



THE CRIMINAL LAW (AMENDMENT) ACT, 2013: EFFICIENCY IN DETERMINING SEXUAL OFFENCES AGAINST WOMEN

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ABSTRACT

Sexual violence has remained a significant global issue affecting women and girls. In India, sexual offences against women have increased by 30% between 2014 and 2022, as per the data of the National Crime Record Bureau.¹ (NCRB). Furthermore, at the global level, as per the World Health Organisation (WHO)² nearly 1 in 3 women worldwide has been subject to either physical or sexual violence in their lifetime. In 2023, the estimated crime rate (sexual violence) against women at the global level was 29%. Despite the age limit, every 1 in 3 women (including girls aged between 1 year to 18 years and older women between the ages of 55 years to 65 years) had been subject to a sexual offence. Sexual violence against women has never been subject to the age of the victim, but rather the age of the act done against them. Despite various legal frameworks and penal provisions that aim to prevent these offences, the effectiveness of these laws in delivering justice and protecting victims has always been subject to question. Legislation had made laws regarding protecting women against sexual offence (including rape).³ but the proper implementation of these laws has always been questioned. Failing in filing the FIR, delay in providing justice, no strictness in laws, and also the family and societal pressure could be the core reasons for the delay in delivering justice to women aggrieved by sexual offence and rape. Justice can be served not only by making laws and legislation but also by the proper implementation of those laws. In India, justice lags behind the strictness of laws. Compared to the laws of other nations, the implementation of laws made for women's safety is less strict than that of other countries. Countries like Saudi Arabia, North Korea, and Afghanistan had stricter punishments for rape than India because India gives the

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¹ National Crime Record Bureau(1896), Crime in India: Annual Report (2022), Ministry of Home Affairs, Government of India

² World Health Organization (1948), Global status report on Violence Prevention.

³ Defined under section 375 IPC

death penalty in rarest of rare cases, while the other countries provide justice just by giving the death penalty in the form of beheading, firing squad, or being shot in the head, respectively. The Criminal Law (Amendment) Act, 2013 was made after the brutal gang rape and murder of 23 year 23-year-old paramedical student (also referred to as the Nirbhaya Case)⁴ in a moving bus in Delhi in 2012. This amendment act has amended many Indian laws, including the Indian Penal Code (IPC), the Indian Evidence Act (IEA), the Code of Criminal Procedure (CrPC), and the Protection of Children from Sexual Offences Act, to strengthen the laws regarding sexual offences against women.

Keywords: Criminal Law (Amendment) Act, 2013, Indian Penal Code, Sexual Offence, Indian Evidence Act, Code of Criminal Procedure.

INTRODUCTION

Sexual violence, particularly rape,⁵ it is one of the most egregious crimes committed against women worldwide. Despite significant progress in legal frameworks aimed at preventing sexual offences and offering justice to victims, the issue remains pervasive and deeply entrenched in societies across the globe. The legal system's approach to rape and sexual violence involves a combination of punitive measures, victim support, and preventive strategies. However, the efficacy of these legal provisions in delivering justice and deterring offenders remains a contentious topic.

Rape laws in many countries are intended to offer justice by punishing the accused and providing legal protection to victims. These laws define the act of rape, stipulate punishment for offenders, and sometimes include aggravating factors to ensure harsher penalties. However, the effectiveness of these provisions is frequently undermined by a range of factors, such as social stigmas, underreporting of crimes, inefficiencies in the justice system, and gaps in the legal definitions of rape.

In most jurisdictions, the legal definition of rape is a central element in determining guilt and punishment. Traditional legal definitions, however, have often been narrow and may exclude acts of sexual violence that do not involve physical force or penetration,⁶ such as sexual coercion, harassment, or marital rape. Additionally, despite severe penalties, including life

⁴ Mukesh & Anr. V. State for NCT of Delhi & Ors. (2017) 6 SCC 1

⁵ Defined under section 375 IPC, 1860

⁶ Section 375(a) IPC, 1860

imprisonment or the death penalty.⁷ In some countries, the deterrent effect of these laws remains questionable. Many offenders, driven by impulse or a sense of entitlement, may not be deterred by the fear of punishment. Furthermore, the underreporting of rape due to victim-blaming, fear of retaliation, or distrust in the justice system compounds the issue, leading to a situation where many offenders remain unpunished.

Countries like India have taken about women's safety since independence, but fail to protect women against offences like domestic violence, sexual harassment, kidnapping, or rape. To protect women against these offences, it is not only important to make laws and provisions, but the implementation of these laws is also important, with better and stricter punishment.

The strictness of punishment talks about the number of justices provided to women against sexual offences. There are many challenges faced by the legal system in prosecuting rape cases. Also, the question arises whether the current penal provisions can act as effective deterrents for potential offenders or whether they merely focus on punitive measures without addressing the root causes of sexual violence.

PENAL PROVISIONS FOR RAPE

Provision for rape has been defined under sections 375 and 376 of the Indian Penal Code, 1860, referring definition of rape and punishment of rape respectively.

Definition of rape under the Indian Penal Code, 1860: Rape is defined under section 375 of the Indian Penal Code, 1860, as

A man is said to commit "rape" if he—

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra, or anus of a woman or makes her do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra, or anus of a woman, or makes her do so with him or any other person; or
- (c) manipulates any part of the body of a woman to cause penetration into the vagina, urethra, anus, or any part of the body of such woman or makes her do so with him or any other person; or

⁷ Section 376 IPC, 1860

(d) applies his mouth to the vagina, anus, or urethra of a woman or makes her do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:

First, against her will. Secondly, without her consent. Thirdly, with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt, fourthly, with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly, with her consent, when, at the time of giving such consent, 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 to which she gives consent. Sixthly, with or without her consent, when she is under eighteen years of age. Seventhly, when she is unable to communicate consent.

PUNISHMENT FOR RAPE UNDER THE INDIAN PENAL CODE, 1860

Section 376 of the Indian Penal Code, 1860 defines punishment for Rape,⁸ as

(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,

(a) Being a police officer, commits rape—

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such a police officer's custody or in the custody of a police officer subordinate to such a police officer; or

⁸ Defined in Section 376 of the Indian penal code, 1860

- (b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or
- (c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or
- (d) being on the management or on the staff of a jail, remand home, or other place of custody established by or under any law for the time being in force, or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place, or institution; or
- (e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
- (f) being a relative, guardian, or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
- (g) commits rape during communal or sectarian violence; or
- (h) commits rape on a woman knowing her to be pregnant; or
- (j) commits rape, on a woman incapable of giving consent; or
- (k) being in a position of control or dominance over a woman, commits rape on such woman; or
- (l) commits rape on a woman suffering from mental or physical disability; or
- (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
- (n) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten 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.

Explanation: For this sub-section;

(a) “armed forces” means the naval, military, and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) “hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) “police officer” shall have the same meaning as assigned to the expression “police” under the Police Act, 1861 (5 of 1861);

(d) “women's or children's institution” means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

(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.

But the question arises whether the simple mention of terms and provisions in the legislation and explaining is sufficient to provide justice to the victim. Maybe not, because of the improper implementation, long-term proceedings of the cases, lack of evidence, and delay in justice. And sometimes false evidences also deny justice. I question whether the law should be so blind that it could not see the actual situation of the victim that which needs true or maybe false evidence to provide justice. Indian criminal law is somewhat based on reformatory theory.⁹ This focuses on the rehabilitation of the offender into society. This system could be considered as the reason for delayed justice because it is said that no innocent person could be punished, even though

⁹ ‘Punishment in Criminal Law- Theory, Objective, Resolution’: published by Taxman in blog, Indian acts on June07, 2025

100 criminals have been released. What if those 100 people had committed the severe and brutal crime, then also is the law going to release those 100 offenders to protect that 1 innocent? And what if that innocent person is in jail based on false evidence?

PRE- CRIMINAL LAW (AMENDMENT) ACT, 2013

The law system of India, before the Criminal Law Act, is subject to question on the state and central government for failing to provide adequate security to women. 1 in 3 Women face sexual violence and are being subjected to rape, still the system fails to make proper laws that could safe women from being victims.

Also, the definition of rape had included only physical intercourse, forcefully against the will, to be defined as rape, and the punishments were life imprisonment and the death penalty in rarest of rare cases for the same. The law related to sexual harassment was not developed, and there was no specific provision for harassment outside of the workplace.

Even the law of Protection from Sexual harassment at work workplace was also not there from the start. It was made after the case of **Vishaka v. State of Rajasthan**,¹⁰ where a lady, Bhanwari Devi, was brutally raped and murdered by a group for stopping child marriage. This case was presented before the Supreme Court, questioning the safety of women in the workplace.

Now the question arises, why are laws made for the protection of women always made after the crime? Why not these laws not made before the crime, and then safeguard the rights of women and protect them from being sexually harassed?

CHALLENGES FACED BY THE LEGAL SYSTEM

There are several significant challenges faced by the legal system in prosecuting rape cases:

Slow Pace of Trial: Many rape cases take years to come to a final verdict due to the overburden of the court, false evidence, and manipulation of facts. Also, the lengthy process of the court discourages victims from pursuing justice.

¹⁰ 1997 6 SCC 241 and AIR 1997 SC 3011

Underreporting of Rape: The Long process of court, social, and family pressure and fear of retaliation stops victims from reporting crimes.

Poor or Inefficient Investigation: Poor police force fails to handle the case carefully, like by denying reporting cases just by blaming women, being slow in evidence collection, and mishandling the medical report.

Loopholes in the Legal Framework: Incomplete definition of rape, no framework regarding other offences, and also the inappropriate punishment leads to delay in justice and acts as a lacuna under the law.

POST- CRIMINAL LAW (AMENDMENT) ACT, 2013

The Criminal Law (Amendment) Act, also known as the Nirbhaya Act, was made after the brutal gang rape and murder of a woman, named Jyoti Singh, in a bus by six people, including a minor boy, in 2012.

This law was a significant legal reform addressing sexual violence against women by providing stricter punishment and provisions under the law. The act brought certain changes to the Indian Penal Code (IPC), Criminal Procedure Code (CrPC), and the Indian Evidence Act.

In this act, the measures for rape, such as the death penalty and life imprisonment, are often seen as stronger than in earlier acts. But due to slow proceedings, lack of evidence, and false facts somewhat restrict the victim from getting justice.

PROVISIONS OF THE CRIMINAL LAW AMENDMENT ACT OF 2013

After the Nirbhaya case, the legislation has made an amendment and introduced the Criminal Law (Amendment) Act of 2013 to introduce new provisions related to sexual offences and provide safeguards to women through the following provisions:

Expanded Definition of Rape: The definition of rape, given under section 375, has become broad, including non-penetrative acts such as finger insertion, oral sex, and attempted penetration.

Punishment: Punishment, under section 376, has also been broadened to include life imprisonment and the death penalty, and also covers the offence of groping and molestation.

Introduction to New Offences: New offences like groping, stalking, and voyeurism have been introduced under section 354A and section 354B.

Improved Police Investigation and Protocols: It introduces a time duration for the investigation and mandates that the investigation be done within that time only.

Fast-track Courts: Fast-track courts have been introduced to speed up the trial of rape cases and reduce delays in justice.

JUSTICE VERMA COMMITTEE¹¹

This committee was constituted in December 2012 to recommend urgent amendments in India's criminal law for effective protection against sexual offence and violence after the Delhi gang rape case that took place in 2012. Chaired by Justice J.S. Verma, the committee was formed to respond to public outrage demanding stricter and faster justice in cases of sexual crimes.

Key recommendations:

- Expand the definition of rape to include non-consensual penetration and stricter punishment for the same.
- Recommended to make the law gender neutral and include men, transgender individuals, and homosexuals as victims of sexual violence.
- The committee also recommended criminalising marital rape to safeguard married women from being subject to rape.
- Also suggested specific penalisation for public servants who fail to record the complaints of victims of sexual violence.
- Also proposed comprehensive reforms in the medical examination of victims.
- Recommended to expand the definition of sexual harassment to include domestic workers and workplace protection.
- Recommend making a rape crisis cell for legal assistance to victims.
- Suggested educational reforms, such as compulsory sex education in schools, along with adult literacy programs.

¹¹ Verma, J.S., Seth, L., & Subramanium, G. (2013)

CRITICAL ANALYSIS

The effectiveness of penal provision in deterring sexual offences in India highlights a fundamental issue that while punitive measures are important, they alone are insufficient. Despite the harsh punishment introduced after the Nirbhay Case (2012), the effect has been limited. Indian legislation has made many laws to provide safeguards to women against violence, but still lacks in providing justice to them. Between 2013 and 2022, as per the data, even the act, the crime rate against women has increased to 30% which is quite unacceptable that even though there are laws, rules, and regulations to protect women from offences, still they are being subjected to sexual violence.

Apart from protecting women from sexual offences, it also aims to protect men from offences. In modern times, Men are also subject to sexual violence, and the law is not that gender neutral that it could protect men.

The act lags in protecting women from being raped by their husbands. The act doesn't criminalise marital rape, which is also becoming common these days, despite recommendations by the Justice Verma committee. This makes an exception to section 375 of the Indian Penal Code, giving husbands the liberty to force themselves on their wives.

The act, also, is gender gender-biased as it only focuses on women and fails to protect or recognise homosexuals, transgender individuals, and men as victims of sexual violence.

Furthermore, the act fails in mandating the police force to take strict actions after writing the FIR. The police investigation is weak and slow, failing to collect evidence against the accused, which delays justice. Despite of mandatory FIR, the police fail to write an FIR and blame the victim for the offence. These factors contribute to low conviction rates and perpetuate the cycle of impunity for offenders.

Despite the Criminal Law (Amendment) Act, 2013, there are still certain cases of rape, like the **RG Kar case**,¹² where a 31-year-old trainee doctor who was raped and murdered in August 2024 is still unresolved. How far it will take to resolve the cases and provide justice to the victim is still questionable, and should be dealt with seriously.

¹² SMW (Crl) no. 2 of 2024

LIMITATION

The act fails in providing safeguards to victims because of its improper implementation. The Verma committee has recommended certain changes in accordance with the modern problems, still the act was unable to adopt the changes and made certain limitations to the act. The very important recommendation made by the committee was to include marital rape in the category of rape, but it was excluded, and marital rape remains decriminalised. In continuation, the committee suggested to not only include women as victims of sexual offences but also men, homosexuals, and transgender individuals too, but again the act became gender biased and included only women as victims of sexual offences, excluding the above three categories.

Also, the act provides the provision of stricter punishment for rape accused but fails in punishing them due to lack of evidence and denies justice. The punishment for rape is either life imprisonment or the death penalty (in rarest of rare cases). The fact that the rarest of the rare cases is not defined in law, acting as a safeguard to accused to escape from death penalty. The undefined phrases like rarest of the rare case also act as a limitation to provide justice to victims because in severe cases, too, the accused reduce their punishment just by stating that the case doesn't fall under the rarest of the rare case.

Despite the provision to punish police for failing to report the crime, many police officers still do not record the crime and blame the victim for the offences, and also, no action is taken against them, which fails in providing justice to the victim. Also, many schools don't give sex education to children, which also acts as a limitation to the Criminal Law Amendment Act, 2013.

SUGGESTION

The laws that define crime and justice are the most important rules for society. They touch every life, from the victim seeking justice to the citizen interacting with the police. India's core criminal laws were relics of the colonial past and often focused more on state control than on the needs of the average person. Lawmaking is a continuous process of improvement.

Furthermore, here are certain suggestions for the improvement of the Criminal Law Amendment Act, 2013:

Gender Neutral Rape Laws: One of the most long-standing criticisms of the Criminal Law Amendment Act was that the definition of sexual offences primarily protects women. A recommendation is to establish a gender-neutral definition of sexual offences to protect all individuals, including men, women, homosexuals, and transgender with specific punishment for the crimes.

Marital Rape: Despite widespread debate, the non-criminalisation of marital rape is still a major point of criticism. An amendment is needed to change the laws regarding the penalisation of marital rape and provide safeguards to marital rape victims.

Bail Reforms: A clear and more systematic implementation of guidelines is needed for granting bail to reduce the number of undertrials languishing in jail.

Stricter Punishment for Public Servants: The provisions should be strengthened to ensure institutional accountability of commanding officers and public officials for dereliction of duty or failure to report or prevent sexual crimes by subordinates. Also, introduce harsher punishment for the police who refuse to file an FIR or fail to complete the investigation within the stipulated time.

Set up a rape crisis centre: The Justice Verma committee had already recommended the immediate setting up of the Rape Crisis Cell to provide legal, medical, and psychological assistance to the victims. There should be a mandatory establishment of fully staffed and funded crisis cells at the district level.

Trial Efficiency: The 2013 act mandates time-bound trials, that is, investigations must be within two months and the trial must be within six months, which were often not met due to judicial delay. The law should be backed by a time-bound financial plan to establish a sufficient number of dedicated fast-track courts to ensure the procedural timelines.

Preventive Measures: Incorporating comprehensive sex education in schools can help in preventing sexual violence by teaching consent, respect, and gender equality at a young age. Also, governments and civil society organisations should invest in awareness campaigns to challenge social norms that tolerate sexual violence and promote women's rights.

CONCLUSION

The current penal provisions concerning rape and sexual offences play a significant role in the legal framework that aims to combat sexual violence against women. It's clear that the laws we have on the books to fight sexual violence against women are a vital part of the puzzle, but they aren't the whole solution. We've certainly made progress, especially with the Criminal Law (Amendment) Act, 2013, which was a crucial reaction after the horrific Nirbhaya case. That act broadened the definition of rape, cracked down on new offences like stalking and acid attacks, and brought in stiffer penalties and fast-track courts, all big steps toward acknowledging the severity of these crimes.

However, simply making the punishment harsher, even introducing the death penalty for the most heinous cases, hasn't magically solved the problem. The sad reality is that low conviction rates, trials that drag on for years, and victims being afraid to even report the crimes continue to sabotage the potential of these reforms. Ultimately, a law, no matter how strong, is just one piece of paper. To truly win this fight, we need a complete shift to better training for our police, robust victim support systems, and, most importantly, a massive cultural and societal change that focuses on gender sensitisation and teaching true consent to dismantle the deeply rooted patriarchal norms that still fuel this violence. The 2013 Act is an essential foundation, but it needs to be backed up by a genuine commitment to justice and dignity for survivors to truly be effective.