

THE URGENCY FOR STATUTORY REFORMS AGAINST RAPE IN INDIA

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ABSTRACT

The topic of my research is 'The Urgency For Statutory Reforms Against Rape In India'. We get to hear about many horrifying cases of rape on daily basis through various sources such as newspapers, news channels, virtual platforms, etc. Although there are many incidents which are not even reported. This article explains the meaning and nature of rape from eyes of Law in order to highlight its intensity and repercussions on victim's life. The evolution of criminal laws right from The Indian Penal Code, 1860 to the recently enacted Bhartiya Naya Sanhita, 2023 reflects the deficiencies and loopholes in statutory provisions as well as the legal infrastructure considering the current scenario in India. As a result, The Aparajita Bill, 2024 passed by Government of West Bengal (after The Kolkata Gang-Rape Case) seems to comprise of all necessary reforms through its comprehensive framework and aims to create safer environment for women as well as children. It imposes punishments like life imprisonment and death penalty to inflict equivalent sufferings upon rapists. This article mainly focuses on exploring the aftermath of rape followed by paramount importance of harsher punishments and other possible solutions against the crime of rape.

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INTRODUCTION

As we hear and see many incidents around us, Rape-free society is a concept one can only imagine about. We come to know about different incidents of rape every single day through newspapers, news channels, internet, etc. which proves that no female is safe, right from newborn to an older one.

In the largely populated country like India where overall crime rate is high, Rape is the fourth leading crime against women. According to National Crime Records Bureau's (NCRB) 2021¹ annual report, total 31,677 rape cases have been recorded nationwide with average of 86 cases

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¹ NCRB Official Website <<https://ncrb.gov.in/en/search/node/rape>> accessed on 15 September 2024

per day. Approximately 89% cases out of total being where the perpetrators either known or relative to the victim.

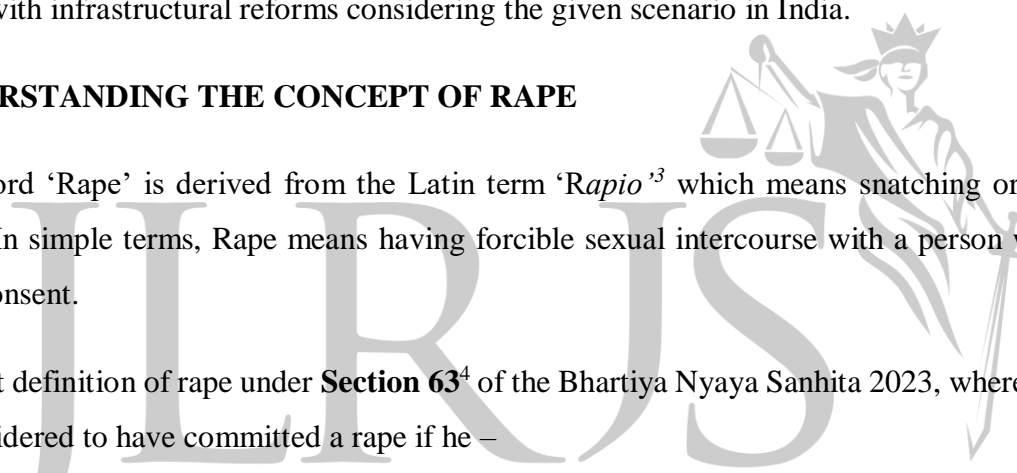
In the case of *Rafiq v. State of U.P.* 1980², Justice Krishna Iyer said “a murderer kills the body whereas rapist kills the soul of a victim”. Every offence comes with lawful punishment. The aim of Law is to punish Rapists who deliberately, maliciously destroy entire lives of women through the act of Rape. The question is whether some years of imprisonment and liberty restraint is sufficient against a crime like this where physical dignity and mental sanctity of a woman is completely ruined?

This article aims to highlight the emerging need for changes in statutory punishments for rape along with infrastructural reforms considering the given scenario in India.

UNDERSTANDING THE CONCEPT OF RAPE

The word ‘Rape’ is derived from the Latin term ‘*Rapio*’³ which means snatching or taking away. In simple terms, Rape means having forcible sexual intercourse with a person without their consent.

Current definition of rape under **Section 63**⁴ of the *Bhartiya Nyaya Sanhita* 2023, where a man is considered to have committed a rape if he –

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- (i) Penetrates his penis into vagina, anus, urethra or mouth of a woman to any extent or makes her do with any other person; or
 - (ii) Inserts any object or part of the body (not being penis) into the vagina, urethra or anus of a woman or makes her to do so with him or any other person; or
 - (iii) Manipulates any part of the woman’s body to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
 - (iv) Applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person.

Any of above circumstances along with following essentials –

² *Rafiq v State of UP* (1980) 4 SCC 262

³ Gitika Jain, ‘Rapes in India: reasons and prevention’ <<https://blog.iplayers.in/rapes-india-reasons-prevention/>> accessed 14 September 2024

⁴ The *Bhartiya Nyaya Sanhita* 2023, s 63

- (i) Against will;
- (ii) Without consent;
- (iii) With consent obtained by putting her or any person in whom she is interested, in fear of death or of hurt;
- (iv) With knowledge that he is not her husband and her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;
- (v) With consent obtained by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that she gives consent;
- (vi) With or without her consent when she is under eighteen years of age;
- (vii) When the woman is unable to communicate consent.

The word Vagina in the section includes the Labia Majora. Consent is defined as an unequivocal voluntary agreement when a woman signals her intent to participate in a certain sexual act using words, gestures, or any other kind of verbal or nonverbal communication provided a woman who does not physically reject the act of penetration should not be considered to have consented to the sexual activity merely because she does not physically oppose it. The definition explains the capacity of rape to damage victim's body to an unimaginable extent.

It must be noted that mental as well as social consequences on victim's life should be equally considered which are not expressed in the definition. In the landmark judgment of *Maneka Gandhi v. Union of India* (1978)⁵, the Supreme Court held that the right to life and personal liberty under Article 21 is not limited to mere animal existence but includes the right to live with dignity.

In another landmark case of *Shri Bodhisattwa Gautam v. Ms. Subhra Chakraborty*⁶, the Supreme Court held that rape violates Article 21 of Indian Constitution as it hinders with the fundamental rights of an individual and breaches victim's right to life and dignity. Hence it is

⁵ *Maneka Gandhi v Union of India* [1978] AIR 597

⁶ *Shri Bodhisattwa Gautam v Ms. Subhra Chakraborty* [1996] AIR 922

proved that act of rape is in absolute violation of victim's basic fundamental right guaranteed under Article 21⁷ of Indian constitution.

CURRENT SITUATION REGARDING RAPE LAWS IN INDIA

Post-independence, British-made Indian Penal Code, 1860 was the official criminal code of Republic of India which covered all substantive aspects of criminal law.

The Government of India replaced long lived code by the Bhartiya Nyaya Sanhita (BNS) in 2023 which prescribes imposition of stricter rape laws and much needed streamlining in their implementation. The new Act introduced electronic First Information Reports (e-FIRs) facility to ease out and smoothen crime reporting process. **Section 64(1)** of the 2023 Act prescribes imprisonment of a term not less than 10 years to Life imprisonment for Rape while **Section 64(2)** prescribes life imprisonment in case of 'aggravated rape'.⁸ **Section 66**⁹ of the Act prescribes rigorous imprisonment of minimum 20 years for certain offences. The act also mandates application of relevant sections of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act)¹⁰ where the victim is Minor.

Despite such reforms, India is onto the horrifying and yet to be decided case of R. G. Kar Hospital also known as Kolkata Rape case where 31-year-old female trainee doctor at Kolkata's Hospital was brutally raped and murdered. According to the postmortem report, her both cheeks, lips, nose, jaw, shoulder, knee, calf bone and neck with marks of sucking. There are multiple other injuries on her scalp, neck, thyroid cartilage and inner side of the epiglottis. 150 gram of semen was found inside her hymen. Death was due to effects of manual strangulation with smothering. There exists evidence of forceful penetration/ insertion in her genitalia according to the postmortem report.¹¹

As usual, public outrage results in protests, strikes, candle marching, etc then everything goes back to the normal. Trials take place and time goes by but the Rapists being aware of the loopholes in our legal system take advantage of situations like delay in judicial procedures,

⁷ Constitution of India 1950, a 21

⁸ The Bhartiya Nyaya Sanhita 2023, s 64 (1) (2)

⁹ The Bhartiya Nyaya Sanhita 2023, s 66

¹⁰ The Protection of Children from Sexual Offences Act, 2012

¹¹ Arkamoy Datta Majumdar, 'R.G. Kar doctor's autopsy report reveals grisly physical injuries, all inflicted before her death' (India Today, 19 August 2024) <<https://www.indiatoday.in/india-today-insight/story/rg-kar-doctors-autopsy-report-reveals-grisly-physical-injuries-all-inflicted-before-her-death-2584759-2024-08-19>> accessed 14 September 2024

discrepancies in medical reports or names, lack of dedicated investigations, evidence tampering, trying to abscond, bribery, rights guaranteed by the constitution, etc. This highlights the existence of deep-rooted issues and deficiencies present in our laws for not acting as deterrent enough.

The great example is landmark 'Nirbhaya Case' which is also known as 'Delhi Gang-Rape' case 2012 where a 23 years old girl was brutally assaulted, gang-raped by 5 adults and 1 minor in a moving bus at night in Delhi. The minor also inserted an iron rod into victim's private parts ripping and pulling out her intestines. Then she was thrown out of the bus to die on side of the road. After hospitalising, it was found by the doctors that only 5% intestines were left inside her body. On 29 December 2012, the victim died with multiple organ failure due to overall injuries. A fast-track court was set up and the matter was concluded in eight months. The Minor was tried separately by juvenile board sent to the reformation centre for 3 years only. He got out after the same. However, it took seven years to hang adult culprits. One cannot ascertain the trauma and agony victim's family must have suffered all those years in search of justice for the victim.¹²

In the infamous landmark case of Aruna Shanbaug where 24 years old nurse was choked by dog chain and raped in basement of the hospital that she worked in. She was found lying on the floor next day. She allegedly suffered serious spine injuries due to the brutal attack, the strangulation with the dog chain cut off the oxygen supply to her brain, rendering her in a vegetative state for life. She was abandoned by her own family but the other staff took care of her like their daughter till she died at age of 42. The offender was convicted of attempted murder and theft but was not tried for rape due to then existing narrow definition rape. After mere seven years of imprisonment, he vanished.¹³

Another infamous case known as 'Hathras Gang Rape' Case where 19 years old Dalit female was gang-raped by group of upper caste men in a field in Hathras district of Uttar Pradesh. The rape left severe damage on her spinal cord. After two weeks in Hospital, she died. Her body was taken to a field without her family's consent and burned using gasoline.¹⁴

Above cases highlight the deficiencies of Indian Justice system. The often delay in serving justice to victim and the insufficient punishments makes the situation more favourable to the

¹² Mukesh & Another v NCT of Delhi & Others [2017] 6 SCC 1

¹³ Aruna Ramchandra Shanbaug v Union of India & Others [2011] 4 SCC 454

¹⁴ Satyama Dubey v Union of India [2020] SC 874

currently accused and future Rapists. Many times, judicial processes take so much time that justice seems equivalent to injustice. Simply imprisoning these criminals, providing facilities and releasing them after serving their time seems more like protecting rather than punishing. This explains the urgency for imposing not only stricter laws but also deterrent punishments against crime of Rape. Stricter laws and deterrent punishments create a mindset where a perpetrator is afraid of the statutory consequences of such heinous crime.

Prevention of Rape in largely populated country like India is not practically possible as the ill and perverse mindset of rapists is never going to or can be changed. their acts clearly show that they have underestimated the law. The sole reason behind current situation is absence of stringent laws in India.

FUNDAMENTAL RIGHTS AND PUNISHMENTS

Capital punishment against rape is a controversial topic with lot of debates relating to the fundamental rights of Offender guaranteed under article 21 of Indian Constitution. Advocating human rights of rapist is a huge loophole in Indian system that Rapists are aware of.

One act of rape is capable to destroy entire lives not only victims but also their families. Act of rape is an internationally recognized Crime which absolutely breaches victim's basic fundamental rights by snatching away rights, e.g. equality, personal liberty, dignity, privacy, bodily sovereignty and emotional sanctity. The nature of this crime is such that the victim may

carry the physical as well as mental trauma for rest of their lives. For some it may become too much to bear resulting in suicide. It can be concluded that rape victim suffers miserable life or even death in certain cases rather than offender during or after the punishment. It undermines the very principles of basic human rights that form the foundation of just society. Therefore, it is essential that the punishment for rape must reflect the gravity of the offense.

By imposing the harshest penalties on rapists, the system affirms collective commitment to upholding the dignity, safety, and equality of women with a clear message that such violations will no longer be tolerated.¹⁵

¹⁵ Pinky Anand, 'R G Kar case shows stricter rape laws are necessary' (The Indian Express, 6 September 2024) <<https://indianexpress.com/article/opinion/columns/r-g-kar-case-shows-stricter-rape-laws-are-necessary-9552728/>> accessed 16 September 2024

Instead of reserving discretionary penalties like life imprisonment and death Penalty only for undefined and exceptional circumstances i.e. gang rape, rape of minor, vegetative state or death of victim, etc, it must be imposed as statutory penalty in the book against rape. Therefore, imposing such irrevocable punishments may not only act as a reactive but also a great preventive measure.

NECESARY REFORMS UNDER RAPE PUNISHMENTS

Statutory punishments for rape must be as severe and harsh as the cruelty inflicted upon victim. Such punishments only for convicted rapists and not where there is doubt or possibility for fake accusations.

On 27 August 2024, Government of West Bengal has passed the 'Anti-rape bill' in a special assembly session known as 'Aparajita Woman and Child (West Bengal Criminal Laws and Amendment) Bill 2024'¹⁶ which aims to create safer environment for women and children in the state by reinforcing its commitment to protecting fundamental rights of victims and ensuring positive force of law towards inhuman acts of rape and sexual offences. The Bill seeks to enhance the existing rape laws by introducing more stringent provisions against rape and sexual offences. The Bill proposes amendments to several central laws including the recent Bharatiya Nyay Sanhita 2023, the Bharatiya Nagarik Suraksha Sanhita 2023 and the Protection of Children from Sexual Offences Act 2012.¹⁷

Life Imprisonment :

In the cases of rape and gang-rape, the Bill proposes sentence of life imprisonment for rape convicts. It means imprisonment till natural death of the offender. Where victim's entire life is destroyed, the offender also loses his freedom, liberty and privacy for rest of his life.

Capital Punishment / Death Penalty :

One of the most significant provisions of the proposed Bill is the introduction of capital punishment for individuals convicted of rape in cases where the crime results in the death of the victim or causes the victim to enter a vegetative state. Capital Punishment is the ultimate

¹⁶ Aparajita Women and Child (West Bengal Criminal Laws and Amendment) Bill, 2024

¹⁷ Pinky Anand, 'R G Kar case shows stricter rape laws are necessary' (The Indian Express, 6 September 2024) <<https://indianexpress.com/article/opinion/columns/r-g-kar-case-shows-stricter-rape-laws-are-necessary-9552728/>> accessed 16 September 2024

penalty where offender is lawfully executed by the State for a crime committed by him. The retributive theory of punishment justifies that rapist can be avenged through Capital punishment since he has committed the harshest crime by violating the sanctity and dignity of a women.

Additionally, for repeat offenders who have committed similar crimes in the past, punishment shall be life imprisonment or in severe cases, the death penalty along with a fine. The Bill also suggests the omission certain sections such as 65(1), 65(2) and 70(2) relating to the punishment of perpetrators depending upon his age by streamlining the legal process and focusing on the gravity of the crime rather than the age of the offender. The Bill introduces strict penalties in relation to protection of privacy and dignity of victims for unauthorized publishing of matter during court proceedings without prior permission. Guilty Individuals for the same shall be awarded imprisonment of three to five years along with a fine.¹⁸

These punishments mainly aim to address the acute trauma and irreversible damage inflicted by rape on the victim. It justifies as the powerful deterrent as follows:

- severe punishments and strict regulations to prevent potential future offenders from committing similar crimes and reduce the number.
- Severe punishments ensure justice to victims and their families by reflecting the gravity of the harm caused. Some provisions contribute towards privacy of victims.
- Imposing severe punishments demonstrate zero-tolerance policy towards sexual violence which reinforce societal norms and moral values against such acts.

ADDITIONAL CONTRIBUTIONS PROPOSED UNDER THE APARAJITA BILL, 2024

Special Force:

The Bill proposes the establishment of district-level 'Special Task Force' named as 'Aparajita Task Force' which intends to treat cases of rape and sexual offences against women and children are handled with the utmost priority and expertise.

¹⁸ Ibid

It shall be led by a Deputy Superintendent of Police. It shall bare the specific responsibility of investigating offences under the new provisions of the Bill.

Speedy Investigation:

The Bill proposes fast investigation process for rape cases which must be completed within 21 days of the initial report, which was 2 months earlier. According to the draft, this timeline intends to reduce the trauma of victim and maintain their trust on legal system.

Fast-track Courts:

Dedicated specialised courts and trained investigation teams must be established. These specialized units will be equipped with the necessary resources and expertise to handle cases of rape and sexual offences against children in a manner that is both efficient and sensitive to the needs of the victims.¹⁹

CONCLUSION

It can be concluded that man and crime both go hand in hand. Wherever exists man, Crime is inevitable. As one can see how intensely horrible rape crime is. Absolute prevention of rape crime in huge country like India is not practically possible due to various factors, i.e. never-changing mindset of Rapists, lack of family support to victims, financial conditions, lack of social awareness, poverty, etc. It should be noted that no one can challenge the superiority of Law. Only Law is capable of putting these offenders in the right place. The Aparajita Bill proposes various reformative provisions. Also, relevant infrastructural reforms proposed by the Bill seem focused on proper service of justice. The Government of India must take immediate action by reviewing, amending current rape laws and implementing severe, uncompromising punishments for rape offenders as The Aparajita Bill, 2024 suggests.

¹⁹ Ibid