
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**AN OVERVIEW TO EVERY ASPECT OF SEXUAL OFFENCES UNDER
THE INDIAN PENAL CODE, 1860**- Harshita Agarwal¹**ABSTRACT**

Despite the laws, rape cases are increasing at a rapid rate in India and this is a very concerning issue. According to the rape statics of 2018, there are approximately 106 rapes which take place each day in India. As per the latest National Crime Report Bureau (NCRB) 2019, 3,59,849 crimes are being reported against women and Uttar Pradesh stands at the top.

The paper is written with the purpose to explain the interpretation of sexual offences, especially rape, according to the Indian Penal Code (I.P.C.), 1860². Under the I.P.C., the offence of rape is being described broadly under Section 375 with its essentials and descriptions. Further, Section 376 defines the punishment of rape under different circumstances and it is being noted that the punishment varies from imprisonment for a term of two years to life imprisonment or death sentence with the fine, according to the situation of the case. The last clause of sexual offences includes section 377 which includes bestiality, buggery etc. The paper also throws light on some major amendments which has helped a lot to upgrade the system and cover the loopholes. All the clauses are backed by the respective case laws which help to understand the journey of the rape laws in India and explain about the changing mentality of the judiciary system.

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INTRODUCTION

Women, LGBT community and animals have always been considered as a weaker sect of the society. All need to admit that the society we live in is ruled by men and women need to follow the protocols set by them irrespective of the fact that they are right or not. But it is very necessary to understand that women are an individual and have feelings. It is the time when men need to stop interfering in their personal space which priority involves their body. Whereas, LGBT community have been looked upon as aliens and have not being accepted as one of the normal human beings and this needs to change. On the other hand, humans pray to animals and also torture them, where mental and physical torture was not enough, humans started sexual torture too. All the double standards just hit the roof when humans, especially men forgets that one's body is their personal dignity and it is not right to kill other's dignity and pride for completing the unjust desires.

The term Sexual Offence can be defined as the illegal Act which is done with reasoning in which a person is sexually exploited. The offence is said to be committed if there is a sexual Act against the free consent of the person.

There are various types of offences come under the umbrella of Sexual Offences-

- Rape
- Sex Trafficking
- Sexual Harassment at Workplace
- Unwanted Sexual Touching, voyeurism etc.,

RAPE

Rape is considered to the most heinous crime one can commit to the mankind. It is even worse than a murder, as a person's body dies in a murder whereas a rapist kills the victim's soul and integrity.

Rape is differently defined around the world as in-

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USA³, it is defined as the penetration, no matter how slight, of the vagina or anus by any object or oral penetration by sex organ of another person, without consent will count the Act of rape.

Canada does not consist of the term rape. They have replaced it with sexual assault.

Ireland⁴ has divided rape into two parts- (A) when a man has unlawful sexual intercourse with a woman without her consent (B)⁵ at the time, he is reckless as to whether she does or does not give consent for it.

As per Indian Law, sexual offences are widely stated under the sections 375 to 377 of Indian Penal Code (I.P.C.) 1860. It majorly defines rape and the punishment for rape under different circumstances.

SECTION 375 DEFINES RAPE AND ITS DESCRIPTIONS

Rape is defined as the Act of sexual intercourse committed by a man with a woman or forced her to do so, where penetration of penis or any object is sufficient to constitute the Act of rape, under circumstances falling in any of these six descriptions.

1. Against her Will

The clause 'Against her Will' was first time explained by the Court in State of Up v Chhotelal 2011⁶. The Court held that sometimes against her will and without her consent overlaps but surely the two expressions have different meanings. Against her will simply means that the intercourse was done even after her resistance and opposition.

2. Without her Consent-This means an Act of reason accompanied by deliberation.

There is a difference between consent and will.

Will is an emotional or mental state to do something. If a person is not willing to do something at a certain point, it does not mean that the person will never do that thing. There are chances that

³ An updated definition of Rape, the U.S. Department of Justice (January 6, 2012), <https://www.justice.gov/archives/opa/blog/updated-definition-rape>

⁴Criminal Law (Rape) Act 1981, Section 2

⁵Criminal Law (Rape) (Amendment) Act 1990, Section 4

⁶State of U.P v. Chhotelal, A.I.R 2006 SC 2011

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the person can do the task some other time. But, if the person is not giving consent it means that the person is not giving the permission to take the task forward or in other words, the person is not accepting to do something.

The Act of consent to any sexual Activity is very pivotal as it reduces and prevents sexual assault and coercion. A small gesture of asking for consent improves the quality of relationship and it forms a sense of belongingness and mutual respect for each other. It denotes the attitude of being an individual and creates a healthy environment.

Act done against the will is surely without consent, but the vice versa is not necessary. According to law, consent needs to be expressed verbally or written.

3. With consent, when consent has been obtained by putting her or any other person in whom she is interested in fear or death or any harm.

In *Prakash v. State of Maharashtra* 1992⁷, where the wife was raped by businessman and police by getting her consent, which was given because of fear as they started, beating her husband. The Supreme Court of India stated that it is not necessary to use force to create threat, mere a fear of threat of any harm is sufficient.

“Consensual Sex under the fear is Rape” a statement given by The Supreme Court of India in *Satpal Singh v. State of Haryana* 2010⁸, the case related to the rape of a minor which took place in 1993. The panchayat and the police pressured the family to not lodge criminal proceedings against the victims in the name of family honor. Finally, Apex Court held the accused liable and gave the punishment of imprisonment for seven years which was reduced to five years by the High Court. The Supreme Court rejected the plea of the accused.

4. With consent, when man knows that he is not her husband and that her consent is given because she believes that she is married to the man.

7. AIR 1992 SC 1275, 1992 CriLJ 1924, 1993 (1) SCALE 721, 1993 Supp (1) SCC 653

8. AIR 2010, Criminal Appeal no. 763 of 2008

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In such a case, the man knows for a fact that he is not the husband but makes such circumstances by which the a a woman considers him to be her husband. This situation is generally occurred by bigamy (illegal in India) or to get sex without any resistance.

There are two situations in this, first the breach of promise and second, false promise. Some may believe that there is no difference in these two but there is a fine line. Breach of Promise occurs when there were complete and true intentions to fulfil the promise but could not do so due to situations like family pressure, delay or any other things which hampers the promise and man is unable to fulfil it. On the other hand, False Promise is when from the very starting, man knew that he will not be fulfilling the promise but still make assurance of fulfilling it to the a a woman. Generally, false promise is made only to have sexual relation with a a woman without any emotions attached.

Consent for sexual intercourse taken, after the promise of marriage and if breach of promise takes place, such sexual intercourse will not come under the definition of rape.

Bhupinder Singh v. Union Territory of Chandigarh 1994⁹, is a case where the accused married Manjit Kaur without informing her about the fact he was already married and had children. During her second pregnancy, she met two of accused friends from whom she got to know about his first marriage. On confrontation, the accused left her and didn't turn up even after the birth of their baby. She made a complaint and he was held guilty of rape as prosecutrix gave consent for sexual intercourse on believing him to be her husband.

Bodhisattwa Gautam v. Subhra Chakroborty 1995¹⁰, case is of false promise. The accused was a lecturer in Baptist College of Kohima, Nagaland where he met complainant Subhra who was a student there. They both fell in love and to get consent for sexual relation with Subhra, Bodhisattwa gave her false promise of marriage, and she gave consent. After her first pregnancy in 1993, he secretly conducted a marriage ceremony knowingly to be invalid. He forced her to abort the pregnancy. She again got pregnant in 1994; he forced her to again go for abortion. Finally, 1995, he left her of a lecturer position in Assam, after which she filed a

9. (2008) 8 SCC 531.

10. 1996 AIR 922, 1996 SCC (1) 490

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complaint against him for rape, forceful abortion, conduct of illegal, false marriage. The Court held Bodhisattwa liable of all the charges except for rape.

The Supreme Court of India should great concern towards the rape laws and stated that Rape laws in India unfortunately do not take care of the social aspect in many matters. This should be a matter of concern as rape is not only a crime and a violation of Article 21 but it is also a social evil.

5. With consent, when consent was given under the influence of intoxication or the person giving consent in of unsound mind. Generally, this constitutes the ideology that the person does not understand the aftermath of giving consent. This clause was added through The Criminal Amendment Act, 1983¹¹ to save females from rape in the situations where they are not in their senses and to prevent man from taking advantage of that state for their own benefit and satisfaction. One of the sole purposes for adding this clause was to prevent the exception of obtaining consent from an adult a woman.

The most famous case is Tulsidas Khanolkar v. State of Goa 2003¹². The accused raped a girl while she was not in senses which later resulted in pregnancy. The Court held accused liable of the Act and sentenced imprisonment for 10 years with fine.

6. Any sexual relation, with or without consent, will be punishable as rape. Earlier the age of consent was 16¹³ but this clause was amended through The Criminal Amendment Act, 2013 which took place after the famous Nirbhaya Case¹⁴, in which it was concluded that according to the law, a person becomes an adult at the age of 18 years and by this time he/she becomes sensible about the consequences one might face related to their Actions. It was seen as an immune for the girls between the ages of 16 to 18.
7. When she is unable to give consent, some believes it to be her yes for the Act. But importantly, quietness will not consider as a symbol of giving consent, so if a person or in case of rape, if a woman has not expressed her consent verbally or in written or conveyed

11. Criminal Law (Amendment) Act, 1983, Act of Parliament 1983

12. A.I.R 2003, Crim. App. No. 78 out of 2000

13. The Criminal Law (Amendment) Act, 2013 (Nirbhaya Act), Act of Parliament, 2013

14. (2017) 6 SCC 1

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consent under the definition of consent established in Section 90 of I.P.C., 1860, it will not amount as a yes.

Sakshi v. Union of India case 2004¹⁵ is a landmark case in the Indian history. Sakshi, an NGO filed a petition seeking a prayer to widen the definition of rape under Section 375 in which all forms of penetration should be involved. The judgment given by the Court was very welcoming. The statement involved the more reasoning of the definition of rape, camera trials of rape cases, questions asked by the opposite party to be strictly case related with no intention to insult the victim, holding trials of child sex abuse and rape etc.

EXCEPTIONS

Under Indian Penal Code 1860, there are two exceptions given with respect to rape-

1. A medical procedure or intervention will not constitute as rape.

Here if any doctor has suggested a procedure for the betterment of health, the patient cannot put allegations against the doctor under the charges for rape, provided that the procedure should be strictly within the limits for providing medical help.

But it does not mean that a doctor can take the advantage of the patient's situation.

2. Any sexual Act of a husband with his wife, wife of not the age below 18 years, will not amount to rape.

This clause was amended through judgment of the case Independent Thought v. Union of India 2017¹⁶. Prior to the judgment, consent age of the wife was 15 years.

This is the most controversial clause as according to this; consent of the wife does not matter. It is believed that if a girl is married, she has automatically given right over her body to the husband.

IDEOLOGIES ON MARITAL RAPE

Though India is a signatory of UN Convention of Elimination of All Forms of Discrimination Against Women which has viewed Marital Rape as discrimination, India is still one of the remaining 36 countries of the world where MARITAL RAPE is legal. Countries like Norway,

15. Sakshi v. Union of India SC 2004

16.[2017] 10 SCC 800

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Denmark, South Africa, USA etc., have criminalized Marital rape. Nepal criminalized Marital rape in 2002 by stating that the classification of law that an Act against an unmarried a woman to become an offence and the same Act committed against a married a woman not to become an offence is not a reasonable classification.

This clause can be viewed by two different sides- one of a woman and other of the husband.

In general, if one considers looking through a woman's side, it is the violation of their basic fundamental rights like Article 14 and Article 21.

Article 14 says that each and every person is equal before law and law is same for everyone, but this exception creates line between the married and unmarried women above the age of 18 years. Where our laws protect a woman from sexual violence from very man, the same law describes a woman as a submissive to her husband.

Article 21 says that it is the right of every person to live the life with dignity and personal liberty. This article also gives a woman their right to make reproductive choices which included to make choices whether or not they want to have a sexual intercourse, but this clause hampers this right of a woman, as consent, is not required to have a sexual relation, from a woman which indirectly says that a husband can impose his will on his wife and a woman cannot take legal protection against him.

KS Puttaswamy v. Union of India 2012¹⁷ laid down the most important judgment in the matter of the a woman's personal choices related to their reproductive freedom. The nine- judges' bench in the Court decided that the Right to personal liberty also includes the a woman's Right to make reproductive choices.

In Suchita Srivastava v. Chandigarh Administration 2009¹⁸, the Court held some important decisions related to the reproductive choices of a woman.

- A woman's entitlement to carry pregnancy to full term.

17.A.I.R 2012 (2017) 10 SCC 1

18.(2009) 14 SCR 989

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- Giving birth to a baby is her own decision
- Right to subsequently raise the children.

The statement also recognized that these right forms a part of a woman's Right to privacy, dignity and bodily integrity.

These two are the landmark cases which states that women have complete and individual right over their body and decisions related to their body.

There are many efforts made to close this loophole and criminalize Marital rape. In 2015, RIT Foundation¹⁹ filed a petition seeking to get a judgment in their favor but it is still in process.

Various reasons are being given by the judges and judicial experts for not criminalizing Marital rape and one such reason shows the viewpoint of a man.

- In 2019, our former CJI Deepak Misra said that it should not be made illegal as it will shake the foundation of a family and our country is based on family values. The Government of India believes that our country is not ready for such a step as there is illiteracy and people will not understand the basic meaning of Marital rape.
- Many say that it is just a western influence which, if come into force, will destroy the ethnic customs and decency which binds the family together.
- The society has always been working in patriarchal manner; thus, it is automatically understood that if a girl has agreed for married, she has given consent for sexual relation as well. Even after this argument, Gujarat High Court in 2017 stated that it has been long upheld a notion of implied consent in marriage. It's high time that law must uphold the bodily autonomy of all women, irrespective of their Marital status.
- One of the reasons given by a man's perspective is that by criminalizing Marital rape, it will work against man. Man will become vulnerable and he will face a lot of problems. There will be a number of false complaints and women will use the law wrongly. This argument is faulty because there are several other laws like Protection Against Domestic Violence Act, The

19. RIT Foundation v. Union of India writ petition (C) no. 284 of 2015

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Dowry Prohibition Act etc., which gives women strength to fight for themselves. And if there are some false complaints, the judiciary is there to give the justice to innocents.

It is the time when, India needs strict laws against the Marital rape as it is becoming a demon day by day. Regardless all the arguments given above, the only thing which matters is the safety of a woman at least in her comfort place, her home. Here's a pro tip from a bench of Acting Chief Justice Gita Mittal and C Hari Shankar of the Delhi High Court. "Marriage does not mean that the a a woman is all time ready, willing and consenting [for sex]. The man will have to prove that she was a consenting party." It really is that simple.

MAJOR AMENDMENTS

- Criminal Amendment Act, 1986-

This Act came into force several years after the famous Mathura Rape Case or *Tukaram v. the State of Maharashtra, 1978*²⁰, the case is about the young girl, Mathura who belonged to a lower caste, who developed some sexual relations with the boy where she used to work and they were about to get married. Later, a complaint of kidnapping was filed at the local police station. The case was resolved and as all the people were walking towards their homes, police asked Mathura to come inside the police station and asked her brother to wait outside. Inside the police station she was assaulted and raped by the officers. When the case was filed in the Session Court, the Court dismissed the case by pointing out that there were no marks of injuries on the petitioner's body and that she was "habitual to sex." The case was taken to the Bombay High Court, where Court successfully differentiates between the passive submission and consent. Passive submission is given in the fear of further harm to the family or oneself. The High Court declined the judgment of Session Court and held the accused of crime. Whereas, the Supreme Court again acquitted accuse on the same grounds as of Session Court raged the society.

The highlights of the Act are as follows-

- The term Custodial rape came into force.

²⁰Tukaram and others Vs. State of Maharashtra, AIR 1979 SC 185

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- Section 376 (A) to 376 (D)²¹ were added in the I.P.C., 1860.
- Section 114 (A) was added in the Indian Evidence Act, 1872²² which says that if once it is said by the victim that there was no consent given, the Court will presume that there was no consent given and now the burden of proof will be on accused.
- Disclosing the identity of victim will be punishable under Section 228 (A) of I.P.C., 1860.
- The Criminal Amendment Act, 2013

The need to amend the Act was once again felt after the horrifying Nirbhaya Rape incident which shook the nation all together. Nirbhaya Rape Case 2012²³ is a gruesome case in which the victim was gang raped by six men in a bus and her friend was beaten up badly. After the rape, she was dumped at the edge of the road in a vegetative state. Due to her injuries and severe infections in the body, the victim died. Five of the six accused were given life imprisonment and later on death penalty while one of the accused who was a minor at the time of offence was sent to Juvenile home. Thus, some serious steps were taken in order to upgrade the laws.

- The Act expands the definition of rape.
- The age for consent was increased from 16 years to 18 years.
- A different section of 376 D- gang rape was added with harsher punishments in I.P.C., 1860 1860.
- Section 376 (E)- repeat offence, was added in the I.P.C., 1860.
- The provision of zero FIR [victim can file an FIR in any of the police stations] was added in Criminal Procedure Code, 1973.
- The Act increased the punishment for rape to not less than 10 years and in some cases with fine.
- In case of death or vegetative state of the victim, the punishment of death penalty can be given.
- Punishments for other sexual assaults like acid attack, staking, voyeurism etc., were also increased.

21. Id. at 1

22. Indian Evidence Act, 1872, Act of Parliament 1872

23. Id. at 13

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- Strict provisions for registering the complaints were added.
- New provisions were laid down in POCSO like Section 42 (A)²⁴.
- Bill of Rights for women and criminalizing Marital rape was proposed by The Verma Committee but these were not implied.
- The age of committing a crime was reduced to 16 years which was earlier 18 years.
- The Criminal Amendment Act, 2018

Another rape case that shook the nation and raised the question against the legal procedures and law of the country was the famous Kathua Rape Case 2018²⁵. The gang rape and murder case of an 8-year-old nomadic girl of Kathua district of Jammu- Kashmir state put the big question mark on the safety measures and legal provisions mentioned. Even though the accused got the life sentence, it showed the nation that there is still a space to fill with higher and harsher provisions to ensure safety of women; therefore, another step was taken to amend and add various laws.

- The main focus was to provide higher punishment in the rape case of girls of the age below 16 years and 12 years.
- The punishment for gang rape of a girl below 16 years will be given life imprisonment with fine.
- The punishment for gang rape of a girl below 12 years will be given life imprisonment or death sentence with fine.
- The concept of speedy trial for rape cases was added.
- The clause of not giving anticipatory bail for the offences committed against the girls of age below 12 years was added.
- The Act omitted Section 376 (2)(i) of I.P.C., 1860 and added Section 376 sub section-3.
- Section 376(E) of I.P.C., 1860, 1860 was amended through this Act.

24.The Protection of Children from Sexual Offences (POCSO) Act 2012, Act of Parliament 2012

25.Kathua rape and murder case verdict, Firstpost (June 17, 2019 15:20:47 IST),
<https://www.firstpost.com/india/kathua-rape-and-murder-case-verdict-pathankot-Courts-judgment-focused-on-poetic-justice-refused-to-give-benefit-of-doubt-to-accused-6825801.html>

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PUNISHMENT FOR RAPE

According to Indian Penal Code 1860 section 376, any Act which amounts to rape[definition under section 375], except sub section 376 (2), will be punishable for a rigorous imprisonment of term which will be not less than 10 years and can extend up to life imprisonment according to the case. Additionally, the accused is also liable to pay a fine, equal to medical expenses and rehabilitation expense, to the victim.

Rape is a cognizable, non bailable offence with rigorous punishments according to Indian law.

Sub-section (2) of the Section 376 can be classified into following clauses-

1. Custodial Rape-

Custody can be described as a guardianship or protective care. Custody can also be defined as the imprisonment or the arrest by any police authority. According to I.P.C., 1860 section 376 (2) clauses (a)-(e), rape committed by police officer in the area of his in charge, in the premise of any police station or against any a woman in his custody; or rape committed by any public servant; or by any member of the armed force; or by the management staff of jail, remand homes, any other place of custody; or management staff of the hospital or any women and children institution, will amount to a rigorous punishment of term not less than 10 years which may extend to life imprisonment or person's natural death. The accused will also be liable to pay fine to the victim which combines all the expenses of medical treatment, legal proceedings etc.

According to some experts, it is the most heinous crime because it is caused by the very same people who are supposed to be the protector of the law and the people.

A very famous case of Rameeza Bee 1978²⁶ can define the custodial rape into words where a lady Rameeza Bee was brutally raped by four police officers while her husband was beaten to death in response of protesting against the rape. The telephone lines were cut off by the protestors; roads were blocked, seeing these two platoons were released on the roads to take

26.HimanshiNagpal, The Historical Journey of Rape Laws in India (June 22, 2017), <https://feminisminindia.com/2017/06/22/historical-journey-rape-laws-india/>

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charge. There were a lot of agitation carried out in Hyderabad and finally when situation seems to go out of hands, President's Rule was implied in Hyderabad and Secunderabad. What is shameful is that, when finally, a committee was set up, the police men guilty were released of their charges by the session- Court.

There are many such cases of members of armed forces raping women in Guwahati, Jharkhand etc.

Asian Centre for Human Rights (ACHR) states that "Custodial rape remains one of the worst forms of torture perpetuated on women by law enforcement personnel and number of custodial rapes of women table place at regular interval."

2. The cases where a pregnant a woman is raped or a woman is raped by in laws are very common to hear and are very shameful as it shows that today a woman is not safe with the ones who are her protectors and the place where is resides is becoming a hell for her.

Rape defined under section 376 (2) clauses (f)-(n), omitted (i), which includes rape committed by someone who is a guardian or a relative; or rape committed during communal or sectarian violence; or rape of a pregnant a woman; or a woman who is incapable of giving consent; or rape by a person who has a control or dominance over the a woman; or rape of awoman suffering from mental or physical disability; or repeated rape of the same a woman, the accused will be punishable for a term of not less than 10 years which may extend to life imprisonment or up to person's natural death with a fine. Section 376 (C), defines the punishment for sexual offence by a person in authority or in other words, a person who has a fiduciary relationship with a woman. This relation may include doctor- patient, teacher-student, parents, superintendent of police or any other person who has an influential effect of a woman. Such an Act does not amount to rape but comes under sexual offences and are punishable for a term not less than 5 years which may extent to 10 years, with a fine.

There is another painful case of Teghoria Village where complaint was filed by 30-year-oldda woman's father against a 40-year-old man, Shahinur Rahman who lives in the same village accusing him for raping his intellectually disabled daughter when nobody was at home. The victim gave her statement in front of the magistrate and case is proceeding forward.

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During the lockdown period, a case of daughter being raped by her own father while her mother silently watching the scene was registered and accused gave an excuse through this the girl will become habitual of the sexual intercourse and she won't feel any pain after the marriage. The police took the accused under the custody and the girl was admitted to the hospital.

Rape against girls below 16 years and 12 years of age

Section 376 (i) was omitted by The Criminal Amendment Act, 2018 and was added in the form of Section 376 (3) which defines the punishment of rape of any girl below the age of 16 years.

Whereas, section 376 (AB) defines the punishment for rape of a girl below 12 years of age.

Any such Act is punishable for not less than 20 years which may extend to life imprisonment or to a person's natural death. The accused is also liable to pay a fine to the victim.

Rape causing Death or Persistence Vegetative State-

The term 'Vegetative State' was not in the Indian Penal Code before The Criminal Amendment Act 2013. It was added after the Nirbhaya Rape case in which the victim was left in the vegetative state and later died.

Vegetative state as explained by the Court is a state in which, the victim is alive but is not at all aware of the surrounding and shows no evidence of life. Section 376 (A) was added, under which it is stated that if a woman is raped according to section 375 of I.P.C., 1860 and the sexual intercourse results in injuries causing death or the victim is in a persistence vegetative state, the accused will be liable for a rigorous punishment for a term not less than 20 years which may extend to life imprisonment or accused natural death.

Sexual intercourse by a husband with his own wife, without her consent, who is living separately under the judicial separation, will amount to rape and the husband will be liable for punishment of not less than 2 years which may extend to 7 years which also included the fact that husband is liable to pay fine to his wife.

Gang Rape

This section was added by The Criminal Amendment Act, 2013 with harsher punishment.

Gang Rape under the law means, an Act of raping a woman by two or more people with

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the common intention, each will be liable individually to have committed an offence and will be punished under section 376 (D) of I.P.C., 1860 with punishment for a term not less than 20 years which may extend to life imprisonment. The accused is further liable to pay a fine to the victim which includes medical expenses, legal expenses etc.

Further the provision of gang rape is divided into two sub parts-

Section 376 (DA)- Gang Rape of a girl below the age of 16 years whose punishment is life imprisonment or the accused will be in jail till he dies, with the fine payable to the victim.

Section 376 (DB)- Gang Rape of a girl below the age of 12 years whose punishment is either life imprisonment or death sentence depending on the case. The accused is liable to pay a fine to the victim as well.

Park Street Rape case 2012, is a famous case in which a girl named Suzette Jordan was gang raped by five men in Kolkata. Three of the five men are convicted of the rape and are sentenced for a rigorous punishment of 10 years in jail.

The most recent gang rape case is the Priyanka Reddy Case 2019²⁷. A veterinary doctor Priyanka Reddy was found dead in Shamshabad on 28th November 2019. After the autopsy, it was found that she was raped by four rapists repeatedly and finally died. The men even tried to burn her dead body in order to leave no evidence but failed. The accused were given life imprisonment.

Section 376 (E) defines the punishment for the repeat of offenders. Any person who has committed an Act of offence under Section 375 and who is previously convicted under section 376 or Section 376 (A) or section 376 (AB) or Section 376 (D) or Section 376 (DA) or Section 376 (DB) will be liable for life imprisonment or for the remainder of the person's natural death.

SECTION 377 - UNNATURAL OFFENCES

Any carnal intercourse against the order of the nature with a man, a woman or any animal is punishable under the law. Penetration is sufficient to constitute the carnal intercourse necessary

27 Urmila Shadm, Dr. Priyanka Reddy Complete CASE STUDY, Youth Against Injustice Foundation, <https://yaifoundation.org/dr-priyanka-reddy-complete-case-study/>

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for this offence. This means that sodomy, buggery, bestiality etc., are all against the course of nature and are illegal according to Indian Law. Such an Act is a cognizance, non- bailable offence.

- Any carnal intercourse or any sexual intercourse of a human being, whether a man or a woman, with an animal will amount to unnatural offence and will be punishable under the law with life imprisonment, or imprisonment for a term which may extend to 10 years. The accused shall be liable to pay fine as well.

In the recent times, one can hear and read a number of cases regarding bestiality and cruelty against animals' like-

In 2017, a 27-year-old boy of Jaipur was caught engaged in an Act of bestiality with a calf, when the calf's owner came to check on the calf who was wailing in pain.

In 2018, PETA²⁸ India filed a complaint against eight- men; under Section 377 and Section 429 of I.P.C., 1860 and Section 11(1)(a) and 11(1)(I) of The Protection of Cruelty to Animals Act (PCA), 1960; who were found guilty for gang raping a pregnant goat and killing the goat.

PETA India CEO, Dr. ManilalValliyate stated that the fear and pain that goat must have felt during the horrific assault is hard to understand. He further added that such people who commit Acts of cruelty on animals move on hurting humans. There is a need to make some harsher penalties under PCA, 1960²⁹.

The phrase which the CEO said that such people carry on such heinous Act against the humans as well, was proved in Jisha Rape and Murder Case, 2016, in which the accused Ameerul Islam had a history of cruelty against animals.

- Earlier, Section 377 even constituted the Act of sexual intercourse of homosexuals as a crime. But, after a lot of efforts and different interpretations of various laws and articles of the Indian Constitution, finally this section was partially decriminalized.

28. People for the Ethical Treatment of Animals, 1980

29. The Prevention of Cruelty to Animals Act, 1960, Act of Parliament 1960

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From the British times, homosexuality was always seen as a crime and till 2009 it was taboo to come out as homosexual, the very reason why the people of LGBT community (Lesbian, Gay, Bisexual and Transgender) lived a faced life in India. These people never the absolute recognition which they were rightful of and they were always looked as aliens. Given below is a short journey of various NGOs, who fought for the rights of LGBT community-

1. Naz Foundation Case 2009³⁰

The main issues raised by the Naz Foundation were that Article 14 and 15 of Indian Constitution gives Right to Equality to every citizen of the country which ultimately provided protection against any unreasonable discrimination. Through which, it is seen that homosexuals are considered as an individual class. Article 21 gives Right to Life to every person of the country which protects their dignity and privacy as well.

Delhi High Court gave the judgment in the favor of the case by stating that sex does not constitute only biological sex but sexual orientation also. Part of Section 377 which says homosexual Acts are illegal should become unconstitutional, though, it is parliament's decision to make the needful amendments.

2. Suresh Kaushal v. Naz Foundation, 2013³¹

In 2013, Suresh Kaushal filed a petition against the judgments given in the Naz Foundation Case, 2009 by saying that homosexuality is a criminal offence and only parliament can have a say in decriminalizing it, not the Courts. Another point which was highlighted that Right to privacy cannot be extended up to a point where it covers homosexual Act.

The SupremeCourt of India reversed the judgment of Delhi High Court and again criminalized homosexuality. This Act was considered as 'a step backward' by the international agencies and the people who were disclosing their identities after the 2009 judgments were targeted and treated badly.

3. NALSA v. Union of India, 2014³²

30.A.I.R 2009 WP(C) No.7455/2001

31.(2014) 1 SCC 1

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With the judgment given in 2013 case, another NGO NALSA took a step forward and presented the case in which it was clear that there are loopholes in the laws as there are not laws and rights which protect the LGBT community.

After the discussion, The Supreme Court of India describing the multifaceted rights gave its verdict in the favor of the LGBT community by explaining various articles of the Constitution which provided the rights to the community as well-

- Article 14 includes all the genders.
 - Article 15 and 16 says that there should be no discrimination on the basis of gender.
 - Article 19(1) stated that every person has the right of gender identity and integrity.
 - Article 21 gave the Right to Choose Gender Identity with privacy to every person.
- Finally, legal recognition was given to self- identity and gender identity.

4. Justice K.S Puttaswamy v. Union of India, 2017³³

A 9- judges bench was set-up from which one of the judges was Justice Chandrachud who said that it is necessary to rectify the mistake of SC in Suresh Kaushal case 2013.

He then explained the extended meaning of right to privacy which shows as an essential attribute of the sexual orientation and Part III of the Indian Constitution protect this attribute.

5. Navtej Singh Johar v. Union of India, 2018³⁴

All the previous judgments denote the up and down relationship of the laws and rights, and sexual orientation of the LGBT people. But, none of the judgment laid any prominent step towards the sexual intercourse of the community.

The most famous and landmark case of Navjot Singh Johar finally gave the verdict which was much awaited by the LGBT community and NGOs working for them. The Supreme Court of India, decriminalized all consensual sex among adults in private, including the LGBT sex. A 5-

32. AIR 2014 SC 1863

33.(2017) 10 SCC 1

34. AIR 2018 SC 4321

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judges bench gave the verdict by quoting previous judgments and explaining them as well with a wider perspective.

The Court gave the judgment with the support of Article 14 by saying that criminalizing the Act of consensual sex between two adults just on the basis of their gender is neither intelligible differentia nor rational nexus. Ethics like morality are too ambiguous and subjective, and there is a need to widen the definition and society need to view the perspective of these targeted sexes also. The Court further explained that Delhi High Court correctly stated that in Article 15 sex is just not the biological sex but also included the sexual orientation. The verdict also took a note from the NALSA case which was backed by Article 19 and Article 21 defining the Right to expression of one's sexual orientation and Right to Privacy, dignity and autonomy, respectively. Lastly, Court also said that reasonable restrictions can be imposed in order to curtail these rights as well.

Section 377 is partially decriminalized up to a limit which notifies the consensual sexual intercourse of the LGBT community, but bestiality or sexual intercourse of a man or a woman, with an animal is still cognizable, non-bailable offence.

CONCLUSION

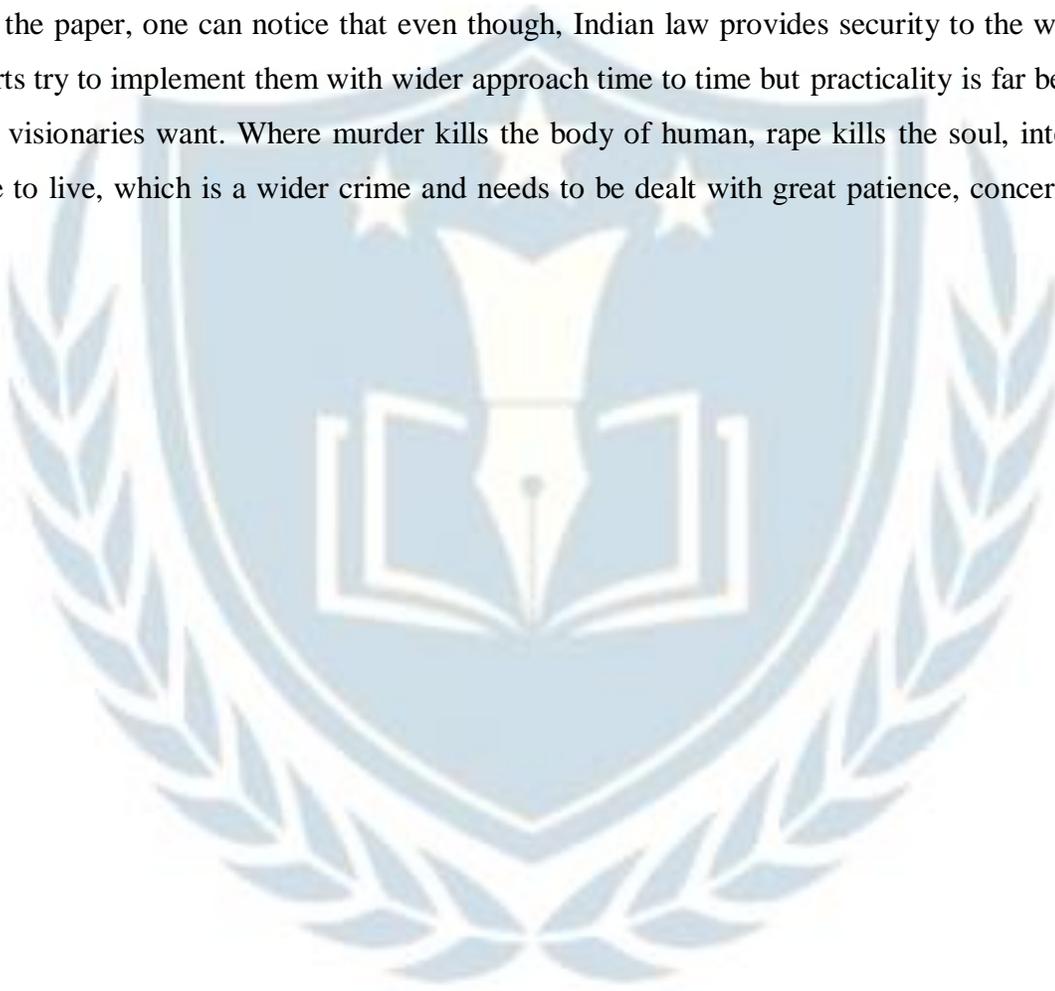
The statement given in *The Chairman, Railway Board v. Chandrima Das* 2000³⁵ case is very apt for the crime of rape. The statement was that "Rape is not merely an offence in I.P.C., 1860 but it is a crime against society". To remove this gruesome gender-based crime from the society, some steps are to be taken not just by the Government but by the people as well. Where the Government and the judiciary are trying their best to provide justice to the victims, people should stop defaming the victims further and encourage them to restart their life. On the part of people, they should understand the situation of the victims and should try to ease them rather than pointing fingers and blaming them for the circumstances. On the part of the Government, there should be strict implementation of the rules given and it is time when the Government should start considering for making laws which it has been neglecting for some time like Marital rape

35.A.I.R 2000, 2 SCC 465

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and making the laws gender neutral because lately, there has been various cases in which men are being brutally sexually assaulted. But most importantly, as one says that home is the first school, family should teach children how to respect other's privacy and how to control their desires and enlighten them about their rights; especially teach the boys of the family to accept rejections and understand the phrase 'NO MEANS NO'.

Through the paper, one can notice that even though, Indian law provides security to the women and Courts try to implement them with wider approach time to time but practicality is far beyond what the visionaries want. Where murder kills the body of human, rape kills the soul, integrity and hope to live, which is a wider crime and needs to be dealt with great patience, concern and care.



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