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DEVELOPMENT OF RAPE LAWS IN INDIA

You save yourself or you remain unsaved.

— Alice Sebold

INTRODUCTION

Be it a society which claims to be gender-neutral or a society that is Patriarchal, indifferently every second crime committed in each type of society is Rape. A sexual intercourse with lack of consent with varied reasons like pleasure, revenge or sudden provocation. The voice of the crowd roared high every time a girl was raped but this outrage was always suppressed amidst some political questions, societal obligations, or even some times on the lines of family reputations or delayed justice which resulted in humiliation in the society. With the fast-moving society the concept of feminism and gender neutrality has gained fire and has begun to spread throughout the nation and this has truly resulted in more powerful and strong demand for strict anti-rape laws and strict punishments for the rapist.

RAPE: A HEINOUS CRIME

The word “Rape marks” its origin from the Latin word ‘Rapere’ which means ‘to snatch’ or ‘to carry off’¹. Rape is an act of utilizing force by a man toward a woman who is not his wife in order to have unlawful sexual intercourse in the absence of her will or consent.² It is such a heinous crime that not only physically and morally devastates the victim but also sometimes either causes

¹ Sourya Banerjee, *Good to Know: Laws Related to Sexual Assault and Rape in India*, The Logical Indian, (Nov.6, 2018), <https://thelogicalindian.com/story-feed/awareness/sexual-assault-laws/?infinite-scroll=1> (Last visited on 17th April, 2020)

² *Rape Crimes Defined, Common Defenses and Rape Penalties*, FIND LAW, (Nov.22,2019) <https://criminal.findlaw.com/criminal-charges/rape.html> (Last visited on 17th April, 2020)

her death or even leads to suicide by the victim. Rape is termed to be statutory rape if it is done with a minor who is below the age of consent.

NEED OF RAPE LAWS

Every second news headline in the present day has in it a case of rape and behind it are thousands of cases that could never come in limelights. As per the statistics, in India, every 20 minutes, a rape is committed and only 10% of it is reported, out of which 98% cases are committed by the close friends of family of the victim.³ The figures are themselves a voice towards the need for laws that can act as a safety valve to the rape victims. The strict anti-rape laws are important to help those who cannot report these crimes, provide faster conviction, to curb the crime of Rape completely, and award punishment to rapists as only 24.2% convictions occur out of 10% reported cases.⁴

HISTORY OF RAPE LAWS

The male dominating society of India always treated a woman as property. It was only in 1860, when the Indian Penal Code came into force and the word Rape was recognized. Prior to this Code of 1860, there were two kinds of offences that could be included under rape they were: Theft of property against husband or father. Where the property meant woman and the second offence was sexual abuse.

However from those ancient times itself the Hammurabi Code of the Babylonian Civilizations defined rape as a damage of property against his father if the victim was a virgin. By 1861 major developments occurred throughout the world and the Black women were also by this time allowed to file charges of rape. Later during the feminist movement, the Anti-Rape movements began⁵

³ National Crime Records Bureau (NCRB), Ministry of Home Affairs, Government of India (June 20, 2014). p. 385, <https://web.archive.org/web/20140620023952/http://ncrb.nic.in/CD-CII2012/Statistics2012.pdf> (Last visited on 17th April, 2020)

⁴ Bharti Jain, *Conviction Rate fell from 41% to 24% in 12 Years*, The Times of India. (Sept.12, 2013, 04:11 P.M) <http://timesofindia.indiatimes.com/city/delhi/Conviction-rate-fell-from-41-to-24-in-12-years/articleshow/22473030.cms> (Last visited on 17th April, 2020)

⁵ Kyla Bishop, *A Reflection on the History of Sexual Assault Laws in the United States*, U A Little Rock (April 15, 2018) <https://ualr.edu/socialchange/2018/04/15/reflection-history-sexual-assault-laws-united-states/> (Last visited on 17th April, 2020)

Later in India, after Britishers established their rule the charter of 1833 was passed which enabled the codification of laws in India. The first and most remarkable law was the Indian Penal Code made by Lord Macaulay in 1860. Rape was thus made an offence under the Indian Penal Code under Section 375 which stated that if any sexual intercourse is committed without the consent of the woman or against her will or if the consent is obtained by any fear or intoxication it would be an offence and will be punishable under IPC. The punishment prescribed was minimum 7 Years of Life Imprisonment.⁶

DEVELOPMENT OF RAPE LAWS IN INDIA

Criminal Law (Amendment) Act, 1983

After the enactment of IPC in 1860 and incorporation of Rape as a punishable offence under section 375 & 376 there initially existed no demand for change. It was only after the case of *Tukaram v. State of Maharashtra*⁷ popularly known as Mathura Custodial Rape Case where a girl of 16 years of age was raped by a police officer in Maharashtra. After the case reached the court the session court acquitted the policemen on grounds of absence of any such proof towards the commission of rape. Later the order was reversed by High Court but the Supreme Court on Sept.15, 1978 stated that the intercourse took place but the commission of rape cannot be proved.

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This decision led to a huge discontent among the people and hence many protests began against such a gross miscarriage of Justice.⁸ As a result of this agitation the Criminal Law (Amendment) Act, 1983 was brought up which is known as Criminal Law (2nd Amendment) Act, 1983. Three major changes were made including

- 1) Recognition of custodial rape
- 2) Hiding the identity of the victim, this was made punishable by adding Section 128-A to IPC.⁹
- 3) All the proceedings of Rape cases to be Camera Trials.¹⁰

⁶ Section 376, Indian Penal Code, 1860

⁷ AIR 1979 SC 18 J

⁸ Annapurna Chakraborty, *Critical Analysis of Development of Rape Laws in India: from the social transformation perspective*,¹⁰

⁹ Inserted by act 43 of 1983, Sec.2 (w.e.f.- 25-12-1983)

¹⁰ Section 327, Code of Criminal Procedure, 1973

Also section 114 A was inserted in Indian Evidence Act, 1872 which applied to cases of Custodial Rape. Apart from this, Section 376-A to 376-D were also added in Indian Penal Code. The parliament through amendment of 1983 wanted to make the laws on Rape more realistic but could not stop the crime which was spreading like a forest fire and covered the entire society in its flames. The need of still better and stricter anti rape laws existed. The demand for widening the definition and meaning of section 375 of Indian Penal Code, 1860 was made by an NGO through a PIL and demanded to widen the preview of Section 375.¹¹ As per the direction of Supreme Court of India, the law commission took up the matter and its 172nd Report focused on widening the concept of rape laws for the sake of removal of bias and to bring gender neutrality. The result of 172nd Report was the Indian Evidence (Amendment) Act, 2000 which amended section 155(4) thereby barring the cross-examination of rape victims on question regarding their moral character in any direct or indirect manner.¹²

VISHAKHA GUIDELINE

Despite the changes brought through the Criminal Amendment Act, 1983 it was not sufficient to curb the heinous crime of rape. A huge movement was initiated throughout the country when a woman named Bhanwari Devi, an employee of Rajasthan government's Women Development Programmers became a victim of sexual harassment and rape at her work place in 1992. A guideline was issued by the Court towards the writ petition filed by Vishakha which was a women's rehabilitation group, jagori and kali groups to seek justice for Bhanwari Devi¹³ on Aug 13, 1997. The guidelines included provisions for safe working environment, and duties of employer.¹⁴ It was these guidelines which laid down the foundation of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

PREVENTION OF CHILDREN FROM SEXUAL OFFENCES ACT (POSCO), 2012

Keeping the statistics of National Crime Bureau Record in mind which marked 33.6% rape cases on children a new act called Prevention of Children from Sexual Offences act was enacted on

¹¹ Sakshi v. Union of India, 1999 CriLJ 5025

¹² Section 155(4), Indian Evidence Act, 1872

¹³ Archana Nathan, *Dalit Woman's Rape in '92 Led to India's first Sexual Harassment Law – but Justice still Eludes her*, scroll.in, <https://scroll.in/article/899044/dalit-womans-rape-in-92-led-to-indias-first-sexual-harassment-law-but-justice-still-eludes-her> (Last visited on 17th April, 2020)

¹⁴ Vishakha v. State of Rajasthan., AIR 1997 SC 3011

November 14, 2012 i.e. On Children's Day. Prior to POSCO, 2012 IPC had just one clause which made it an offence to have intercourse with a girl below 16 years of age. The enactment of POSCO led to the development of special courts with a definite procedure of camera proceedings, fast track and children friendly processes.¹⁵ Thereby discouraging the ill- impacts on victim's body and mind. POSCO has a wider scope and includes not just peno-vaginal penetration but also includes non penetrative assault and child pornography in its ambit.¹⁶

CRIMINAL LAW (AMENDMENT) ACT, 2013

The nation and its voice against improper rape laws once again triggered when a paramedical student was brutally raped and injured in a moving bus at Delhi in 2012, which later led to her death. The outcry of people and various NGO's was the foundation of Criminal Law (Amendment) Act, 2013. A committee under Justice J S Verma was appointed to make recommendation on prevailing criminal laws. The committee submitted, 172 pages report in 29 days and pointed out the need for strict anti-rape laws, including various reforms in Police, education, and training institutes for boys and offices who are involved in criminal justice system. This Bill was passed on 19 March, 2013 by Lok Sabha and on 21st March, 2013 by Rajya Sabha and came into force after receiving the Presidential assent on 2nd April 2013.¹⁷ The Criminal Law (Amendment) Act, 2013 was a stricter outlook towards sexual harassment and rape crimes which provided maximum imprisonment for such offences of sexual assault and even death penalty in case of rape. Stalking was also made punishable and punishment for offence of attack by acid was increased to imprisonment for 10 years. The biggest drawback in Criminal Law (Amendment) Act, 2013 was however its failure to criminalize marital rape¹⁸. Almost after 7 years of Nirbhaya gang rape case the rapist were hanged to death and the famous quotation in the entire law fraternity was highlighted that "Justice Delayed is Justice Denied".

CRIMINAL LAW (AMMENDMENT) ACT, 2018

¹⁵ Biswaranjan Panda, *Summary on: The Protection of Children from Sexual Offences (POCSO) Act, 2012*, LAWyersclubindia, <https://www.lawyersclubindia.com/articles/Summary-on-The-Protection-of-Children-from-Sexual-Offences-POCSO-Act-2012--8978.asp> (Last visited on 17th April, 2020)

¹⁶ *The Evolution of Anti-Rape Laws in India Since 1860*, YKA, (Aug 19, 2018) <https://www.youthkiawaaz.com/2018/08/indias-anti-rape-laws-the-evolution/> (Last visited on 17th April, 2020)

¹⁷ Jha MK, *Rape Law: Latest Trends: Criminal Law (Amendment) Act, 2013 and Supreme Court on Right To Privacy*. (May 29, 2013), 46 .

¹⁸ Yamini, *Criminal Law (Amendment) Act, 2013*, Lawoctopus, (April 8, 2015) <https://www.lawctopus.com/academike/criminal-law-amendment/> (Last visited on 17th April, 2020)

Before Nirbhaya could even get justice another criminal law amendment emerged in 2018 having its roots from the Kathua Rape Case¹⁹ and Unnao Rape case²⁰ where the victims were girls of 8 years and a teenager respectively. The Criminal Law (Amendment) Act, 2018 came into force in 2018 and amended provisions of Indian Penal Code, 1860 by adding one more category of punishment for rape of women to the existing two under section 376 in the form of section 376 (AB), also other sections including section 376 (DA) and 376 (DB) were inserted. Section 376 (2) (i) was omitted. Simultaneous amendments were also done in CrPC²¹, POSCO²² and Indian Evidence Act.²³

PRESENT STATUS OF LAWS AND LOOP HOLES IN RAPE LAWS

Since 1860, the anti-rape laws were modified tremendously. There has been much improvement in the laws since then but none of it has been able to curb or reduce the statistics of Rape cases. Some of the major loop holes in prevailing anti – rape laws are- 1) Delayed Justice- The very recent judgment of Nirbhaya Rape Case is in it a question on the entire criminal justice system which took 7 years to provide justice. Such a delay in imparting justice causes the piousness of judiciary among the citizens to fade away. Also the major loop holes that were seen in the case are the irrelevant chances and illogical pleas taken to extend the death sentence. The lack of proper limitation period.

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2) Burden of Proof- the laws that have emerged as anti-rape laws are women centered laws which in many cases become a tool for women to file forge rape charges on an innocent. Thus amendment is needed to equalize the burden of proof on both parties so that fair justice can be rendered.²⁴

3) Review of Laws- the national commission of women has marked about 9 parts in rape laws which needs to be relooked and discussed some of them are- i) the definition of rape ii) death

¹⁹ Mohd. Akhtar v. The State of Jammu and Kashmir, 2018 SCC Online SC,494

²⁰ Sunauvvar v. State of U.P., 2017(5) ALJ 349

²¹ Criminal Law (Amendment) Act, 2018 inserted section 438 and 439 in CrPC, 1973

²² Criminal Law (Amendment) Act, 2018 inserted Section 42 in POSCO, 2012

²³ Criminal Law (Amendment) Act, 2018 inserted Section 53A and 146 in Indian Evidence Act, 1872

²⁴ Akshay Goel, *Rape laws in India Appropriate or not?*, Legal Services India,

<http://www.legalservicesindia.com/article/471/Rape-Laws-In-India-Appropriate-or-not?.html> (Last visited on 17th April, 2020)

penalty for rape convict iii) reduction in time taken for rape trials iv) bringing uniformity throughout in age of consent .

4) There has to be a very clear and unambiguous distinction between consent and passive submission.

5) Poor level of investigation – as the law commission in its report stated that we first need to build up our police and safety departments. The investigation process needs to be more fast and accurate and unbiased as well.

6) Marital rape is an important issue that needs to be looked upon we cannot hide it behind the curtains of marriage

CONCLUSION

In the present society women empowerment has spread its roots and feminism is a popular wave. Women are much aware about their rights and even the society is inclined towards their protection. Yet the statistics of rape is high. It is the need of time to spread more and more awareness so as to bring a sense of understanding among people. It is important to educate all about rape which is a heinous crime. The trials must be done faster and unbiased. Also the principles and faith of judiciary must be maintained in the eyes of those who seek justice from it.