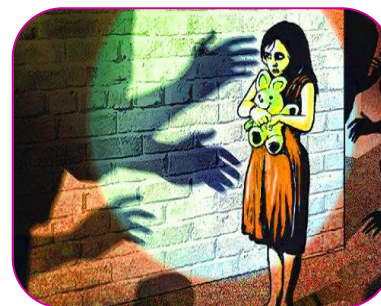




## MAJOR AMENDMENTS IN INDIAN ANTI-RAPE LAWS: AN ANALYTICAL STUDY

Vice-Prin. Vardhaman Vinayak Ahiwale  
B.A, LL.M, NET, SET (Law)  
MGV's K.B.H. Law College, Malegaon (Nashik)



### ABSTRACT

In the month of June 2018, the report released by the, Thomson Reuters Foundation, ranked India, the most dangerous country for women in the world having topped in three indices out of six i.e. cultural traditions, sexual violence and human trafficking. Furthermore, as per the NCRB data, every year around forty thousand rape cases are get registered. This facts, has raised the doubt about the present rape law's suitability and forced to analyze rape laws especially the amendments made in it, to understand that, are the present laws sufficient to tackle the rape epidemic.

In India, after the incidences of Mathura, Nirbhaya and Kathua rape cases, which were followed by public protest throughout the country, have played important role to enact major amendments in rape laws. So far, in the years 1983, 2013 & 2018 three major Criminal Law (Amendment) Acts have been enacted, to control the incidences of rapes. In these amendments, the major focus is on widening scope of definition of 'rape', introducing stringent punishments, and to some extent speedy disposal of cases, and various assistance to rape victim. But it has failed to recognize the, 'marital rape' and also neglected the requirement of infrastructural development for speedy disposal.

Even though the amendments have been made, it seems that law alone failed to control rape incidences. Therefore, rape laws should be coupled with other measures like awareness programme about rape law and gender justice, basic sex education at certain age, ban on pornographic material with certain exceptions, and most importantly need to bring change in mindsets and attitude of individuals as well as society, so the women can truly get cherished.

**KEYWORDS:** Criminal Amendments, Rape Laws, Rape, Punishments, Other measures.

### INTRODUCTION:

In the month of June 2018, the report released by the, Thomson Reuters Foundation, after the poll surveyed by 548 experts on six different indices, ranked India, the most dangerous country for women in the world<sup>1</sup>. This news, has raised the doubt about the present rape law's suitability to control or reduce the rape incidences from Indian society. So far, three major amendments have been made in anti-rape laws, to reduce the incidences of rapes, which are increasing day by day<sup>2</sup> and around forty thousand case are getting

<sup>1</sup>Before seven years, India was ranked fourth in the said poll survey. But now this year out of six different indices India topped in three i.e. cultural traditions, sexual violence and human trafficking. Other three indices are healthcare, discrimination and non-sexual violence.

<sup>2</sup>The number of reported children rape cases has increased. In 2012 it were 8541 and in 2016 it is 19765. **CF:** <https://www.bbc.com/news/amp/world-asia-india-44922084>. Another example is, this year, till September 2018, in Ranchi District alone, 144 rape cases are registered.

registered every year. This has forced to analyze rape laws, specially the major amendments made in anti-rape laws in India, to understand, what further changes required to be done to bring down the number of rape cases or are the present laws sufficient to tackle the rape epidemic.

The word 'rape', which is derived from the Latin term, 'rapio' means 'to seize'. In simple words rape means a forcible seizure. It signifies in common terminology, as the ravishment of a woman without her consent by force, fear, fraud or carnal knowledge of woman by force against her will<sup>3</sup>. Recently, the series of high profile rape incidences like *Kathua*, *Unnao* rape cases have shocked the nation, resulting in enacting Amendment Act<sup>4</sup> in rape laws. Actually, first time the major amendment was made in the year 1983<sup>5</sup>, after the *Mathura* rape case. The second amendment had took place few years before when, the *Nirbhaya* rape incidence and thereafter countywide protest, had forced the government to make the changes in rape laws. And government enacted Amendment Act of 2013<sup>6</sup>. After the major criminal amendments in Anti-rape laws, it seems that, the present statutory definition has covered almost all facet of 'rape', but not the all<sup>7</sup>.

After the Apex court's controversial decision in *Mathura*<sup>8</sup> rape case the first major amendments in rape law was made in the year 1983. In this case, the 18 years girl was raped by two police constable namely Ganpat and Tukaram in police custody. During the trial, session court acquitted the accused on the ground that, there was a consent for sexual intercourse. On appeal, the Nagpur Bench of Bombay High Court reversed the decision of session court and held that, Ganpat is guilty for rape and Tukaram, who had drank heavily, who could not commit rape, punished for molestation of woman. In its judgment, the court had made it clear about the difference between 'consent' and 'passive submission' and rightly said that, the passive submission caused due to fear or threat cannot be parallel with desire or wish and such act cannot be said to have committed by volition<sup>9</sup>. However, in appeal the Apex court, reversed the judgment of High Court and mentioned that, the victim was not under the fear of death or hurt and no mark of injury, which means it was consented sexual intercourse.

This judgment was, widely criticized throughout the nation, followed by strong protest by public against the verdict. Taking note of this protest and to protect the interest of victim of rape, the government enacted the Criminal Law (Amendment) Act 1983. By this amendment, it is made it clear that, passive submission will not be a consent at all<sup>10</sup>, it became conclusive presumption that woman have not consented and burden of proof of innocence lies upon the accused<sup>11</sup>. Further, the prohibition of disclosure of rape victim made it mandatory<sup>12</sup>. In addition of this new kind of rape added i.e. custodial rape, which does not amount to rape, because of the circumstances, in which the consent of the victim obtained due to supervisory positions of accused, who take the undue advantage of their authority<sup>13</sup>. The sexual intercourse with wife, without her consent during the separation made punishable<sup>14</sup>. And camera trial made it compulsory in some kind of rape incidences.

<sup>3</sup>*Bhupendara Sharma v. State of Himachal Pradesh* (2003) 8 SCC 551 *See also* Nelson's Pakistan Penal Code, 7<sup>th</sup> Edi (1983) Vol. II p. 2014 *CF* K.D. Gaur's Textbook on The Indian Penal Code, Universal Publication, New Delhi 4<sup>th</sup> Edi. (2010) at p. 643

<sup>4</sup>For details *See*: The Criminal Law (Amendment) Act, 2018

<sup>5</sup>*See infra* The Criminal Law (Amendment) Act, 1983

<sup>6</sup>*Infra* The Criminal Law (Amendment) Act, 2013

<sup>7</sup>*See* Sections 375 & 376 of Indian Penal Code 1860

<sup>8</sup>*Tukaram v. State of Maharashtra* AIR 1979 SC 185

<sup>9</sup>*Ibid*

<sup>10</sup> Inserted Clause (5) 375 of IPC 1860

<sup>11</sup>*See* Section 114A of Indian Evidence Act 1872

<sup>12</sup>*See* Section 228A of IPC 1860

<sup>13</sup> Sections 376B to 376 D were inserted.

<sup>14</sup><sup>1414</sup> Section 376 A of IPC which had prescribed the punishment for two years and fine. After Amendment of 2013 now 376A is number as 376 B and punishment is increased i.e. not less than two years which may extend to seven years.

Till December 2012, it was thought that, those changes in rape laws were sufficient. But after the incidence of Nirbhaya rape<sup>15</sup>, which leads to public outrage across the nation and forced government to enact the Criminal Law (Amendment) Act, 2013. By this amendment, the original sections 375 to 376-D have been substituted. It means that, it not only increased scope of definition of 'rape', but also increased the punishments as well. Now the definition of rape under section 375 of IPC, it covers penetration of penis or any object or any part of body to any extent into the vagina, mouth, urethra or anus of another person or making another person to do it, including application of mouth is also covered in the definition. And the punishment provided is not less than seven years to life imprisonment. It means that, the discretionary power of court while punishing in rape cases have been reduced tremendously. Under section 376A, 376D provides death penalty also. Furthermore, it has inserted the new sections 166A<sup>16</sup> & 166B<sup>17</sup> in IPC.

Prima facie, the Amendment Act of 2013 seems to have made a sweeping changes in Indian rape laws. Nevertheless, this amendment criticized for gender biased and the interest of women has taken utmost care. Furthermore, the quantum of punishment is too harsh, which might result into counterproductive to victim of rape. It has not covered the marital rape, though the recommendation was made by Justice Verma Committee. In 2017, in *Independent Thought v. Union of India and Another* case<sup>18</sup> while delivering the judgment, court criminalized the sexual intercourse with minor wife i.e. whose age lies between fifteen to eighteen years. And mentioned that, the exception second of section 375 of IPC is violative of articles 14, 15 and 21 of Constitution of India. And being a married with such minor girl, cannot validate sexual intercourse. In fact, such exception clause in rape laws was contrary to the purpose of prohibition of Child Marriage Act 2006 and also Protection of Children from Sexual Offences Act (POCSO) 2012. The court has struck down the said exception second of Section 375 of IPC. Now, it is irrespective whether the girl is married or not, if she is below eighteen years, she will always remain a child and sexual intercourse with such minor girl will now attract a minimum rigorous imprisonment of ten years. In this case, Supreme Court has partially recognized the marital rape, but failed to recognize it fully just like other countries has done it.

Today, the reality is that, even after the drastic changes made by Amendment of 2013, the number of rape cases are increasing. The latest incidence of Kathua rape and murder case, in which, the eight year victim was kept in captivity at a small village temple in Kathua district of State of Jammu & Kashmir, where she was kept sedated and raped before she was murdered brutally. After this incidence, the massive protest seen by the nation across the country, and the demand for death penalty increased everywhere, especially in child rape cases. Finally, in the month of August 2018 the Criminal Law (Amendment) Act 2018<sup>19</sup> has been made to amend the IPC, Cr. P.C. POSCO<sup>20</sup> and Indian Evidence Act. This amendment has given retrospective effect from 21<sup>st</sup> April 2018.

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<sup>15</sup> On 16<sup>th</sup> December, 2012, a 23 years old physiotherapy intern was brutally gang-raped in moving bus in Delhi, who died thirteen days later during the treatments.

<sup>16</sup> Which deals with, if public servant disobey the any direction of law or knowingly disobeys to prejudice of any person or fail to record information cognizable offence of rape other certain crimes, then he will be punished not less than six months but which may extend to two years and also liable to fine.

<sup>17</sup> Punishment is given for non-treatment to the victim.

<sup>18</sup> Writ petition (Cri.) No. 382 of 2013

<sup>19</sup> This Act has repealed, The Criminal Law (Amendment) Ordinance, 2018.

<sup>20</sup> The Protection of Children from Sexual Offences Act 2012, is made to protect the children from sexual abuse, sexual harassment and pornography, having main object to provide child friendly system for trial. The person below the age of 18 year considered as child. This Act has defined various forms of sexual abuse such as penetrative and non-penetrative assaults, sexual harassment, which may convert into aggravated under certain circumstances to which the harsh punishment is prescribed. This Act of 2012 has imposed the legal duty upon the person, to make mandatory reporting, who are aware of such offence and if he fail, he can be punished with six months' imprisonment or fine. To record the evidence of child, thirty days' time limit given and court shall complete the trial within one year. Use of child for pornographic purpose is prohibited and punished, the provisions for camera trial, monitoring of implementation of this Act by concerned commissions, the compensation to victim etc. have also been made.

Due to this Amendment of 2018, now the punishment under section 376 for rape of woman is increased from not less than seven years to not less than ten years which extend to life imprisonment. If the victim is under sixteen years of age, the punishment increased from ten years to not less than twenty years rigorous imprisonment, which may extend to life imprisonment and also fine, which shall be just and reasonable to meet the medical expenses and rehabilitation of victim, and if gang rape committed than it will be imprisonment for life. Apart from this, if the victim is below twelve years of age than minimum twenty years jail or life imprisonment or death sentence<sup>21</sup>, if gang rape committed than life imprisonment or death sentence<sup>22</sup>.

Furthermore, the time limit is prescribed for investigation of cases of rape and it should be completed compulsory within two months and trial will be concluded within two months and six months is given for disposal of appeal<sup>23</sup>. In addition to this, the anticipatory bail is also barred, if the rape comes under the category of sections 376 (3) or 376AB or 376DA or 376DB of Indian penal code<sup>24</sup>. Because of this major changes, now a days, the court is disposing the rape cases speedily with harsh punishments. However, the rape incidences are taking place often, which is subject of worry and to think, what exactly is needed to curb the menace like rapes from Indian society.

After taking into account the phenomenon of India, it is evident that, all these major amendments in anti-rape laws, have been made as per the changing scenario and demand of public at large. They have mainly focused upon widening the definition of 'rape' to cover all facet and enhancing its punishments up to death penalty. In fact, the death sentence for rape and murder is in proportionate but only for rape, it is very harsh & excessive in nature. It seems that, only to calm down the people's outrage or anger, the death sentence is prescribed for 'rape' by the government. We cannot deny the fact that, the legislation having stringent punishments are not enough to fight against the increasing crimes against the women, especially against the crime of rape. Moreover, all these amendments failed to recognize the 'marital rape'.

Altogether, it is the need of hours, to have strict implementation of legislative provisions in letter and spirit by bringing clarity in roles and responsibilities of dedicated human resources. Periodical arrangement of mass movements, to end the violence against the women and respect their dignity. And also to sensitizing the public at large about gender justice by educational, governmental institutions, employers of other institutions, television and press media. In India, the complete ban on pornographic online and offline materials urgently be banned, with certain exceptions for like educational or basic knowledge purposes. Because, now a days, such obscene material is accessible very easily to anyone, which is resulting to corrupt the mind of its viewer<sup>25</sup>. The gender justice should be a part of school syllabus or basic sex education at certain age group should be made compulsory. If needed, the parents and teachers should trained to observe behavioral changes of children. Further, the effective banners and placards at public places and in public vehicles should be displayed. And most importantly, there is need to bring change in mindsets and attitude of individuals as well as society, so the women can truly get respected equally and value in society.

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<sup>21</sup> For details *See* section 376AB of Indian Penal Code 1860

<sup>22</sup> See section 376 DB which deals with punishment for gang rape on woman under twelve years of age.

<sup>23</sup> For details of Amendment Act of 2018 *See* The Gazette of India, EXTRAORDINARY, PART II Section 1, No. 35 NEW DELHI, SATURDAY, AUGUST 11, 2018/SHRAVANA 20, 1940 (SAKA) But, this amendment too, like previous one, could not include the marital rape.

<sup>24</sup> Section 438 (4) of Criminal Procedure Code 1973 is newly inserted, to bar the anticipatory bail in certain kind of rape cases.

<sup>25</sup> The current record of rape accused or offender shows that, most of them were habituated to watch porn regularly.

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B.A, LL.M, NET, SET (Law) , MGV's K.B.H. Law College, Malegaon (Nashik).