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INDIA'S EVOLUTION IN ADDRESSING SEXUAL OFFENCES

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ABSTRACT

'Sex' and 'Sexuality' are typically the triggers of unpredictable, aggressive, and violent behaviour. Women are frequently the victims of such acts, including sexual assault. The Mathura rape case, the Nirbhaya case, and the Kathua rape case are a few instances of the horrible crimes against women that have rocked the very moral foundations of the country. In reaction to these cases, revisions were made to our country's legislation dealing with crimes against women as the "Criminal Law (Amendment) Acts of 1983, 2013, and 2018".

The 2013 Amendment makes major modifications, establishing new offences such as stalking, workplace harassment, and voyeurism, along with imposing harsh penalties for acid attackers. The Information Technology Act of 2000 covers cybercrimes relating to sex and sexuality and imposes severe penalties for the same.

The Protection of Children from Sexual Offences (POCSO) Act of 2012 is a watershed moment in addressing sexual crimes against children. This legislation demonstrates a commitment to protecting the rights of society's most vulnerable members.

Our Criminal Law system serves as a link between the state and its inhabitants, thus it is necessary to establish a clear and strong relationship between the two. The government's revisions should be strong enough to save the public from facing challenges in their pursuit of justice. The law changes regularly with new scenarios and circumstances, but will it be fair to update the existing legislation swiftly with sufficient safeguards to avert more rape incidents? The question remains.

"But no matter how much evil I see" said Robert Uttaro, "I think it's important for everyone to understand that there is much more light than darkness."

Key Words: Sex, Sexuality, Crimes against women

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INTRODUCTION

Women were considered goddesses in ancient India, but it has been us who have soiled this image. In today's world, everyone is aware of the increasing number of crimes committed against women in some form or another. The explanation for increased crime rates is lack of education and equality. There is a stereotype that men are superior to women and can accomplish more than women. This stereotype is represented in a patriarchal attitude. The use of force on women is a byproduct of this mindset since they believe women to be weak, which leads to greater criminality. These horrible actions harm not only the victim but also their family.

This can be seen in the play of Shakespeare where the female character Lavinia in the play *Titus Andronicus* says these words before being whisked away to be raped.

'O, keep me from their worse than killing lust,

And tumble me into some loathsome pit,

Where never man's eye may behold my body:

Do this, and be a charitable murderer.'

Titus Andronicus, Shakespeare

She would sooner die than be raped, which she believes is worse than death. Women are subjected to a variety of forms of violence, including physical assault, denial of the right to life, domination, neglect, and psychological damage caused by violence².

There has been a positive shift in the legislation, and judges are more effective in rendering decisions. From the Mathura rape case to the Nirbhaya case, numerous laws were altered, and many positive improvements were implemented.

To address the rising proportions of sexual assaults in India, considerable modifications have been made to the legal system. The Criminal Law (Amendment) Acts of 1983, 2013, and 2018 introduced revisions to address offences against women, emphasising that rape and sexual assault are expressions of power rather than crimes of passion³. Following the Nirbhaya case in 2012, the

² Sexual Violence - The root cause of violence against women, 24 JCLJ (2022) 2116

³ Choudhary Laxmi Narayan et al, An Overview of Criminal Laws in India in Relation to Sex and Sexuality, 5 Journal of psychosexual health 23, 23-29 (2022)

Criminal Law Amendment Act and the Protection of Children from Sexual Offences Act were enacted, imposing harsh punishments including the death penalty. Furthermore, the formation of "fast-track" courts to resolve instances involving sexual offences against women was intended to expedite justice and deter future crimes⁴.

However, problems remain, such as marital rape immunity in the Indian Penal Code, which denies some women the right to denial based on their marital status. These amendments indicate a move towards examining sexual offences through a human rights lens to reduce gender and sexuality-based violence and discrimination.

IMPACT OF MATHURA, NIRBHAYA AND KATHUA RAPE CASE

India's legal landscape has undergone a significant transformation in recent decades, particularly in its approach to addressing sexual offences. The country has witnessed a series of high-profile cases, such as the Mathura rape case, the Nirbhaya case, and the Kathua rape case, which has shaken the moral foundation of the nation and prompted legislative reforms to better protect the rights and safety of women and children.

The Mathura rape case⁵, which occurred in 1972, was a landmark case that exposed the deep-rooted biases and insensitivities within the Indian criminal justice system. The case involved the rape of a young tribal girl, Mathura, by two police officers, and the subsequent acquittal of the accused by the Supreme Court. This verdict sparked outrage and led to the introduction of the Criminal Law (Amendment) Act of 1983, which aimed to address the shortcomings of the existing laws and provide better protection for victims of sexual crimes.

The Nirbhaya case⁶, which occurred in 2012, was another pivotal moment that galvanized the nation and led to the enactment of the Criminal Law (Amendment) Act of 2013. The brutal gang rape and murder of a young woman in New Delhi, known as "Nirbhaya," shook the collective conscience of the country and prompted widespread protests and demands for stricter laws and harsher punishments for sexual offenders.

⁴ Vandana Peterson, Speeding up Sexual Assault Trials: A Constructive Critique of India's Fast-Track Courts, 18 Yale Human Rights and Development Journal 64, 64-65 (2016)

⁵ Tukaram and others Vs. State of Maharashtra, AIR 1979 SC 185

⁶ Mukesh & Another vs State for NCT of Delhi, 2017 SCC Online SC 533

The Kathua rape case⁷, which occurred in 2018, further highlighted the need for a comprehensive and sensitive approach to addressing sexual crimes, particularly those involving children. The case involved the rape and murder of an 8-year-old girl in the Kathua district of Jammu and Kashmir, and it sparked nationwide outrage and calls for justice.

These landmark cases have been instrumental in driving the evolution of India's legal framework in addressing sexual offences. The Verma Committee, which was constituted following the Nirbhaya case, played a crucial role in this process by emphasizing the need to shift the perception of rape and sexual assault from crimes of passion to displays of power. The Criminal Law (Amendment) Acts of 1983, 2013, and 2018 have introduced significant changes to the Indian Penal Code, expanding the definition of sexual offences and imposing harsher penalties for perpetrators. The 2013 amendment, in particular, established new offences such as stalking, workplace harassment, and voyeurism, reflecting the growing recognition of the diverse forms that sexual crimes can take. In addition to these legislative changes, the Information Technology Act of 2000 has also been expanded to cover cybercrimes related to sex and sexuality, underscoring the need to address the evolving landscape of sexual offences in the digital age. The Protection of Children from Sexual Offences (POCSO) Act of 2012 is another landmark legislation that demonstrates India's commitment to protecting the rights of its most vulnerable members of society. This act has been instrumental in addressing sexual crimes against children and has set a new standard for the country's approach to safeguarding the well-being of its youngest citizens⁸. Furthermore, recent developments in India's legal landscape, such as the decriminalization of same-sex relationships, the repeal of adultery as a criminal offence, and the enactment of legislation protecting the rights of transgender individuals, indicate a progressive movement towards a more inclusive and human rights-oriented approach to issues of sex and sexuality. These legal reforms and advancements reflect the country's ongoing efforts to address the complex and multifaceted challenges posed by sexual offences. The criminal justice system serves as a critical link between the state and its citizens, and the government's revisions to the law must be robust and effective in providing justice and preventing further incidents of sexual violence. However, the question remains whether the existing legislation can be updated swiftly and with sufficient safeguards to avert more rape incidents. The legal landscape is constantly evolving, and India's lawmakers and policymakers must remain vigilant and responsive to emerging challenges and societal needs.

⁷ Mohd. Akhtar vs The State of Jammu And Kashmir, 2018 SCC Online SC 494

⁸ Narayan CL et al, An Overview of Criminal Laws in India in Relation to Sex and Sexuality, *Journal of Psychosexual Health* 23, 23-29 (2023)

CHANGES AFTER CRIMINAL LAW AMENDMENT ACTS 1983, 2013 AND 2018

While the criminal justice system in India gives law enforcement authorities broad powers to undertake comprehensive investigations, it also respects and protects the victim's entitlement to effective and respectful treatment by the investigating agency. This is clear from the general precautions afforded to all women by law. A female medical practitioner must supervise a female accused's medical examination, according to Section 53(2). And the provision in Section 160 of the Code that allows a female witness's statement to be recorded at her own home. These are some of the legislative steps implemented to protect women victims in their interactions with the CJS, and to eliminate any potential for harassment or exploitation of women by law enforcement authorities. However, cases in which those in positions of authority instil fear in the prosecutrix are especially concerning. Such situational crises frequently result in delays in reporting the crime or filing the First Information Report (FIR), encouraging the police to treat the allegation with mistrust. However, in several cases, the Supreme Court has excused these delays and denied their acceptance as material evidence, including *State of Uttar Pradesh v. Manoj Kumar Pandey*⁹, *State of Himachal Pradesh v. Prem Singh*¹⁰, *Harpal Singh v. State of Himachal Pradesh*¹¹, and others.

The Mathura rape case verdict sparked indignation in the court system, and it drew widespread criticism. So, following the Criminal Law (Amendment) Act of 1983, which broadened the definition of rape under the Penal Code of 1860 by adding four sub-sections specifically dealing with the rape of a woman in custody by a public servant in charge¹², rape of a wife by her husband during separation¹³, rape committed by the superintendent of a jail, remand home, etc¹⁴, and rape committed by more than one person¹⁵. The amendments also criminalised the disclosure of a survivor's identity without her/her kin's/the court's order¹⁶ and made a revolutionary change in the Indian Evidence Act relating to the presumption of absence of consent¹⁷, putting the burden of proof on the accused to prove consent on the part of the victim.

⁹ (2009) 1 SCC 72

¹⁰ (2009) 1 SCC 420

¹¹ (1981) 1 SCC 560: AIR 1981 SC 361

¹² Criminal Law (Amendment) Act, 1983, S. 376-B.

¹³ Id., S. 376-A

¹⁴ Id., S. 376-C

¹⁵ Id., S. 376-D

¹⁶ Id., S. 228-A

¹⁷ Id., S. 114-A

LEGAL REFORMS POST-2013

Following the Nirbhaya rape case, there were nationwide protests. People were furious with the system and the criminal laws. Following this occurrence, the government established the Committee led by Justice J.S. Verma to explore the necessary modifications in criminal law to make laws protecting women more strict and to add many components that were required given the increase in the number of cases of crimes against women. Subsequently, the Verma Committee proposed a much broader definition and the inclusion of newer categories of aggravated rapes requiring harsher sentences under Section 376(2) of the Penal Code, 1860. The 2013 Criminal Law Amendment Act added rape, penetration, penile as well as non-penile and non-penetrative actions committed orally¹⁸, as well as other new types of aggravated rapes. Further clarification indicates that consent refers to "an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates a willingness to participate in the specific sexual act." As a result, the absence of bodily resistance would not be considered consent in the future. Although the Verma Committee suggested that marital rape be included as a crime under the Penal Code of 1860, Parliament did not approve it. This demonstrated the legislature's steadfast conviction in patriarchal ideals of husband-wife relationships existing in the twenty-first century.

The major provisions added in the Indian Penal Code after the Criminal Amendment 2013 are:

ACID ATTACK

Following the case of *Laxmi v. Union of India*¹⁹, in which a sixteen-year-old girl was attacked with acid, these provisions were added to the Code. Following this instance, it became evident that more stringent measures were needed to counteract the aforementioned offence. Section 100 included the act or attempt to hurl acid to the general exception of the "right to private defence." It implies that in the event of an acid assault, a person can now assert their right to private defence. Sections 326A and 326B were introduced as new provisions. Section 326A punishes "acid attack" with a minimum of 10 years in jail, up to life imprisonment, and a fine, but Section 326B punishes "attempting to throw acid" with a minimum of five years in prison, up to seven years in prison, and a fine.

¹⁸ Penal Code, 1860, S. 375

¹⁹ (2014) 4 SCC 427

RAPE

The Criminal Law (Amendment) Act of 2013 broadens the term of "rape" in order to impose heavier penalties for more egregious actions. It also made non-penetrative actions like oral sex and placing any instrument or other part of the body into a woman's body an offence under Section 375's²⁰ definition of "rape." Although the sentence for "rape" was not increased under Section 376²¹, it was later enhanced to a minimum of ten years imprisonment, with the possibility of life imprisonment, as part of the Criminal Law Amendment Act of 2018. However, the 2013 Amendment adds new laws and enhanced penalties for more egregious forms of rape, such as:

SECTION 376A²²

Punishment for killing or placing someone into a vegetative condition. This section punishes a man who injures, disables, or kills a woman. The sentence under Section 376 A must be at least 20 years, although it can be raised to life in prison. It is a cognizable, non-bailable offence that can be prosecuted in the Court of Sessions.

SECTION 376B²³

This section covers the effects of a separated husband engaging in sexual relations with his wife. Marriage is described as a relationship in which both husband and wife can exercise their marital rights. When a woman lives away from her husband under a judicial separation order, the spouse's sexual intercourse without her agreement is illegal under this section. Sexual intercourse has the same meaning in these instances as in Section 375 clauses (a), (c), and (d).

SECTION 376C²⁴

This section criminalises sexual intercourse with a person in power. If a person in authority or under the influence of his power seduces or exploits a woman, he is accountable under this Section. Sexual intercourse in these instances will not be considered rape but will result in a 5-year term with the option of a 10-year sentence and a fine.

²⁰ Indian Penal Code, 1860

²¹ Id., Penal Code 1860

²² Id., Penal Code 1860

²³ Id., Penal Code 1860

²⁴ Id., Penal Code 1860

SECTION 376D²⁵

This section make rape in a group crimes punishable. Gang rape occurs when a woman is raped by a group of people who are all intent on raping her. Offenders are facing a minimum term of 20 years in jail, with the possibility of life imprisonment.

SECTION 376E²⁶

This section outlines the punishment for repeat offenders. If a person has previously been convicted of an offence under Section 376, 376 A, or 376 D and commits the same offence again, he or she faces life in prison..

In response to the country's increasing number of sexual harassment cases, this Amendment established four new sexual crimes. They are as follows:

SECTION 354A²⁷

This Section covers behaviours such as a male initiating physical contact with a woman, requesting sexual favours, and showing pornography to a woman. For these charges, a man faces up to three years in prison. It also covers the offence of making sexually charged statements to a lady, which is punishable by a year in prison.

SECTION 354B²⁸

Under this Section, attacking or threatening a woman with criminal force to disrobe her or forcing her to be naked is penalised by a minimum of three years in jail, which can be raised to seven years, and a fine.

SECTION 354C²⁹

According to the dictionary, "voyeurism" comprises "the act of gaining pleasure from watching others naked or engaged in sexual activity." Any such crimes performed by a male are punishable by at least one year in prison, which can be increased to three years, as well as a fine under this Section. It can also refer to the act of observing or photographing a lady while she is engaged in a

²⁵ Id., Penal Code 1860

²⁶ Id., Penal Code 1860

²⁷ Id., Penal Code 1860

²⁸ Id., Penal Code 1860

²⁹ Id., Penal Code 1860

private activity. If a man is convicted of the same crime more than once, he risks a minimum sentence of three years in jail, which can be enhanced to seven.

SECTION 354D³⁰

This Section involves following or attempting to contact a woman who has already shown disinterest in a male, as well as monitoring her internet, email, or other electronic communication activities. This act by any male is punishable by imprisonment for up to three years and for repeat offenders, imprisonment for up to five years plus a fine.

CRIMINAL PROCEDURE CODE, 1973 (CRPC)

The Criminal Law Amendment Act of 2013 amended the Code of Criminal Procedure, 1973 to create a more welcoming environment for women during investigations, trials, and examinations, as well as to adapt new provisions inserted into the Indian Penal Code's First Schedule. The following are some noteworthy revisions to the Code:

Sections 154³¹, 161³², and 164³³ were changed to include a requirement that only a female police officer record the victim's comments. Furthermore, Section 154 requires that if the victim is intellectually or physically impaired, statements be recorded at their home or any other convenient location in the presence of an interpreter or special educator, that the recording be videotaped.

Section 273³⁴ was revised to include a clause requiring the court to take reasonable measures to guarantee that women under the age of 16 and victims of rape or sexual assaults are not faced by the accused, while also protecting the accused's right to cross-examination.

Section 357C³⁵: It added a provision mandating hospitals, both public and private, to give free care to victims of sexual offences and to quickly alert police authorities of the incident.

INDIAN EVIDENCE ACT, 1872

Following the Amendment, the following key sections were added and substituted into the Act:

³⁰ Id., Penal Code 1860

³¹ Criminal Procedure Code, 1973

³² Id., CrPc

³³ Id., CrPc

³⁴ Id., CrPc

³⁵ Id., CrPc

Section 53A³⁶ of the Act provides that during prosecution for sexual offences, the character of the person or the victim's prior sexual experiences are irrelevant as evidence for the victim's consent or the quality of the victim's consent.

Section 114A³⁷ was added, which stipulates that it is sufficient for the victim of a sexual offence to state before the court in her evidence that she did not consent to the sexual intercourse in order to presume the absence of consent in this situation.

Section 146 of the Act was changed to contain a clause saying that during cross-examination of victims of sexual offences, no questions of an immoral nature or linked to the victim's previous sexual encounters can be asked in order to prove or test the quality of consent.

THE CRIMINAL LAW (AMENDMENT) ACT, 2018

The Criminal Law Amendment Act of 2018 is likewise a product of such horrible occurrences that shook the nation's soul and inner voice. Because of many teenage ambush scenarios, there was a growing desire in tightening rape regulations. The well-known Kathua rape prompted this attention, and it had a significant impact in 2018. Following the amendment or correction, Section 376³⁸ provides three orders of discipline for an attack, including assaults on women by police officers, community workers, military adherents, and others.

Changes made after the Criminal Law (Amendment) Act, 2018:

INDIAN PENAL CODE, 1860

Section 376AB³⁹: The minimum sentence for rape of a woman is ten years of harsh incarceration, which can be extended indefinitely. The punishment was raised from seven to ten years in prison.

Section 376DA⁴⁰: The modification now includes a punishment for rape of a young lady under the age of sixteen. In such circumstances, imprisonment must be for at least twenty years, with the option of life imprisonment.

³⁶ Indian Evidence Act, 1872

³⁷ Id., Evidence Act, 1872

³⁸ Id., Penal Code 1860

³⁹ Id., Penal Code 1860

⁴⁰ Id., Penal Code 1860

Section 376DB⁴¹: The amendment also contains a penalty for rape against a lady under the age of 12. In such circumstances, imprisonment is stated as a minimum of twenty years, with the risk of being held permanently. In such circumstances, the offender risked capital punishment. Given the seriousness of the crime, the death sentence for rape was introduced.

The update also includes Sections 376DA⁴² and 376DB⁴³, which supervise or manage punishments for assault on a young lady under the ages of sixteen and twelve, respectively. In such circumstances, the sentence must be life imprisonment. In any scenario, the death penalty may be imposed for rape of a young lady under the age of twelve.

THE CODE OF CRIMINAL PROCEDURE, 1973

Section 173⁴⁴: Subsection (1A) of this section was amended to provide that rape of a child may be completed within 3 months; this sub-section was replaced 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 of the CrPc states that if an appeal is filed against a sentence imposed under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, and 376DB, or Section 376E of the Indian penal code, the appeal must be resolved within 6 months of the filing date.

Section 377: Following sub-section (2) of Section 377 of the Code of Criminal Procedure, a new sub-section (3) was added, which reads as follows: "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 6 months from the date of filing the appeal."

In *Priya Patel vs. State of Madhya Pradesh*⁴⁵, the Supreme Court held that it is "unimaginable for a woman to rape another woman." The Supreme Court issued a narrow decision that has the ability to debunk the idea that "only a man can rape a woman," but it took an opposing narrower interpretation. The Justice Verma Committee has advocated making women liable for gang rape. It was suggested that each perpetrator, regardless of gender, be punished for gang rape.

⁴¹ Id., Penal Code 1860

⁴² Id., Penal Code 1860

⁴³ Id., Penal Code 1860

⁴⁴ Id., CrPc

⁴⁵ AIR 2006 SUPREME COURT 2639

Section 438: Following sub-section (3) of Section 438 of the Code of Criminal Procedure, a new sub-section (4) is added, which states that nothing in this section applies to any case involving the arrest of a person on suspicion of committing an offence under sub-section (3) of Section 376, 376AB, 376DA, or 376DB of the Indian penal code.

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

INDIAN EVIDENCE ACT (1872)

The Act altered two parts of the Indian Evidence Act, 1872.

Section 53A⁴⁶: This section supersedes Sections 376AB, 376B, 376C, 376D, 376DA, and 376DB and addresses proof of character or prior sexual experience that is irrelevant in certain situations. Section 146: This section addresses the legal cross-examination questions. When a witness is being cross-examined, he may be asked any question that relates to:

The veracity is frequently checked.

To find out who he is and what his position

To safeguard his reputation, hurting his character, even if the answer leads to direct or indirect conviction, may result in a penalty or forfeiture.

PROTECTING CHILDREN FROM SEXUAL OFFENCES ACT, 2012

Section 42 of the POCSO Act of 2012 was changed by the Criminal Amendment Act of 2018. This section discusses alternative punishment, and Sections 376A, 376C, and 376D have been replaced with Sections 376A, 376AB, 376B, 376C, 376D, 376DA, and 376DB of the Indian penal code.

⁴⁶ Id., Evidence Act, 1872

CHANGES MADE IN BNS

Rape: The Bharatiya Nyaya Sanhita, 2023, altered the age from 15 to 18 in Exception 2 of Section 375 of the Indian Penal Code, 1860, as held in the case of *Independent Thought vs. U.O.I* and *Anr.*

Gang Rape: Section 70 sub-section 2 of the BNS raises the age of victims from 16 to 18 years old.

Sexual intercourse through deceptive means Section 69 of the BNS has been inserted, which carries a 10-year sentence for engaging in sexual intercourse with a woman under the false and deceptive pretence of marriage.

These are the significant changes made to BNS. The BNS has adopted a gender-neutral approach by replacing "importation of girl" with "importation of girl or boy" in Section 141.

CONCLUSION

The evolution of India's legal framework concerning sexual offences has been profoundly shaped by landmark cases and societal outrage. The journey from the Mathura rape case to the Nirbhaya and Kathua cases underscores a nation's grappling with the deep-seated issues of gender-based violence and the need for a robust legal response. These high-profile incidents have not only brought about legislative reforms but have also catalyzed a broader societal introspection on the status of women and children in India.

The legislative amendments introduced through the Criminal Law (Amendment) Acts of 1983, 2013, and 2018 represent significant strides towards addressing sexual violence. These amendments have expanded the definitions of sexual offences, introduced harsher penalties, and established new protections for victims. The formation of "fast-track" courts and the implementation of the Protection of Children from Sexual Offences Act further signify the government's commitment to expediting justice and safeguarding vulnerable populations.

However, challenges remain, particularly in the area of marital rape, which is still not recognized as a crime under Indian law. This oversight reflects persistent patriarchal norms that continue to influence legal interpretations and societal attitudes. Additionally, while legislative changes are critical, their effective implementation and the sensitization of law enforcement agencies are equally important to ensure that justice is not only done but seen to be done.

The ongoing reforms, including the recent changes brought by the Bharatiya Nyaya Sanhita, highlight a progressive shift towards a more inclusive and human rights-oriented legal approach. Yet, the true test lies in the continuous vigilance and responsiveness of lawmakers and policymakers to emerging challenges. As India moves forward, the legal system must evolve to protect the rights and dignity of all its citizens, ensuring a safer and more just society for future generations.

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