

# Evolution and Major Criminal Law Amendments Relating to Rape Laws in India

Anita Sharma<sup>1\*</sup> Dr. Ruchi Sharma<sup>2</sup>

<sup>1</sup> Research Scholar, Maharishi Arvind University, Jaipur-302041

<sup>2</sup> Assistant Professor

**Abstract – Rape laws have gone through many changes over the years. This article gives an overview of how rape laws evolved in the world and then how they specifically evolved in India. It also makes recommendations on how to fill in the gaps left by the current legislation, as well as possible fixes. Criminal law in India governs and prohibits the offences or crimes and punishes those who commit crime(s) in accordance with the laws. All the offence or crimes committed in India are all deemed as offences or crimes against the State. In India, generally Criminal law comprises of three major Statutes i.e. Criminal Procedure Code,1973, Indian Evidence Act,1872 and the Indian Penal Code,1860. There are other Criminal laws in India like the Dowry Prevention Act The Narcotic Drugs and Psychopathic Substances Act, etc.**

**Key Words – Rape Laws, Statutory Rape, Marital Rape, Code of Hammurabi, Criminal Procedure Code,1973, Indian Evidence Act,1872 and the Indian Penal Code,1860, POCSO Act ,PIL, Custodial Rape**

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## INTRODUCTION

When rape was first introduced, Even when they were married or had dads, women were treated as property, and therefore it was regarded as a criminal offence property. Rape has now been elevated to the level of a felony against the person who was raped. As with many Latin words, "rape" originates from the verb "reperere," which meant to "seize or grab something which again did indicate possession". The husbands or fathers were given compensation for the crime. The Code of Hammurabi, one of the earliest sets of laws known to man, has this documented according to it if you raped a virgin, compensation was paid to the father and the victim was married to a perpetrator. However, if the woman who was raped had a husband, her rapist would consider her an adulteress and sentence her to death. Hebraic law followed an eye for an eye philosophy, thus when a man raped his daughter, his father was permitted to rape his daughter's lover. However not all laws were bad the Celtic laws in Pre-British England did recognize rape against women is committed in the woman's absence as an act of violence and even made a distinction between no consent, and being in a state where you are unable to give consent i.e. intoxication. These regulations, on the other hand, were an outlier and not the rule in the early Rape legislation. Until the 12th century, rape was not seen as a kind of assault on the victim. To my knowledge, the Statutes of Westminster, passed in the 13th century, were the first set of such rules, giving the crown broad authority to pursue

criminal charges against anyone who raped women and girls. Another way of saying this is that conceptions of rape dating back to the early 18th century are still relevant today.

## EVOLUTION OF RAPE LAWS IN INDIA

In the 1860s, the Indian Penal Code included rape as a crime. To be clear, it was defined as any sexual act done on a female victim or anybody else who matters to her without her consent. For the following 100 years or more, rape's legal meaning remained unaltered. After the Supreme Court's acquittal in the Mathura custodial rape case, the country's rape laws underwent significant revisions. A new term, custodial rape, was introduced to the dictionary to describe rapes carried out by police. The Evidence Act of India of 1872 was amended to include Section 114A as a result. This new Section applied to rapes that occurred while the victim was in the custody of the perpetrator and considered that the victim had given her permission to the sexual activity. Section 228A of the IPC, enacted in 1860, made it a felony to reveal the identities of victims of certain crimes, including rape. It also banned character assassination of those who had been the victims of crimes covered by this section. Despite the fact that it was illegal, character assassination did not entail cross-examination. Lawyers would make an effort to humiliate a victim by interrogating her about her sexual past and presenting evidence to the courts that the victim was 'immoral,' when she testified.

Infringing on the victim's sexual integrity inflicted further anguish. Following a PIL, the Supreme Court directed the law commission to make recommendations on how to improve our rape laws. Indian Evidence Act Section 155(4) was amended as a result of this. Cross-examination of victims was outlawed following the amendment.

### POCSO Act

From 2001-2011 the National Crime Bureau recorded a large rise in child rape cases before this the law regarding sexual offenses against minors was the Statutory rape clause which criminalized sexual intercourse with a minor below 16 years regardless of consent. A new law, POCSO, was created in 2012 since the perpetrator in most cases was someone close to the kid. The Police were in charge of caring for the young victim during the trial in each of these situations. This statute was gender-neutral since it accepted various types of penetration in addition to peno-vaginal penetration as legitimate. Child pornography, abetment to child abuse, sexual harassment of children was all covered in this Act.

### NIRBHAYA GANG RAPE CASE

There was an intern in physiotherapy gang-raped on a bus on December 16, 2012. Because of her injuries, she passed only a few days after being thrown from the truck. The media paid close attention to the Nirbhaya gang rape case, which stunned the country with its ferocity. Now that the government sought to modify the rules to avoid another crime of this magnitude from occurring in the future, there was a great deal of public outcry. In 2013, a criminal amendment legislation and a juvenile justice act were passed in response to this. As a result of a penal amendment passed in 2013, the definition of rape was broadened and the maximum sentence for gang rape was increased from 10 years to life to 20 years. There were new crimes including stalking, voyeurism, and acid assaults as well as an increase in the sentence for rape from 7 to 10 years, which had been unaltered since 1860. This meant that the death penalty was a possibility for those who committed murder or were left in a vegetative state. First usage of the phrase "vegetative condition" due to the landmark Aruna Shanbaug case.

### Asifa Bano's Rape Case

A group of men raped and murdered an 8-year-old girl called Asifa Bano in the Kathua region of Jammu & Kashmir in January 2018. The primary suspect in the rape was a priest who worked at the temple where it happened. A huge uproar and calls for stricter rules followed this tragic occurrence. This case was extremely racially and ethnically politicised in the context of political upheaval in J&K at the time. This led to the 2018 Criminal Amendment Act, this Act mainly changed POCSO as the rape was against a child. The Act established the death penalty as an

option for anyone convicted of rape of a juvenile under the age of 12; the previous standard was life in prison. Another section of the IPC was added that dealt with the crime of rape against a juvenile under the age of 16, and the sentence ranged from 20 years in prison to life.

### PROBLEMS IN INDIAN RAPE LAWS

Outrage over individual rape instances prompts the government to pass tougher legislation in an attempt to appease the public. This may be seen in the way our rape laws have shifted over time. Raising a child in India is a common crime, and the cases we know about are only a fraction of the overall. A staggering 99 percent of all sexual assaults in India go unreported. Victims of rape often know the perpetrators. Having a death penalty hanging over their heads makes it impossible for victims to come forward and report a crime that has gone unpunished. A tougher penal code with capital penalty encourages rapists to murder their victims so that the victim has no way to protest. The number of people convicted of rape has decreased in countries where the death penalty is used to punish the crime, such as Pakistan, Afghanistan, and Bangladesh. They aid rapists instead of victims since there isn't a reduced penalty available. The Supreme court in its judgment of Independent thought vs. The Union of India correctly interpreted down Section 375's Exemption 2 and found that a man's sexual intercourse with his 15-18-year-old wife amounted to rape since this exception was antiquated and out of step with modern laws designed to safeguard women. An difficulty with this scenario is that a 15-year-old girl's marriage to an adult is voidable at her discretion, but it is not totally void. This legitimizes child marriages, which should be ruled null and invalid in every instance. Given India's traditional views on marriage, it's unrealistic to assume an adult wedded to a kid won't make an effort to bring their union to a successful conclusion. In the absence of any reporting, this will not be a crime, and considering the prevalence of unreported crimes in India, the chances of it being reported are slim. This exploitation of young women will be ended if all marriages between minors and adults are declared null and invalid.

### STATUTORY RAPE

" Code of Criminal Procedure, Chapter XVIII, Section 375 states that any male who engages in sexual activity with a girl under the age of eighteen whether with or without her consent commits Statutory Rape. (Amendment of 2013). POCSO is a piece of legislation passed in 2012 with good intentions to combat child sex offences. There are several disadvantages to these rules, such as the fact that consent is now required to engage in sexual behaviour with someone under the age of 18, regardless of whether that person gives their assent. As previously stated, this is because children are

regarded unable to offer informed permission due to their lack of understanding about sex. If two consenting juveniles or an adult and a minor are involved, there is no gender discrimination in the severity of the punishment. It's estimated that 11% of females had their first sexual experience before the age of 15, and 39% had their first sexual experience before the age of 18. These rules are frequently invoked by the parents of young women whose parents disapprove of their relationship because of differences such as religious beliefs, social class, or other factors. Sadly, in a small number of these situations, the boys involved are wrongly convicted under the statutory rape provision and sentenced to prison terms. A number of states in the United States have Romeo-and-Juliet laws that penalize consenting minors only if the age difference is greater than three years. Although this is true, the Madras High Court recently ruled that homosexual acts committed by teens older than sixteen were not illegal acts. Such changes to the legislation are required in the 21st century to keep it relevant.

## **MARITAL RAPE**

When a stranger performs it, neither he nor I have any prior knowledge of the person. Obviously, he isn't doing it out of malice toward me. Your husband's involvement makes it more personal. You claim to know who this man is. He's tuned into my feelings. A kind of abuse is when someone who is close to you does something like this to them. Unfortunately, India is one of the 36 nations in the world where marital rape is still a crime. Over 100 nations have made it a criminal offence. CEDAW, as well as the J. S. Verma committee established in the wake of Nibhaya rape, both recommended that India outlaw marital rape. United Nations Committee to End Discrimination Against Women (CEDAW). During the lockdown, there was a record amount of domestic violence and sexual assault against women. However, still, there is no law to protect women from this inhuman crime. Section 498-A, or the domestic violence act, is the sole legal option accessible to women who are victims of marital rape. However, this merely makes it a civil infraction, and the only legal remedies are penalties and protection. The following are compelling reasons to oppose marital rape.

- i) It is against Article 21's guarantee of the right to dignity in life.
- ii) Doesn't satisfy the intelligible difference test since married women age 17 or younger are protected from marital rape whereas women above the age of 18 aren't protected.
- iii) Supreme Court of India vs Union of India & Others, private rights were trampled on. There is no age restriction for married women who are above 18.

Despite the fact that our laws were acquired from the British, India's legal code still permits marital rape

despite England criminalizing it in 1991. The amendments were brought about to Criminal law due to massive change in the structure of committing crimes. In this modern era, the crimes have increased drastically and the ways of commission of the crimes have also undergone changes. The provisions that were drafted about a century ago though stands good in most cases, there are many offences/crimes which were never even thought or heard of before(eg: Acid attack). The amendments have brought about changes to the then existing laws and have also inculcated new types and forms of offences/crimes and also have given them new dimensions and definitions. The following are the most significant changes to Indian criminal law as a result of the four high-profile rape cases that rocked India to its core:

## **THE CRIMINAL LAW AMENDMENT OF 1983**

This case resulted to changes in the Criminal Code in 1972. 1983, which changed the law on rape. Custodial rape in Maharashtra's Desaijanj police station was an unusual occurrence. On the night of 26<sup>th</sup> March 1972, a young tribal girl, aged between 14-16 years who, worked as domestic help went to Desaijanj police station in Gadchiroli district of Maharashtra along with her brother and other relatives to lodge a complaint of her abduction. After receiving the complaint, the policemen sent the girl's brother & other relatives out leaving behind the girl inside the station. Two police officers are accused of sexually assaulting the young woman inside the police station. Sessions Court found no rape charges against the officers since the victim did not complain and was used to sexual encounters. On a High Court of Bombay appeal to the Nagpur Bench, the Sessions' Court judgment was set aside and the accused Policemen were imprisoned. The accused policemen appealed to the Supreme Court of India in 1979 where the policemen were acquitted as there was no suggestive evidence of rape. After few days of pronouncing the judgment in Mathura rape case, there was a huge public outcry and widespread protests by women organizations throughout India and some eminent scholars even wrote letter to the Supreme Court for excluding 'consent' in Mathura rape case. In the end, this resulted in the 1983 Criminal Law Amendment. The Amendments that were made in various Laws are as follows:

## **INDIAN PENAL CODE, 1860**

Section 228A - Identifying the victim of certain crimes, etc., by disclosing their name., Indian Penal Code 1860 [Provides for criminal penalties for anyone who prints or publishes the identity of a rape victim, including the victim's name or other identifying information, unless the disclosure is made with the victim's consent, by victim's next of kin, or under an order of the court, or by or with consent of the victim.]

Section 375 - Rape, Indian Penal Code 1860

Section 376 - Punishment for Rape, IPC 1860

Section 376A - Intercourse by a man with his wife during separation, IPC 1860

Section 376B - Intercourse with public servant with woman in his custody, IPC 1860

Section 376C - IPC, 1860: Interaction with prison, remand home, etc. superintendent

Section 376D - Gang Rape, IPC, 1860

Section 498A - Guy subjecting lady to cruelty under IPC (1860), spouse or a close family member of the man [Anyone who exposes a woman to abuse by bringing her spouse or a relative of her husband may be penalised with up to three years in jail and a fine.]

### CODE OF CRIMINAL PROCEDURE, 1973

Section 327(2) & 327(3) - Court to be open, Code of Criminal Procedure 1973 [Section 327(2) In case of rape trial, in camera proceedings to be conducted; Section 327(3) it's against the law for anyone to publish or print anything about the proceeding].

Section 174(3) - The police should look into any reports of suicide and make an official record of it., Code of Criminal Procedure 1973 [An official is required to submit the body of a deceased lady who died within seven years of her marriage to a Civil Surgeon or other government-appointed medical professional for examination.]

Section 198A - Criminal case under Section 498A of the IPC, 1973 Code of Criminal Procedure

### INDIAN EVIDENCE ACT, 1872

Section 113A - The Indian Evidence Act of 1872 contains a presumption that a married woman abetted her husband's suicide.

Section 114A - Presumption as to absence of consent, Indian Evidence Act, 1872 [In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the IPC(custodial rape), In cases where the accused has been proven to have engaged in sexual activity with another person and it is unclear whether the victim's consent was obtained, the court will assume that she did not provide her consent if the victim says so in her testimony before the court.

### CRIMINAL LAW AMENDMENT OF 2013

After the rape case of Nirbhaya in 2012, a change in criminal law was made in 2013. The rape of a 23-year-old physiotherapy student travelling in a private bus through southern Delhi with a friend shocked the world. Gang members raped and tormented the young woman. After a few days in Singapore for treatment,

she passed dead. Due to the widespread public outcry and calls for stronger and more strict legislation following the occurrence, the Criminal Law Amendment, 2013, was enacted in 2013. The amendments that were made are as follows:

### IPC, 1860

Section 166A - Public Servant disobeying direction under law, IPC 1860

Section 166B - Punishment for non-treatment of victim, IPC 1860

Section 354 - Violence against women with the aim to offend her modesty is punishable under the IPC of 1860.

Section 354A - IPC 1860, prohibits sexual harassment and punishes those who do it.

Section 354B - IPC 1860: Assault or use of unlawful force on a woman with the purpose to strip her

Section 354C - Voyeurism, IPC 1860

Section 354D - Stalking, IPC 1860

Section 375 - Rape, IPC 1860

Section 376 - Punishment for Rape, IPC 1860

Section 376A - IPC, 1860, punishment for inflicting death or a prolonged vegetative condition as a result of rape.

Section 376B - IPC, 1860: Sexual relations between a man and his wife when they are separated

Section 376C - Sexual Intercourse by a Person in Authority, IPC, 1860

Section 376D - Gang rape, IPC, 1860

Section 376E - Punishment for repeat offenders, IPC, 1860

Section 509 - Word, Gesture or Act intended to insult the modesty of a woman, IPC, 1860

### CODE OF CRIMINAL PROCEDURE, 1973

Section 154(1) - Information in cognizable cases, Code of Criminal Procedure, 1973 [In situations involving sexual offences and acid assaults, the statement will be recorded by a female police officer or officer.]

Section 161 - Criminal Procedure Code, 1973, Examining Witnesses [The victim's statement may be audio-video recorded in situations of sexual



assault and rape. The victim's statement will be recorded by a female police officer.]

Section 164(5A) - admissions and statements are recorded for further review and analysis Constitution of the United States of America, 1789 As soon as the commission of the crime is reported, According to IPC 1960, the Judicial Magistrate must record the victim's account. sections 354, 354A, section 354B, section 354C, section 354, Section 354D, and Section 376, section 376A, section 376B, section 376C, section 376D and section 376E in the manner prescribed under Section 164(5) of the Code of Criminal Procedure, 1973.

Section 197 - Code of Criminal Procedure, 1973, regarding Prosecution of Judges and Public Servants It's not required to take any action if a public official commits a sexual offence.

Section 198B - Cognizance of Offence, Code of Criminal Procedure, 1973 [Marital rape cases under Section 376B can only be filed by the wife]

Section 273 - Evidence to be taken in presence of accused, [When a someone under the age of 18 has been sexually assaulted or committed a sexual offence, the court must ensure that the accused will not interrogate that individual.]

Section 309(1) - Power to postpone or adjourn proceedings, Code of Criminal Procedure, 1973 [Rape trials must be held on a daily basis and concluded within two months, if feasible.]

Section 357B - To be paid in addition to the penalties under IPC, 1973 Section 326A or Section 376D [Medical practitioner has to mandatorily inform police]

Section 357C - Treatment of victims, Code of Criminal Procedure, 1973 [Section 326, Section 376, Section 376A, Section 376B, Section 376D, & Section 376E of the IPC, 1860 require medical professionals to immediately report any crime to the police, even if the victim does not wish to report it. As a result, all hospitals must provide free immediate first-aid or medical treatment to victims who have been charged under any of these sections.]

## **INDIAN EVIDENCE ACT, 1872**

Section 53A - Evidence of character of previous sexual experience not relevant in certain, Indian Evidence Act, 1872 [The character or prior sexual history of the victim should not be relevant in sexual offence cases when consent is contested on the question of consent or its quality.]

Section 114A - In some rape prosecutions, there is a presumption that consent was not given. [Absence of consent shall be presumed in cases of aggravated rape given under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m),

clause (n) of sub-section (2) of Section 376 of the IPC, 1860]

Section 146 - Questions lawful in cross-examination [When the victim's consent is in doubt, Section 376 through 376E forbids introducing evidence or asking cross-examination questions on the victim's immoral character or prior sexual experience.]

## **CRIMINAL LAW AMENDMENT, 2018**

The Criminal law amendment 2018 was the result of two unfortunate rape cases, one in 2017 at Unnao, Uttar Pradesh and one in 2018 at Kathuna, Jammu and Kashmir. Unnao In Unnao, Uttar Pradesh, a 17-year-old girl was gang-raped in June 2017. When it came to rape charges, the politician at the centre of the investigation was found guilty. He was given a life sentence. When the victim attempted to set herself on fire in front of the accused politician's home in 2018, it made headlines. In 2018, police in Kathuna, Jammu and Kashmir, reported the rape and murder of an 8-year-old girl. It was known as the Kathuna Rape Case. The girl was kidnapped, imprisoned in a shrine, raped, and then killed, according to reports. This incident came to light when the trial began. Both the incidents drew the attention of media and public which protested for amendments in criminal law for rapes. These two incidents led to Criminal law amendment, 2018. The amendments that were made are:

## **INDIAN PENAL CODE, 1860**

Section 376 - (a) in sub-section (1), Instead of the terms "not less than seven years," "not less than 10 years," "not less than life," and "also liable to fine," the words "not less than ten years," "also liable to fine" should be substituted:

- (b) in sub-section (2), clause (i) shall be omitted;
- (c) after sub-section (2), There will be an additional part added, specifically:
- (3) Rape of a woman under sixteen is punishable by a minimum of 20 years in prison and a maximum of life in prison. which means they will be imprisoned for the rest of their natural lives. They will also face a fine.

Section 376AB - Anyone found guilty of raping a lady under the age of twelve will face a minimum sentence of twenty years in jail and a maximum sentence of life in prison, which means they will be imprisoned for the rest of their natural lives, as well as a fine or the death penalty.

Section 376DA - Every one of them is guilty of rape and will be sentenced to life in prison and a fine if they rape a lady under sixteen in a group or with a shared aim.

Section 376DB - Any individual who rapes a woman under the age of twelve while acting in concert with the other members of that group is guilty of rape and must serve a sentence of life in prison, a fine, or the death penalty.

### CODE OF CRIMINAL PROCEDURE, 1973

Section 374 - (4) As to Section 376 of the IPC 1860 when an appeal is made against a sentence issued under the sections of that code (Section 366) It is expected that an appeal will be resolved within six months of the day it was filed (Section 366).

Section 377 - (4) Section 376 of the IPC, as well as sections 376A and 376AB, each have a six-month appeals period. After the sentence has been handed down, you have six months to file an appeal.

Section 438 - (4) This section does not apply to any situation in which a person is arrested on suspicion of committing an offence under Section 376, Section 376AB, Section 376DA, or Section 376DB of the IPC 1860, as defined in subsection (3).

Rape legislation has undergone several revisions throughout the years. This page provides an overview of the global evolution of rape laws, as well as the evolution of Indian rape laws. It also makes recommendations on how to fill in the gaps left by the current legislation, as well as possible fixes.

Section 439(a)(1) - Prior to giving bail to a person suspected of a crime punishable under Section 376, Section 376AB, Section 376DA, or Section 376DB, the High Court or Court of Session should provide notice to the Public Prosecutor within fifteen days of receiving notice of such application before providing bail. (b) immediately following the subsection (1) Section 376 or Section 376AB, Section 376DA, or Section 376DB of the IPC 1860, requires the informant or any person allowed by him to appear at the hearing on the individual's bail application to be present.

### INDIAN EVIDENCE ACT, 1872

Section 53A and Section 146 have been amended to make the provisions compatible with the amendments of other laws.

### CONCLUSION

If rape laws are to serve as a deterrent, courts and legislators must make several adjustments. Punishment sentences usually vary from one to 10 years, although most prisoners get off with three to four years of hard labour and only a minor fine; and in certain situations, when the accused is resourceful or important, they may even pay enormous sums of money and be exonerated. The courts must recognise that a sentence of less than a year would neither discourage or elevate these morally bankrupt criminals, some of whom have beaten and tortured their victims, including little children. As a result, these

offenders should be given life sentences for the sake of justice and society as a whole. The law is still in place, but the number of victims (including minors) is growing, killing the very spirit of vulnerable women in the process. In India, there is no such thing as marital rape. Rape is nearly never committed for sexual satisfaction, contrary to common perception. Sexual acts of violence are defined as "acts of violence" by the APA. As a result of popular pressure for tougher anti-rape measures, the Amendment of 1983 made significant modifications to the previous rape statutes. As a result of this change, rape will now carry a stiffer penalty under Sec. 376 of the IPC. A minimum of 10 years in prison or other detention facilities is also given to police and jail employees who commit rape under this law. Indian Evidence Act, 1872, There is a presumption that consent was not given in gang rapes, instances of pregnant women and custodial abuse under Section 114-A. It removes the infirmity previously attached to a rape victim's testimony that was unfairly attached without taking note of the fact that disclosure of the girls' identity in India, unlike in the overseas countries and The deterrence effect by severely punishing offenders. Arrests by themselves may not elicit a significant response from society. Long jail terms have the potential to change people's conduct. Many well-known jurists and public figures have argued in favour of capital punishment for those who commit rape since it is a more serious crime than murder. Even so, the discrepancy in the Indian Marriage Act regarding the consent age and the age of the wife must be amended.

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### Corresponding Author

**Anita Sharma\***

Research Scholar, Maharishi Arvind University,  
Jaipur-302041