Rape Laws in India- A Brief Review

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ABSTRACT

India is one of the prominent nations which is taking lead in crime. Rape is the fourth major crime in our country which leaves the victim in physical as well as mental agony and torture. The cases of violence against women is not a new concept in India. Such loss can't be replaced by doing anything. So, it is the need of the hour to make our laws more stringent and strict with their implementation. There is a need to enhancement the declaration of judgements of punishments as well as penalties to punish the offenders as soon as possible. Such laws should be stricter in cases in child rape and child pornography. Not only rapes but other offences relating to women needs to be treated seriously like sexual assault, voyeurism, stalking cruelty, dowry deaths, acid attacks etc.

Key Words: Rape, Women, Laws, Crime

Introduction

Many offences comes within the ambit of “violence against women” that are Rape, Sexual Assault, Voyerism, Stalking, Dowry Deaths, Eve Teasing, Marital Rape, Child Sex Abuse, Domestic Violence etc. Many cases remain unreported due to the pressure of the society and fear of stigma for the victim. It can be considered as a kind of theft, but not of any movable property but it is a serious theft of victim’s body and soul which leaves her helpless and traumatized. Besides the strict laws and regulations, India is still taking a lead in such crimes. The fourth most common crime in India is the Rape which is a big question mark on the safety of a women. It is very serious as well as heinous crime which is very shameful for our society. Such pain and torture lasts long in cases of gang rapes.

As per the Report of National Crime Report Bureau, the total number of rape cases that has been reported are 221724 in 2010, 24206 in 2011, 24923 in 2012, 33707 in 2013, 36735 in 2014, 34651 in 2015, 38947 in 2016. So in the present data, the continuous increase in the number of rapes is being observed.1

Prior to amendment, the term “Sexual Intercourse” was interpreted as the penetration of the male genital organ into the female genital organ only. The courts interpreted the term sexual intercourse as “mere slightest or partial penetration of the male organ within the labia majora or the vulva or pudenda is sufficient to constitute ‘sexual intercourse’.2

Other facts were also being held such as the depth of penetration is immaterial and the presence of injuries on private parts is also immaterial to constitute rape.3

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1 Source: Crime In India : National Crime Records Bureau 2010-2016
2 Madan Gopal Kakkkad vs Naval Dubey (1992) 3 SCC 204
To constitute the offence of rape it is not at all necessary that there should be complete penetration of the male organ with the emission of semen and rupture of hymen. Even Partial or slightest penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim would be quite enough for the purposes of section 375 and 376 of the Indian Penal Code. That being so it is quite possible to commit legally the offence of rape even without causing any injury to the genitals or leaving any seminal stain.\(^4\)

Under section 376 of the Indian Penal Code, The minimum punishment is of seven years and it can also be given with a fine and extend to life imprisonment. However section 376(2) provides the situations where the quantum of punishment will be very high and it will include rigorous imprisonment which will not be less than a term of 10 years.

The punishment for gang rape is provided under sub section 2 of section 376 IPC which postulates that when a woman is raped by more than one person then each of the person will be convicted of the crime of gang rape and the punishment would not be less than ten years of rigorous imprisonment in such cases.

After the amendment of 2013 the scenario is totally changed. The punishments and penalties have been enhanced due to the worst case in the Indian history of Nirbhaya Rape and Murder Case which took place in December 2012, a twenty-three year old college student, who was fatally gang-raped on a private bus in Delhi. This case gave the new strength and safety to the women of our nation. The definition of rape is widened after the amendment which include any kind of penetration and also in any body part of the woman or girl. The new recommendations added that any penetration would be considered as rape.

Moreover ‘voyeurism’ was also inserted as a new crime in the Criminal Law (Amendment) Act, which means the recording or viewing images, movies or any such media material without the permission of the person portrayed or screened in them would result in penal punishment. Under section 354 of IPC-

Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such images shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may not be less than three years but which may extend to seven years, and shall also be liable to fine.

Now the punishment of rape has been increased to ten years which may extend to imprisonment of life, and shall also be liable to fine. Also section 376A is also being inserted in the new criminal law that states that punishment for causing death or resulting in persistent vegetative state of the victim that is to say that Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission

inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, or with death.

Under section 376B- Sexual Intercourse by husband upon his wife during separation meaning thereby Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Under section 376C- Sexual Intercourse by person in authority- whoever, being—
in a position of authority or in a fiduciary relationship; or
a public servant; or
superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women’s or children’s institution; or
on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than 5 years, but which may extend to ten years, and shall also be liable to fine

Under section 376 D- 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;

Under section 376E-Punishment for repeated offenders- Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376AB or section 376D or section 376DA or section 376DB and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person’s natural life, or with death

Under section 376AB- Punishment for rape on woman under twelve year of age- Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and with fine or with death:

Under section 376DB- Punishment for gang rape on woman under twelve year of age- Where a woman under twelve years of age 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
imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and with fine, or with death.

**Case Studies**

Why there is the need for Implementation of stringent laws?

In Mathura Rape Case, the case was regarding the rape of a girl in police custody in Desai Gunj Police Station in Maharashtra. The incident took place on March 26, 1972. This case raised issues about two-finger test and the girl’s sexual history. It was held by the Sessions Court that the defendants are not guilty. It was further held that it was not a rape but consensual sex between them as she was used to sexual intercourse. The appeal was filed in Bombay High Court, it was further held that there is a major difference between “consent” and “passive submission”. On the proper interpretation of the findings of the case it was been held that defendants were guilty of rape and the consent given was not voluntary and it was due to serious threats by policemen. Again the appeal lied in the Supreme Court, and the defendants were acquitted as there were no signs of any resistance on the body of a girl and she was habituated to sex therefore it may be possible that a girl might have allured the cops.5

The Supreme Court ruled that the two-finger test is unconstitutional and it is violative of the privacy of rape survivors. If the report of this test is affirmative then also it cannot be presumed that the offence was not a rape but a consensual sex.6

As per International Covenant on Economic, Social, and Cultural Rights 1966 and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, rape survivors needs to be treated with proper care and the mental and physical integrity and dignity should not be violated. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with their privacy.

In the above case, justice was not been delivered to the girl only on the ground that she was habitual of sexual intercourse and was not a maiden which amounts to miscarriage of justice. There are many such cases in the Indian history in which the girl was held accused rather than a victim. Aftermath of the amendment says that now the punishments and penalties are stricter as compared to the past and it was the need of an hour to protect our daughters.

In another case, the Trial Court acquitted the accused for the reason of lack of the medical shred of evidence and other reasons which resulted in so many women’s groups and organizations went for appeal against the judgment. Then a Public Interest Litigation was filed in the Supreme Court of India which took the issue of Sexual Harrasment at Workplaces. Then Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 which came into force from December 9, 2013 was formed and certain guidelines were established foe women at workplaces such as formation of complaint committees, inclusion of women employees in the committees and so on.7

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5 Tuka Ram And Anr vs State of Maharashtra, AIR 1979 SC 185
6 Lilu @ Rajesh and anr v. State of Haryana (2013)
7 Vishaka vs. State of Rajasthan and Ors., JT 1997 (7) SC 384 (Bhanwari Devi Case)
Another incident took place in Bhiwandi town police station by a police inspector. He alone in uniform in the night went to the hutment of a woman named Banubi. There, he tried to assault her and pretended that if he was conducting a prohibition raid. After investigation it was found that Banubi was a woman of easy virtue. She also had extramarital affairs. It was held by the High Court of Bombay that she was a woman of immoral character therefore, the policeman was not guilty of the offence of rape. The Supreme Court of India overruled this decision and ordered to remove of his service. It was further held that even an immoral woman has right to privacy and no one has right to invade that. Also the history of the rape victim should not be taken into consideration while dealing with rape offences. So, unchastity of a woman cannot be taken as a defence in such crimes. 

Another aspect of crime against woman came into light, in which an NGO named Independent Thought, which deals with child rights filed a Public Interest Litigation to challenge the constitutional validity of exception 2 to section 375 of Indian Penal Code was in question which says that sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

The Supreme Court held that the sexual intercourse with a minor wife whose age lies between 15 and 18 years is an offence. And further held that it violates the article 14, 15 and 21 of the Indian Constitution and the provisions of Protection of Children from Sexual Offences Act (POCSO). In this case, section 375, exception 2 of the Indian Penal Code was struck down. The child of the age between 15 to 18 years of age is a child irrespective of the fact that she is married or not.

So, taking into the account the various judgements and orders of the courts there has been a change in the laws specially related to women which is the need of the society in order to deliver justice to women. As the Criminal Law (Amendment) Act, 2013 has changed the whole scenario in the rape laws of the country. Looking into the cases in the past, there are many cases in which the crime against women has not been given so much importance resulted in the increase in such offences. But with such stringent laws, there is silver lining in the dark clouds for our daughters. Therefore, there should be strict implementation of the laws in India to make our nation safe for women.

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8 State of Maharashtra vs. Madhukar Narayan Mardikar, AIR 1991 SC 207
8 Independent Thought vs. Union of India and Anr.
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