



## A critical analysis: Development of rape laws in India

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### Abstract

Sexual assault and its various forms have been recognized by almost all the society and have been recorded by history. It is not a crime against women but it is the crime against the whole society; it is against the basic human rights of all the individuals. Rape laws have been recognized by all the countries; in India 'rape laws' began with the enactment of the Indian Penal Code 1860. After 1860 there have been various amendments. Rape laws have gone through many changes over the years. This paper gives an overview of how rape laws evolved in India. It also gives certain recommendations regarding the lacunae in the existing laws and provides possible solutions for the same.

**Keywords:** Legal provisions, rape, assault, amendments, criminal law amendment act 2013, criminal law amendment act 2018

### Introduction

IPC is the official criminal code of India. The code was drafted in 1860 on the recommendation of first law commission of India established in 1834 under the charter act of 1833 under the chairmanship of Lord Thomas Babington Macaulay. It came into force in British India During the early British Raj period in 1862. When criminal law was codified by Lord Macaulay. He included the sexual offence under the topic "*Offences Affecting the Human Body*" (Chapter XVI) in IPC. From the 1860 to the recent 2018 amendments we can see so many changes. First time we see a major amendment in criminal law in 1983 after Tukaram case<sup>[1]</sup>. After the Nirbhaya rape incident, the 2013 Criminal Amendment Act brought a tremendous reform in rape laws in India. Criminal Amendment Act 2018 also brought a landmark change in the Criminal Law regarding rape against minor girls. But still the rape incidents have shaken the country even after such laws. According to official data, nearly 34,000 rape cases were reported in the year 2018; almost 150,000 rape cases are still awaiting trial in our country. This shows the face of our dysfunctional criminal justice system. The provisions need to be more swift and safety measures for the women should be more strict. As stated by Ex Union Law Minister Ravi Shankar Prasad, it's time to reflect if people who commit heinous crimes against women like rape, should be allowed to manipulate with the judicial system of our country.

### Area of study

The area of study of this paper especially focuses on the amendments made regarding rape in Indian Criminal Laws from 1860 till today. Various important amendments and reasons behind those amendments have been discussed in this paper. This research paper is purely a doctrinal research that has taken its reference from books, journals and reports.

### Aims and objectives of the study

The main aim of this research paper is to introduce the variations of rape amendments that have been made by the parliament. The paper also discusses the reason that lead to

the changes in the rape provision of the Indian Criminal Law. This study also aims at comparing the various amendments and the loopholes that existed in the amendment due to which rape in India is still a matter of serious concern. The objective of this paper is to find the loopholes in the rape laws in India that are acting as a barrier to reducing incidents of rape in India. My suggestion is just to prevent rape and other sexual assault offenses in India through various laws that are the way to punish the offender in a better manner.

### Historical amendment in Indian penal code 1860

The first time rape was mentioned in our legal structure was when the IPC was written in 1860. Section 375 to section 376E of the Indian Penal Code refers to 'sexual offense'. It defined rape as sex without consent, with consent but under the fear of death or with consent but under pretenses. The first changes in the Indian Penal Code and the concept of aggravated rape was a very 'general' outline of rape after the Tukaram Case in 1972.

### History of criminal law amendment 1983

The Tukaram case was an incident of custodial rape in India on 26 March 1972, wherein, a young tribal girl, was allegedly raped by two policemen on the compound of Desaijanj Police Station in Gadchiroli district of Maharashtra. After the Supreme Court acquitted the accused, there was public outcry and protests, which eventually led to amendments in the Indian rape law via The Criminal Law Amendment Act 1983.

### Legal reform<sup>[2]</sup>

The Criminal Law Amendment Act 1983 (No. 43) made a statutory provision in the face of Section 114 (A) of the Evidence Act made 25 December 1983, which states that if the victim says that she did not consent to the sexual intercourse, the Court shall presume that she did not consent as a rebuttable presumption. New laws were also enacted following the incident. The Section 376 (punishment for rape) of the Indian Penal Code underwent a change with the

enactment and addition of Section 376(A), Section 376(B), Section 376(C), Section 376(D), which made custodial rape punishable. Besides defining custodial rape, the amendment shifted the burden of proof from the accuser to the accused once intercourse was established; it also added provisions for in-camera trials, the prohibition on the victim identity disclosure, and tougher sentences.

### History of criminal amendment 2013

On December 16, 2012, a 23-year-old physiotherapy intern was brutally gang-raped in a moving bus. After struggling to survive in the hospital, she died due to her injuries on December 28, 2012. The brutality and violence of the case led to widespread protests around the country. The public was demanding change in law and this was a turning point for anti-rape laws in India. After Nirbhaya incidence the government of India constituted Justice Verma Committee to recommend amendments that can be made in the Criminal Law and to provide a process of quicker trial in rape cases and cases related to crime against women. After Verm committee report Parliament have passed the Criminal law amendment act 2013.

### Criminal law amendment 2013 <sup>[3]</sup>

The Criminal Law (Amendment) Act, 2013 was passed in the aftermath of the Nirbhaya case wherein a female student was gang-raped in December 2012. The Act amended several provisions of the Indian Penal Code, Indian Evidence Act, and the Criminal Procedure Code.

By way of this amendment, several new offenses have been recognized and incorporated into the Indian Penal Code, including acid attack (Section 326 A & B), voyeurism (Section 354C), stalking (Section 354D), attempt to disrobe a woman (Section 354B), sexual harassment (Section 354A), and sexual assault which causes death or injury causing a person to be in persistent vegetative state (Section 376A). The Act also amended the already existing offenses to make them more stringent. Notably, the definition of rape in Section 375 was broadened to include acts in addition to penetration. Also, Section 370 was replaced with Section 370 and 370A. The amended section incorporated the definition of trafficking as provided in the UN Trafficking Protocol while excluding "forced labour."

### Changes to the Indian penal code, 1860 (The Criminal Law Amendment ACT 2013) <sup>[4]</sup>

#### Section 100

The offence of acid attack was added to section 100 of the code so as to use the right of private defence of the body so as to cause death.

**Section 166A:** Section 166 A was inserted by this act so as to punish the public servants who disobey the direction given by law. They shall be punished with rigorous imprisonment for a term of 6 months which may extend to one year and may include fine.

**Section 166 B:** Section 166 B was inserted to provide punishment for non- treatment of victims by hospitals under any authority with an imprisonment which may extend to one year and with fine.

**Section 228 A:** Section 228 A was amended to include the newly inserted section 376 E relating to the disclosure of the identity of victims of certain offences.

**Section 326 A AND 326 B:** Sections 326 A & B was inserted to include the offences of ACID ATTACK and attempt to make an acid attack to the code with their relevant punishments i.e. imprisonment of a term of 10 years which may extend to life imprisonment and also with fine. For an attempt to administer acid the punishment is imprisonment for a term of 5 years which may extend to 7 years and also fine. The key feature of this section was that the fine levied as per this section should be used for meeting the medical expenses of the victim.

**Section 354:** Section 354 was amended in order to increase the punishment for the offence of assault or use of criminal force to women with intent to outrage her modesty from 2 years to 5 years of imprisonment.

**Section 354 A:** Section 354 A was inserted to introduce the offence of sexual harassment and its relevant punishment of rigorous imprisonment for a term of one year which may extend to three years along with fine.

**Section 354 B:** Section 354 B was inserted to include the crime of assaulting or compelling a woman to disrobe or compelling her to be naked for which he could be punished with imprisonment for a term of three years which may extend to seven years along with fine.

**Section 354 C:** Section 354 C was inserted to introduce the offence of VOYEURISM i.e. watching or capturing image of women engaged in private act which will be punishable with imprisonment for a term of one year which may extend to three years and in case of second conviction it may extend to seven years and may include fine.

**Section 354 D:** Section 354 D deals about the offence of STALKING which means following her, monitoring the use by a woman her emails or internet or any other electronic means of communication or tries to communicate with her despite a clear indication of disinterest. The offence of staling is punishable with imprisonment of a term of 5 years which may extend to seven years in case of second conviction and also liable to fine.

**Section 370 & SECTION 370 A:** Section 370 & 370 A were substituted in order to widen the definition of trafficking of a person and to provide for punishments for specific offence of trafficking like trafficking of a minor, more than one person and repeated trafficking. Section 370 A provides for punishment of exploitation of a trafficked person.

**Section 375:** Section 375 was substituted to widen the ambit of the definition of RAPE.

A man is said to commit the offence of rape if he penetrates or inserts or manipulates any part of the body of the women so as to cause penetration into the urethra, vagina or any part of the body of the women or applies his mouth to vagina, urethra, anus of a women or compels her to do so with him or any other person under the following circumstances:

- Against her will
- Without her consent
- With her consent which was got by fear or death or hurt
- With her consent when she believes the man to be her

husband and he is not so

- With her consent, got while she was intoxicated or due to unsoundness of mind she is unable to understand the nature of the act
- With or without her consent when under 18 years of age.
- When she is unable to communicate consent.

The exceptions provided in the section were medical examination and sexual intercourse by the husband with his wife who is not under 18 years of age.

**Section 375– Under the new section, a man is said to commit rape if there is**

- Penetration of penis into vagina, urethra, mouth or anus of any person, or making any other person to do so with him or any other person;
- Insertion of any object or any body part, not being penis, into vagina, urethra, mouth or anus of any person, or making any other person to do so with him or any other person;
- Manipulation of any body part so as to cause penetration of vagina, urethra, mouth or anus or any body part of such person or makes the person to do so with him or any other person;
- Application of mouth to the penis, vagina, anus, urethra of another person or makes such person to do so with him or any other person;
- Lastly, touching the vagina, penis, anus or breast of the person or makes the person touch the vagina, penis, anus or breast of that person or any other person.

**Section 376:** Section 376(1) provides for punishment of offence under section 375 to be rigorous imprisonment for a term of seven years which may extend to life imprisonment and shall also be liable to fine.

**Section 376(2):** provides for more heinous forms of rape like rape by a police officer, public servant, member of armed forces, staff of jail or any custody place by any relative or guardian of the women and commits rape during communal or sectarian violence, raping a pregnant women, raping a women under sixteen years of age, women incapable of giving consent, women suffering from mental or physical disability, commits rape repeatedly on the same women then the punishment will be rigorous imprisonment for a term not less than 10 years which may extend to life imprisonment and shall also be liable to fine.

**Section 376 A:** Section 376 A provides for punishment of causing the death or persistent vegetative state of the victim to be rigorous imprisonment for a term of 20 years which may extend to life imprisonment and shall also be liable to fine.

**Section 376 B:** Section 376 B gives punishment for sexual intercourse by the husband with his wife during separation or against her will or when she is under sixteen years of age to be punishable with an imprisonment of a term of 2 years which may extend to 7 years and shall also be liable to fine.

**Section 376 C:** Section 376 C states the punishment for the under section 375 when it is committed by persons in authority like ones in fiduciary relationship or public servant

or manager of a jail or hospital to be punished with rigorous imprisonment for a term of 10 years which may extend to life imprisonment and shall also be liable to fine.

**Section 376 D:** Section 376 D defines gang rape and fixes the punishment to be rigorous imprisonment for a term of 20 years which may extend to life imprisonment and also fine. Provided the fine is used to meet the medical expenses and rehabilitation of the victim.

**Section 509:** Section 509 was amended to increase the punishment from the imprisonment of a term of one year to three years and also with fine for the offence of using act, gesture or act intended to insult the modesty of women.

**Criminal law amendment Act 2018** <sup>[5]</sup>

**Brief facts of Kathua rape case and Unnao rape case**

An 8-year-old girl was raped in Kathua, a district of Jammu and Kashmir. It has been alleged that she was kept in a Shrine for several days and raped continuously and later murdered.

The Unnao rape case was another shock to the nation where a teenage girl accused an MLA of raping her in the year 2017. She tried to set herself on fire in front of the MLA's residence in Unnao, northern Uttar Pradesh.

**After Kathua and Unnao rape case Parliament has passed the Criminal law amendment act 2018.**

**Timeline of events which led to the amendment** <sup>[6]</sup>

Several state assemblies such as Madhya Pradesh, Haryana, Rajasthan, and Arunachal Pradesh passed stringent anti-rape laws for committing rape of minor girls after the Kathua rape and the Unnao rape incidents.

- Following this, the President had promulgated the Criminal Law Amendment Ordinance on 21 April 2018.
- The Criminal Law (Amendment) Bill was then tabled in the Parliament which replaced the Ordinance.
- The Bill was passed by the Parliament on 6th August 2018.
- The President gave assent to the Bill and thus, the Criminal Law (Amendment) Act, 2018 came into force.

**What lead to enactment of Criminal Law Amendment Act, 2018**

This followed the Criminal Law (Amendment) Ordinance, 2018 and brought amendments in four major Acts.

- The Indian Penal Code, 1860
- The Code of Criminal Procedure, 1973
- The Evidence Act, 1872
- The Protection of Children from Sexual Offences Act, 2012

**Amendments in Indian Penal Code**

Criminal amendment act 2018 inserts three new sections in IPC-

376AB  
376DA  
376DB

**And amend three sections of IPC-**

166A  
228A  
376

**Inserted Sections****376AB** <sup>[7]</sup>

This section was inserted just after Section 376A and provides that whoever commits rape with a woman, who is under 12 years of age shall be punished with rigorous imprisonment for a term which shall not be less than 20 years, and it may extend to life imprisonment which impliedly intends to introspect what he had been done is thoroughly illegal and off-base, or in legal sense, reminder for that person natural life, and with fine or death penalty. And also liable to pay compensation and such compensation shall be reasonable and just, to meet the medical expenses and for victim rehabilitation. Additionally, commands that any payment by the denounced under this section will be paid to the person in question (victim).

**376DA** <sup>[8]</sup>

After Section 376D, 376DA section inserted and states that when a woman under the age of sixteen years raped by one or more person constituting a group or done some action for the pursuance of common intention, each of that person deemed to commit the offence of rape and shall be punished with imprisonment for life which shall impliedly intends to introspect what he had been done is thoroughly illegal and off-base, or in legal sense, reminder for that person natural life, and with fine or death penalty. And also liable to pay compensation and such compensation shall be reasonable and just, to meet the medical expenses and for victim rehabilitation.

Additionally, commands that any payment by the denounced under this section will be paid to the person in question (victim).

**376DB** <sup>[9]</sup>

This section states that where a woman who, is below the age of 12 years is raped by one or more person constituting a group or action for the pursuance of common intention, each person shall be deemed to commit the offence of rape, and punished with life imprisonment which impliedly intends to introspect what he had been done is thoroughly illegal and off-base, or in legal sense, reminder for that person natural life, and with fine or death penalty. And also liable to pay compensation and such compensation shall be reasonable and just, to meet the medical expenses and for victim rehabilitation.

Additionally, commands that any payment by the denounced under this section will be paid to the person in question (victim).

**Amended Sections****166A** <sup>[10]</sup>

This section deals with public servant disobeying directions under the law, and has three clauses. And clause (c), is substituted with section 376AB, 376B, 376C, 376D, 376DA and 376DB.

**228A** <sup>[11]</sup>

This section deals with disclosure of the identity of the victim of certain offences, and sub section 1 of this section was substituted with Section 376AB, 376B, 376C, 376D, 376DA, and 376DB.

**376** <sup>[12]</sup>

This section deals with the punishment for rape and under this section, the sub-section 1 was substituted as “whoever commits an offence of rape shall be punished for the term not less than 10 years or which may extend to life imprisonment and with fine”.

And by this amendment in section 376, sub-section 2 clause (a) sub-section 1 has been repealed.

After sub-section 2 of section 376, new sub-section inserted namely “3” which provides that whoever commits the offence of rape with a woman, who is under the age of sixteen years shall be punished with rigorous imprisonment for a term not less than 20 years, and shall extend to imprisonment for life which impliedly intends to introspect what he had been done is thoroughly illegal and off-base, or in legal sense, reminder for that person natural life, and with fine or death penalty. And also liable to pay compensation and such compensation shall be reasonable and just, to meet the medical expenses and for victim rehabilitation.

Additionally, commands that any payment by the denounced under this section will be paid to the person in question (victim).

**The Criminal Amendment Act, 2018 amends two sections of the Indian Evidence Act, 1872****53A****Provision of Section 146****53A** <sup>[13]</sup>

This section deals with the evidence of character or previous sexual experience not relevant in certain cases substituted with Sections 376AB, 376B, 376C, 376D, 376DA, and 376DB.

**146** <sup>[14]</sup>

This section deals with questions lawful in cross-examination (what are the questions must be asked by the Police Officer) when a witness is cross-examined, he may in addition to the question hereinbefore referred to, be asked any question which tends-

- Tend to test the veracity.
- To discover who he is and what is his position in life.
- To sake his credit, by injuring his character, although the answer might tend directly or indirectly to criminate him, might expose him to a penalty or forfeiture.

Provision 3 or this section were substituted with section, 376AB, 376B, 376C, 376D, 376DA and 376DB.

**Amendment in Code of Criminal Procedure**

By the Criminal Amendment Act, 2018 following sections of Cr. PC has been amended these are:

Section 173

Section 374

Section 377

Section 438

Section 439

Section 173<sup>15</sup>

In this section there is an amendment in sub-section (1A) which provides that rape of a child may be completed within 3 months, this sub-section was substituted with “an offence under section 376AB, 376B, 376C, 376D, 376DA, and 376DB or section 376E of the Indian penal code shall be completed within 2 months”.

**Section 374** <sup>[16]</sup>

In section 374 of Cr.PC, after sub-section (3), the following sub-section inserted i.e. sub-section (4) and read as when an appeal has been filed against a sentence passed under Section 376, 376A, 376AB, 376B, 376C, 376D, 376DA, and 376DB or Section 376E of the Indian penal code the appeal shall be disposed within period of 6 months from the date of filing of such appeal.

**Section 377** <sup>[17]</sup>

In Section 377 of the code of criminal procedure, after sub-section (2), new sub-section was inserted i.e. sub-section (3) and read as when an appeal has been filed against a sentence passed under section 376, 376A, 376AB, 376B, 376C, 376D, 376DA, and 376DB or section 376E of the Indian penal code the appeal shall be disposed off within a period of 6 months from the date of filing the appeal.

**Section 438** <sup>[18]</sup>

In Section 438 of the Code of Criminal Procedure, after sub-section (3), new sub-section inserted i.e. sub-section (4) and provides that nothing in this section shall apply to any case involving the arrest of a person on accusation of having committed an offence under sub-section (3) of Section 376, 376AB, 376DA, 376DB of the Indian penal code.

**Section 439** <sup>[19]</sup>

In Section 439 of CrPC, after sub-section (a), (1) provision, another provision was added and says that “the high court and the session court shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of Sections 376, 376AB, 376DA, 376DB, give notice of the applicant for the bail to the public prosecutor within a period of 15 days from the date of receipt of such notice.

And after sub-section (1) of Cr.PC following sub-section was inserted i.e. (1A) which provides that the presence of the informant or any person authorized by him, shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of sections 376, 376A, 376DA, 376DB.

**Protection of children from sexual offences (POCSO) Act, 2012** <sup>[20]</sup>

By the Criminal Amendment Act, 2018 there is a change in Section 42 of POCSO Act, 2012. This section deals with Alternative Punishment and Sections 376A, 376C, 376D were substituted with 376A, 376AB, 376B, 376C, 376D, 376DA and 376DB of Indian penal code.

**Conclusion**

India's rape laws have come a long way from their inception in the Indian Penal Code in the 1860s. We see that after Tukaram case Parliament has passed the criminal law amendment act 1983, similarly after Nirbhya case Parliament has passed the criminal law amendment act 2013 and after Kathua case Parliament has passed the criminal law amendment act 2018. Many changes that have taken place in the laws have been progressive. When you see the evolution of rape laws in India it is easy to notice a pattern there's a big rape case with a lot of publicity that shocks the nation and the government to reduce public outrage brings in some changes in the existing laws. However, for every rape that is reported and becomes public, there are thousands of case which never get the same public attention.

It is time to fight this evil aggressively and proactively. Let's not wait for the next big case to make changes in our laws let's do it now when we have the chance.

**Reference**

1. Tukaram v. State of Maharashtra AIR 1979 SC 185.
2. The Criminal law amendment Act 1983.
3. The Criminal law amendment Act 2013.
4. The Criminal law amendment Act 2013.
5. The Criminal law amendment Act 2018.
6. The Criminal law amendment Act 2018.
7. Sec. 376 AB IPC
8. Sec. 376 DA IPC
9. Sec. 376 DB IPC
10. Sec. 166 IPC
11. Sec. 228-A IPC
12. Sec. 376 IPC
13. Sec. 53 A The Code of criminal procedure.
14. Sec. 146 The Code of criminal procedure.
15. Sec. 173 The Code of criminal procedure.
16. Sec. 374 The Code of criminal procedure.
17. Sec. 377 The Code of criminal procedure.
18. Sec. 438 The Code of criminal procedure.
19. Sec. 439 The Code of criminal procedure.
20. Protection of children from sexual offences (POCSO) Act, 2012.