



## TRACING THE EVOLUTION OF RAPE JURISPRUDENCE IN INDIA: LEGAL REFORMS AND CONTEMPORARY CONCERNS

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### ABSTRACT

*Rape jurisprudence in India has evolved from colonial-era notions of chastity to modern debates on autonomy, dignity, and equality. This paper explains how landmark cases such as Mathura, Nirbhaya, and Kathua cases, together with amendments in 1983, 2013, and 2018, have shaped the law, while courts have also played an important role in redefining consent, striking down humiliating evidentiary practices, and constitutionalising rape as a violation of fundamental rights. Yet critical gaps remain; one of the major issues is that marital rape continues as an exception. Other issues are that gender neutrality is partial, and survivors still struggle with stigma, delays, and secondary victimisation. This article raises an important question: Are stronger punishments enough, or is timely justice the real deterrent? Should India recognise marital rape to uphold women's autonomy? By situating India's framework against global practices, it argues that true reform lies not only in statutes but in transforming social attitudes, ensuring dignity. Another aspect this paper highlights is the changes related to rape introduced in the Bharatiya Nayaya Sanhitas, 2023, and the contemporary challenges. What is the status of the rape law in other countries, and what lessons can India take from them?*

**Keywords:** Rape, Marital Rape, Amendment, Sexual Autonomy, Sexual Violence.

### INTRODUCTION

Rape is one of the heinous crimes and the biggest violations of human dignity. It violates the very idea of equality, human rights, personal liberty, and the dignity of the individual. Rape is a crime against women, and it's not a new thing in India. It refers to the sexual violence against women. Rape laws have been transformed and reformed many times. There are so many laws

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to protect women from sexual violence; however, the condition of women in India has not changed. Women still face many problems, and rape is one of the gravest violations. Non-consensual sexual intercourse by a man on a woman without her consent is called rape. It is against the will of the women. The term “rape” came from the Latin word “rapio”, which means to seize. Initially, rape was not considered a crime against a woman but a crime against property; in the beginning, women had no rights, and they were treated just as property that belonged to fathers and later to husbands. According to the Hammurabi Code, if a man rapes a virgin woman, the father will get compensation, and the accused will be married to the victim. In the case of married women, it will be treated as adultery, and raped women with the rapist will be punished by death. The condition of women was at this level, but later, new laws were enacted and several amendments were made. Eventually, the gravity of this offence was understood with the help of different cases like the Kathua rape case, the Mathura rape case, the Nirbhaya rape case, and many more.

## **HISTORICAL BACKGROUND OF RAPE LAWS IN INDIA**

The roots of rape law can be traced back to the British colonial rule in 1860, when the Indian Penal Code (IPC) was drafted under lord Macaulay. Initially, rape was defined in narrow terms; later, the definition was changed by amendments, and the scope became wider. Rape was defined under Section 375 for the very first time in the Indian Penal Code 1860. The Indian Penal Code was replaced by BNS in 2023, that is, the Bharatiya Nayaya Sanhita 2023, and Section 63 of this Sanhita defines rape. Before 2013, the definition of rape included 6 essentials or circumstances. Later, the definition was changed and penetration by hand, penetration by foreign object, and oral were added by the Criminal Amendment Act of 2013. After this amendment, the minimum punishment for rape was decided to be seven years. Sections 375 to 376DB of IPC and Sections 63 to 73 of BNS deal with rape and its punishments.

According to Section 375 IPC<sup>1</sup> or Section 63 of BNS<sup>2</sup>, a man is said to commit rape if he has done sexual intercourse with a woman, under any of the seven circumstances:

1. Against her will (when she clearly does not want it).
2. Without her consent (when she does not agree freely).
3. With her consent, but obtained by fear of death or hurt.<sup>1</sup>

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<sup>1</sup> Indian Penal Code, 1860, s 375

<sup>2</sup> Bharatiya Nayaya Sanhita ,2023, s 63

<sup>3</sup> *Tukaram & Anr. v. State of Maharashtra*, (1979) AIR 185, 1979 SCR (1) 810

4. With her consent, but she believes he is her husband (when he is not)
5. With her consent, but she is of unsound mind, intoxicated, or under drugs, and cannot understand what is happening.
6. With or without her consent, if she is under 18 years of age (statutory rape).
7. When she is not able to communicate consent.

There are two exceptions given in this definition: first, is medical procedure or intervention shall not constitute rape. Secondly, Sexual intercourse or sexual acts by a man with his own wife the wife is under eighteen years of age, is not rape. This is another challenge in India that marital rape is not considered as rape, and there is no provision for the same. Marital rape is still an exception, even under the new laws. Section 376 of the IPC and 64 of the BNS talk about punishment for rape. It provides the minimum punishment of 10 years and also provides special circumstances with harsher punishment. BNS provides a minimum of 20 years to life imprisonment for gang rape and life imprisonment and the death penalty for gang rape of a minor.

One of the important sections added to BNS is Section 69, which protects women. Whoever promises to marry a woman and has sexual intercourse with that woman (not amounting to rape), but he doesn't have any intention to marry, in that case, the person can be held liable for imprisonment, which may extend to 10 years, and shall also be held liable to pay a fine.

## **EVOLUTION OF RAPE LAWS THROUGH LEGAL REFORMS**

The rape laws in India have undergone a significant transformation, and judicial interpretation also played a critical role in this. In today's time, rape laws reflect an understanding of sexual autonomy and dignity. One of the crucial changes came after the case of *Tukaram v. State of Maharashtra*<sup>3</sup> in 1972. Also known as the 'Mathura bai rape case', this case was in the context of 'custodial rape'. Mathura Bai, a tribal woman, was raped in the custody, and there were no marks on her body; that is why the Supreme Court assumed she did not resist, and it was held that it was not rape. This decision triggered a nationwide protest by women's groups.

The Criminal Law (Second Amendment) Act, 1983<sup>4</sup> (post-Mathura case). Sections 376A to 376D were added, and the act brought about significant changes. Sections 376-B, 376-C, and 376-D were inserted to deal with custodial rape. A major change was that the burden of proof of providing that the consent was present lies on the accused. Custodial rape was brought in

the preview of rape under section 376(2). Disclosing the identity of a victim is punishable with 2 years of imprisonment and shall also be liable for a fine under Section 228A of the IPC.

The second major reform was done after the *Mukesh & Anr v. State for NCT of Delhi & Ors*<sup>5</sup> in 2012, also known as the Nirbhaya rape case. This is the case of Delhi, which shook India; it was the brutal gang rape case. Nirbhaya was raped in a bus by six men. She died after some days because of her injuries. In 2015, a juvenile accused was released after 3 years, and four accused were sentenced to death.

The Criminal Law Amendment Act, 2013 (post-Nirbhaya case), also known as the Nirbhaya Act, is an anti-rape act. It was based on the recommendations of the Justice Verma Committee. Some of the important recommendations were to increase the punishment for rape (not the death penalty, though), stricter provisions for registering complaints of rape, also recommend the bills of rights for women, which give dignity and respect to women over their choices of sexual relationships and for their sexual autonomy. After the Nirbhaya rape case, some changes in juvenile justice were made, such as children between the ages of 16 to 18 would be treated as adults if accused of committing heinous crimes, have knowledge, understand, and be aware of their act.

The Next important case was the Kathua rape case 2018<sup>6</sup>. <sup>2</sup>An 8-year-old muslim girl was raped and killed by a group of men in Kathua, Jammu and Kashmir in 2018. Seven men were tried in a specially convened fast-track court on Monday, and six were found guilty.

Criminal Law Amendment Act, 2018 (post-Kathua case). The main goal was to give harsher punishment to rapist, especially for the rape of minor girls below 16 years and 12 years. After the 2018 amendment, the changes were made in IPC and CRPC, and POCSO<sup>7</sup> and the minimum punishment for rape was increased from 7 years to 10 years to life imprisonment, rape of a minor below 12 years minimum punishment 20 years, and up to the death penalty, and gangrape of a minor below 16 years imprisonment for the rest of their life. Also, no provision for anticipatory bail for a person accused of rape or a gang rape of a girl below 6

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<sup>4</sup> The Criminal Law (Second Amendment Act), 1883

<sup>5</sup> *Mukesh and Anr v State (NCT of Delhi) and Ors* (2017) 6 SCC 1 (SC).

<sup>6</sup> *Mohd Akhtar v State of Jammu & Kashmir* (2018) 5 SCC 499(1)

<sup>6</sup> BBC, '[Kathua child rape and murder: Three men given life sentences](https://www.bbc.com/news/world-asia-india-48552354)' (10 June 2019) <[www.bbc.com/news/world-asia-india-48552354](https://www.bbc.com/news/world-asia-india-48552354)>

<sup>7</sup> Protection of Children from Sexual Offences Act 2012,

years of age. If there is a different punishment in IPC and POCSO, then the punishment, whichever is higher, will be given.

Despite these reforms, certain gaps persist. The marital rape exception under Section 375 or 63 continues to shield husbands from prosecution, despite being widely criticised as discriminatory and inconsistent with the principle of bodily autonomy. Moreover, the law remains gender-specific, recognising only women as victims of rape, even though men and transgender persons can also be survivors of sexual violence.

## **JUDICIAL CONTRIBUTION TO THE DEVELOPMENT OF RAPE JURISPRUDENCE**

The Indian Supreme Court has played a crucial role in shaping the interpretation of Section 375 IPC and advancing rape jurisprudence. Through landmark judgments, it has redefined consent, reformed evidentiary standards, struck down ancient practices, and expanded the rights of survivors.

**Priyadarshini Mattoo Rape and Murder Case** Priyadarshini Mattoo, a 25-year-old law student, was raped and murdered in 1996. She was raped and murdered by Santosh Kumar Singh at her house in New Delhi. The trial court had cleared Santosh, but due to media pressure, the Delhi High Court made a landmark decision and sentenced him to death.

**State of Punjab v. Gurmit Singh (1996):** In this, the Court emphasised that a rape survivor's testimony alone is sufficient to convict the accused, and corroboration is not mandatory unless there are serious doubts. This was a turning point in shifting the burden away from questioning the survivor's credibility.

**State of Punjab v. Ramdev Singh (2004):** The Court described rape as not only a crime against the person but a violation of the victim's fundamental right to life under Article 21. This case directly linked rape jurisprudence with dignity and personal liberty.

**Lillu @ Rajesh v. State of Haryana (2013):** There were two main issues in this case: firstly, whether the two-finger test used by the doctor against the prosecutrix was violative of Article 21. And secondly, the relevance of habituation to sexual intercourse in the case of rape trials. The court held that the two-finger test and its interpretations do not determine that the

prosecutrix was habituated to sexual intercourse, and it also violates the right to privacy and dignity of a rape victim; hence, this test is unconstitutional.

**Independent Thought v. Union of India (2017):** In this case Supreme Court increased the age of consent to 18 for sexual intercourse. “It also called for legal reforms to prevent and address violations of girls' rights due to child marriage”<sup>8</sup>

All these judgments are essential when it comes to rape jurisprudence. Initially, primitive, outdated beliefs were there, and now the modern definition considers autonomy and the dignity of the woman. An important step by the court was striking down the two-finger test because that could violate the privacy and dignity of a woman. Most significantly, rape law has been constitutionalised, with sexual assault increasingly understood as a direct violation of fundamental rights under Article 14,<sup>3</sup> 15, and 21, thereby elevating it from a mere penal offence to a constitutional wrong against equality, liberty, and human dignity.

## CONTEMPORARY ISSUES AND CHALLENGES

**Unreported rape cases:** One of the major challenges in India is that so many rape cases don't get reported due to social fear and stigma. Some people blame the rape victim, which is also one of the reasons for not reporting the case.

**Misuse of rape laws:** There are so many fake rape complaints filed with the intention to defame the accused, or if the relationship is opposed by families, or under the pressure of parents. Rape laws are mainly designed to protect women, but it is equally essential to differentiate between the false and genuine cases.

**Delays in the investigation and trial process:** This is also one of the major issues in rape cases, that because of pending cases, trials. These delays make the rape victims suffer and also weaken the prosecution's case; thus, speedy investigation and trials are very important in rape cases to ensure timely and effective justice.

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<sup>8</sup> SCO, ‘[Exception to Rape within Child Marriages - Supreme Court Observer](http://www.scobserver.in/cases/independent-thought-union-of-india-exception-to-rape-within-child-marriages-case-background/)’<[www.scobserver.in/cases/independent-thought-union-of-india-exception-to-rape-within-child-marriages-case-background/](http://www.scobserver.in/cases/independent-thought-union-of-india-exception-to-rape-within-child-marriages-case-background/)>

In **Delhi Domestic Working Women's Forum v. Union of India (1995)**, the Court highlighted the need for time-bound investigation and trial in rape cases and recommended setting up specialised, fast-track courts.

## COMPARATIVE PERSPECTIVES

**United States:** In the U.S., rape laws are state-specific, but most follow the principle of *affirmative consent*. This model requires an explicit “yes” rather than assuming consent from silence or lack of resistance. The U.S. also recognises marital rape as a criminal offence across all states. Penalties are stringent and include long prison sentences, sex offender registries, and post-release monitoring. Many states also provide strong victim support services, including counselling, relocation, and anonymity protections.

**United Kingdom:** In 1991, marital rape was criminalised, and it was a landmark shift in the U.K. The *Sexual Offences Act 2003* provides a comprehensive definition of rape, centring on the absence of consent and the accused's reasonable belief in consent. The U.K. also focuses on public awareness campaigns.

What can India learn from other countries when it comes to rape laws?

Although rape laws have mainly evolved after the *Nirbhaya case (2012)* and the *Criminal Law (Amendment) Act, 2013*, the gaps and loopholes are still there in Indian rape laws. India should follow the principle of the affirmative consent model, like the USA, which will give more clarity in rape cases.

In countries like the U.S, U.K., and Canada, marital rape is a criminal offence and there is a strict punishment for that, but in India, marital rape is still an exception under IPC Section 375 or Section 63 of BNS.

There are so many countries which has established special courts to deal with rape cases. Fast-track courts are established in India, but they always remain overburdened, so India should focus on that because this can reduce the delays.

Countries like South Africa and Canada admit that not only women but also men and LGBTQ+ persons can all be victims of rape. POCSO (child protection laws) talks about gender neutral provisions, but still, only women are included under Section 375 of IPC and Section 63 of BNS, so there is a need for a broader definition.

## **WAY FORWARD**

One of the main issues in India is the gap between the implementation and the laws. India has undergone significant reform in the past decade, particularly following the enactment of the Criminal Law (Amendment) Act of 2013. Harsh punishments were introduced, but still, rape victims face many challenges; we need to focus on other areas. Most of the Rape victims face secondary victimisation and which leads them to trauma. So, a victim-centric approach or system is needed in India, like in other countries. Confidential information must be protected in rape cases. In these types of cases prosecutrix goes through a lot mentally and physically. They must be provided with emotional support and psychological counselling. Awareness campaigns are important, and education and societal changes are needed to reduce sexual violence against women.

## **CONCLUSION**

The rape laws in India have been amended, and harsh punishments were introduced, but still, rape cases are increasing day by day. That means harsh punishments are not the solution that is needed it does not create deterrence. In many judgments Supreme Court has said that sexual violence, like rape, is a violation of Article 21, which is a violation of the right to life and personal liberty. Rape is a heinous crime that is not only against a woman but also against society and humanity. Victim-centric approach is very important in these cases. So many countries have criminalised marital rape, but why does India not think about it? From 1860 to 2025, marital rape was under the exception of section 375 of IPC and section 63 of BNS, and how long will this continue? Speedy trial and investigation are essential to provide timely justice to the rape victims. More gender-neutral laws are needed, like the POCSO Act. Better implementation of laws and awareness campaigns together can reduce sexual violence and address the challenges.