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Evolution of Rape Trials under Old Criminal Laws

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ABSTRACT

This paper talks about how rape trials have evolved in India. Detailed and descriptive analysis is done of the landmark judgments starting up with the Mathura rape case to the Kathua rape case that brought several amendments under the Indian Penal Code, The Code of Criminal Procedure, and the Indian Evidence Act and it also discusses in detail about the Criminal law amendment act of 1983, 2013 and 2018. It also looks into the recommendations given by the committees like Justice Verma Committee about gender neutrality, capital punishment, and many more. All crimes that occur in India are presumed to be committed against the State, which is why the State is always a party in criminal cases. In India, the criminal law consists of three primary statutes: the Indian penal code, the Code of Criminal Procedure, and the Indian Evidence Act. This article finishes with my perspective on the four major decisions handed down by the court, as well as my thoughts on how it's great that amendments have been made and how timely justice is crucial. Since, in my opinion, slow justice does not amount to justice.

Keywords: Rape, the Mathura rape case, the Nirbhaya rape case, the Unnao rape case, and the Kathua rape case, Amendments, Justice.

I. INTRODUCTION

The 1973 Code of Criminal Procedure, defines the main mechanisms for arresting criminals and further preventing them from committing any crime, investigating criminal cases, putting them before Criminal Courts, and punishing the guilty with appropriate punishments.

In contrast, procedural law is responsible for the enforcement of substantive law.

The entire code of criminal procedure is based on these three considerations-

- An accused should be given a fair trial by complying with all the principles of natural justice, which is why portions of the CrPC outline the rights of an arrested person.
- Delays in investigation and trial should be avoided at all costs, as they are not

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only detrimental to the individuals involved but also to society as a whole.

- The system should be straightforward and, to the greatest extent feasible, fair to the less fortunate members of the community.

This code also establishes the criminal case hierarchy and which courts are authorized to impose which level of penalty.

All of the aforementioned objectives will be achieved if everyone works with cooperation, honesty, and dedication.

Now talking about rape. It is the most heinous and barbaric crime which has a long struggle of getting recognized as one and punishing the offenders strictly and stringently under our laws.

The term rape is originated from the Latin word which is derived from the verb “reperere”, which means to seize or seize something, indicating possession. Rape is a sexual attack that is not confined to vaginal penile penetration but also includes various other forms of penetration without the agreement or will of the victim, which can be carried out by deception or intimidation. According to statistics from 2021, India reported an average of 86 rapes per day and 49 crimes against women each hour. There is a decrease in the number of rape cases compared to the previous year, but 31,677 rape cases are still a large number and a protracted battle for justice.

The Indian Penal Code added rape as a crime in the 1860s. To be clear, it was defined as any sexual act done on a female victim or anybody else who matters to her without her consent. The definition of rape which was defined under IPC was very vague about certain terms and it also does not clearly define consent for the next century or more, the legal definition of rape remained unchanged.

However, after cases such as the Mathura rape case, the Nirbhaya case, and the Unnao and Kathua cases, the Indian Penal Code, the Criminal Procedure Code, and the Indian Evidence Act were amended.

(A) Literature Review-

a. Articles

“New trends in rape law”- ²By Sumit Malik (1996)

This article examines the basic definition of rape, compares India to other nations, and discusses

² Sumit Malik, New trends in rape law, Student Advocate Journal, Vol.8, pp.49-62, (1996)
<https://heinonlineorg.svkm.mapmyaccess.com/HOL/LuceneSearch?terms=rape+trials+in+india&collection=ccjournals&searchtype=advanced&typea=text&tabfrom=&submit=Go&sendit=>

terminology such as penetration and resistance. It also discusses the implications of marital rape in India and other countries, such as the United States. And concludes with questions such as whether a woman can also rape a man.

“Gender-based Crime and Gender Inequality in India: A Subnational Analysis”³ – By Paribhasha Sharma (November 2015)

This article examines gender inequality and gender-based crimes in India via the lenses of health, empowerment, labour, and the market. The findings indicate that crimes based on gender have grown over time while overall crime has declined. In addition, a few notable events that shook the nation and resulted in amendments to the law are mentioned. Cases such as the rape of Nirbhaya, the rape on Park Street in Kolkata, and the shakti mills gang rape in Mumbai.

“Evolution and Major Criminal Law Amendments Relating to Rape Laws in India”⁴- By Anita Sharma, Ruchi Sharma (2021)

This article begins with defining rape and describing how its definition, interpretation, and legal status have evolved over time. It also discusses the preceding age and how men and society treated women in the past. How numerous modifications and statutes are introduced into our legal system by landmark court decisions and cases. Acts such as POSCO and instances such as the Asifa Bano case. It also discusses marital rape and concludes with several modifications to the IPC, CrPC, and Evidence Act.

(B) Books

1) “ RatanLal & DhirajLal, 2022, The Indian Penal code”⁵

This book takes a different approach to the study of the law of the Indian Penal Code; it is a contemporary commentary with a section-wise material flow that focuses on developing concerns and legislative and judicial developments. A critical commentary on new laws and related topics; emphasizes both legislative and judicial developments; includes an analysis of Supreme Court and other high court rulings. Refers to the significant amendments made to the Indian Penal Code by the Criminal code Amendment Act of 2018. Focusing on instances involving adultery, **rape**, and euthanasia.

³ Paribhasha Sharma, Gender-based Crime and Gender Inequality in India: A Subnational Analysis, *Economic and Political Weekly Journal*, Vol.50, pp.48-55, (2015)

<https://www-jstor-org.svkm.mapmyaccess.com/action/doBasicSearch?Query=rape+trails+in+india>

⁴ Anita Sharma & Ruchi Sharma, Evolution and Major Criminal Law Amendments Relating to Rape Laws in India, *Ignited Minds Journals*, Vol.18, Issue no.5, pp.124-130, (2021)

<http://ignited.in/I/a/305052>

⁵ Ratanlal and Dhirajlal, *The Indian Penal Code*, published by LexisNexis, 36th edition, ISBN-10: 938854840X ISBN-13: 978-9388548403, (2022)

2) “RatanLal & DhirajLal, 2020, The Code of Criminal Procedure”⁶

In dispensing justice from lower courts all the way to the Supreme Court, the Code of Criminal Procedure, 1973 serves as a tool. Legislative modifications and judicial interpretations have morphed into their current shape over time. The commentary on the Criminal Procedure Code by Ratanlal and Dhirajlal is a legal classic and as CrPC is procedural law that guides in approaching the police station or court in any matter such as **rape cases**.

3) “RatanLal & DhirajLal, 2019, The law of Evidence”⁷

Technical rules of evidence have been demonstrated and discussed in a clear, exhaustive, and methodical manner. This version has been rigorously updated to reflect recent legislative changes. As a result of the Mathura rape case, the Nirbhaya rape case, the Unnao rape case, and the Kathua rape case, several revisions were implemented.

4) “Pratiksha Baxi, 2014, Public Secrets of Law: Rape Trials in India”⁸

The book *Public Secrets of Law* discusses the socio-legal mechanisms that underpin the creation of rape trials in Indian courts. The book describes how state law is altered through localization, frequently to the point that it has little relation to written law. This does not deliver justice to a survivor of rape, but rather addresses and reinforces deeply established phallocentrism.

(C) Statement of problem

As it can be observed that there are various flaws in the legal system, when it comes to the procedure of rape. It is a common view that only the heinous crimes come to the limelight but the fact remains that there are more than a 100 rape cases every day. This research paper addresses such problems relating to the same, discussing the challenges that rape victims face and how there is a delay in providing justice when there is a low-profile case involved. This paper also deals with the problem of Marital rape, and why and how it should be recognized.

Thus, this paper addresses and provides suggestions for all such problems that have arisen from rape not only from outside the home but within the homes as well.

⁶ RatanLal & DhirajLal, *The Code of Criminal Procedure*, published by LexisNexis, 23rd edition, ISBN: 9789388548854, (2020)

⁷ RatanLal & DhirajLal, *The law of Evidence*, published by LexisNexis, 27th edition, ISBN: 9789388548526, (2019)

⁸ Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India*, published by Oxford University Press, 1st edition, ISBN-10: 9780198089568 ISBN-13: 978-0198089568, (2014)

II. AMENDMENTS THAT WERE MADE IN 1983

The rape legislation has seen significant changes over the years. Initially, there were no strong restrictions, but these have been added and the law has become more stringent. The original IPC does not adequately define rape. Nonetheless, the rise in crimes against women has resulted in significant reforms to our legal system.

It all started with the **Mathura Rape case**.

Criminal Amendment 1983 was passed due to worldwide protest raising concern for women's safety and an open letter that was submitted to the court.

Changes made under Criminal amendment 1983 in IPC were:

- A section was added to protect the identity of a rape victim under **Section 228 A⁹ of the IPC** No information should be published about the rape victim without her consent and in the case of minors without their family's consent.
- Earlier there were 5 descriptions of rape under **Section 375 of IPC¹⁰** but after this amendment, it was made 6 that if there is sexual intercourse done by any man with a girl of 16 or below that with or without her consent will amount to rape.
- The punishment for rape was increased as earlier the maximum punishment used to be 10 years but now it has been increased to life imprisonment.
- Earlier there use to be no provisions for instances of sexual intercourse that were not legally considered as rape.
 - **Section 376A¹¹** – Sexual intercourse by a man with her wife during separation.
 - **Section 376B¹²**- Sexual intercourse by public servants with women under her custody.
 - **Section 376C¹³**- Intercourse by any superintendent of jail, remand house, etc.
 - **Section 376 D¹⁴**- Intercourse by any management or staff of a hospital with a woman in that hospital.

⁹ Indian Penal Code 1860, §228A

¹⁰ Indian Penal Code 1860, §375

¹¹ Indian Penal Code 1860, §376A

¹² Indian Penal Code 1860, §376B

¹³ Indian Penal Code 1860, §376C

¹⁴ Indian Penal Code 1860, §376D

Changes made under Criminal amendment 1983 in CrPC were:

In **section 327 of CrPC¹⁵** subsections (2) and (3) were added stating that In-camera trials will be held for the cases of rape under Sections 375 and 376 of IPC¹⁶ and if any personal information of the victim is released in the form of printing or pressing then that will be considered as unlawful.

Changes made under Criminal amendment 1983 in Indian Evidence Act were:

Section 114 A¹⁷ was inserted which shifted the burden of proof from the victim to the accused proving the consent. Earlier the victim has to prove that she had no consent but now if the victim will say that there was no consent then the court will believe that.

This section is applicable only to Section 376 under IPC situations.

- The Nirbhaya rape case shook the entire nation. The crime was so heinous that the law didn't contain enough provisions to punish such offenders. A committee was set up which was led by retired honourable judge J.S Verma the committee was called the Verma committee¹⁸ which made various recommendations but not all were accepted.

The changes were brought in three significant statutes- The Indian Penal Code, 1860, Code of Criminal Procedure, 1937, and The Indian Evidence Act, 1872.

III. AMENDMENTS THAT WERE MADE IN 2013

Changes made in the Criminal amendment act 2013 in IPC were-

- **Section 166 A of IPC¹⁹**- A provision was added to punish police officers if they refuse to file an FIR in case of rape of women
- **Section 166 B of IPC²⁰** – A provision to punish hospital authorities if they refuse to give free treatment to the rape victim.
- The definition of rape under **Section 375 of IPC²¹** was broadened regarding inserting the penis into any private parts of a woman's body forcibly or touching any private parts by applying his mouth was included.
- The meaning of consent was made clear that if a woman remains silent or says no to any sexual activity then it could not be understood as yes and age of consent was increased from

¹⁵ The Code of Criminal Procedure 1973, §327

¹⁶ Indian Penal Code 1860, §375 & 376

¹⁷ Indian Evidence Act 1872, §114A

¹⁸ Report of the Committee on Amendments to Criminal Law, Justice Verma Committee, ISBN:9789382696058, (2013)

¹⁹ Indian Penal Code 1860, §166A

²⁰ Indian Penal Code 1860, §166B

²¹ Indian Penal Code 1860, §375

16 to 18 years.

- **Section 376 (2) of IPC²²** was expanded and also included punishment if rape is committed by personnel of armed forces deployed by central or state government.
- Under Section 376 more sub-sections were added-
 - **Section 376 D²³**- gang rape
 - **Section 376A²⁴**- death or vegetative state of the victim. Under this section, the death penalty is given as a punishment.
 - **Section 376E²⁵**- repeat offenders and comparatively higher punishment is given.
- Provision for Acid Attack was also added under
 - **Section 326 A²⁶** punishment of 10 years imprisonment for an acid attack
 - **Section 326 B²⁷** attempts to an acid attack 5 to 7 years imprisonment.
 - Offenses like Voyeurism and Stalking under Section 354 C and D are punishable by 1 to 3 years imprisonment.
 - **Voyeurism-** getting sexual pleasure by watching them secretly without their permission.
- During separation if the husband rapes the wife, then for that through amendment punishment was increased.

Changes made in the Criminal amendment act 2013 in CrPC were-

- Under **Section 154(1) of CrPC²⁸** special provision was made that in case of rape a women police officer should file an FIR. Due to the commission of such an offense if the victim gets physically or mentally injured then according to the victim convince the FIR will be filed either at her house or any other place with an interpreter or special educator and should be video graphed.
- Under **Section 164 of CrPC²⁹** the police officer should record the statement in front of the magistrate as soon as possible.

²² Indian Penal Code 1860, §376(2)

²³ Indian Penal Code 1860, §376D

²⁴ Indian Penal Code 1860, §376A

²⁵ Indian Penal Code 1860, §376E

²⁶ Indian Penal Code 1860, §326A

²⁷ Indian Penal Code 1860, §326B

²⁸ The Code of Criminal Procedure 1973, §154(1)

²⁹ The Code of Criminal Procedure 1973, §164

- A medical examination report of a rape victim should be attached along with a police report when submitted to the Magistrate in accordance with **Section 173 of the Criminal Procedure Code**.³⁰
- Earlier for the prosecution of a public servant. Permission from the appropriate government has to be taken but now there is an exception to this in the cases of rape. Direct prosecution can be done of a public servant now under **Section 197 of CrPC**.³¹
- Fast track courts were brought in to deal with cases related to rape under **Section 309**³² which says trial should be completed within 2 months after filing of the charge sheet.
- **Section 327 of CrPC** ³³ talks about in-camera trial proceedings in which only two parties and court staff will be present in cases of rape.
- **Section 357 B**³⁴ under that government will provide extra compensation to the rape victims and their families.
- **Section 357 C**³⁵ was inserted in CrPC to make sure that free medical aid is provided to rape victims by hospitals.

Changes made in the Criminal amendment act 2013 in Indian Evidence were-

- **Section 53A**³⁶ was added which makes the previous sexual experience of the victim irrelevant in deciding the consent.
- **Section 114 A**³⁷ will also be applicable now for Section 376(2) of IPC.
- **Section 146**³⁸ says that no questions can be asked to the victim of rape in cross-examination related to previous sexual experience or which are immoral.

Changes occur in law due to changes in society. Before the 18th century, there was hardly any law regarding cybercrime. That has increased due to development and technological advancements.

After the report, India ranked as the most dangerous country for women. Cases like the Unnao case and the Kathua case triggered widespread protests and hatred, resulting in 2018

³⁰ The Code of Criminal Procedure 1973, §173

³¹ The Code of Criminal Procedure 1973, §197

³² The Code of Criminal Procedure 1973, §309

³³ The Code of Criminal Procedure 1973, §327

³⁴ The Code of Criminal Procedure 1973, §357B

³⁵ The Code of Criminal Procedure 1973, §357C

³⁶ Indian Evidence Act 1872, §53A

³⁷ Indian Evidence Act 1872, §114A

³⁸ Indian Evidence Act 1872, §146

amendments that were made to CrPC, IPC, and POSCO act.

IV. AMENDMENTS THAT WERE MADE IN 2018

Changes made under Criminal amendment 2018 in IPC were:

Changes in *Section 376 of IPC*³⁹-

- The minimum punishment was increased from 7 to 10 years.
- Rape of a girl below 16 or 12 will result in a minimum punishment of 20 years to life imprisonment
- Gang rape of a girl below 16 will result in a punishment of life imprisonment
 - (*Section 376 DA*)⁴⁰
- Gang rape of a girl below 12 will result in life imprisonment or a death sentence
 - (*Section 376 DB*)⁴¹
- Provision regarding the fine that accuses has to pay to the victim
- Repeat offender's punishment has also become stricter

If a girl under the age of 12 is the victim of a gang rape, no matter how many people were involved, the offenders will be given a death sentence.

Section 166 says that if a police officer goes against the directions of law, he will be punished under IPC for 6 months to 2 years imprisonment.

Changes made under Criminal amendment 2018 in CrPC were:

- *Section 173 of CrPC*⁴² was amended to fast-track the rape cases as it says that after a rape case is filed the investigation should be completed within 2 months
- *Section 374 of CrPC*⁴³ was amended so that says within 6 months a rape case in appeal should be heard
- *Section 438 of CrPC*⁴⁴ restricts rape offenders to filing an anticipatory bail in case of rape of child below 16 years.
- *Section 154 of CrPC*⁴⁵ now applies to victims under Section 376 AB, Section 376 DA, and

³⁹Indian Penal Code 1860, §376

⁴⁰ Indian Penal Code 1860, §376DA

⁴¹ Indian Penal Code 1860, §376DB

⁴²The Code of Criminal Procedure 1973, §173

⁴³The Code of Criminal Procedure 1973, §374

⁴⁴The Code of Criminal Procedure 1973, §438

⁴⁵The Code of Criminal Procedure 1973, §154

Section 3756 DB.

- **Section 164 and 173 of CrPC⁴⁶** now applies to victims under Section 376 AB, Section 376 DA, and Section 3756 DB.
- **Section 309 of CrPC⁴⁷** now applies to victims under Section 376 AB, Section 376 DA, and Section 3756 DB.
- **Section 327 of CrPC⁴⁸** now applies to victims under Section 376 AB, Section 376 DA, and Section 3756 DB.
- **Section 357 B & C of CrPC⁴⁹** now applies to victims under Section 376 AB, Section 376 DA, and Section 3756 DB.
- **Section 197 of CrPC⁵⁰** also applies to rape victims under Section 376 AB, Section 376 DA, and Section 3756 DB.

Changes made under Criminal amendment 2018 in Indian Evidence Act were:

Section 53A⁵¹ which was added in the 2013 amendment says that you cannot question the previous sexual life of a rape victim while cross-examination or while proving consent.

In addition, the 2018 amendment adds Sections 376AB, 376DA, and 376DB to the IPC⁵²; for victims of rape prosecuted under these Sections, Indian Evidence law Section 53A⁵³ now applies.

POSCO Act

There has been an uptick in reported occurrences of child rape over the years, necessitating the implementation of new legal protocols for handling such crimes. As in our statute, there were laws to protect girls that sexual intercourse with a girl below the age of 16 with or without consent will amount to rape. There was no gender-neutral laws

In 2012 POSCO act was enacted by the government to identify sexual violence crimes against children. It is a gender-neutral law to protect all children below the age of 18.

When a child trial is going under this act it is the responsibility of the police to take care of the child during the trial and provide them medical treatment and these cases are handled by fast-

⁴⁶The Code of Criminal Procedure 1973, §164 & 173

⁴⁷The Code of Criminal Procedure 1973, §309

⁴⁸The Code of Criminal Procedure 1973, §327

⁴⁹The Code of Criminal Procedure 1973, §357 B & C

⁵⁰The Code of Criminal Procedure 1973, §197

⁵¹ Indian Evidence Act 1872, § 53A

⁵² Indian Penal Code 1860, §376AB, 376 DA, 376 DB

⁵³ Indian Evidence Act 1872, § 53A

track courts only.

It has expanded the definition of sexual assault from non-sexual penetrative assault to aggravated penetrative sexual in its section 3-10.

It also consists of sections to punish people under higher authority like public servants and more.

Whenever it will come to deciding the punishment in the case of the rape of a child. Between IPC and POSCO whichever will have higher punishable that will be applicable in the case of minors.

V. JUDICIAL PRECEDENTS

1. **Tukar Ram and anr. Vs. State of Maharashtra**⁵⁴

- After this case people became more aware and concerned about human safety a lot of amendments were made under the Indian penal code, Code of criminal procedure and the Indian evidence act related to women's safety and sexual laws.
- This case is famously called as the “**Mathura Rape Case**”.
- **FACTS:** Mathura was a young girl of the age 14-16 years. She was an orphan who lived with her brother Gama they both were laborers. Mathura use to work at Munshi's house and over time she develops a relationship with Ashok Munshi's cousin, they both want to get married but Gama was against their relationship.
- On March 27th Gama logged a complaint that Mathura is kidnap by Munshi's family. Mathura, his brother, and Munshi's family were brought to the police station and their statement was recorded.
- Everyone was leaving while Mathura was asked to stay back at the police station by policemen Ganpat and Tuka Ram.
- Ganpat took Mathura to the latrine and raped her and then again took her to the backside and raped her again.
- After Ganpat was done another policeman came and flonded with her private parts but he could not rape her because he was highly intoxicated.
- While Mathura's brother and Munshi's family who were waiting outside grew

⁵⁴ Tuka Ram and Anr v. State of Maharashtra, (1979) 2 SCC 143

suspicion as police station lights were turned off, they shouted and gathered a crowd then after some time Mathura came outside and claimed that she was raped. Police were not ready to file an FIR but under the pressure of the crowd, they have to.

- Mathura's medical examination was done and it showed that she had no injuries on her body. Hymen revealed old ruptures. No traces of semen were found.
- **JUDGEMENT:** The case came up to the sessions judge on 1st June
- The **session court** found that there is no evidence that says that Mathura was below 16 years of age and says that Mathura's testimony is fake that she is a liar and she had sexual intercourse at the police station but it can't be called rape.
- **High Court** gave a different judgement and convicted both the policemen for Section 375 i.e, Rape, and found that sexual intercourse was forceful as both of them were complete strangers to her and the fact that semen was not found can be because she was examined 20hrs later by the doctors and the probability that she had taken a bath in a meanwhile is very likely.
- **Supreme Court** reversed the judgement of the High court and acquitted both the policemen as the burden of proof is on the victim to prove that there was no consent of her. She failed to do so and the Section 375 cannot be applied because the policemen took Mathura in front of her family members so there is no question that higher authority must have put her in fear of death.

2. **Mukesh & Anr v. State for NCT of Delhi & Ors**⁵⁵

- This case is also famously called the "Nirbhaya gang rape"
- **FACTS:** On 16th December 2012 a 23-year-old girl paramedical student was coming back from a movie with her friend at night. After waiting so long for the bus they finally got a bus. The bus had 6 men, including the driver, Ram Singh, Mukesh, Vinay Sharma, Pawan Gupta, Akshay Thakur, and a juvenile.
- After some time, a few men started commenting on Nirbhaya. Then, later on, one man started assaulting Nirbhaya and in defence, Nirbhaya's friend hit that man. In return, all 6 men knocked down him with an iron rod.
- Now the appellants have attacked Nirbhaya by forcibly disrobing and sexually

⁵⁵ Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1

assaulting her. They are being really crude by engaging in anal sex and making her engage in oral sex against her will. physical damage from bites to the right and left breasts, the face, lips, jaws, and the area around the ears. They continued the assault by inserting a rod into her genitalia, which led to internal bleeding, sepsis, and eventually her death from organ failure.

- **JUDGEMENT:** A bench comprising the Chief Justice Dipak Misra, Justice R Banumathi, and Justice Ashok Bhushan delivered the judgment in the landmark case of Nirbhaya. There were 6 criminals out of which 4 criminals were awarded a death sentence. The convicts were Pawan, Mukesh, Vinay, and Akshay who were hanged to death, and the minor was convicted by the Juvenile Justice Board and was sent to a reformation home for 3 years and then was acquitted. The remaining accused among the 6 was Ram Singh who hanged himself to death in jail before conviction.
- Nirbhaya received justice after seven years and three months, and it was unfair that the juvenile who brutally assaulted the victim was released after only three years since he was a minor. Likewise, adjustments were made to our statute in this regard. However, he was not penalised as severely as he should have been.

3. Mohd. Akhtar v. State of Jammu and Kashmir⁵⁶

- This case is famously known as Kathua Rape and Murder case.
- **FACTS:** The girl was 8 years old, nomadic, and belonged to a Bakerwal community of Jammu and Kashmir in Kathua. She was gang raped and murdered and was found on temple premises. They kidnapped the girl intoxicated her and confine her to Devasthan.
- For the next 6 days, she was drugged, raped, and then killed.
- On day one, the girl attempted to flee; to stop her, she was drugged, and when she was unconscious, she was raped by a juvenile. She was given more seductive. One man from Meerut was summoned to gratify his lust. Six days later, she was again assaulted and drugged.
- She was taken from Devasthan and deposited in an open drain. Deepak demanded that they halt so he could rape the minor before she was killed.
- Then, they murdered her. To ensure her demise, they gave her two blows to the

⁵⁶ Mohd. Akhtar v. State of Jammu and Kashmir (2010) 3 SCC 615

head and flung her into the jungle.

- **JUDGEMENT:** Trial court convicted 6 out of 7 accused as one of them was released on the benefit of the doubt. They all were convicted of Murder, Rape, Kidnapping, and wrongful confinement. Out of these 6, there was one minor accused called Shubham Sangra. He was involved in kidnapping, giving drugs, rapping her not only once, and murder.
- **Trial court** declared the accused as a minor and ask him to treat as a juvenile. Police then filed an appeal in **High Court**
- Some medical tests were done to find out the actual age of the minor as his father was showing fake birth certificates and documents to claim him as a minor. The medical board of the government medical college, Jammu said the accused was not less than 19 and not more than 21 years of age, meaning he was not a minor and had to be treated as an adult.
- **Supreme Court** declared Shubham as an adult and was shifted from a juvenile home to normal jail. On 10 June 2019, three men were sentenced to life imprisonment “till last breath”. These were Sanji Ram, who was the mastermind and caretaker of the temple where the crime took place, and police officer Deepak Khajuria, and a civilian Parvesh Kumar.
- Three additional accused, Sub Inspector Anand Dutta, Head Constable Tilak Raj, and police officer Surender Verma, were found guilty of destroying evidence to cover up the crime and were sentenced to five years in prison and fined Rs 50,000.

4. **Kuldeep Singh Sengar v. State of UP & Anr.**⁵⁷

- This case is called The Unnao Rape case
- **FACTS:** A 17-year-old minor girl has filed a complaint against the BJP MLA, his brother, and other mates for abduction and rape. When she went there to get employed.
- And after serval tries the FIR was not lodged against them. After serval months the FIR was finally lodged but it didn't include MLA's name. The victim's father and the accused had a fight but it resulted in the arrest of the victim's father. He was tortured in jail for 5-6 days.

⁵⁷ Kuldeep Singh Sengar v. State of UP & Anr. (2019) 3 SCC 22.

- Then later girl tried to commit suicide outside CM Yogi Adityanath's house. After this incident, this case came in limelight.
- Soon after this hospital informed that the victim's father is no more due to severe injuries that resulted due to custodial torture. The government then ordered the police to hand over the case to CBI as the police were biased towards MLA.
- **JUDGEMENT**: In this case, the judgement was given by the trial court. The BJP MLA Sengar was given life imprisonment for raping and kidnapping the girl.
- For the death of the victim's father, he was sentenced under Section 304 IPC which is culpable homicide not amounting to murder.
- For the death of the victim's father, he was sentenced to 10 years of rigorous imprisonment and a fine of rupees 10 lakhs. His brother and 5 other mates were also sentenced to 10 years of imprisonment.
- Sengar filed an appeal challenging the trial court verdict in the High court which is still pending.
- Recently Sengar applied for an interim bail for her daughter's wedding. Due to safety concerns for the victim, the court will release Sengar for two different occasions but will not permit for 2 weeks.

VI. CRITICAL ANALYSIS

The biggest problem with our system is that unless it is not a very famous case it will not get attention and maybe because of that the rape victim will not get justice.

Unless you keep a careful eye on them and file reports, nobody will obey the law. Another major issue in India is that its populace generally isn't aware of the law.

The people generally started demanding new laws. As they thought by bringing amendments and changes in the law the victims and families will get justice but this will only happen with the cases which get the limelight but real justice will be served when laws will be implemented and interpreted properly.

Majority of the rape cases are cases where a family member or known person is involved in the offense. In our statute, there is no way provided to deal with the cases where the child is raped by her own father or someone she loves in her own family. As the victim goes through a lot in the entire process not only physically but mentally as well.

(A) Martial Rape

In the Nirbhaya case, the Justice Verma committee was constituted, and several suggestions were made, but not all of them were taken into account. One such proposal was to criminalize marital rape in India. There is no such crime as marital rape in India, but rape is terrible whether or not it occurs in a marriage.

To get physically involved with anyone getting consent is a must. But due to old traditions and beliefs it is believed that if a couple is married. Neither party's consent is required for sexual activity, but this should not be the case. Even if you are married, forcing someone to engage in sexual activity is wrong and should be punished.

(B) Changes in Laws before and after the amendment

In the cases discussed above. The introduced adjustments were necessary, but we do not use the retrospective system. Due to this, the minor in the Nirbhaya case who placed the iron into Nirbhaya was only penalized for three years under the law that was in effect at the time. Nevertheless, the Juvenile Justice Act has since been amended, and numerous other amendments have been made that were not previously in place.

- Before the amendment, there were no provisions to punish any public servant who disobeys the law. But now through amendment, they can be punished.
- Earlier punishment for rape was 7 years to life imprisonment but now it is punishable by 10 years to life imprisonment.
- Earlier there were no specified provisions for rape done by someone in authority like a public servant but it has also been brought up through amendment.
- There were no provisions regarding providing free medical facilities to rape victims earlier.
- Prior to the enactment of amendments, there was no legal distinction between throwing hot tea and acid at a person.
- There were no such provisions for repeat offenders.
- The most important amendment was regarding consent in the cases of rape. The burden proof is shifted and now under the age of 18, any sexual activity with a girl with or without her consent will be considered rape.
- During the rape proceedings the previous sexual life cannot be questioned in court and cannot be subject to decide on matters like consent.
- Now other forms of rape are identified and our punishable under the law.
- Offences like Sexual offense, Touching, and now with changing times and increase in

technology crimes like Voyeurism and Stalking are recognized and the punishment has become stricter.

- Changes in the trial like the fast-track courts and in-camera trial proceeding has been brought up.
- Along with the accused now the state also provides compensation to the rape victims and their families.

(C) Comparison of rape laws with other countries

In **India**, as we know after a lot of amendments and by seeing the increase in the number of crimes in India the punishment for rape is life imprisonment which is 14 years or can be for the entire life depending upon the nature of the crime to a death sentence.

Depending on the severity of the act, the penalty for rape in **France** can range from 15 to 30 years of imprisonment, or even life imprisonment.

In **China**, the punishment is either the death penalty or castration, which involves the removal of the male reproductive organ. Due to their autocratic system, some innocents also get convicted.

In **Saudi Arabia**, a person who has committed a crime such as rape or drug trafficking is given a sedative to induce sleep, and then publicly decapitated.

In contrast to India, there is no democracy in **North Korea**. Under the dictatorship there, a rapist is executed by the firing squad.

In **Australia** rape is considered a non-consensual penetration and the punishment varies from imprisonment to life imprisonment.

In the **United states** rape is defined as non-consensual sexual intercourse and the punishment is given from life imprisonment to death sentence.

As we can see from the above comparison, few countries do not apply the death penalty as a punishment for significant offenses such as rape, whereas few countries impose harsh punishments such as public hanging or public execution. At last, we can see that law of the UK is quite similar to the laws of India regarding rape.

(D) Foreign precedents

Coker v. Georgia⁵⁸: The judgment was given by the U.S. Supreme court. The accused was convicted of rape of a woman, armed robbery, and other offenses. The death penalty was

⁵⁸ Coker v. Georgia, (1977) 433 U.S. 584

awarded which was reduced to a lower punishment on the ground that the death penalty will be a very harsh punishment and the 8th amendment of the U.S. Constitution does not allow this.

The U.S. courts, like those in India, adhere to the reformation theory rather than the preventative and retributive theories.

(E) Suggestions

1. The court should start imposing a fine on lawyers when they take adjournments on useless grounds.
2. The number of judges should be increased as the amount is not sufficient to hear all the cases that are filed on a daily basis.
3. Fast-track courts should be set up all over India in order to ensure speedy trials for crimes against women.
4. To evaluate rape victims, there should be an increase in the number of lawyers and female physicians.
5. In India, there are no provisions for offenses such as the rape of a man. Only male child is protected under POSCO. Before any horrible crime is done against humans, it is preferable to enact protective legislation.
6. In India, till today, marital rape is not a crime that should be recognized before it is too late.

VII. CONCLUSION

For years, rape offenses have been on the rise, and there were many legal loopholes. As a result, neither the victims nor their families received justice. There have been numerous modifications to rape legislation, but there is still no provision for marital rape and gender neutrality. The fundamental problem with our system is that no action will be taken until a violent and heinous incident is reported in the news. As it happened in the cases such as the Nirbhaya case, the Mathura rape case, the Unnao case, and the Kathua case, when these terrible and non-humanitarian crimes were committed and our system lacked mechanisms to punish the offenders, changes were made. The sole concern is that people and our systems should properly apply and interpret the laws and each victim should get justice, regardless of whether the crime was of the rarest kind.

This paper is made subject to the old criminal laws that were followed in India which will now be replaced with The Bharatiya Nyaya Sanhita, The Bharatiya Nagariksaraksha Sanhita and The Bharatiya Sakshya Adhiniyam.

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