

## CHANGES IN RAPE LAWS IN THE LIGHT OF CRIMINAL LAW AMENDMENT ACT OF 2013 AND THE CRIMINAL LAW (AMENDMENT) ORDINANCE, 2018

Shreya Bajpai\*

### Abstract

*The Criminal Law Amendment Act, 2013 as well as the Criminal Amendment Ordinance, 2018 has introduced numerous new offences as well as disciplines. Further, it introduced more stringent punishments with an ultimate aim to check and control the number of offences against women in India. In this context, the author in this paper made an attempt to examine and to conduct basic investigation of laws in connection with the offence of rape in India.*

**Keywords:** *Criminal Law Amendment Act, Criminal Law Amendment Ordinance, Offences against women in India, Rape laws in India .*

---

### PREFERRED CITATION

---

- Shreya Bajpai, Changes in rape laws in the light of Criminal Law Amendment Act of 2013 and the Criminal Law (Amendment) Ordinance, 2018, *The Lex-Warrior: Online Law Journal* (2018) 7, pp. 346 – 354, ISSN (O): 2319-8338

---

\* 4<sup>th</sup> Year B.A, LL.B (Hons.), Indore Institute of Law.

## INTRODUCTION

*"I was thrown face down onto the floor.... He punched me twice in the head and said: "shut up queer -- you get what you deserve".... [and then he raped me].... I wanted to die."*

- Stephanie Allen

*"If the law fails to respond the need of changing society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth law must therefore constantly be on the move adopting itself to the fast changing society and not lag behind."*

- Justice P.N Bhagwati

For the social control and counteractive action and control of wrongdoing there is have to change Criminal justice framework as per the need of the public. The law is an instrument through which it could conceivable to correct the law and to secure privileges of the general population as insurance of Human Right idea. The fundamental question of Criminal justice is to keep up lawfulness in the public arena and to secure the guideline of normal equity, for example, lead of law in the public arena. There is squeezing need all around organized enactment and legal in the event that or sexual wrongdoing and other wrongdoing. There is a need of considerable update in the arrangements and practices for casualties of the different wrongdoings.

There is huge lacuna in our Criminal equity framework as there are no more grounded Laws, Acts or Statute to shield individual from various sorts of rape. The legal reaction in this setting is exceptionally poor. As the greater part of the denounced individual was

discharged because of absence of confirmation or threatening witness or because of taking preferred standpoint of the lacunas in the lacunas in the present law. Since wrongdoing emits and lights the mainstream nostalgic intrigue, fear, want for exact retribution, a specific bleak interest and wistful enthusiasm for the casualty or even in the press or on the screen. To correct laws according to human right is fundamental due to the repulsive development rate of wrongdoing, the expense of wrongdoing and there is a critical requirement for moderation and minimization if not end. Wrongdoing has an immediate bearing on financial structure of the public.

### **Examination of laws prior to the Criminal law amendment, 2013**

Laws in connection with the offence of rape have seen various changes prior to achieving the present shape through the criminal law correction of 2013, which was brought through as a mandate as the parliament was not in session. This correction was brought

after an across the nation shock against the ruthless rape of a physiotherapist student in Delhi.

Section 375 of the Indian Penal Code characterizes Rape. In like manner, speech assault is portrayed as sex with a woman without her assent by power, fear or fraud. Section 375 has seen an alteration in the year 1983, which redesigned the meaning of assault and furthermore rolled out improvements to the disciplines that were stipulated under the section 376. This was made through the Criminal Law (Amendment) Act of 1983.

Interestingly this amendment was also brought about due to the widespread criticism of a judgment in the case of *Tukaram v. State of Maharashtra*<sup>1</sup>. For this situation the trial court had articulated the charged as not liable which depended on the idea that the casualty had given implied agree to the demonstration. It was likewise watched that the young women was of unbridled character, which was utilized as thinking for the inferred assent. This was toppled by the Bombay High Court, which appropriately called attention to, that there was a colossal contrast amongst assent and latent accommodation. It was exceptionally right as it has would see it that unimportant surrender to someone else's desire ought not be taken as assent. This was upturned by the Supreme Court who absolved all the denounced. This judgment was reprimanded broadly by the common

*society. The repercussions of the case were found in the changes that were realized in the IPC and the Indian Evidence Act. Section 376 A to D were added to the IPC and section 114A was presented in the Indian Evidence Act.*

To examine the laws under the steady gaze of the criminal law revision act 2013 it is vital to know how the segments have characterized assault and the disciplines related with it. The core of the meaning of assault in section 375 IPC before the revision of 2013 is that assault includes coercive nonconsensual sex between a man and a woman. Six conditions can be said to be the constituents of assault. The essential condition fundamental for assault to be submitted is that there must be the commission of sex between the man and the woman. It is generally trusted that assault must be conferred if the sex has been managed without the assent of the casualty, yet this isn't generally the case, assault can be submitted even after assent has been gotten if the age of the lady is beneath the age of sixteen years. On a more intensive take a gander at the conditions required for the commission of assault it can be comprehensively separated into three sections. The initial two provisos uncover that they manage sex with a woman 'with consent' and 'without her consent'. This implies the woman is intentionally equipped for giving or not offering agrees to the demonstration. The following two provisions

---

<sup>1</sup> AIR 1979 SC 185

manage the lady giving her agree because of compulsion that is by putting her or any of her relative to risk of hurt or deplorable mischief and it likewise bargains when the assent is acquired through misinterpretation. The last two statements manage the circumstance when the consensual sex with underage female individual happens.

### **Clarification of the term 'sexual intercourse' and 'penetration'**

These are the terms that have experienced the most complete change in the ongoing amendment of 2013. Prior to the amendment of 2013, sex was interpreted as meaning the entrance of the male genital organ into the female genital organ as it were.

The courts deciphered the term sex as “*mere slightest or partial penetration of the male organ within the labia majora or the vulva or pudenda is sufficient to constitute 'sexual intercourse'*”<sup>2</sup>

The courts have stressed on the fact that the depth of the penetration is immaterial.<sup>3</sup> It also laid down that there is no requirement for injuries to be present on the private part of the woman to constitute rape.<sup>4</sup> The hymen need not be ruptured.<sup>5</sup> Thus, the essential condition of rape is penetration and not ejaculation. Ejaculation without penetration will constitute as an attempt to

rape and not rape actually.<sup>6</sup> These conditions were explicitly specified by the Supreme Court in *State of Uttar Pradesh v. Babulnath*<sup>7</sup>.

The court for this situation while digging into the basic elements of rape mentioned the objective fact that “To constitute the offence of rape it is not at all necessary that there should be complete penetration of the male organ with the emission of semen and rupture of hymen. Even Partial or slightest penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim would be quite enough for the purposes of section 375 and 376 of the Indian Penal Code. That being so it is quite possible to commit legally the offence of rape even without causing any injury to the genitals or leaving any seminal stain”<sup>8</sup>

### **Laws in connection with the offence of rape after the Amendment of 2013**

The Criminal Law Amendment Act of 2013 was brought into impact after the horrendous Delhi Gang Rape case, which stunned the entire country with the fierceness of the demonstration perpetrated. Far reaching challenges and fomentation constrained the assembly to ponder the changing of the

<sup>2</sup> Madan Gopal Kakkad v. Naval Dubey (1992) 3 SCC 204

<sup>3</sup> Wahid Khan v. State of Madhya Pradesh (2010) 2 SCC 9

<sup>4</sup> Fateh Chand v. State of Haryana, (2009)15 SCC 543

<sup>5</sup> Guddu v. State of Madhya Pradesh (2007)14 SCC 454, 2006

<sup>6</sup> Ramkripal Shyamlal Charmakar v. State of Madhya Pradesh (2007) 11 SCC 265

<sup>7</sup> (1994) 6 SCC 29

<sup>8</sup> (1998) Cr LJ 2428

pervasive assault laws. The essential thought was to make them more stringent and present harsher disciplines other than expanding the ambit and meaning of the term rape.

Late Justice J.S.Verma, Gopal Subramaniam and Ex-Justice Leila Seth involved the fairly acclaimed 'Justice Verma Committee', which was made to gather proposals and make suggestions for the lawmaking body to make a law to battle assault and different wrongdoings against women. The specialized council was so proactive with its working that amid its brief term it got upwards of 80,000 recommendations over which considerations were finished.

Different activists, legal advisors, NGOs and different people speaking to the 'common society' sent these recommendations. Since the lawmaking body was deferred and there was no session, the advisory group's proposals were presented by means of a law.

The offense rape was presently corrected or given a more extensive importance which was sufficiently exhaustive to incorporate any sort of entrance and furthermore in anyone a player in the woman or young woman. This was the most essential change in light of the fact that prior area 375 of the IPC just stipulated the Penile Vaginal infiltration as rape.

The way that the new proposals included that any infiltration would be considered as assault was the most productive device in

augmenting the ambit of the term rape, which was being requested before based on the suggestions of the fifth law commission report.

There was likewise the incorporation of enrolling grumblings and therapeutic examination. The report completely specified, "Any officer, who fails to register a case of rape reported to him, or attempts to abort its investigation, commits an offence which shall be punishable as prescribed."

The committee gave broad suggestions seeing keeping away from marital rape and in addition rape conferred by means of commission of void relational unions. This was critical as I feel that Marital Rape is an escape clause that is extremely unequivocal and on the face in nature.

A theme is not extremely concealed that enactments are not being made on the issue. This is the reason it is such something imperative since everybody thinks about it but then the push to incorporate it under the meaning of rape has just started as of late. To incorporate this reality and perception the advisory group specified necessary enrolment of relational unions in order to give lawful holiness solemnization of marriage.

The Code of Criminal Procedure likewise experienced a comparative upgrading credited to the new law and had beforehand experienced a similar procedure after the

judgment in the Supreme Court choice in the Gurmit Singh Case.<sup>9</sup>

### **Basic comparison of the two enactments**

That the laws have now changed radically from what it existed already. Societal perspectives changes every now and then with the appearance of new qualities and advancements. It is quite reasonable that comparatively laws which matter such a great amount in directing the peace winning in the general public likewise changes now and again. This is essential to counter and battle new sorts of wrongdoings that have risen generally, for example, digital violations which incorporate information burglary, annoying, rupture of security and so forth.

The Criminal Law (Amendment) Act, 2013 was a substitution of the Criminal Law (Amendment) Ordinance, 2013. The Act was ordered to roll out improvement in the Indian IPC and Cr.PC and in addition the Indian Evidence Act. There was an ascent in dangers towards singular security in the country and it was high time to incorporate certain new wrongdoings under the Indian Penal Code in consonance with the progression of time. Another wrongdoing that was presented and was not accommodated in the nation's before enactments was 'voyeurism' which implies the chronicle or review pictures, motion

pictures or any such media material without the authorization of the individual depicted or screened in them would bring about reformatory discipline.

A 'voyeur' is defined as "a person who derives sexual gratification from the covert observation of others as they undress or engage in sexual activities."<sup>10</sup> Voyeurism is a criminal act which creates apprehension for society and is infringement of expectations of privacy that all citizens have about their body which they do not wish to expose it to others.

Another essential change from past enactments is the much-required change in the method of giving proof in the courtroom. After the Mathura rape case the objection resulted in correction of Section 114A of the Indian Evidence Act. This was done to keep up that notwithstanding there being the absence of assent given by the women, there was frequently a character death of the women at the court preliminaries, which was extremely terrible. In this way there was a change from before enactments and Section 53A of the Indian Evidence Act was presented making it express that in a preliminary where there was rape then the confirmation provided identifying with the casualty's past sexual experience or notwithstanding for a self-evident reality her 'character' couldn't be acceptable in the official courtroom. Still is lamentable that the

<sup>9</sup> State of Punjab v. Gurmit Singh, AIR 1996 SC 1393

<sup>10</sup> Oxford English Dictionary, available at <http://bit.ly/YN2ZvI> accessed on 1 July 2018

character death of the casualty proceeds in the public, which builds the hurt endured by the casualty.

On instances of rape or sexual assault cases, the evidence concerning consent is often derived on the basis of the past conduct of the woman which seems rather frivolous as at the instance of the abuse she might not have consented thus constituting the criminal act. In earlier cases, prostitutes could be raped and their right would not be protected as the victim's previous sexual experience

and "promiscuous character" would always malign the proceedings and create a bias in the judiciary's mind. The sole reason for this inclusion of this amendment was to prevent the breach of privacy of the victim's sexual history by preventing it to be included as a piece of evidence in court. Thus, members of the civil society should not support unwarranted intrusion in the privacy of the victim's life. The new law protected defamation of the woman and rights of the woman to live with dignity.<sup>11</sup>

Offence	Existing law	Criminal law Amendment Bill, 2013
Punishment for gang rape	10 years to life imprisonment and fine.	20 years to life imprisonment (rigorous imprisonment) and fine payable to the victim, that is reasonable to meet medical expenses.
Rape upon judicially separated wife	Maximum 2 years imprisonment.	Punishable with 2 to 7 years imprisonment and fine. Courts to take cognizance if there is prima facie evidence of offence.
Rape by armed personnel	No specific provision. Public servant includes armed personnel. Punishment: 10 years to life imprisonment and fine.	Specific offence. SA by armed personnel within the area they are deployed in. Penalty remains same.
Rape resulting in death or vegetative state	Rape and murder dealt with as two separate offences. <b>Rape:</b> 7 years to life imprisonment. <b>Murder:</b> imprisonment for life or death.	Specific offence. Punishment 20 years rigorous imprisonment or life imprisonment or death

<sup>11</sup> See <http://cis-india.org/internet-governance/blog/the-criminal-law-amendment-bill-2013> last accessed on 19 July 2018

## **Changes after Criminal law amendment, 2018**

The law to grant capital punishment to those sentenced assaulting kids beneath 12 years old has become effective after obtaining the Presidential Assent. The law clears path for giving stringent discipline to those sentenced raping children.

The Ordinance corrects the Indian Penal Code, the Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973 and the Protection of Children from Sexual Offenses Act, 2012. The warning expressed that since Parliament is not in session and President has fulfilled that conditions exist which render it essential for him to make quick move. The Ordinance might be known as the Criminal Law Short title and (Amendment) Ordinance, 2018. It will become effective on the double.

## **AMENDMENTS TO THE INDIAN PENAL CODE, 1860**

### **Amendment of section 376**

In section 376 of the Penal Code; (a) in sub-section (1), for the words “shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine”, the words “shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine” shall be substituted;

(b) in sub-section (2), clause (i) shall be omitted;

(c) after sub-section (2), the following sub-section shall be inserted, namely:

“(3) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.”

### **Insertion of new section 376AB.**

After section 376A of the Penal Code, the following. Section shall be inserted, namely: **Punishment for rape on woman under twelve years of age.**

### **Insertion of new sections 376 DA and 376 DB**

After section 376D of the Penal Code, the following sections shall be inserted, namely: **376 DA Punishment for gang rape on woman under sixteen years of age. 376**



## **DB Punishment for gang rape on woman under twelve years of age.<sup>12</sup>**

### **CONCLUSION**

To finish up with the examination between the enactments one might say that the two noteworthy substantive changes were presentation of sixteen types of assault (Penetration made by question and all parts of body included) and furthermore the expansion in time of assent. Both were acquainted with battle ascent of assaults conferred on minors particularly. In spite of the fact that there was another proposal by the J.S. Verma Committee which needed to present conjugal assault under area 375 however this was not permitted as it would

have been a social contention. One should likewise take note of that the inappropriate behaviour at work environment which was out of the blue featured on account of *Sakshi v. Association of India*<sup>13</sup> which was an open intrigue case looking for disciplines for inappropriate behaviour conferred against ladies at working environments. It likewise needed to extend the understanding of assault to incorporate all types of entrance to be secured, the court had then given the ruling for the NGO yet the parliament was did not remember it. The 2013 Amendment and Act made this a reality as it offered authorize to the judgment. So I trust laws can be made substantially more stringent than they as of now are.

---

<sup>12</sup> See <http://www.prsindia.org/uploads/media/Ordinances/The%20Criminal%20Law%20>

Amendment%20Ordinance%202018.pdf last accessed on 23/7/2018 at 9:23 am

<sup>13</sup> AIR 2004 SC 3566