

## ANTI-RAPE LAWS IN INDIA

---

Sanjushree Deo \*

### ABSTRACT

---

Sexual violence is a major problem which is faced by women in India. The victim is likely to face a huge challenge with respect to fighting for justice. The victim is stigmatized and shamed for being a victim of a sexual offense. India is a developing country with a huge population consisting of a marginalized section of society. A person from a marginalized section is likely to face even more problems to get legal help and justice. Indian legal system has undergone a lot of changes with respect to laws relating to offences like rape and other sexual offences. For instance, The Protection of Children from Sexual Offences (POCSO) Act<sup>1</sup> was introduced in 2012. A few more changes were introduced which are mentioned further. Even after making amendments, there are a lot of loopholes in the legal system of India even today. Understanding the issues revolving around sexual offences is a vital step to provide a solution.

**Keywords:** Rape, Anti-Rape laws, Sexual violence, Marital Rape.

---

\*BA LLB, FOURTH YEAR, ILS LAW COLLEGE, PUNE.

<sup>1</sup> The Protection of children from Sexual Offences (POCSO) Act 2012

## INTRODUCTION

---

The offence of rape is defined under section 375 of the Indian Penal Code, 1860<sup>2</sup>. Rape is one of the gravest crimes committed against any person in India. It is a common notion that the victims of rape are mostly women, but this does not imply that the offence of rape is not committed against men. The offence of rape is committed in various ways across the diversity of society and social strata. The word 'rape' was first mentioned in the Indian Penal Code, 1860<sup>3</sup> and since then the ways in which the legal system of the country deals with rape laws have changed repeatedly.

## PROVISION UNDER THE INDIAN PENAL CODE, 1860

---

The Indian Penal code had come into force in the year 1860. This act first mentioned the word 'rape'. It defined rape as sexual intercourse without consent, with consent but under the fear of death or with consent but under false pretenses.<sup>4</sup> The act also did not have a mention of sexual intercourse between a wife and a husband without consent, such an offence is referred to as Marital rape. This particular provision is still not expressly included in the Indian Penal Code even today. However, the punishment for gang rape and for repeat offenders was severe than that of the original offence. But the minimum punishment that was to be awarded was just two years of imprisonment which was not fair as Rape is one of the most serious crimes of humankind and two years of imprisonment shall not be appropriate. A lot of changes were observed in the rape laws after the Mathura Rape Case (*Tuka Ram And Anr vs State of Maharashtra*)<sup>5</sup>.

## POSITION AFTER 1983: SECOND AMENDMENT

---

A young girl of the Adivasi community was raped by two policemen while she was in their custody on 26<sup>th</sup> March 1972. The trial went up to the Supreme court but the policemen were acquitted on the basis that the girl was habitual to sexual intercourse. The defense proved that she was sexually active and hence she was not raped. The Hon'ble Justice of the Supreme

---

<sup>2</sup> India Penal Code 1860, s 375

<sup>3</sup> India Penal code 1860

<sup>4</sup> WTD news in society, 'The Evolution Of Anti-Rape Laws In India Since 1860' (youth ki awaz, 9 August 2018) <https://www.youthkiawaaz.com/2018/08/indias-anti-rape-laws-the-evolution/> accessed 6 April 2020

<sup>5</sup> 1979 AIR 185

Court even pointed the fact that there were no signs of resistance observed by the girl and since she was familiar with sexual intercourse it was considered possible that she encouraged the policemen to have sexual intercourse with her. The lawyers pointed out the fact that the Supreme Court relied more on the societal taboo around pre-marital sex rather than relying on hard evidence presented.

After the verdict of the Mathura Rape Case, huge protests were observed by women all around the country. Demand for change in law was made. The demand was justified because a girl who was the victim of a very grave crime was denied justice due to some societal taboo being more stringent than laws. As a result of protests, change was observed in section 114 (A) of the Indian Evidence Act<sup>6</sup>. This amendment included the word 'consent' and was stricter in nature than the previous laws in India.

Before the amendment made to section 155 (4)<sup>7</sup> of the Indian Evidence Act in the year 2002, the victim was cross-examined about the past sexual intercourse instances in the process and this procedure resulted in the victim not reporting the rape case at all due to the fear of embarrassment and social bullying. After the amendment, the cross-examination of the victim is now prohibited.

### **INTRODUCTION OF THE POCSO ACT (2012)**

---

The Protection of Children from Sexual Offences (POCSO) Act<sup>8</sup> was introduced in the year 2012. The reason why there was a need for a special act for the protection of children from sexual offences was that India observed a rise in the offences committed against children. The provision for rape under IPC mentioned about sexual intercourse with a girl under the age of 16 without consent, but the need for more stringent regulation was observed. The POCSO Act provides for a steady procedure and the procedure to be fast-track in nature. The main advantage of the POCSO act is that the provisions are gender-neutral in nature. It recognized the fact that even boys are vulnerable to a sexual crime committed against them. Another advantage of the POCSO act is that it also recognized non-penetrative assault and child pornography.

---

<sup>6</sup> The Indian Evidence Act 1872, s 114 A

<sup>7</sup> The Indian Evidence Act 1872, s 155 (4)

<sup>8</sup> The Protection of children from Sexual Offences (POCSO) Act 2012

The introduction of the Protection of Children from Sexual Offences (POCSO) in my opinion is a landmark in Indian Laws. Children are more vulnerable of sexual assault, there also could be instances wherein a child is being sexually assaulted but the child has no idea as to what is happening with him or her, and the person committing such an offence, in absence of stringent law would be confident of getting away with it. But when a set of stringent laws with higher punishments are present, the person before committing a crime is likely to think about the consequences of their actions.

### 2013 AMENDMENT (CRIMINAL LAW)

---

We all are aware of the brutal Nirbhaya Rape Case [*Mukesh and Another v State (NCT of Delhi) and Others*]<sup>9</sup>. The nation was stunned at the grave crime committed. Many questions followed by fear were felt by every human being who read about the Nirbhaya Rape Case. On 16<sup>th</sup> December 2012, a 23 years old woman was gang-raped in a moving bus. The injuries that were inflicted on her were so grave that she fought a battle for her life, but she died on 28<sup>th</sup> December 2012. The brutality of the crime created fear in every person's mind and as a result, widespread protests were observed all over the country in demand of amendment to the existing laws against the crime of Rape. It was observed that a lot of offences that were committed against women were not included in the regulations. The protests were also observed in demand for the change in societal view towards the crime of Rape.

The amendment was made and new offences against women were recognized under IPC. Offences like acid attack<sup>10</sup>, stalking<sup>11</sup> and voyeurism<sup>12</sup> was added. The punishments were also made stricter and higher in nature. For the first time, a 'vegetative state'<sup>13</sup> was also included in the regulations as a result of the landmark case of Aruna Shanbaug (*Aruna Ramachandra Shanbaug v Union of India and Others*)<sup>14</sup>.

The character of the victim was questioned by the media by conducting debates. The media houses flooded the news channel by analyzing the influence of western culture on society and

---

<sup>9</sup> AIR 2017 SC 2161

<sup>10</sup> The Indian Penal code 1860, s 326 A

<sup>11</sup> The Indian Penal code 1860, s 354 D

<sup>12</sup> The Indian Penal code 1860, s 354 C

<sup>13</sup> The Indian Penal code 1860, s 376 A

<sup>14</sup> (2011) 4 SCC 454

claimed the influence to be the root cause for a woman to get raped. After the amendment, the character of the victim was not to be taken into consideration.

### **CRIMINAL LAW (AMENDMENT) ORDINANCE OF 2018**

---

Asifa Bano (*Mohd. Akhtar v State of Jammu and Kashmir*)<sup>15</sup>, an 8 years old girl was raped and murdered in Kathua district of Jammu And Kashmir in 2018. This case was a brutal crime against an 8 years old child but this case soon became a victim of politics. Asifa Bano was raped in a temple by a priest and hence the Hindu-Muslim agenda was used by the politicians. The government was under pressure to address the crime and to take action with its regards; and as a result of huge outrage all over the country and the pressure on the government, an ordinance was introduced within 3 months of the crime committed against Asifa Bano. The changes were mostly made to the Protection of Children from Sexual Offences (POCSO)<sup>16</sup> Act because the crime was committed against a child of 8 years. Previously, the Punishment was 10 years of imprisonment which was amended to 20 years of imprisonment, and also provided for the punishment of the death penalty for committing the crime against anyone below the age of 12.

There have been many instances wherein the penalty of death has been demanded against the crime of rape. Many protests were observed in this regard and this was the first time wherein the death penalty was included in the punishment. Before the introduction of the ordinance, the cases under POCSO Act were fast track with 1 year timeline, this clause was amended to 6 months timeline for the justice to be served sooner.

### **WOMEN SAFETY: A CONCERN**

---

A poll was conducted in 2018 by Thomson Reuters Foundation<sup>17</sup> and India was voted to be the most dangerous country for women. Sexual violence against women and forced labor were the key factors for the result of the poll. The main reason for the higher rate of sexual violence in India is the loopholes in the law. For instance, the Indian Penal Code does not recognize male victims of rape. There is a lot of stigmas that follow the offences of sexual violence and unfortunately, the victim is stigmatized and blamed more than the offender.

---

<sup>15</sup> (2018) 2 SCC (Cri) 726

<sup>16</sup> The Protection of children from Sexual Offences (POCSO) Act 2012

<sup>17</sup> Thomson Reuters Foundation 'The world's most dangerous countries for women 2018' (2018) <[https://wcd.nic.in/sites/default/files/Reuters\\_poll\\_PR.pdf](https://wcd.nic.in/sites/default/files/Reuters_poll_PR.pdf)> last accessed 7 April 2021



Changing the attitude of a society is not an easy task. It is not something that could be achieved in a few days or months. The time required for a vital change to be observed may take a lot of years altogether. The law of the country however plays an important role in this aspect. The government of a country cannot be held solely responsible for changes in societal views to be made. But the government has a critical role to play—law reform coupled with effective implementation of laws will help make a dent in misogynist attitudes.<sup>18</sup> Even today a large number of people in our society look at a rape victim or a victim of any sexual crime with shame and blame them for getting raped or assaulted. People tend to spread rumors about the victim's character. They assume certain things about the victim's lifestyle and declare it to be a bad influence. It is observed that a victim of rape or any other sexual offence is likely to not file a police complaint just because of the fear of being stigmatized by society. There also have been instances wherein the police have denied registering a complaint against rape or assault. The police in several cases have also suggested the victim and their families settle and make a compromise instead of filing a complaint and hoping to get justice. The awareness of the law also plays an important role here. Under the law, a police officer who fails to register a complaint against sexual offences is liable for a punishment of imprisonment up to 2 years.

The state governments and the central government have taken various steps in support of victims of rape and other sexual assaults but due to lack of a proper framework, the steps taken resulted to be ineffective. Currently, there is 597 fast track court in India which are functional. Out of 597, 321 courts are exclusively POCSO courts.

## CONCLUSION

Yes, it is a challenge to make a vital change in societal views of sexual offences. But it is not an impossible task. Steps taken by the government and legal awareness play an important role. The government has been taking steps for the betterment and along with that if people who are capable of understanding law and functioning of the legal system try and spread awareness about these topics in people who lack knowledge or have no resources to gain

---

<sup>18</sup> Public service Europe 'The stigma and blame attached to rape survivors in India' (8 January 2013) <<https://www.hrw.org/news/2013/01/08/stigma-and-blame-attached-rape-survivors-india>> last accessed 7 April 2021

knowledge, shall create a huge difference and we as a nation can help this society to be a safer place.

