



## Changing dimension of rape laws in India

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### Abstract

Rape is one of the most horrifying and dreadful crime committed against women every few minutes all round the world. The condition of women is not good in present times however the status of women during ancient times was completely different than what position women holds in the society today. Women were highly esteemed in ancient India and religion was highly valued, they were regarded as Shakti goddesses. Hindus had the belief that Lord Shiva's body was divided into two half, one of which was feminine and the other male. Rigveda Sanskrit hymns are among the oldest sacred texts, and they suggest that in ancient India, women had the same educational opportunities, marriage was not forced upon them, and they had full rights and occupational freedom in the religious sector too. However, a son was still preferred over a daughter.

Even during the epic era, women held honourable and respected positions in the Ramayana and Mahabharata. As specialization occurred, men began doing more technical and scientific work while women continued to do domestic work. This led to social, political, and economic changes that began to affect women's status in society. In the past, both men and women performed specific jobs for their subsistence. Due to increasing discrimination between both men and women, women were considered in equal and were even objectified by the male section of the society. Such degrading status of women created by society led to an increase in crimes against them. Rise in rape against women led to creation of several codes and laws in India, however they have gone through many changes over the years. This paper is thus determined towards discussing the evolution of rape laws in India.

**Keywords:** Repere, POCSO, Rigveda, custodial rape, marital rape

### Introduction

Rape is the most heinous and savage act that violates a woman's bodily integrity and honour. It is regarded as an act against not only the woman but also all of humanity. It has been observed in a wide variety of cultures, including Roman, Greek, and even Indian. Rape was a common motif in myths and legends despite the fact that most societies have recognised it as a crime. During this time, it had also become a consideration to punish the rapist. The idea of rape and its penalties were also prevalent in mediaeval times. To punish offenders, the modern era has adopted penal norms. Rape is the most common crime in India, and it's getting worse every day. The Indian Penal Code was adopted in 1860 after being initially established in India by the British East India Company. The IPC has undergone numerous revisions over the years, particularly in regards to the rape laws. The many modifications to rape laws since 1860 are covered in this article.

The Latin term "reperere," which means to seize or take something—again, implying property—is where the English word "rape" originates. Compensation for the crime was offered to the fathers or husbands. According to the code of Hammurabi, one of the earliest codes of law known to man, if a person raped a virgin, then the father of the victim would receive recompense, and the victim would be ultimately married to the offender. However, if the lady who was raped was married, that made her an adulteress, and both she and her rapist would be put to death.

In the 1860s, the IPC gave first definition of rape. It was defined as engaging in sexual activity without a woman's knowledge or consent; this included consent gained by putting the victim or anybody else she cares about in danger.

The next 100 years or so saw little change in the definition of rape.

### Rape under Indian penal code (IPC), 1860

According to the original provision for definition of rape under Section 375 of IPC, a male is said to have committed rape, if he have done sexual intercourse with a female in following circumstances:

- Against her will
- Without her consent
- With her consent but that consent is not a free consent. Her consent has been obtained by coercion or any undue influence on her.
- With her consent, when the man is pretending to be her and has obtained such consent because she believes him to be her lawfully wedded husband.
- With her consent, but she is not in a prudent mental health to give such consent or to understand the nature of such act to which she has given the consent because of unsoundness of mind or intoxication.
- When she is under 16 years of age because minors consent is no consent.

### Evolution of rape laws in India

#### The criminal law amendment act, 1983

A very remarkable amendment was made in the Indian Penal Code (IPC), 1860 after the adjudication of the case of Tuka Ram & Antr v. State of Maharashtra or popularly known as Mathura Rape Case. The brief facts of the case are that three inebriated police officers were accused of raping a sixteen-year-old Adivasi girl called Mathura in 1972 while the girl was under their custody. The girl then disclosed the details of incident to her family and her family members

encouraged her to bring a claim against the police officers, so she did, however when the case went to the court, the lower court found the victim girl to have “loose morals”, dismissed the petition and cleared the police officers. An appeal was then made to the Hon'ble Bombay High Court and thereafter the Hon'ble Court overturned the lower court's decision after hearing the appeal.

Later, a further appeal was made to the Hon'ble Supreme Court wherein the decision of the Hon'ble Bombay High Court was overruled by the Hon'ble Supreme Court and the court determined that Mathura had not resisted the advances made by the police officers since neither she nor any obvious injuries to her body indicated that she had raised an alarm. The court further observed that Mathura might have encouraged the police officers herself to engage in sexual activity with her because she was accustomed to it. This caused a nationwide outrage across the nation.

According to attorneys, the court made its ruling based on the societal taboo of premarital sex rather than on solid evidence. This taboo led to the ‘submission’ during rape being misinterpreted as ‘consent’. Women’s organizations from all throughout the nation demonstrated in favour of changing the law. The Indian Evidence Act’s Section 114(A) underwent a revision in 1983. The term “custodial rape” was coined to describe rapes committed on women while they were in the care of governmental officials. The court should assume that the lady is telling the truth when she claims that there was no consent because this change made consent an essential component of rape. This amendment also made it unlawful to reveal the victim’s identify or to “assassinate” the victim in court.

Rape laws underwent significant revisions as a result of the Mathura custodial rape case, in which the culprits were given a free pass by the Supreme Court. Regarding rapes perpetrated by police officers, the term “custodial rape” was introduced to the definition of rape. It resulted in the addition of 114 A to the 1872 Indian Evidence Act. This new provision applied to custodial rapes and presumed a lack of consent in certain circumstances if the victim so stated. The IPC, 1860 was even amended to include Section 228A, which made it illegitimate to reveal the identity of victims of some crimes—rape being one of them—and forbade character assassination of those victims. Despite being forbidden, cross-examination was not a part of character assassination. This indicated that when a victim testified, attorneys made it a point to degrade her by inquiring concerning her sexual history and to undermine her testimony by presenting the victim as “immoral” to the judges.

#### **Amendment to the Indian evidence act, 2002**

In a PIL, an NGO by the name of Sakshi made the point that the victim’s cross-examination was still ongoing and that the victims were hesitant to report the rape. This was due to the defense’s primary goal, which is to undermine the victim’s sexual integrity and right to privacy instead of showing them compassion. In light of this, the Supreme Court requested that the Law Commission examine the rape legislation. They came to the conclusion that the provision in Section 155(4) of the Indian Evidence Act was what hindered rape victims from filing a rape report. They thought the defence lawyer might still attack the credibility of a rape victim’s testimony and assert that she had a morally dubious character. After this rule was changed in

2002, it was no longer permitted to question the victims on the other side.

#### **POCSO- protection of children from sexual offences**

Between the year 2001 to 2011, the national crime bureau observed a marked rise in incidents of child abuse. Prior to this, the statutory rape clause—which made having sex with a minor underneath the age of sixteen illegal regardless of consent—was the law governing sexual offences against children. The POCSO (Protection of Children from Sexual Offences) Act of 2012 was passed due to the fact that family members of the victim are typically the perpetrators of child abuse. In these situations, the police were in control of the victim’s care throughout the trial. This law recognised different kinds of penetration in addition to peno-vaginal penetration and was gender-neutral. Everything from child sexual exploitation to child abuse was covered by this Act.

#### **Nirbhaya case & the criminal law amendment act 2013**

A physiotherapy intern was viciously gang-raped in a moving bus on December 16, 2012; she was afterwards thrown from the bus and eventually passed away from her injuries a few days later. Due to the brutality of the crime, the Nirbhaya Gang Rape Case rocked the entire nation and received extensive media coverage. Because of the widespread public indignation, the government decided to modify the laws to ensure that a crime of this magnitude would never occur again.

The 2013 Criminal Amendment Act and the Juvenile Justice Act were the result of this. The criminal amendment of 2013 broadened the scope of rape and enhanced the penalty for gang rape from 10 years to life to 20 years to life. In addition to the addition of new charges like stalking, voyeurism, and acid attacks, the minimum sentence for rape, which had not altered since 1860, was increased from 7 to 10 years. In cases when the victim was slain or left in a state of neglect, the death sentence was also stipulated. Following the famous Aruna Shanbaug case, the definition for vegetative state was finally expanded to include it.

#### **Asifa Bano, kathua rape case**

A group of men abducted and murdered an 8-year-old girl named Asifa Bano in the Kathua area of Jammu & Kashmir in January 2018. The primary suspect was a priest from the temple where the incident had occurred. National protests and a demand for tighter rules resulted from this terrible occurrence. This case was extensively racially and ethnically politicized against the backdrop of the political upheavals occurring in Jammu and Kashmir. This prompted the 2018 Criminal Amendment Act, which modified POCSO primarily because the rape was committed against a child. For the crime of raping a child under the age of 12, the statute made the death penalty feasible; the previous minimum sentence was 20 years in prison. A new section of the IPC was added that dealt with the crime of rape against a person under the age of 16, for which the penalty ranged from 20 years to life in prison.

#### **Criminal law amendment act, 2018**

On July 23, 2018, the Ministry of Law and Justice introduced the Criminal Law Amendment Bill 2018, which was later approved by the Lok Sabha and Rajya Sabha on July 30 and August 6 respectively. This measure intends to enforce the death penalty for those found guilty of raping a

girl under the age of 16 or 12 and to offer compensation to the victim of sexual assault. It repealed the ordinance that the President of India had issued in April and made pertinent changes to:

- In Indian Penal Code, 1860
- Criminal Procedure Code, 1973
- Further even in Indian Evidence act, 1872
- Protection of Child from Sexual Offences (POCSO) 2012

### **Striking features of the criminal law amendment act, 2018**

This Act makes necessary adjustments to our penal codes to safeguard girls from the horrible crime of rape. These are what they are:

- a. Earlier, punishment for rape was 7 years however with new amendment it carries a minimum sentence of 10 year. This is a great step towards creating a fear amongst the criminals with respect to their own life and liberty after performing such a humiliating act.
- b. The concept of anticipatory bail shall not be applicable and the accused will not get anticipatory bail in the cases wherein the rape happened with a girl while she was under the age of 16.
- c. As per the new amendment, any individual who rapes a girl who is under the age of 16 will be punished for minimum 20 years.
- d. Convicted individuals are required to pay the compensation to the victim, which will be used to cover the victim's medical costs and rehabilitation costs. Additionally, the payment will be fair and reasonable.
- e. A person who rapes a girl under the age of 12 will likely face a life sentence in jail, a strict 20-year prison sentence, or maybe the death penalty.
- f. No matter where the crime of rape is committed, the police officer will be penalised with a strict prison sentence of at least 10 years.
- g. According to the new amendment, those persons found guilty of gang raping a girl under the age of 16 will face life imprisonment in jail along with hefty fine.
- h. There have been changes brought in the matter of investigation too *viz.* In the cases of rape, the police officers are required to complete their investigation within two months of the FIR being lodged by the victim.
- i. The Act also provides for the provision of death penalty or a harsh life sentence in prison for anyone found guilty of gang raping a girl who is under the age of 12.

### **Amendments in the Indian Penal Code (IPC), 1860 Criminal amendment act of 2018 inserted three new sections in the Indian penal code, 1860.**

#### **Section 376AB**

This section, which was added immediately after Section 376A, states that anyone found guilty of raping a woman under the age of 12 will be sentenced to a minimum of 20 years in prison and up to life in prison. This is meant to serve as a reminder to the offender for the remainder of their natural lives that what they did was wrong and against the law. In addition, they can also be penalized for a fine or even death can be the ultimate punishment depending upon the severity of the case and decision of the court. Additionally, they are liable for paying compensation,

which must be just and reasonable to help with victim rehabilitation and cover medical expenses.

#### **Section 376DA**

After Section 370D, Section 376DA was added, which states that whenever a woman under the age of sixteen is raped by one or more people acting in a group or doing something for the sake of a common objective, each of those people is deemed to have committed the crime of rape and is subject to life in prison, which suggests that the person intends to reflect on the fact that what he did was completely wrong and off-base or, in a legal sense, a reminder for that Additionally, they are liable for paying compensation, which must be just and reasonable to help with victim rehabilitation and cover medical expenses.

#### **Section 376DB**

According to this section, if a woman under the age of 12 is raped by one or more people acting in concert to further a common goal, that person or people will be considered to have committed the crime of rape and will be sentenced to life in prison, which implies that the person will be reminded throughout their natural lives that what they did was completely wrong and immoral, as well as a fine or the death penalty. Additionally, they are responsible for paying compensation, which must be fair and reasonable in order to cover medical costs and aid in victim rehabilitation.

### **Conclusion & suggestions**

Since being initially enshrined in the Indian Penal Code in the 1860s, rape laws in India have come a long way. Many of the legislative changes which have been bought in the rape legislation are progressive, however it is extremely essential to ensure the proper implementation of those laws as even after having so many legislations regarding rape, still the victim and her family gets deprived of justice due to long and unnecessary delays made by judicial system in India.

The condition in India is such that laws and amendments are being made and at present, there are several rape laws in place, but the number of victims—including minor girls—is steadily rising, thus shattering the very souls of every women. In India, even the idea of marital rape is nonexistent which is also a major issue for the Indian judiciary to tackle with.

In response to the growing public desire for stricter anti-rape laws, the Amendment 1983 made some significant adjustments to the existing laws against rape. It amended Section 376 IPC and strengthening the penalties for rape. It also stipulated that police officers and employees of jails, remand facilities, and other legal detention facilities will receive enhanced punishment of at least 10 years in prison. The Act also added a new Section 114-A IEA, which raised a presumption as to absence of consent in cases of gang rape, rape on pregnant women, and custodial rape and etc. Even after such an amendment, the cases kept coming and rising heavily in number which then led to several amendments including the ones made in the year 2013 then 2018 which brought significant changes to the existing rape legislations. Apart from laws, today there are several organizations and institutions existing to protect women, however the issue with some of the anti-rape organizations is that they focus more on educating women how to protect themselves rather than training males not to rape which is

not the right way. It is crucial that parents instil in their son the value of and the role played by women in society. Children also need to be taught from an early age that this world would not exist without women, further the society also plays a important role in the development of children henceforth the society too has a moral responsibility to display women as a very strong, independent and significant section of the society rather than showing her as a vulnerable group in the society, only then the status of women will rise up.

### References

1. <https://articles.manupatra.com/article-details/An-Extensive-study-of-Rape-Laws-in-India>
2. <https://blog.ipleaders.in/indian-rape-laws-nutshell/?amp=1>
3. <https://www.legalservicesindia.com/article/880/Change-in-definition-of-Rape-in-India.html>
4. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3619807](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3619807)
5. <https://www.google.com/amp/s/www.lawinsider.in/columns/landmark-judgements-that-shaped-the-rape-laws-in-india%3famp>