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RIGHTS OF RAPE VICTIMS AND ITS HISTORICAL BACKGROUND- Aditya Singh¹**Abstract**

Rape is widely regarded as the most gruesome offence to mankind. It refers to the nonconsensual sexual intercourse committed by a person against a person. It has been one of the most gruesome offences since the past centuries. Rape is defined under Section 375 of the Indian Penal Code and is punishable for minimum imprisonment of 10 years or imprisonment of life along with fine under Section 376 of the IPC. Rape is not only a gruesome offence limited against a woman, but also it serves as a serious threat to the male gender as well. With the continuous rise in the number of Rape cases, it has become extremely unsafe for both men and women to live fearlessly in the society. Therefore, it is very important for the legislature to enact more strengthening and stern laws.

Introduction

Earlier during the past centuries, slavery was the most common mode through which both men and women were subjected to grievous sexual and physical assault. Both the genders, especially females were more prone to it. However, as slavery was legal, it was not regarded as an offence during that time and it was a common practice among the people to be indulged in the buying and selling of slaves. The practice continued in the country and was finally abolished by the Britishers during the late 18th century through the implementation of Charter Act, 1833 and IPC.

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Since the past few decades, there has been rapid increase offences related to Rape and sexual harassment against different genders. Lack of education and pornography has been one of the key factors behind the commission of such offences. Lack of sex education in educational institutes also plays a pivotal role in ballooning the figure of offences related to Rape and Sexual Harassment.

Origins and Development

1. Before British Rule

During the Ancient times when the country was not engulfed in the control of Britishers, the laws were not properly codified in the country. Slavery and sexual harassment offences were very common in India and there was no proper regulatory framework in India. Men and women both were subject to severe mental and physical cruelty. However, sexual offences against women were more prominent in the nation due to lack of proper legislations and education. Slavery was only abolished after the Britishers entered India by the passage of Indian Slavery Act, 1843.

2. Charter Act, 1833

When Charter Act, 1833 was implemented in India, the laws related to Rape was very conflicting and could not be implemented in India properly due to its improper codification. The laws related to Rape were properly implemented only after the establishment of IPC in the country during the late 18th century.

3. Indian Penal Code, 1860

During the year 1860, Indian Penal Code was established by the Britishers in India. The Indian Penal Code provided a proper codification to the laws in India. The laws related to Rape were strengthened due to which India

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witnessed decent decline in the Rape cases. However, the laws and provisions mentioned in IPC were not adequate enough to completely eliminate and deter the criminals. IPC was subject to various amendments in the future and went through a lot of amendments and deletions with the passage of time and occurrence of some shameful and gruesome cases which are discussed later in the Research Paper.

4. CRPC

Crpc was implemented in India during the year 1973.²Crpc is the procedural law which states the manner in which the police officials are bound to act and states the procedure for the functioning of Administration. Crpc and IPC together regulate the offences in India and both these provisions walk hand in hand. According to Section 164 A of the Crpc, it is stated that as soon as any information is received about the commission of Rape against any woman, then such woman shall be sent to a Registered Medical practitioner, and she will be examined by such medical examiner within 24 hours.

Rights of Rape Survivors

Rape is one of the most brutal and gruesome offence known to mankind which can easily destroy the mental and physical health of the victim. Therefore, it is very important to safeguard the rights of the survivor so that he or she does not have to undergo further trauma because of the same. The following are the Rights of the Rape survivors -:

1. According to Section 376 of the Indian Penal Code, the minimum imprisonment for Rape is 10 years with or without fine. However, if the victim is below 16 years of age, then the criminals will be punished with a minimum imprisonment of 20 years to imprisonment for the rest of the

²Crpc was implemented at [https://en.wikipedia.org/wiki/Code_of_Criminal_Procedure_\(India\)](https://en.wikipedia.org/wiki/Code_of_Criminal_Procedure_(India))

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life, and if the victim is lesser than 12 years of age, then the accused can be awarded a death penalty for the offence and may also be awarded a fine which may be just and reasonable.

2. Right to Privacy – The Rape victims have the right to protect their names and details in the public and their name and sensitive case details are not reflected at public level as it can tarnish the image of the prosecutrix.³
3. Right to Medical examination – As per Section 164-A of Crpc, the rape victims have the right to be medically examined by a medical examiner as soon as the police officials are informed about the offence if she or the person complaining in favor of the prosecutrix consents to. However, it is to be noted that the complainant's consent will only be held valid if the complainant is not in a condition to give her consent.⁴ It is also pertinent to note that no hospital can deny from examining the victim. It will also be mandatory for the treating medical professional to inform the police officials if Rape or sexual violence has been committed against a person brought to the hospital.
4. Right to Camera Trial – The victims have the Right to attend the trial via camera without any public attendance. In the camera trial, only court officers, concerned party and court staff are present for the trial. Camera Trial is done under Section 151 of Code of Civil Procedure, 1908.⁵
5. Right to Treatment – As per Section 357 of CRPC, it is compulsory for the hospitals whether public or private to treat the victim. No hospital can deny treatment to a Rape victim.⁶
6. Right To Consent – The medical examination of the victim cannot be

³ Protect their names at <https://nyaaya.org/nyaaya-weekly/what-are-rights-of-rape-survivors-in-india/#:~:text=Right%20to%20in%2Dcamera%20trial,front%20of%20her%20alleged%20abuser.>

⁴ complainant's consent will only be held at https://india.unfpa.org/sites/default/files/pub-pdf/handbook_final_design.pdf

⁵ Section 151 at <https://www.livelaw.in/news-updates/in-camera-proceedings-section-151-cpc-delhi-high-court-221184#:~:text=The%20Delhi%20High%20Court%20has,Code%20of%20Civil%20Procedure%2C%201908.>

⁶ As per Section 357 of Crpc at https://india.unfpa.org/sites/default/files/pub-pdf/handbook_final_design.pdf

done without the consent of the victim or the complainant. The complainant can also provide her consent if the victim is not in the condition to provide her consent due to her age, mental health, physical health etc.

7. Right to file Zero FIR – The victim has the Right to file Zero FIR. It means that the victim can file FIR at any police station irrespective of the occurrence of offence happening outside the jurisdiction of such police station. Normally, an FIR can only be filed by an individual if the offence has happened within the jurisdiction of such police station. If the offence has happened outside the jurisdiction of the police station, then such police officers can ask the complainant to file the complaint within the police station which has its jurisdiction. However, Rape offences are an exception to this rule.
8. Marital Rape is an exclusive ground for Divorce – Though Marital Rape is considered to be falling under the category of cruelty, it has still not been criminalized and remains legal. However, it is an absolute ground for Divorce. Marital Rape is one of the leading contributors to the offences against women. Males are also a victim of Domestic Violence, however the crime rate against men are very low as compared against women.

The aforementioned Rights in this chapter has been provided to the victims of Rape. However, these rights aloof are not sufficient to eradicate the evils in the society and we need more stringent law against offenders committing Rape against any of the genders. Offences like Rape cause grave mental agony to the victims and lasts an eternal impact in their minds, therefore, mere punishment of 10 years or fine is not justifiable for the same. The minimum punishment bar should be pushed to Life Imprisonment and should contain the provision to punish the accused with Death Penalty.

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Though, India has refrained from passing Death Penalty against the criminals, if the provision for Death Penalty is regularly imposed against the Rape offenders, it will cause a great level of deterrence in the hearts of the Criminals and the offences against Rape will be brought down to a major extent.



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