

# Strict Implementation: Justice to Rape Victims

Misha Mehta  
GLS Law College, Ahmedabad  
Gujarat, India

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The first time 'rape' was mentioned in our legal structure when the Indian Penal Code was written in 1860. Section 375 to Section 376E of the Indian Penal Code refers to 'sexual offenses'. S.375 defined rape as sex without consent, with consent but under the fear of death or with consent but under false pretenses. It also defined 'statutory rape' as sex with a woman under the age of 16. S.376 deals with the punishment of rape which clearly states that rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine<sup>1</sup>.

Mathura rape case, where a young adivasi girl named Mathura was raped by 2 police man while she was in their custody, the police men were acquitted as they could prove that she was sexually active and not had been raped. The Supreme Court Justices even said that Mathura had raised no alarm, there were no visible marks of injury or struggle and because she was used to sex, she might have incited the cops to have intercourse with her. This created a huge outrage among the public. importantly this case led to an amendment in The Indian Evidence Act, 1872 where S.114(A) stated that in a prosecution for rape under clause (a) or clause (b) or clause (c) Code, (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent<sup>2</sup>. A new category of rape called 'Custodial Rape' was introduced to include rapes of women while in custody of public servants.

Delhi Gang Rape 2012 also known as Nirbhaya rape case where the victim named Jyoti Singh was brutally raped by 6 males travelling by the same bus among which one was the driver of the bus and her friend Awindra was beaten, gagged and knocked unconscious. A medical report later said that she suffered serious injuries to her abdomen, intestines and genitals due to the assault, and doctors said that the damage indicated that a blunt object (suspected to be the iron rod) may have been used for penetration<sup>3</sup>. For this heinous crime the Hon'ble Supreme Court held the accused guilty and were given death sentence. After this they sought mercy from the death penalty from President Ram Nath Kovind. The president decides on the plea in consultation with the Ministry of Home

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<sup>1</sup> IPC Bare Act

<sup>2</sup> Indian Evidence Act, 1872 Bare Act

<sup>3</sup> <https://www.firstpost.com/india/delhi-gangrape-victim-regains-consciousness-next-48-hours-critical-561535.html>

Affairs and Delhi government. Delhi government quickly moved to reject the mercy plea<sup>4</sup>. But still the death penalty has not been implemented. The accused of the rape have not been hanged.

The Nirbhaya Act or The Criminal Law (Amendment) Act, 2013 which came after this incident has stringent punishments to deal with sex crimes against women. The new law expanded the definition of rape including forced penetration, oral, vaginal or anal, with any foreign object. This new Act has expressly recognized certain acts as offences which were dealt under related laws. These new offences like, acid attack, sexual harassment, voyeurism, stalking have been incorporated into the Indian Penal Code<sup>5</sup>.

Gender Justice means ensuring equally access to safe public places at all times of day and night for women. It would mean ensuring both police, as well as the judiciary to have the resources that can swiftly deal with cases of rape and fast-track courts to reduce the pendency of cases unlike the cases like Nirbhaya which took a long period of 3 years for giving the verdict.

After Nirbhaya case which witnessed number of rallies, changes in law, outrage among people etc. the rate of rape has not been reduced. There were many cases of rape reported after the Nirbhaya case. Some of those cases were:

1. Unnao rape case, A 20 year old girl was abducted by the five men and was then raped, beaten and burnt alive. She suffered 90% of burns on her body.
2. The most recent Hyderabad rape case where a young woman who was a doctor was raped and burnt by the rapists. Etc.

It observed by Justice Arjit Pasayat: "While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female."<sup>6</sup>

There are many strict laws in protection of women. Even POSCO, Juvenile Justice Act etc. talks about rape among adults and children. The punishment for the crime is also very well stated in the laws and is mandatory. What is needed is implication. The death penalty in Nirbhaya case needs to be implemented to set an example of justice. The verdict in the rape cases must be given in a short period of time. It is rightly said that justice delayed is justice denied. When the punishment is not implemented strictly or implementation of law is weak the criminals of such heinous crime do not fear from the law and punishments. When the implementation is weak encounters which can be interpreted as a planned encounter happen similar to that which happened in recent Hyderabad rape case.

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<sup>4</sup> <https://www.indiatoday.in/india/story/odisha-law-minister-says-nothing-wrong-with-hyderabad-police-action-1625936-2019-12-06>

<sup>5</sup> <https://www.thehansindia.com/posts/index/Hans-Classroom/2018-04-15/Nirbhaya-Act/374241>

<sup>6</sup> [http://www.legalserviceindia.com/articles/rape\\_laws.htm](http://www.legalserviceindia.com/articles/rape_laws.htm)