

The Indian Rape Law: Vocabulary of Protest, Reactionary Legislations and Quality of Equality Culture

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Abstract

The problem of violence perpetrated against women in India is not simple. It is embroiled in the historical subjugation of the 'weaker sex.' Women have been unable to claim equality in society despite mandatory provisions in the Constitution of India and other legislations in their favour. Despite numerous amendments to the Indian criminal law, rape, one of the most heinous crimes, continues to be committed in India at an alarming rate. The law on Rape in India has undergone three phases of amendments, and all precipitated in the aftermath of public fury on account of brutal and heinous incidents of rape. This paper employs the socio-legal approach to assess the efficacy and impact of these amendments in changing social behaviour. It concludes that though the massive public outrage undoubtedly led to radical amendments, it was a knee-jerk reaction that suffered from legislative ambiguities. The increase in the retributive content of the law ultimately resulted in reduced convictions. Although law is believed to be an instrument of social change, the amendments in the anti-rape legislation have been unable to bring about a positive transformation in the existing cultural inequality.

Keywords: Gender; India Legislation; Rape; Women.

1. INTRODUCTION

Former Judge, the Supreme Court of the United States of America, Ruth Bader Ginsburg said "I don't say women's rights—I say the constitutional principle of the equal citizenship stature of men and women."¹ Commenting on the lack of equality culture, Simone de Beauvoir, in her seminal work, the Second Sex, writes, "The world has always belonged to males, and none of the reasons given for this have ever seemed sufficient."² Beauvoir is believed to have been instrumental in spurring the 'second wave' of feminism. On the issue of rape and other sexual crimes against women, feminism has a vital role to play. However, it is important to understand that feminism does not refer to the philosophy of women hating men.

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¹ American Academy of Achievement, "Ruth Bader Ginsberg on Integrity," <https://achievement.org/video/ruth-bader-ginsburg-20/>

² Simone de Beauvoir. *The Second Sex* (London: Vintage Books, 2011), 73.

Beauvoir believed in the philosophy of equality and it is this philosophy that needs propagation in deciphering the problem of violence against women.³

On the night of December 16, 2012, a horrifying and brutal gang-rape of a young para-medical student took place in New Delhi, India. This barbaric act of five perpetrators resulting in the death of the victim shook the nation. Public outrage and fury poured out into the streets in the form of protests and candlelight marches. Women broke their silence against the reality of sexual violence and claimed their right to equal citizenship in the freedom to think, live and dress without fear of retribution.⁴

This public outrage took the form of a movement of feminist activism that challenged the existing patriarchal notions of the Indian society and the embedded structural inequality. As a result, the authorities in India not only were compelled to take immediate and robust action against the six accused but also overhaul the criminal justice system including the law on sexual violence against women.

The number of rape victims is an insight into the situation in India. From 2001 to 2018, a total of 1,597,466 rape-related crime cases were reported in this country.⁵ According to the National Crime Records Bureau (NCRB) of India, 31,677 cases of rape were registered in 2021⁶ as opposed to 28,046 in 2020.⁷ Even as recently as 6th October, 2022, a 15-year-old girl was allegedly set on fire by a man accused of raping and impregnating her.⁸ India prescribes life imprisonment or death penalty as punishment for rape and has made the rape law even more stringent. However, this has not had the desired deterrent effect. South Africa reports the highest number of cases of rape (42,289 cases in 2019/2020) in the world.⁹ It has not been

³ HT Correspondent, "It's Time to Reclaim the Legacy of Simone de Beauvoir and See Feminism for What it is," <https://www.hindustantimes.com/editorials/it-s-time-to-reclaim-the-legacy-of-simone-de-beauvoir-and-see-feminism-for-what-it-is/story-FFw9y9PCRzzooYSC3QdLDO.html>

⁴ Vrinda Grover, "Citadels of Power and Impunity, Disturbed but not Dislodged: Evaluating the 2013 Law Reforms in the Anti Rape Law in India" in *Sexualized Violence in the National Debate: Cross-border Observations on India and South Africa*, eds. Melanie Verwoerd & Claudia Lopes (South Africa: Heinrich Böll Foundation, 2015), 114. See also Suvarna Cherukuri, "Sexual Violence against Women, the Laws, the Punishment, and Negotiating the Duplicity" *Laws* 10, no. 2 (2021): 3.

⁵ Rakhi Dandona, et.al., "Administrative Data Deficiencies Plague Understanding of the Magnitude of Rape-Related Crimes in Indian Women and Girls," *BMC Public Health* 22 (2022): 3.

⁶ NCRB, "Crime in India 2021," Vol. 1 (2021): 218, https://ncrb.gov.in/sites/default/files/CII-2021/CII_2021Volume%201.pdf

⁷ *Ibid*, 206.

⁸ Rhea Mogul, Swati Gupta and Manveena Suri, "Alleged Rapist and His Mother Set Teenage Girl on Fire after Learning She Was Pregnant, Indian police say," <https://edition.cnn.com/2022/10/12/india/india-girl-rape-pregnancy-attempted-murder-intl-hnk/index.html>

⁹ Amanda Gouws, "Rape is Endemic in South Africa. Why the ANC Government Keeps Missing the Mark," <https://mg.co.za/opinion/2022-08-09-rape-is-endemic-in-south-africa-why-the-anc-government-keeps-missing-the-mark/>

able to reduce the levels of rape. In USA, over 40% of the women have experienced sexual violence.¹⁰

The problem of violence perpetrated against women is not simple. It is embroiled in historic subjugation of the 'weaker sex.' Women have been unable to claim equality in society despite the mandatory provisions under the law in their favour. Consequently, a latent bias exists against women in the sphere of prosecution of crimes. The lack of financial independence and security has further added to the subjugation of women. The words of Mahbub-ul-Haq hold promise during such moments and engender hope for the future: "As we approach the 21st century, we hear the quiet steps of a rising revolution for gender equality... It is quite clear that the 21st century will be a century of much greater gender equality than the world has ever seen before."¹¹

Women in India have continued to suffer on various fronts, including bodily integrity, physical and mental health, education, relationships in society, work environment, etc. The *de facto* equality guaranteed to them by the Constitution has yet to be converted into equality in real terms. A joint effort of the individual in the society and the State seem to be the only means to achieve a culture of equality. The need for an efficient law enforcement and justice delivery system, along with every citizen of India performing his/her fundamental duties, must be emphasised.

Despite numerous amendments to the Indian criminal law, rape continues to be committed in India at an alarming rate. More than 1,100 cases of rape have been registered in the first six months of the year in Delhi itself. The rise has been on account of "active registration and the introduction of women-friendly helplines and booths."¹² However, the increase in the reported cases of rape is not the only cause for concern. Many such cases still go unreported due to the societal pressure.¹³ In a poll conducted in Indonesia, it was seen that more than 90% of the rape cases go unreported as the victims are afraid of being blamed for the act.¹⁴ The societal challenge is that despite the changes in legislation, the rape victim continues to face stigma from the society and the system in general.

The criminal law in India comprises of the Indian Penal Code, 1860 (IPC); the Criminal Procedure Code, 1973 (CrPC); and the Indian Evidence

¹⁰ Jenifer Kudli, "32 Shocking Sexual Assault Statistics for 2022," <https://legaljobs.io/blog/sexual-assault-statistics/>

¹¹ The Mahbub ul Haq Human Development Centre. *Human Development in South Asia, 2000: The Gender Question* (Pakistan: Oxford University Press, 2000), v.

¹² Jignasa Sinha, "Delhi Recorded 6 Rape Cases Every Day This Year: Police Data," <https://indianexpress.com/article/cities/delhi/delhi-rape-cases-2022-police-data-8081517/>

¹³ Rajeev Ranjan and Tanya Grover, "Comparison and Critical Analysis on Rape Laws in India (Before and After Criminal Law Amendment Act 2013)," *Indian Journal of Creative Research Thoughts* 6, no. 2 (2018): 178.

¹⁴ Beh Lih Yi, "Over 90 Percent Rape Cases go Unreported in Indonesia: Poll," <https://www.reuters.com/article/us-indonesia-crime-women-idUSKCN1051SC>

Act, 1872 (IEA), primarily.¹⁵ There are other laws like the Protection of Children from Sexual Offences Act, 2012 (POCSO) which also form a part of this basic criminal law structure which will be referred to in the paper. The law on rape in India has undergone three phases of amendments, all which were precipitated in the aftermath of the public fury on account of brutal and heinous incidents of rape. However, despite the Indian criminal law being made more stringent, the situation at the ground level has not improved. The massive public outrage undoubtedly led to radical amendments, a knee-jerk reaction that suffers from legislative ambiguities and defeats the objective of justice.

The paper traverses the path of highlighting the three infamous and brutal cases of rape in India that led to mass-level public protests, which in turn precipitated the passing of the amendments in criminal law. It analyses the effectiveness and the repercussions of these amendments. The reason behind the inability of the amendments to deter the occurrence of such heinous crimes is scrutinised. This article's endeavour is to discuss the impetus behind the perpetration of sexual offenses against women, the societal attitude in India towards women, and the ineptitude of the anti-rape legislation to bring about a positive transformation in the inequality culture. This paper concludes that increasing the punitive content in rape legislation does not result in 'deterrence' in the commission of rapes and the protection of women in society. Conclusively, change in law does not necessarily bring about change in societal mindset.

Considering law plays a significant role in any society as it helps speed the process of social reform, the article adopts a socio-legal approach to examine and explore the dilemma in societal perceptions of gender in India, the lack of equality culture, and the lacunae in the Indian rape law. Socio-legal research is a type of study wherein the “science of law meets the science of society.” Herein a multidisciplinary approach is adopted to “analyse and interpret the law, the legal phenomenon, the relationship between these two and also their relationship with the society in its widest sense.”¹⁶

The paper follows the doctrinal methodology that examines the legal norms in the Indian national legislations and judicial pronouncements on rape. It conducts a social audit of the law to appreciate the social factors that impacted the enactment of the amendment in Indian criminal law. The gap between the ideal law on rape and social reality is sought to be analysed. This legal writing relies on primary and secondary sources of information like legislation, rules, regulations, reports, and the authoritative decisions of the courts, as well as information from legal commentaries, journal articles, and websites.

¹⁵ Shruti Bedi, “Bodily Integrity and the Extensivity of Women’s Human Rights under Indian Criminal Law,” in *the Assurance of Women’s Human Rights in Criminal Justice*, eds. Wu Guang Hong *et al.* (Hanoi: Vietnam National University, 2021), 229-230.

¹⁶ Raghav Kansal, “The Basics of Socio-Legal Research” *Indian Journal of Law and Public Policy*. <https://ijlpp.com/3688-2/>

2. RESULT AND ANALYSIS

2.1. Rape: Societal, Cultural and Legal Perspectives

As reflected in the Justice Verma Committee (JVC) Report,¹⁷ the societal stigma ensures that the victim of rape remains a victim throughout her life. The report categorically notes, “In our tradition bound society, structured on the basis of conservative values, when a woman is subjected to sexual assault in any form, it translates into a multiple crime. She is raped at home (literally and figuratively) and in public, followed by demeaning medical examination, examination, and cross-examination by the police and in court, in salacious media reports, and in the insensitive response of society, including family and acquaintances. In sum, the victim suffers intermittent rape in full public glare.”¹⁸ In addition to this humiliation, the society’s patriarchal structure along with the embedded inequities of social status and caste prejudices warrants gender injustice.

The State has been mandated by the Constitution of India to secure “social order in which justice, social, economic and political, shall inform all the institutions of national life”¹⁹ and further “to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people.”²⁰ However a change in law is not the answer to eliminate the ‘rape culture’, it is the change in the mindset of the society which will be the harbinger of gender equality and justice.

Rape culture as a phenomenon is related to “slut-shaming and victim blaming, wherein rape victims are considered to be at fault for being raped.”²¹ The reason behind such a culture is the ‘objectification of women’. Unfortunately, “violence against women has been problematised, naturalised, and trivialised.”²² Physical violence against women takes the form of rape, wife-battering, marital rape, honour killings, female genital mutilation, forced prostitution and pornography, etc. Additionally, the disposal and conviction rates for crimes against women are low.

Rape speaks to a “pervasive, deeply embedded misogyny whose roots run bedrock-deep in our society and are directly proportional to the extent of our denial of this very misogyny.”²³ Victims of rape are hesitant to identify

¹⁷ Justice Verma Committee was appointed by the Central Government of India Notification No. S0 (3003) E, dated December 23, 2012 in the aftermath of the Nirbhaya gang-rape case, with the mandate to suggest amendments in the Indian criminal law on rape and to provide for quicker trial and enhanced punishment for criminals committing sexual assault of extreme nature against women. Report of the Committee on Amendments to Criminal Law, January 23, 2013 (Justice Verma Committee Report). https://adrindia.org/sites/default/files/Justice_Verma_Amendmenttocriminallaw_Jan2013.pdf

¹⁸ *Ibid.*, 14.

¹⁹ The Constitution of India, 1950, Art. 38(1).

²⁰ *Ibid.*, Art. 38(2).

²¹ Prabhat Tyagi, “Prevalence of Rape Culture in India: Where are we Heading?,” *International Journal of Law Management & Humanities* 3, no. 3 (2020): 834.

²² Jean Chapman, “Violence against Women in Democratic India: Let’s Talk Misogyny,” *Social Scientist* 42, no. 9/10 (2014): 50.

²³ Pubali Ray Chaudhuri, “India Hates Women,” <https://msmagazine.com/2013/01/07/being-female-in-india-a-hate-story/>.

their experience as rape. This is primarily due to the society that blames the rape victim and denigrates them as damaged goods. Unfortunately, as pointed out by Charlotte L. Mitra, the initial rape laws were worded so as to safeguard “masculine pride in the exclusive possession of a sexual object.”²⁴ History shows that if a woman was abducted and sexually violated, the crime was not against the woman but was considered as a violation or theft of a woman against the consent of her father, husband, brother, son or guardian.²⁵ Rape is defined by Brownmiller as “conscious process of intimidation by which all men keep all women in a state of fear.”²⁶ It is a mechanism through which men perpetuate their dominance over women. One of the achievements of mobilisation of peaceful public protest and the feminist activism post the 2012 Delhi gang-rape was that rape came to be named as an act of power, and not sex.²⁷

It is time to strengthen our understanding and challenge the traditional patriarchal definition of rape. This will pave the way for identifying rape as an assault on individual autonomy that will result in gender-neutral legislation and procedure. The discriminatory procedures of a rape trial where the integrity of a witness is under question, need to be eliminated so that rape is assessed as a crime and not as an issue of shame. Andre Beteille, a well-respected Indian sociologist says that it is our social and cultural conditions that intensify or perpetuate rape.²⁸ The reason behind such acts is the existing social structure.

Like other nations, rape in India is an outcome of gender inequality and is used as a tool to impose social boundaries for women.²⁹ Since rape is linked to social inequality and social hierarchy, certain categories of women and men are more vulnerable. Because of their lower social standing, the Dalit and tribal women are treated like slaves without human rights and therefore are raped by upper caste men.³⁰ Women and girls are sexually assaulted by persons who are known to them, family members, friends, and neighbours.³¹

Rape in India is defined under its most important piece of criminal legislation, the IPC. Section 375 IPC³² defines it as penile penetration into the vagina, which makes it a gender-specific crime, where only men can be

²⁴ See Sarbani Guha Ghosal, “Socio-Political Dimensions of Rape,” *The Indian Journal of Political Science* 70, no. 1 (2009): 109.

²⁵ *Ibid.*

²⁶ Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York: Simon & Schuster, 1975), 6.

²⁷ Pratiksha Baxi, “Understanding Rape Law Reform,” *Yojana* 58 (2014): 38.

²⁸ Adfer Rashid Shah, “Understanding Delhi Rape Horror and Underlying Perspectives,” *The Tibet Journal* 38 no. 1-2 (2013): 48.

²⁹ Poulami Roychowdhury, “Rape and the Seduction of Popular Politics,” *Gender and Society* 30, no. 1 (2016): 81.

³⁰ Ranjan and Grover, *op cit.*, 182.

³¹ PTI, “98% of Delhi’s Rape Victims Were Relatives or Acquaintances of Accused, Say Police,” <https://theprint.in/india/98-of-delhis-rape-victims-were-relatives-or-acquaintances-of-accused-say-police/547263/>

³² The Indian Penal Code, 1860, Section 375. https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=424

perpetrators and only women can be victims of rape.³³ The law does not categorise marital rape as rape, except where the wife is under 15 years of age.³⁴ Interestingly, Indonesia recently in April 2022 passed the long-awaited law against sexual violence. The new law extends the definition of rape to cover marital rape, and recognizes men and boys as victims of sexual violence.³⁵

The criminal law in India has often been criticised for its inability to protect women who have suffered from different sexual assaults.³⁶ The law has subsequently undergone various amendments; however, the ‘deterrence’ effect remains invisible. The increase in the harshness of the sentences and punishments have not had the desired effect in reducing the existing inequality culture.

2.2. Public Protests and Imperfect Legislations

Reforms and amendments in the anti-rape law in India did not come about due to the initiative of the Parliament but were brought about by the outpouring of public fury after four incidents of rape that shook the nation. The Criminal (Amendment) Act (CLAA) 1983 was the result of a nationwide protest after the Indian Supreme Court’s infamous decision in *Tukaram v. State of Maharashtra*.³⁷ The CLAA 2013 was triggered on account of public protests against the brutal gang-rape of a young woman in New Delhi. Similarly, the CLAA 2018 was the consequence of public fury after the two rapes of minor girls in Unnao and Kathua. Every campaign against violence against women has resulted in enactment of new legislations, with no positive outcome. Public outrage is not always the best source of change in public policy as it detracts from the quality of the required change in legislation. Public disobedience movements where emotions are strong are recognised sources of activism to bring in change; however, they must be given a reasonable response.³⁸ The public fury emanating from these four incidents and the resulting impulsive criminal law amendments are

³³ Geetanjali Gangoli, “Controlling Women’s Sexuality: Rape Law in India” in *International Approaches to Rape*, eds. Nicole Westmarland and Geetanjali Gangoli (Policy Press, 2011), 103. See also Soyonika Gogoi, “Consent Matters: A Comparative Study of Rape Laws in India, UK and Canada,” *International Journal of Law Management and Humanities* 5 no. 1 (2022): 1399, 1405. 1395-1405

³⁴ The Indian Penal Code, 1860, Section 375, Exception II. See also the discussion regarding this issue in T.S. Sathyanarayana Rao, Nilesh Shah, and Chittaranjan Andrade, “Marital Rape in India,” *Journal of Psychosexual Health* 4, no.4 (2022): 221-222.

³⁵ Chad De Guzman, “After a Teacher Was Convicted of Raping 13 Girls, Indonesia Finally Passed Sexual Violence Reform,” <https://time.com/6166853/indonesia-sexual-violence-law/>

³⁶ K.I. Vibhute, “Victims of Rape and their Right to Live with Human Dignity and to be Compensated: Legislative and Judicial Responses in India,” *Journal of the Indian Law Institute* 41, no. 2 (1999): 222.

³⁷ *Tukaram v. State of Maharashtra*, (1979) 2 SCC 143.

³⁸ Tamara Abdelwahed, Stella Gaumert and Laura Konrad, “The Influence of Public Outrage on Law Making,” *Law and Politics in Africa, Asia and Latin America* 51, no. 4 (2018): 481-482.

scrutinised to decipher the reason behind the lack of reduction in the number and brutality of rapes in India.

2.2.1. Mathura Rape Case, 1972 and the Criminal (Amendment) Act 1983

In the first incident, a minor girl was raped by two police officials in police custody on 26th March 1972 in the Desai Gunj Police Station in Maharashtra.³⁹ The Sessions Court did not hold the defendants guilty as it stated that Mathura (rape victim) had willingly given her consent to it as she was habituated to it. Although on appeal the High Court held the two accused guilty, the Supreme Court acquitted the two policemen in 1983. They held that Mathura was “habituated to sex”⁴⁰ and that she was not subjected to any “fear or compulsion such as would justify any inference of “passive submission.”⁴¹ Her claims were discredited based on her sexual history and lack of visible resistance. The verdict spurred law professors from Delhi University to write an open letter to the Supreme Court criticising the notion of consent that equated submission to consent.⁴² This further led to agitation by women’s movement ultimately resulting in the first phase of amendments to the rape law.⁴³

For the first time since 1960, the rape law was amended through CLAA 1983 as a reaction to the demands of the public movement.⁴⁴ “Custodial rape”⁴⁵ came to be located at the “intersection of state power and gender inequality”⁴⁶ through the amendment. Instances of ‘aggravated rape’ were added to section 376, IPC.⁴⁷ A new section 114(A) was added to the Indian Evidence Act (IEA), 1872 wherein the burden of proving consent was shifted to the accused in cases of aggravated rape when the victim stated that she did not consent to the intercourse.⁴⁸ Section 228A, IPC was added which makes it punishable to disclose the identity of the victim of rape. This case is a clear example of the fact that public protests have not only led to reforms in the law on sexual offences in India but also the struggle to change the antiquated rape law has facilitated a wider discourse in society on the issue.⁴⁹

³⁹ Jyoti Yadav, “A Rape Forgotten—50 years ago, Mathura was Denied Justice. Then society betrayed her,” <https://theprint.in/features/a-rape-forgotten-50-years-ago-mathura-was-denied-justice-then-society-betrayed-her/972230/>

⁴⁰ Tukaram, *op cit.*, para 10.

⁴¹ *Ibid.*, para 14.

⁴² Upendra Baxi, et.al., “An Open Letter to the Chief Justice of India.” *Supreme Court Cases* 4, no. J17 (1979): 17.

⁴³ Flavia Agnes, “Protecting Women against Violence? Review of a Decade of Legislation, 1980-89,” *Economic and Political Weekly* 27, no. 17 (1992): WS20.

⁴⁴ Pratiksha Baxi, “Rape, Retribution, State: On Whose Bodies?,” *Economic and Political Weekly* 35, no. 14 (2000): 1197.

⁴⁵ The Criminal Law Amendment Act, 1983, Section 376C, IPC.

⁴⁶ Grover, *op cit.*, 115.

⁴⁷ The Indian Penal Code, 1860, Sections 376 A to D.

⁴⁸ The Indian Evidence Act, 1872, Section 114A.

⁴⁹ Abdelwahed, *Gaumert, and Kondrad, op cit.*, 486.

2.2.2. Nirbhaya Case, 2012 and the Criminal (Amendment) Act 2013

The 'Nirbhaya case', also known as the 'Delhi Gang-Rape case'⁵⁰ is about a 23-year-old female physiotherapist who was brutally gang-raped on December 16, 2012 by five men and a minor on a moving bus in New Delhi. The inhumanity of the act was visible when the victim's intestines were pulled out using an iron rod. This Nirbhaya (or Braveheart as she popularly came to be called)⁵¹ lost the struggle for life two weeks later. One of the accused was reported to have committed suicide in jail, while four adults were sentenced to death and one juvenile was punished with three years in a juvenile facility.⁵²

More significantly, the brutality of the act inspired a mass scale movement against sexual violence. The widespread agitation and protests compelled the legislature to make the rape law more stringent by introducing harsher punishments besides widening the definition of 'rape'.⁵³ Justice J.S. Verma, Justice Leila Seth and Gopal Subramaniam, eminent members of the legal fraternity comprised the JVC that was set up to suggest amendments and changes to the law on sexual offences.⁵⁴ The JVC submitted its report on January 23, 2013.⁵⁵

Because of the report submitted by the Committee, CLAA 2013 was enacted to provide for amendments to various laws related to sexual offences and crimes against women. It contained amendments to the IPC, 1860; the CrPC, 1973; the IEA, 1872; and the POCSO, 2012.⁵⁶

a. Definition of Rape Widened

Prior to the amendment, the definition of 'rape' under the IPC was coercive non-consensual sexual intercourse between a man and a woman. The CLAA 2013 enlarged the scope of the offence of rape to include acts other than penile-vaginal penetration.⁵⁷ With this the notion of bodily integrity was given its due place under law, reflecting the violations suffered by women.⁵⁸

⁵⁰ State Govt of NCT of Delhi v. Ram Singh & Ors., (2013) SC 114.

⁵¹ The name Nirbhaya was given to her by 'The Times of India' meaning 'Braveheart' or 'Fearless'. The Times of India, "Support grows for Nirbhaya," <https://timesofindia.indiatimes.com/city/bengaluru/support-grows-for-nirbhaya/articleshow/17738427.cms>

⁵² Law Insider, "Landmark judgements that shaped the Rape Laws in India," <https://www.lawinsider.in/columns/landmark-judgements-that-shaped-the-rape-laws-in-india#:~:text=The%20objective%20of%20Section%20375,more%20serious%20crime%20than%20murder>

⁵³ Ranjan and Grover, *op cit.*, 180.

⁵⁴ Justice Verma Committee Report, *loc cit.*

⁵⁵ *Ibid.*

⁵⁶ Abdelwahed, Gaumert, and Kondrad, *op cit.*, 491.

⁵⁷ The Criminal Law Amendment Act, 2013, Section 375, IPC.

⁵⁸ Grover, *op cit.*, 117.

b. Use of Force and Consent

Over a period, the general definition of rape has changed from the requirement of use of force or violence to the requirement of lack of consent.⁵⁹ In majority of the legal systems around the world, both force and lack of consent constitute the dual requirement for the offence of rape. In India as well, the procedure is to use medical evidence to look for resistance on the part of the victim in order to verify the victim's claim. But, in many cases consent is adduced simply on the absence of refusal or resistance by the victim.⁶⁰ In fact, many times sexual consent of a woman has been implied from the manner of her dress or her behaviour.⁶¹ Such an attitude puts a woman's integrity under question, thereby treating her as the culprit instead of a victim. Rape survivors are indelibly marked with shame and stigma, resulting in a life devoid of dignity in the society. In any rape trial, it is extremely difficult to establish consent of the victim or the absence thereof.

CLAA 2013 now specifies that "Consent means an unequivocal voluntary agreement when a woman by words, gestures or any other form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act",⁶² "provided that the woman who does not physically resist the act of penetration shall not by reason only of that fact, be regarded as consenting to the sexual activity".⁶³

The amendments of sections 53A, IEA mandates that if a woman's consent is under question, her character or previous sexual experience would not be relevant to the quality of her consent.⁶⁴ Section 114A, IEA states that if a woman has allegedly been raped and states that she did not give her consent, the court shall not presume otherwise.⁶⁵

c. Marital Rape and Age of Consent

Unfortunately, even though the JVC recommended that the exception for marital rape should be removed,⁶⁶ CLAA 2013 did not incorporate it. Sexual intercourse by the husband against the consent of the wife who is above fifteen years of age is not considered rape.⁶⁷ Consequently, a man can rape his wife without it being categorised as a crime, even if she is not an adult and even though CLAA 2013 raised the age of consent to 18 years under section 375, IPC. CLAA 2013 only made the concession to extend the

⁵⁹ United Nations. *Handbook for Legislation on Violence against Women* (New York: United Nations, 2010), 27.

⁶⁰ Rebecca Whisnant, "Feminist Perspectives on Rape," *The Stanford Encyclopedia of Philosophy* (Fall 2021), ed. Edward N. Zalta, <https://plato.stanford.edu/archives/fall2021/entries/feminism-rape/>

⁶¹ Editor, "A Critique on Anti-Rape Laws in India," https://journal.rostrumlegal.com/a-critique-on-anti-rape-laws-in-india/#_ednref9

⁶² The Criminal Law Amendment Act, 2013, Explanation II, Section 375, IPC.

⁶³ *Ibid.*, Proviso to Explanation II, Section 375, IPC.

⁶⁴ *Ibid.*, Section 53A, IEA.

⁶⁵ *Ibid.*, Section 114A, IEA.

⁶⁶ Justice Verma Committee Report, *op cit.*, 117.

⁶⁷ Indian Penal Code, 1860, Section 375, Exception II.

purview of the law to rape in case of a wife living separately, albeit entailing a shorter prison sentence. The JVC report notes that “the immunity has been withdrawn in most major jurisdictions”⁶⁸ including English law which forms the basis of our law. However, Exception II, section 375, IPC was declared illegal by the Supreme Court of India in October 2017, in as far as it applies to wives under the age of 18 years.⁶⁹ Recently in May 2022, the Delhi High Court delivered a split verdict in a case challenging the marital rape exception under IPC. Since the two judges were divided in their opinion, the marital rape exception continues on the books.⁷⁰ On September 29, 2022, the Supreme Court of India in *X v. Principal Secretary, Health and Family Welfare Department, Govt of NCT of Delhi*, stated that the meaning of rape must be held to include ‘marital rape’ for the purpose of abortion under the Medical Termination of Pregnancy Act, 1971.⁷¹ Hopefully, this will pave the way for marital rape being accepted as rape under the Indian criminal law.

Contrarily, the Protection of Women from Domestic Violence Act, 2005, provides for ‘sexual abuse’ as a form of domestic violence. This anomaly and conflict between the two legislations is a cause for concern and a subject of future law reform.⁷² Further, since the age of consent was raised to 18, this means that ‘consensual sex’ between the age of 16 and 18 years is statutory rape. Such provisions lead to misuse of the law as is evidenced by five studies based on reviews of district court cases of sexual assault filed under POCSO in Delhi, Mumbai, and Lucknow between 2013 and 2016. Almost 54% of rape cases were of ‘consensual sex’ between young persons.⁷³ The disruptive impact of criminal law on cases of consensual sex and other similar relationships is clearly visible.⁷⁴

d. Medico-Legal Examination

The issue of whether rape has taken place or not is a legal issue to be determined by the doctors. The medical examination report is therefore only required to record the medical findings.⁷⁵ Despite clear international legal guidelines to the contrary, the authorities used to routinely conduct the ‘two-finger test’ to assess the size of the vaginal introitus, the elasticity of the

⁶⁸ Justice Verma Committee Report, *op cit.*, 113.

⁶⁹ Independent Thought v. Union of India and Anr., (2017) W.P. (C) No. 382 of 2013. <https://indiankanoon.org/doc/87705010/>

⁷⁰ RIT Foundation v. UOI and other connected matters 2022 LiveLaw (Del) 433.

⁷¹ Padmakshi Sharma, “Rape Includes “Marital Rape” for the Purposes of MTP Act, Wife Conceiving Out of Forced Sex Can Seek Abortion: Supreme Court,” <https://www.livelaw.in/top-stories/rape-includes-marital-rape-for-the-purposes-of-mtp-act-wives-conceiving-out-of-forced-sex-can-seek-abortion-supreme-court-210551?infinitemscroll=1>

⁷² Grover, *op cit.*, 117.

⁷³ Amita Pitre and Lakshmi Lingam, “Age of Consent: Challenges and Contradictions of Sexual Violence Laws in India,” *Sexual and Reproductive Health Matters* 29, no. 2 (2021): 7.

⁷⁴ Swagata Raha and Shruthi Ramakrishnan, “Changing the Age of Consent,” <https://www.thehindu.com/opinion/op-ed/changing-the-age-of-consent/article65849243.ece>

⁷⁵ Justice Verma Committee Report, *op cit.*, 274-275.

vagina or the nature and tear on the hymen.⁷⁶ Such practices lead to the inference that the rape victim is habituated to sex, thereby bringing past sexual history and along with it prejudice, into the rape trials. The apex court in 2013 held that “medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence.”⁷⁷ The court further held that “undoubtedly, the two finger test and its interpretation violates the right of rape survivors to privacy, physical and mental integrity and dignity.”⁷⁸ It believed that even if the report is affirmative, it cannot *ipso facto*, give rise to presumption of consent.” The government has banned this test since March 2014.⁷⁹

It is indeed ironical that medical evidence which is considered to be objective and scientific is in reality plagued with cultural bias in matters of rape. Such medical tests do not have the ability to prove the occurrence of rape beyond reasonable doubt. They only question the victim’s claim by raising a presumption that “women frequently make false allegations of rape.”⁸⁰ Strangely medical evidence simply banks on signs of injuries or the lack thereof to determine a woman’s lack of consent. Such attitude negates and overlooks those categories of rapes that occur in a non-violent manner.

e. Punishment

The public protests demanded the stringent punishments of castration⁸¹ or death for the offence of rape. However, the women’s movement did not support such demands.⁸² This was due to the belief that death penalty is neither a deterrent nor an effective or ethical response to these acts of sexual violence. It was stated that “the most important factor that can act as a deterrent is the certainty of punishment, rather than the severity of its form.”⁸³ Consequently, the JVC resisted prescribing the death penalty generally,⁸⁴ but introduced in three circumstances, i.e. where the injury inflicted in the course of the commission of the rape caused the woman to die, or be in a persistent vegetative state;⁸⁵ and for repeat

⁷⁶ Grover, *op cit.*, 119-120.

⁷⁷ Lillu @ Rajesh & Anr vs State of Haryana on 11 April, 2013, Criminal Appeal no. 1226 of 2011, para 12. <https://indiankanoon.org/doc/78844212/>

⁷⁸ *Ibid.*, para 13.

⁷⁹ Pratiksha Baxi (2014), *op cit.*, 40.

⁸⁰ Rostrum’s Law Review, *loc cit.*

⁸¹ The Justice Verma Committee did not recommend the punishment of castration stating that “castration fails to treat the social foundations of rape which is about power and sexually deviant behaviour.” Justice Verma Committee Report, *op cit.*, 253.

⁸² Nivedita Menon, “Statement by Women’s and Progressive Groups And Individuals Condemning Sexual Violence and Opposing Death Penalty,” <https://kafila.online/2012/12/24/statement-by-womens-and-progressive-groups-and-individuals-condemning-sexual-violence-and-opposing-death-penalty/>; Also see Pratiksha Baxi (2014), *op cit.*, 39.

⁸³ Menon, *Ibid.*

⁸⁴ Justice Verma Committee Report, *op cit.*, 245.

⁸⁵ The Indian Penal Code, 1860, Section 376A.

offenders.⁸⁶ To appease the outcry, CLAA 2013 also introduced imprisonment for the remainder of the accused's natural life, as a sentence.

On similar lines, the Indonesian President had approved harsher punishment for child sex offenders after the brutal gang-rape and murder of a schoolgirl. The law added tougher punishments for child sex offenders which includes the maximum penalty of death and chemical castration.⁸⁷ The justification for this harsh punishment was that such sexual crimes against children threaten the lives of children.⁸⁸ The bill had been languishing in the legislature since 2016 and was finally passed in April 2022.⁸⁹

Such punitive moves however lead to adverse consequences such as a reduced rate of conviction. In a study conducted by the Indian Law Review Journal, researchers examined 1,635 rape judgments from trial courts of Delhi pronounced between 2013 and 2018. It was found that out of the 909 cases adjudicated under the new law, only 5.72% resulted in conviction.⁹⁰ Innumerable cases of rape and murder, where the capital punishment has been awarded, have failed to produce any effect of deterrence. In fact, the possibility of women being killed, mutilated, burnt or terrorised is likely to increase on account of harsher punishments.⁹¹

f. Absence of Gender Neutrality

The CLAA 2013 failed to make rape a gender-neutral offence. This is a noticeable lacuna in the substantive law as it fails to provide protection to transgenders and men from sexual violence. This is so because many times sexual minorities⁹² and men⁹³ are subjected to sexual assault and abuse especially at police stations or jails. The JVC recommendation⁹⁴ to make the category of the victim, gender-neutral was rejected. The definition of rape opts for specificity of both the victim and the perpetrator.⁹⁵ Accordingly, rape is an offence in India only when the victim

⁸⁶ The Indian Penal Code, 1860, Section 376E.

⁸⁷ Rebecca Henschke, "Indonesia Approves Death Penalty for Child Rapists," <https://www.bbc.com/news/world-asia-36385909>

⁸⁸ The Guardian, "Indonesia Introduces Death Penalty and Chemical Castration for Paedophiles," <https://www.theguardian.com/world/2016/may/26/indonesia-introduces-death-penalty-and-chemical-castration-for-paedophiles>.

⁸⁹ Niniek Karmini, "Long-awaited law: Indonesia Passes law against Sexual Violence," <https://www.csmonitor.com/World/Asia-Pacific/2022/0412/Long-awaited-law-Indonesia-passes-law-against-sexual-violence>

⁹⁰ Kanu Sarada, "Tougher Anti-Rape Law Led to Lower Conviction, Says Study," <https://www.newindianexpress.com/thesundaystandard/2020/jun/14/tougher-anti-rape-law-led-to-lower-conviction-says-study-2156264.html>

⁹¹ Baxi (2014), *op cit.*, 38.

⁹² Suresh Bada Math and Shekhar P. Seshadri, "The invisible ones: Sexual minorities," *Indian Journal of Medical Research* 137, no. 1 (2013): 4-6.

⁹³ Jagbir Singh Malik and Anuradha Nadda, "A Cross-sectional Study of Gender-Based Violence against Men in the Rural Area of Haryana, India," *Indian Journal of Community Medicine* 44, no. 1 (2019): 35-38.

⁹⁴ Justice Verma Committee Report, *op cit.*, 416.

⁹⁵ Baxi (2014), *op cit.*, 40.

is a woman. This reflects the societal acceptance of one gender's ownership and right to identity over the other.⁹⁶

2.2.3. Unnao Case, 2017 and Kathua Case, 2018 and The Criminal (Amendment) Act 2018

Rape against minor girls has been a growing cause for concern in India. Two heinous incidents led to the enactment of CLAA 2018. In the Unnao case, in 2017, a 17-year-old girl was kidnapped and raped by a former Member Legislative Assembly (MLA) Kuldeep Singh Sengar, along with his brother and other men. Later the father of the girl was arrested in an arms case, where he was beaten up in custody and resultantly died.⁹⁷ Subsequently, there was a serious car accident in which the victim was injured severely and her two aunts died. The case provoked a serious reaction from the public. The apex court in this matter transferred the Unnao rape case from the Lucknow court to the Delhi court.⁹⁸ The case ultimately resulted in the conviction of the MLA with life imprisonment and a fine of Rs. 25 lakhs to be paid to the victim.⁹⁹

In the Kathua rape case, an 8-year-old girl was raped by six men for a week in Kathua, Jammu & Kashmir, and thereafter she was murdered.¹⁰⁰ The minor girl was a Muslim and the perpetrators in the case were Hindus. This became an issue of communal politicking and religion was dragged into this heinous crime. Due to the heightened communal tension in the area, the apex court decided to transfer the case from Jammu & Kashmir to Punjab, in order to ensure a fair trial.¹⁰¹ Three of the main accused were sentenced to life imprisonment while the rest were awarded a five-year sentence.¹⁰²

⁹⁶ Caroline Zielinski, "Why Women Are Still the Property of Men," <https://www.dailytelegraph.com.au/rendezview/why-women-are-still-the-property-of-men/news-story/b18f0a4d456db6967e7c05f4f309604f>

⁹⁷ Web Desk, "Unnao Rape and Murder: No Judge to hear Kuldeep Singh Sengar case," <https://www.indiatoday.in/news-analysis/story/unnao-rape-and-murder-no-judge-to-hear-kuldeep-singh-sengar-case-1575728-2019-07-31>

⁹⁸ India News, "Court Verdict in Unnao Rape Case against Kuldeep Sengar likely Today," <https://www.hindustantimes.com/india-news/court-verdict-in-unnao-rape-case-against-kuldeep-sengar-likely-today/story-8AvdmEud3OgAV1uaTbHcfl.html>

⁹⁹ Tejaswini Mallick, "An Extensive Study of Rape Laws in India," <https://articles.manupatra.com/article-details/An-Extensive-study-of-Rape-Laws-in-India>.

¹⁰⁰ Nishu Singh, "Kathua Rape Case: Critical Analysis of Pocso," *International Journal of Advanced Legal Research*, <https://ijalr.in/kathua-rape-case-critical-analysis-of-pocso/>

¹⁰¹ Bhadra Sinha, "Supreme Court Transfers Kathua Rape and Murder Case to Punjab's Pathankot court, rules out CBI probe," <https://www.hindustantimes.com/india-news/supreme-court-transfers-kathua-rape-and-murder-case-to-punjab-s-pathankot-court/story-dwDDtG1ft07cJw5lomEsWO.html>

¹⁰² Express Web Desk, "Kathua Rape Case Verdict HIGHLIGHTS: Three Main Accused Sentenced to Life Imprisonment, 5-year jail term for others," <https://indianexpress.com/article/india/kathua-rape-murder-case-verdict-live-updates-5772581/>

Both these cases led to widespread protests due to the brutal nature of the crime and that it was committed against minor girls. As a result, the CLAA 2018 was enacted which made changes in the IPC; CrPC; IEA; and POCSO.¹⁰³ Under IPC, sections 166A, 228A, 376 were amended and three new sections 376AB, 376DA, 376DB were inserted.¹⁰⁴

A new offence was created under section 376AB, IPC, where the punishment for rape of a girl under 12 years of age is 20 years imprisonment which may extend to life imprisonment, and maximum punishment is death penalty.¹⁰⁵ Section 376DA, IPC introduces a mandatory sentence of life imprisonment for gang-rape of a girl under 16 years of age. Further, section 376DB, IPC provides for punishment of gang-rape of a girl under 12 years of age with enhanced punishment of life imprisonment or capital punishment.

a. Stringent Punishment

The requirement of mandatory sentence of life imprisonment is questionable on the ground of violation of the proportionality principle. A mandatory sentence of life imprisonment without the exercise of judicial discretion, fails to take into account the situation and circumstances of the incident. It presumes the extent and gravity of the guilt of the accused. Additionally, such a stringent penalty is likely to negatively impact the conviction rates in such cases, since the standard of proof required would be higher for such conviction.¹⁰⁶ Moreover, the stringent punishment would lead to fewer rapes being reported especially in cases of rape of girls under 16 years or 12 years. In view of the prevalence of child marriages in India, which wife who is a minor would like to report a case of rape against her husband especially when the sentence is life imprisonment or death.¹⁰⁷

b. Rape of Minors

Further section 42, POCSO was amended by CLAA 2018. Through the amendment, IPC was given an overriding effect over POCSO on the issue of awarding punishment. IPC provides for harsher punishments as compared to POCSO. The minimum punishment for penetrative sexual assault under POCSO is 7 years imprisonment, as opposed to 10 years imprisonment (when woman is between 16-18 years) or 20 years (when woman is under 16 years age), under IPC. On account of CLAA 2018, the accused is sentenced with the harsher punishment provided under IPC for an offence committed under POCSO. However, this amendment has resulted in an anomalous situation as POCSO is a gender-neutral law, whereas the offence of rape under IPC is gender-specific. Hence, a man committing rape of a girl under 12 years would get a sentence of minimum life imprisonment or death

¹⁰³ The Criminal Amendment Act, 2018, Act no. 22 of 2018. https://www.mha.gov.in/sites/default/files/CSdivTheCriminalLawAct_14082018_0.pdf

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*, Section 5 corresponds to Section 376AB The Indian Penal Code, 1860.

¹⁰⁶ Abhishek Gupta, "Decoding 'Deterrence': A Critique of the Criminal Law (Amendment) Act, 2018," *Indian Law Institute Law Review* (Summer 2018): 143.

¹⁰⁷ *Ibid.*

penalty.¹⁰⁸ However, a sexual assault on a minor boy would invite a lesser punishment of 10 years or life imprisonment. This inconsistency will also be reflected in the duality of punishment for gang-rape. The CLAA 2018 by overlooking the gender-neutrality of POCSO while bringing about the amendment has created another error, which violates the right to equality and promotes inequality in the Indian society. The CLAA 2018 has perpetuated the existing ambiguity under the Indian criminal law.

2.3. Retributive Death Penalty: Is it Really a Deterrent?

According to the JVC Report, the “deterrent effect of death penalty on serious crimes is a myth.”¹⁰⁹ Over 150 states across the world either do not practice death penalty or have abolished it. The US Supreme Court in *Coker v. Georgia*¹¹⁰ has held the death penalty for rape to be violative of the US Constitution. Unfortunately, both CLAA 2013 and CLAA 2018 have prescribed the capital punishment in some form, which is a matter of distress. This is even though the Indian Supreme Court itself has limited the constitutional validity of the death penalty to rarest of rare cases.¹¹¹ Flavia Agnes states that “the conviction rate in rape cases continues to be abysmally low even after the introduction of stringent punishment under POCSO, 2012.”¹¹²

Legislative amendments that are enacted in response to public fury and outrage demanding harsher punishments for harsh crimes “give legitimacy to the reductionist argument of harsher punishment for harsher crime, without truly engaging with the task of social reorganisation.”¹¹³ Justice Anjana Prakash states that “death sentence as ‘collective conscience’ is a fraud upon justice.”¹¹⁴

The capital punishment not only lacks the power of deterrence and leads to reduced reportage,¹¹⁵ it could also result in the perpetrators ensuring that the victims are murdered or are left in state wherein they are unable to make a complaint or recognise the perpetrators.¹¹⁶ When the perpetrator knows that his crime carries the death penalty, he is likely to

¹⁰⁸ The Indian Penal Code, 1860, Section 376 AB read with Protection of Children from Sexual Offences Act, 2012, Section 42.

¹⁰⁹ JVC Report, *op cit.*, 250.

¹¹⁰ 433 U.S. 584 (1977).

¹¹¹ See, *Bachan Singh v. State of Punjab* (1980) 2 SCC 684; *Machhi Singh v. State of Punjab* (1983) 3 SCC 470; *Sangeet v. State of Haryana* (2013) 2 SCC 452.

¹¹² Flavia Agnes, “Death Penalty for Child Rapists: This Populist Move Will Only Cause India’s Children More Harm,” <https://scroll.in/article/876554/death-penalty-for-child-rapists-this-populist-move-will-cause-more-harm-to-indias-children>.

¹¹³ Sahana Manjesh, “Why the Death Penalty is Not a Solution to India’s Rape Problem,” <https://article-14.com/post/why-the-death-penalty-is-not-a-solution-to-india-s-rape-problem>.

¹¹⁴ Anjana Prakash, “Death Sentence as ‘Collective Conscience’ is a Fraud upon Justice,” <https://thewire.in/law/death-penalty-collective-conscience-justice>.

¹¹⁵ Divya Arya, “India Death Penalty: Does it actually Deter Rape?,” <https://www.bbc.com/news/world-asia-india-44922084>.

¹¹⁶ Jahnavi Sen, “Seven Reasons Why We Shouldn’t Demand the Death Penalty for Rape,” <https://thewire.in/women/rape-death-penalty>.

kill the victim to eliminate any evidence against him. Consequently, such harsh punishments could increase the chance of further violence.

Death penalty once executed, cannot be reversed. A wrong decision could result in disastrous consequences as it extinguishes a life permanently. Since the consequences are grave, the courts generally require a higher standard of proof to hold the accused guilty.¹¹⁷ Interestingly, the Malimath Committee¹¹⁸ had also negated the idea of capital punishment for cases of rape. It believed that emphasis should be laid on procedural amendments rather than the quantum of punishment. This would lead to certainty in punishment and that would be the real deterrent.¹¹⁹

2.3. Reflection

Patriarchal societies are inclined to control a woman's sexuality, and rape is therefore considered a defilement of the woman. A rape victim carries the shame and stigma of the act on her shoulders. It dishonours the family and the community and goes unreported on many occasions. In this act of gendered violence, men assume the role of subjects of violence and women become the objects of violence. It is, therefore, imperative to recognise rape as a power-based crime committed by a distorted society that provides legitimacy to the inequality culture. To reduce crimes against women, it is crucial to adopt both socio-cultural and legal approaches simultaneously.¹²⁰

The public campaigns in India were limited in their scope as they failed to raise the more critical questions of power balance between men and women. However, the positive outcome was that they brought with it attention which raised citizens' awareness about the reasons behind rape. The new amendments introduced new categories of sexual offenses and enhanced the punishments but failed to redefine rape in a manner that would serve justice. The change in law has failed to bring in the desired transformation in the societal mindset.

The rape trials are usually plagued with the bias inherent in the system and amongst the authorities and judges, leading to prejudicial treatment of the victim. Additionally, marital rape persists as an exception under the rape law, and the issue of gender neutrality remains unaddressed by the profoundly patriarchal society. The imposition of the stringent death penalty punishment has not lowered the incidence of rape cases but led to lower rates of conviction. Judges are hesitant to invoke the death penalty because of its irreversibility and general disbelief in a woman's testimony.

¹¹⁷ Gupta, *op cit.*, 146.

¹¹⁸ Justice Malimath Committee Report, "Committee on Reforms of Criminal Justice System," Government of India, Ministry of Home Affairs (Mar. 2003). https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf

¹¹⁹ *Ibid.*, 193.

¹²⁰ Prerna S. Ramteke, "Knitting the Future Story of Indian Women: Preventing Violence, Fostering Development, and Accelerating Empowerment," *Udayana Journal of Law and Culture* 1, no. 2 (2017): 113.

The severe punishment also diminishes reportage and heightened violence against the rape victim.

The inability of the criminal law to offer protection to women against crimes of rape or sexual assault has often been criticised. Firstly, the laws have been framed callously without regard to the problems faced by women in society. Further, the amendments and the supposed reformation brought about in the law due to the public outrage and feminist movements have not translated into reducing the occurrence of rapes and the extant societal perceptions against women. The public protests and the subsequent media attention pressurised the government into setting up committees/commissions, etc., on criminal law reform.

However, the Indian Parliament did not incorporate the expert committees' recommendations in the amendments to the law. The changes in the criminal law consequently did not promote equality, nor did they attempt to rectify the social conditions that allow violence against women and sexual minorities. They did not seriously address the procedural lacunae in delay in deciding rape cases, the insensitivity of the police authorities, and the prevailing apathy of the State. The hastily crafted changes in law, intending to soothe public tempers, compromised the quality of reform.

3. CONCLUSION

The superficial changes in the law made no substantive effort to engage with the roots of social pathology and the actual cause behind crimes against women. Social change and gender justice cannot be achieved by simply enacting stricter laws. The Constitution of India envisages an effective State that is sensitive to perverse social discrimination. It is an instrument to guarantee equal rights to all sections of society and to achieve fulfilment of individual potential. Any solution to the issue of rape must incorporate meaningful reforms. The State must address social exclusion and illiteracy issues and build a sensitive and aware police force. In addition, education must be imparted to rectify gender bias and prejudices against women, while measures must include educating children and building their awareness and moral values. Most importantly, if the cases are disposed of speedily and without unnecessary delay, it will promote an effective criminal justice system. As the constitutional promise of gender justice remains unrealised, India needs to promote an equality culture and eliminate misogynist traditions. Violence against women inherently violates constitutional values, which entails that society should raise future generations in a manner where their experiences are not gendered. Moreover, the sexual and social identities of women must be understood in terms of equality. Education, gender sensitization, and legal awareness must be worked upon. Both families and schools must facilitate this awareness. It is time that the nation bore the responsibility to the millions of women it has failed.

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