. That the legislations formulated are adequate but better implementation is needed. That the judicial approach is satisfactory.

SCOPE AND OBJECTIVE OF STUDY

This paper aims to dissect the issue of RAPE in India from various points of view and suggest measures for relieving this wrongdoing from the country. Utilizing the much-featured episode of assault of a 23-year-elderly person in Delhi, India on 16

¹ Conrad, J. P., & Myren, R. A. (1979). Two views of criminology and criminal justice: Definitions, trends, and the future



December 2012², the examination investigations the conduct of the different gatherings associated with the case with the assistance of some sociological and mental hypotheses. An organized examination through the strategy of main driver investigation was applied to the assault instance of 16 December 2012 to recognize the genuine reason for the issue of assault and propose the activities important to wipe out such reoccurrences in future. This investigation incorporates the examination of various types of assault. Because of the touchy idea of topic this investigation is restricted by utilization of auxiliary information to direct main driver examination. Social ramifications – Despite the way that assault is respected shocking and criminal in nature, the number and the degree of savagery of this wrongdoing has been on an ascent.

In this way, the topic is vital and effective. The examination makes hypothetical and functional commitment on a least investigated subject of wrongdoing against ladies as assault. Numerous advantages could gather from such multi-dimensional examination of the assault case. A superior comprehension of the inspiration driving the assault would most likely bring about taking measures to forestall the issue. Inventiveness/esteem – Though diverse perspectives exist in regards to assault and unified violations, the investigations are scattered in nature and need an all-encompassing reconciliation to dive further into the causes and consequents of assault. This paper coordinates different

points of view as well as investigates the multi-dimensional reasons for the marvel of assault.

REVIEW OF LITERATURE

Research can contribute something to the existing literature only if that research has been carried out after reviewing the existing literature in the field. Keeping in view this general principle and to make present research more focused the already available literature on insanity will be analyzed by researcher by going through the contents and observation of the various works done on the relevant subject. A review of theoretical perspectives, research studies, reports and reviews of government, national and international organizations indicate that offence of rape is multi-factorial and multi-dimensional. There are numerous studies pertaining to Sections such as:

- Laws pertaining to rape and protection of women.
- International instruments relating to rape and protection of women.

MEANING OF TERM RAPE

Rape is unlawful intercourse or penetration done to vagina, anus or mouth of another person with or without force by body part, sex organ or foreign object without the consent. The offender uses violence, actual violence or threats to control others. Some rapists use drugs to get others out of the fight. Crime, no matter who committed the crime, whether it is a stranger, a date, a

² BBC News - Asia, Nirbhaya case: Four Indian men executed for 2012 Delhi bus rape and murder, 20 March 2020, Last Visited 23rd December 2021, Available at: <https://www.bbc.com/news/world-asia-india-51969961>.



friend or a relative.³ Rape is a heinous behavior in which one person exercises precise and complete power and control over another person.

According to the law, rape is often referred to as sexual assault. However, the definition of sexual assault is broader, and the term rape usually refers to sexual intercourse.⁴

Explanation of the term 'Sexual Intercourse' and 'Penetration'

These are the terms that have gone through the most exhaustive change in the new correction of 2013. Before the revision of 2013, sex was interpreted as meaning the infiltration of the male genital organ into the female genital organ as it were. The courts deciphered the term sex as halfway penetration of the male organ inside the labia majora or the vulva or pudenda is adequate to establish sex⁵. The courts have pushed on the way that the profundity of the entrance is not important. It is likewise set out that there is no prerequisite for wounds to be available on the private part of the female to constitute assault. The hymen being ruptured or not is immaterial. In this manner the fundamental state of assault is entrance and not discharge. Discharge without infiltration will comprise an endeavor to assault and not assault really.

These conditions were explicitly referenced by the Supreme Court on account of State of Uttar Pradesh v Babulnath⁶. The court for this situation while digging into the fundamental elements of assault mentioned

the objective fact that to establish the offence of assault it isn't at all important that there ought to be finished infiltration of the male organ with the emanation of semen and burst of hymen. Indeed, even Partial or smallest infiltration of the male organ inside the labia majora or the vulva or pudenda with or with no discharge of semen or even an endeavor at entrance into the private piece of the casualty would be sufficient for the motivations behind Section 375 and 376 of the Indian Penal Code⁷. That being so it is very conceivable to lawfully submit the offense of assault even without injuring the private parts or leaving any original stain.

A significant issue of extending the ambit of Section 375 to incorporate the any real entrance as assault was brought up for the situation of Smt Sudesh Jhaku v KCJ and Ors⁸. The solicitors needed to expand the ambit of the definition to incorporate infiltration of any male body part into any opening in the female's body. This anyway was dismissed by the court which was not for fiddling with the current meaning of the term. The court said that it was important to forestall disarray and disarray in the general public concerning the changed meaning of assault and subsequently Section 375 ought not to be modified.

³ Ashby, W.R., (1968), Variety, constraint, and the law of requisite variety.

⁴ Ajzen, I. (1991), The theory of planned behavior. *Organizational Behavior and Human Decision Processes*, 50, 179-211.

⁵ Bandura, A. (1989), Social cognitive theory

⁶ Supreme Court of India, appeal (Crl.), 648 of 1990, Decided on Aug 12, 1994.

⁷ Indian Penal Code 1860.

⁸ Supreme Court Appeal No 1998 CriLJ 2428, decided on 23 May 1996.



Comparison between the before and after amendments of Rape laws⁹

Offence/Issue	Law before the 2013 Amendment	Criminal Law (Amendment) Act, 2013			
Disobedience of law by a public servant	No specific provision, IPC, 1860.	Punishable with rigorous imprisonment for six months to 2 years and fine	Rape by armed personnel	No specific provision. Public servants include armed personnel. Punishment: 10 years to life imprisonment and fine, IPC, 1860.	fine payable to the victim, that is reasonable to meet medical expenses. Specific offence. Shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life.
Rape resulting in death or vegetative state	Rape and murder dealt with as two separate offences. Rape: 7 years to life imprisonment, Murder: imprisonment for life or death, IPC, 1860.	Specific offence. Punishment 20 years to life imprisonment (rigorous imprisonment) or death.	Responsibility of Hospital	No specific provision, IPC, 1860 and CrPC, 1973.	Punishable with 1 year and/or fine. In cases of acid attacks or rape, all hospitals
Punishment for gang rape	10 years to life imprisonment and fine, IPC, 1860.	20 years to life imprisonment (rigorous imprisonment) and			

⁹ Ayush Verma, Comparison of rape laws before and after the Criminal Amendment Act, 2013, Last Visited 23 December 2021, Available at <https://blog.ipleaders.in/comparison-rape-laws-criminal-amendment-act-2013/>.



		(public and private) are required to provide free medical treatment to the victim and immediately inform the police.			in the IPC, 1860.	
				Touching	Outraging a woman's modesty. Punishment: Imprisonment for a maximum of 2 years and fine, IPC, 1860.	Outraging a woman's modesty: 1 to 5 years imprisonment and fine. Physical contact involving unwelcome and explicit sexual overtures: up to 3 years imprisonment and/or fine.
Acid Attacks	No specific provision. Covered under grievous hurt. Punishment: up to 7 years imprisonment, IPC, 1860.	Specific offence. Punishable with 10 years or life imprisonment and reasonable fine amount to meet medical expenses.		Stalking	No specific provision	Specific offence. 1st offence punishable with 1 to 3 years imprisonment (Bailable). 2nd offence punishable with up to 5 years imprisonment (Non-bailable).
Punishment for repeat offenders	No specific provision, IPC, 1860.	Specific offence. Life imprisonment (rigorous imprisonment) or death.		Voyeurism	No specific provision, Information Technology	Specific offence. Only protects
Age of Consent	Specific provision, since the 1983 amendments in the rape law	18 years.				



	Act, 2000 protects both men and women. Punishment: up to 3 years and/or fine up to 2 lakh.	women. 1st offence punishable with 1 to 3 years imprisonment and fine. 2nd offence punishable with 3 to 7 years.	The requirement to fast track	No requirement to fast track sexual offence cases, CrPC, 1973.	Trial to be held on a day-to-day basis. In case of rape cases, trial to be completed in 2 months of the filing of the charge sheet.
Other forms of rape	In the absence of penile-vaginal penetration offence of outraging the modesty of a woman punishable with maximum 2 years and fine, IPC, 1860.	Specific offence. Punishable with 7 years to life imprisonment (rigorous imprisonment).	Compensation	The State government has to prepare a compensation scheme for the rehabilitation of victims. The state or district legal service authority is to make compensation awards, CrPC, 1973.	Compensation awarded by the State is in addition to what is payable by the accused.
Protection against disclosure of the identity of the victim	Provided in case of rape, custodial rape, rape of a judicially separated wife, abuse of power to obtain consent. Punishable with imprisonment for up to 2 years, CrPC, 1973.	Protection extended to victims of repeat offenders as well.	Previous sexual history	No specific provision barring the use of previous sexual history in rape cases, IEA, 1872.	Bars the use of past sexual history in determining consent of the victim. Bars evidence or questions in the



		cross-examination of the victim as to the general immoral character of the victim or past sexual history with any person.
Presumption of consent	Required the victim of rape to prove that she did not consent, IEA, 1872.	Shifts the onus on to the accused to prove that consent was given.
Punishment for rape	7 years to life imprisonment and fine.	10 years to life imprisonment and fine.

report. However, the Supreme Court declined to change the definition of penetration on the grounds that doing so would cause uncertainty and anarchy in the legal system, and held that it was up to the legislature, not the court, to consider amendments to the existing rape legislation in the public interest. The Protection of Children from Sexual Offences Act of 2012 was enacted as a result of this.

To protect children from sexual abuse, parliament passed separate, less ambiguous, and more strict legislation for the first time, which focuses solely on legislative provisions that effectively address child sexual abuse and exploitation. The Act went into effect on November 14, 2012. It has 46 clauses aimed at protecting children from sexual assault, harassment, and pornography. It also establishes special courts to handle offences under the Act. There was previously only one 'Statutory Rape' clause in the IPC, which dealt with rape involving a girl child under the age of 16, but this Act is gender-neutral. It recognised sexual offences involving both girls and boys, which had previously gone unnoticed.

WHY WAS THE POCSO ACT OF 2012 INTRODUCED?

The amendment also called for a broader definition of the term "penetration" to include all types of penetration, such as vaginal, oral, and finger-vaginal penetration. Sexual abuse of minors, particularly underage girls, via means and methods other than penile/vaginal penetration is widespread and can take the form of penile/anal penetration, penile/oral penetration, finger/vaginal penetration, or object/vaginal penetration, according to the

AMENDMENT MADE TO PROSECUTE JUVENILE OFFENDERS

The term "juvenile" refers to someone who has not reached the age of maturity, meaning that he is not mature enough to comprehend the nature and consequences of his acts. One of the six defendants in the Nirbhaya case was a juvenile offender under the age of 18¹⁰. The media and civil society portrayed him as the most terrible face of the horrible act. It was questioned why he should not be treated "as an adult for an adult offence." This

¹⁰ *Ibid* at 1;



resulted in a modification to the Juvenile Justice Act, resulting in the Juvenile Justice (Care and Protection of Children) Act, 2015 Act, which classified crimes into three categories: minor offences, serious offences, and heinous offences. If a youngster between the ages of sixteen and eighteen has committed any serious offence in a legal battle, the act of juvenile justice handles him as an adult. The Juvenile Justice Board will investigate the case to determine if it was done by a 'kid' or a 'adult.'

The Juvenile Justice laws aim not to kill child criminals. But aims at a way to restate and to place them back in society.

The Juvenile Justice Board will investigate the case to determine if it was done by a 'kid' or a 'adult.' In Kathua¹¹, a district of Jammu and Kashmir, an 8-year-old girl was raped. She was allegedly held captive in a Shrine for several days, raped repeatedly, and then murdered. As a result, the Criminal Amendment Act of 2018¹² was passed, increasing the minimum punishment for rape against girl minors of all three age groups. If the victim is under the age of 12, the offender risks a minimum term of 20 years, up from the previous 10 years. The death penalty is the most severe sanction available. The minimum punishment for gangrape of a child under the age of 12 is a life sentence (formerly 20 years), with the death penalty as the maximum.

CONCLUSION AND SUGGESTIONS

Upon considering the above facts we can conclude that the loopholes in the original law were first fixed by the Criminal Amendment Act, 1983 and the loopholes uncovered by the Amendment Act, 1983 were later on fixed by subsequent Amendment Acts. The Criminal Amendment Act, 2013 was very vast in its nature as compared to the previous one. It introduced a changed definition of rape and widened its scope, various new forms of offences against women, new forms of rape that includes means of penetration and other body parts of a woman which can be used for such penetration, enhanced punishment for offences, various procedural laws dealing with rape offences. In other words, it tried to cover all the necessary aspects.

After the Nirbhaya case, the government of India announced the Nirbhaya Fund of Rs. 10 Billion in the 2013-2014 Union Budget to enhance women's safety and security in public spaces. However, the Act of 2013 was gender-biased, it completely ignores the fact that a man can also be a victim of such a crime. The lawmakers completely ignored the provisions for incept rape. This Act gave immense power in the hands of a woman. Justice Kailash Gambhir of Delhi High Court stated that penal provisions for rape are often being misused by women as a "weapon for vengeance and vendetta" to harass and blackmail their male friends by filing false cases to extort money and to force them to get married. The Act in itself

¹¹ Sparsh Upadhyay, Kathua Rape-Murder Case: P&H High Court Suspends Sentence, Grants Bail To Cop Convicted For Destroying Evidence, Last accessed 23 December 2021, available at : <https://www.livelaw.in/news-updates/kathua-rape->

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¹² Indian Penal Code 1860.



is not sufficient to redress and seek justice against such heinous offences. The Government of India needs to make colossal investments in building the necessary infrastructure to deal with the crimes supplemented by meaningful reforms in the judiciary and modernisation of the police system across the whole of India.

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