

WOMEN AS VICTIMS OF SEXUAL OFFENSES: A LEGAL ANALYSIS

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Abstract: The concept of equality and nondiscrimination is place on account of Indian constitution. Additionally, it gives the state the ability to implement a variety of affirmative action policies that favor women. Laws frequently use a step-by-step approach, focusing on specific instances of violence rather than covering all possible kinds of discrimination against women. When the law is implemented, law enforcement is frequently ineffective. Additionally, the lady and her children are thrown out of the stable, which, in addition to having a negative impact on their health, creates an emotional environment in which they are unable to defend themselves from physical violence or other forms of injustice.

Keywords: Sexual offence, Crime against women, fundamental right

1. INTRODUCTION:

Numerous measures for the welfare of the underprivileged and the protection of women are found in the Indian constitution, which serves as the country's foundational law. Because of the Indian constitution, the ideas of equality and nondiscrimination are present. Additionally, it gives the state the ability to implement a variety of affirmative action policies that favor women. In addition to fundamental rights, the Directive Principles of State Policy include several special rules to protect women's rights. In spite of constitutional protection and several laws, gender inequality and injustice still exist. Violence against women is a violation of fundamental freedoms and rights, such as the right to liberty and security, as mentioned in the Charter of Fundamental Rights of the European Union (EU, 2000). Violence against women can be domestic as well as public, physical, emotional or mental. Women have fear of violence in their mind which causes the lack of participation in various areas of life. Deep impact of the trauma remains in their minds even after post-violence corrective measures and rehabilitation. Indian women are, by and large, handicapped with admiration to all the fundamentals important for right to use to fairness. The extensive illiteracy, the educational barriers and subordination is very universal. The frosty development of law has kept most concerned women absent from the law and courts. Mistreated women have a variety of experiences with the state criminal justice systems. They cannot forever depend on the illegal justice system for their protection or treatment. In terms of antagonism fighting against women, there frequently exist gaps and ambiguities in the laws criminalizing antagonism. Laws tend to be gradually, focusing on detailed forms of brutality rather than dealing expansively with all forms of hostility against women. When the law is input, there is frequently feeble law enforcement. The biggest obstacle in nastiness and dowry fatalities, to put it optimistically, is police and other enforcement officers' dishonesty. India has a rich cultural heritage that has been passed down to us over the years, as well as a beautiful past. In this instance, women have been given the primary position of the Goddess in Indian culture. But if we look over the past few years, we see a sharp rise in the number of crimes committed against them. The safety and security of Indian women has become a serious issue not only in India but also worldwide. Rape, dowry deaths, sexual harassment at work, domestic violence at home, kidnapping and abduction, cruelty by a husband, relatives, assault on a woman, child sex, trafficking, attack, and child marriage are only a few of the numerous crimes that are pervasive in Indian society. We all have equal rights to dignity, equality, and freedom from gender discrimination under the Indian Constitution, yet nobody cares to uphold the law in daily life. Today, breaking the law is not seen as a sovereign demand that is met with consequences. In India, there are¹ rights aimed at women, who are

¹ Austin's theory of sanctions

separated into binary categories: legitimate rights and legal rights. The Indian Penal Code, which was passed in 1860, as well as the Criminal Law Amendment Act of 2018 and the Criminal Law Amendment Act of 2019 have all been examined for their rape-related provisions.

PROTECTION OF WOMEN UNDER IPC, 1860²

The term "rape" first arrived in our legal system with the passage of the IPC in the year 1860. Sections 375 to 376E of the Indian Penal Code deal with sexual offences. These regulations describe rape as having sexual contact with a person either without their consent, with their consent but in a life-threatening circumstance, or with their consent but under false pretenses. This definition also included the term "statutory rape" for sexual activity with a minor. When India was still governed by the British, they passed the Indian Penal Code, an extremely old piece of legislation. But the beauty of the Code is that it has endured throughout history. It has undergone multiple amendments to include new provisions within its ambit that were unknown to human civilization in 1860, when it was created. The most recent modification to the Code recognizes "transgender" people's rights as a third gender in The Criminal Law (Modification) of 2019.

THE CONCEPT OF 'RAPE'

The IPC, 1860's Sections 375 and 376 define "rape" as a felony. It also outlines punishments for transgressors in line with the laws' guidelines. These two sections haven't changed, nevertheless, since the IPC included them in 1860. In its place, the criminal law (alteration) act of 1983 reread them in reply to widespread grievances next the contentious judgement of the Supreme Court in the Mathura Rape case.³ The section of the IPC that contains the legal definition of the word "rape" is 375.⁴ Furthermore, if she is below the age of 16 years⁵, is not of sound attention, is drunk, has received some stupefying or distasteful substance, or remained unable to grip the nature and inferences of that to which she provided agreement. Thus, we must see in what way Section 375 distinct the period "rape" and in what way Article 376 IPC⁶ established the suitable sentence. The crime of rape did must one exception, however. The subject that follows proves it to us.

EXCEPTION TO THE DEFINITION OF 'RAPE'

Additionally, it's important to keep in mind that section 375 includes an exemption. Rape in marriage is an exception. Marital rape is defined as non-consensual sexual contact with a wife who is older than 15 years old. Therefore, under the definition of section 375, any coerced or willing sex with a wife older than 15 years old is not considered rape. The assumption that a husband receives his wife's agreement for every future sex after marriage shields him from being charged with marital rape. This is a very worrisome situation because it is against the law for a woman to get married before she turns 18 years old. Because of this, the 1860 statute did not apply to unwelcome sexual relations between a husband and wife, which is still not covered by our current anti-rape statutes. This was the issue with the definition of rape when the IPC was passed by the British kings. However, it would be important to draw attention to the penalty that was established by Section 376 IPC⁷.

THE CONCEPT OF SEXUAL ASSAULT

Throughout history, almost all religions and communities have seen various forms of sexual assault as crimes. It is one of the most common crimes against women in India and a violation of a person's basic human rights. In 1860, the Indian Penal Code was passed, officially establishing the nation's "rape laws." The main focus of subsequent changes has remained the definition of rape, which has recently been broadened to include a variety of sexual behaviors. Whether "marriage rape" qualifies under the concept of rape is still up for debate. This provision does not apply to sodomy, coerced oral sex, or penetration by foreign objects. Young girls and small children are known to be particularly

² Indian Penal Code, 1860 (Act No. 45 of 1860)

³ *Tukaram v. State of Maharashtra*, AIR 1979 SC 185

⁴ *Supra* note 58

⁵ *ibid*

⁶ *Supra* note 59

⁷ *ibid*

vulnerable to this kind.⁸Inopportunistically, this clause falls below the purview of Section 354 IPC⁹, which speaks insulting a female's modesty. It is generally recognized that omitting this element from the definition of rape is an unambiguous unfairness to the women because the punishment set down for such a horrible crime—less than two years—violates the right to live in dignity given by the Indian Constitution.¹⁰

THE CRIMINAL LAW (SECOND AMENDMENT) ACT, 1983

On March 26, 1972, while holding a little adivasi girl named Mathura, two police officers sexually assaulted her. Her family filed a lawsuit against the two cops, and the matter eventually made it to the Supreme Court. The police were found not guilty because Mathura was reportedly "habituated to sexual intercourse." They could demonstrate Mathura's sexual activity but not her rape. The Supreme Court Justices further noted that Mathura was used to having sex and might have encouraged the officers to have sex with her as there were no overt evidence of injury or struggle and she had not raised any concerns. This decision sparked outrage across the country. Lawyers argued that rather than relying on strong evidence, the Court made its decision based on cultural taboos surrounding pre-marital sex. They asserted that "submission" during the rape had been misconstrued for "consent" as a result of this taboo. The penalty parameters of Section 376 did not include a mandatory minimum sentence; instead, they stipulated a maximum sentence of life in prison. That meant that the rapist would probably just serve a month, which was really unpleasant. Even while it did not increase the maximum sentence to the death penalty as was desired by the women's organizations, this amendment at least required a minimum period of seven years. In addition, Section 376(2), which added new rape category definitions, was a significant addition to the IPC.

AMENDMENT TO INDIAN EVIDENCE ACT, 2002

Despite the fact that the 1983 Amendment outlawed "character assassination," the cross-examination of a rape victim was not included in the definition. This was brought up in a PIL submitted by the NGO Sakshi¹¹. They saw that the defense in rape cases had evolved from considering the victim as someone who had suffered emotional and physical harm and who deserved to be protected to demeaning and insulting their sexual integrity and personal space. Women were reluctant to disclose rape as a result.

This was noted by the Supreme Court, who then asked the Law Commission to review our rape laws and make any necessary changes. They learned that a defense lawyer could challenge a rape victim's testimony under Section 155(4) of the Indian Evidence Act of 2002 by pointing out her "immoral character." As part of this scenario, she was questioned regarding prior sexual behavior. They came to the conclusion that rape victims were deterred from filing a case. This phrase was modified in 2002 as a result. After this change, a rape victim could no longer be cross-examined. Another reason why women choose not to report rape was the infamous "2-finger test," in which a doctor puts "2 fingers" into the vagina to confirm its laxity. This test violated her privacy and integrity by treating her like an object of evidence rather than a trauma sufferer. It was impossible to ban the medical examination because it was so important to the case and there was no opportunity for cross-examination. Practitioners evaluating the victim were obligated to provide the victim with all the information they required and explain why the tests are required in order to prevent anyone from being discouraged from pursuing a rape case. Thus, despite its small size, this change made it simpler for the victim of a sexual offence to give a courtroom testimony. In order to limit the alarmingly rapid increase in sexual assaults against children, a new law was later introduced in 2012. In order to stop these assaults, the

⁸Sudesh Jhaku v. K.C. Jandothers (1996) (3) A.D. Delhi 653.

⁹Supranote 67

¹⁰Ind. Const. Art. 21: "No person shall be deprived of his life or personal liberty except according to procedure established by law"

¹¹Sakshi v. Union of India, Final Decision on Writ Petition, Writ Petition (CrI) No 33, 1997, with SLP (CrI) Nos 1672-1673, 2000; ILDC 868 (IN 2004).

Parliament established the POCSO Act in 2012. Let's look at the Act's motivation.

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT, 2012

Statistics show that between 2001 and 2011, there were 336 percent more child rape incidences in India. The National Crime Record Bureau reports that there were 48,338 instances of child rape during this time. This troubling pattern necessitated the creation of a "special legal procedure" for young people who had been the victims of sexual assaults. The IPC's "statutory rape" section, which makes any sexual contact with a girl under the age of 16 criminal regardless of her consent, has been the only legal reference to sexual offences against children to date. However, the trial process in such a case followed the same guidelines as trials involving parties who were older than 16. The POSCO Act that followed highlighted the distinctive situations in which a child could be injured. In recognition of the possibility that the offender could be someone the child is familiar with or his or her guardian, the Act, for example, placed the duty of the child's safety throughout the inquiry in the hands of the police. The legislation then requires anybody with knowledge of the offence to report it. The fact that offences against young men were not explicitly stated was another serious issue. In 2012, this vacuum was filled by the POSCO Act, which safeguards children against sexual assaults. The new Act was gender-neutral and recognized penetration in methods other than peno-vaginal penetration. The Act also made child pornography, sexual harassment, and non-penetrative assault crimes, as well as encouraging and supporting those crimes.

THE CRIMINAL LAW (AMENDMENT) ACT, 2015 (NIRBHAYA ACT)

On December 16, 2012, a bus was brutally gang-raped by a 23-year-old physiotherapy intern. The entire nation was in a state of shock over the way the crime of rape was carried out, involving the insertion of foreign items into the intern's vagina. She battled for her life at the hospital but succumbed to her injuries. Long-lasting protests were placed all around the country in response to the case's brutality and violence. Even the threat of rape is now considered a crime and is susceptible to legal penalty because the situation has gotten so bad. The minimum obligatory sentence was raised from seven to ten years. In cases where the victim passed away or entered a vegetative state, the minimum sentence was increased to 20 years. Since the historic Aruna Shanbaug case¹², the vegetative condition has not been taken into consideration till now. The victim's character was taken into account during the Nirbhaya case trial even though the 1983 and 2002 Amendments were still in force. When you examine how the public reacted to this case, you can see that there was a lot of character assassination coming from the media, parliamentary discussions, and TV news debates. Because the victim was a young professional, her independence and "Western" lifestyle were seen as "invitations" for rape. In order to avoid this in the future, this amendment stated that the "character of the victim" was completely irrelevant in rape proceedings.

Since one of the defendants in this case was a juvenile who was ultimately tried as such, another flaw in the system was found. The Juvenile Justice Act lowered from 18 to 16 the age for being tried as an adult for severe crimes including rape and murder. The government formed a three-person committee under the direction of former Indian Chief Justice Justice J. S. Verma to look into the issue of women's security in India as a result of this unrest and public indignation. Consequently, the Indian¹³. The Penal Code of 1860, the Code of Criminal Procedure of 1973, the India Evidence Act of 1872, and the Protection of Children from Sexual Offences Act (POCSO) of 2012 were all modified as a result.

CHANGES BROUGHT ABOUT BY THE AMENDMENT OF 2015

The only exception to the initial limitations of Section 375 IPC was penile-vaginal penetration. The 2015 amendment established the principle of gender neutrality and replaced the crime of rape with the offence of sexual assault, which covered a wider range of sexual offences than just penile-vaginal penetration. Men and women were both victims and offenders as a result of this transformation. The previously existing Section 375 now has five more subsections. Following the aforementioned Amendment, Section 375 of the Indian Penal Code (IPC) now includes charges for sodomy, forced oral sex, penetration by foreign objects, and forced sexual contact in addition to penetration by the

¹²*Aruna Ramchandra Shanbaug v. Union of India*, AIR 2011 SC 1290

¹³*Supra* Note 189

penis. The first three of the aforementioned subsections were built on the recommendations of the Justice Verma Committee, whilst the fourth and fifth are entirely new rules. The six circumstances described in Section 375 that, before the enactment of this amendment, were regarded as constituting rape. The first five were accepted without reservation, but the sixth was modified to change the consent age from 16 to 18, and a new seventh situation was added that addresses a person who is unable to communicate consent. Unfortunately, this Act kept the original exception from Section 375IPC, which stated that forced marriages are considered rape. The clause that prohibits insulting women's modesty is still in place.¹⁴

OUTRAGING THE MODESTY OF THE WOMEN

Sexual harassment, voyeurism, stalking, and the use of criminal force to strip off women are now recognized as distinct offences under section 354IPC of the criminal law (Amendment) Act of 2013. This horrific incident caused a tsunami of change that was visible. A young girl was the victim of a gang rape in the Kathua district three more years later, which aroused political uproar because it took place on a temple's land and was carried out by a priest. However, this was not the end of the story. Additional amendments to the existing criminal statutes were made in order to address these issues.

THE CRIMINAL LAW (AMENDMENT) ACT, 2018

2018 saw the rape and murder of an 8-year-old girl in Kathua's Jammu and Kashmir region. Four of the seven defendants mentioned on the case charging sheet were police officers who were allegedly trying to cover up the incident. At the temple where the alleged rape took place, the main defendant was a priest. Also accused were his son and nephew, both of whom were children. This Ordinance, which received the President's approval and became a law only three months after the tragedy, was the consequence of pressure on the government to formally address this crime. POSCO was the main entity changed since it was against a kid. It made rape of a child under the age of 16 punishable by a minimum of 20 years in prison and imposed the death penalty for anyone under the age of 12 who committed the crime. The country's criminal code has undergone significant changes as a result of the Criminal Law (Amendment) Act of 2018. These modifications aim to make anti-rape laws more stringent in an effort to lower crime. The investigation and appeal time limits may lessen crime if they are properly implemented. These improvements must be implemented in conjunction with other changes for the criminal justice system to function effectively overall. The POCSO Act of 2012, the IPC, 1860, and other laws dealing to the rape of women are all targeted for modification by the Act. According to the POCSO Act, rape of minors will result in the more severe penalty between the POCSO Act and the IPC.

DEFINITION OF RAPE UNDER THE AMENDMENT IS NOT GENDER NEUTRAL

The POCSO Act states that either a man or a woman may be the victim of a rape of a minor, and that the perpetrator may likewise be of either gender. The IPC only classifies adult-related rape as an offence when a male commits it and a woman is the victim. The Law Commission of India (2000) and the Justice Verma Committee (2013) both recommended changing this definition of rape so that it applies to both male and female victims. The Act does not address this issue.

TABULAR REPRESENTATION OF THE CHANGES BROUGHT ABOUT BY THE CRIMINAL LAW (AMENDMENT) ACT 2018

Table No. I: Changes By Respect To Punishment

Age of woman	Offence	Punishment under IPC, 1860	Criminal Law (Amendment) Act, 2018
Below 12 years	Rape	Minimum: 10 years Maximum: life imprisonment	Minimum: 20 years Maximum: life imprisonment or death

¹⁴Supra Note 60

	GangRape	Minimum: 20 years Maximum:lifeimprisonment	Minimum:lifeimprisonment Maximum: lifeimprisonment or death
Below 16 years	Rape	Minimum:10years Maximum:lifeimprisonment	Minimum:20years Maximum:nochange
	GangRape	Minimum:20years Maximum:lifeimprisonment	Minimum:lifeimprisonment Maximum:noprovision
16 years and above	Rape	Minimum:7years Maximum:lifeimprisonment	Minimum:10years Maximum:nochange

Sources: *Indian Penal Code, 1860; The Criminal Law (Amendment) Act, 2018; PRS.*

Table No. 2 : Variances In Punishment Aimed at Rape Amid Minor Boys And Girls

Age(in years)	Boys	Girls(Before 2018 Amendment)	Girls(After 2018 Amendment)
Below 12	10 years to life imprisonment	10 years to life imprisonment	20 years to life imprisonment/ death
12-16	7 years to life imprisonment	10 years to life imprisonment	20 years to life imprisonment
16-18	7 years to life imprisonment	7 years to life imprisonment	10 years to life imprisonment

Sources: *POCSO, 2012; Indian Penal Code, 1860; The Criminal Law (Amendment) Ordinance, 2018; PRS.*

THE CRIMINAL LAW (AMENDMENT) ACT, 2019.¹⁵

The IPC, IEA, and Cr. PC are amended by the Act. A law has been passed to protect "transgender" people and acknowledge them as belonging to a third gender under Indian law. All people are given a number of rights under the provisions of the Indian Constitution, including the right to life and personal liberty, the equal protection of the law, and the ban on sex-based discrimination, among others. As a result, the Constitution guarantees that these rights must be protected. As a result, the sexual offences have become gender neutral as a result of this legislation. The Supreme Court acknowledged the rights of transgender people as the third gender in the case of National Legal Services Authority v. Union of India and others¹⁶. Thus, in the case of Criminal Justice Society of India v. Union of India & Ors., the Supreme Court modified the IPC, IEA, and Cr. PC provisions to create the gender-neutral rape statute. The term "transgender" shall be used in place of the term(s) "men and women" as used in these laws.

PROTECTION OF WOMEN UNDER OTHER PROVISIONS OF IPC

The IPC deals with several more measures to safeguard women from various types of physical assault in addition to the sexual offences described above. The following has been emphasized and talked about:

Unnatural Crimes

The punishment for voluntarily violating the natural laws by having intercourse with a man, woman, or animal is a life sentence in prison and a fine.

LET'S NOW ANALYSE EACH OFFENCE INDIVIDUALLY OF CRUELTY BY HUSBAND

¹⁵ The Criminal Law (Amendment) Act, 2019 (Act No 4 of 2019)

¹⁶ (2014) 5 SCC 438

AND RELATIVES OF HUSBAND

Three years in jail and a fine are the penalties for intentionally harassing a woman with the intention of making her or any of her family members comply with any illegal demand for property. Also punishable is the husband's or his relative's willful conduct that could encourage the wife to commit suicide or otherwise harm her physically or mentally.¹⁷

PROTECTION OF WOMEN UNDER Cr.PC, 1973

The IPC and IEA are examples of substantive laws that protect women's modesty, but procedural law also creates guidelines in this regard. Procedural laws are required for the proper implementation of the laws written in the law books. The Code of Criminal Procedure (CrPC) is the main law controlling administration in India. It was adopted in 1973, and on April 1 of that same year, it became effective. It provides the means to conduct an investigation, apprehend suspects, gather evidence, determine whether an accusation is true or false, and punish those found guilty. It also talks about public irritation, preventing crime, and maintaining law and order. Some of the key clauses are listed below, with an analysis that is reflected below:

Right to Privacy while recording statement¹⁸

When the matter is in court and no one else needs to be present, a woman who has been raped can record her statement before the District Magistrate. As an alternative, she can record the statement with just one police officer and a female constable in a convenient location that is not crowded and where there is no chance of a third party overhearing the conversation.

Attendance cannot be required at any other place

This provision for the protection of women provides that no woman shall be required to visit any area other than the place where she dwells. In order to undertake an investigation, a police officer must go to the area where a woman resides. There, he or she may be questioned in front of a female constable, her family, or her friends¹⁹.

No arrests after sunset

In order to prevent the rights of women from being violated, the law⁽²⁰⁾ prohibits women from being arrested between sunset and daybreak, unless there are extraordinary reasons. After submitting a written report and gaining prior consent from the relevant Judicial Magistrate of First class, a female police officer may make the arrest in these circumstances.

PROTECTION OF WOMEN UNDER IEA, 1872

The Act expressly addresses the issue of admissibility of evidence. It is a special act that clarifies, updates, and codifies the rules governing admissibility. A contract between parties cannot omit the terms of the Act. Evidence that is against the Act will not be accepted, even if it is required to ascertain the truth. The IEA, which deals with the principle of recording evidence, is a crucial component of the justice delivery system. Significant changes were made to the way evidence is kept on a woman who has been the victim of sexual exploitation by the perpetrators as a result of the criminal law amendment act of 2013.

2. Conclusion:

To prevent and regulate various sex misdeeds, every community has its own set of laws. Individuals' sexual behavior has been redefined and constrained by their laws to conform to national ethos. The Indian position on this topic has been addressed in this essay. The Indian Penal Code has a number of legal provisions that are based on the constitutional guarantee of males and females receiving equal protection under the law and equality before the law. Additionally, from time to time, specific laws have been passed for the purpose of preventing and combating the sexual exploitation of women and girls. The central and state governments in India have taken a number of measures to safeguard women, including passing laws and prosecuting those who inflict violence upon them. Numerous campaigns against violence organized by the country's women's movement led to changes in the Indian Penal Code that pertain to crimes against women. Women have the right to ambiguity and are

¹⁷ Supra note 59

¹⁸ Supra note 73

¹⁹ Supra Note at 74

²⁰ Supra Note at 73

allowed to report any instances of sexual harassment they encounter at work to higher authorities. The Domestic Violence Act of 2005 seeks to shield a wife from acts of domestic violence or other similar cruelty on the part of a live-in spouse as well as a typical mother or sister. The Conception and Pre-Natal Diagnostic Technique Act guarantees this right, as does the right to life, which includes the right to give birth to girls.

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