

# LEGALFOXES LAW TIMES

## ARE THE PUNISHMENTS FOR RAPE IN INDIA ENOUGH?

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### Introduction

Chastity of the woman is more valued than the life of the person in Indian culture. The Chastity of the woman is most valued jewel in the Indian society. Some persons said that once the Chastity of woman is gone it will ruin the remaining life of woman. Society starts embarrassing the woman when they know about such incidents. Woman Chastity goes if someone intimates her forcefully. When the person forcefully penetrates his penis in the vagina of woman or make sexual relation with the girl without her consent then it is called rape. In indigenous society woman were used as an object by the man. We have an example of Mahabharata in Indian society when Pandavas lost Draupadi in game of gambling to Kaurvas and Kaurvas trying to disrobe Draupadi in their durbar. We can understand the mentality of people living during that time. The value of woman at that time was not more than the object. In contemporary period there are many laws to protect the woman from sexual offences and other oppressive offences like sexual harassment at work place and domestic violence and child infanticide. In this paper the main question is as per the main title of paper that Are the punishments for rape in India enough? I will also look upon why rape is happening and what kind of mentality of people who are doing such offences. In contemporary society the rape of little girls reported at many places. For example Kathua gang rape case and who were only just 8 year old girl. Here we can see the brutality of such persons who are doing rape in a vegetative manner only because of fulfilling their lust. The main example of brutality in rape cases is Nirbhaya gang rape case who was brutally gang raped in Delhi. After that the new laws were made the amendment in juvenile justice act the age of juvenile was changed from 18 years to 16 years. Girls who were not attaining the age of puberty that were raped in India which were reported many a times after that incidents the new act came. According to new law that any person who commit rape with the girl under the age of 12 that person will be punished with death punishment and this act will be

implemented and applicable to all states and union territories of India. The main thing we have to understand that instead of harsh punishment why rape happens in the society and what is the main cause of rape in Indian society.

According to my interpretation the main cause of rape is the poor mentality of people. Illiteracy is also one of the reasons. Backwardness in the mind of person also becomes the cause of rape. It is stated by some people that wearing short dresses is one of the reasons of having rape but some states that it occur due to wondering till late night. We can say that unemployment, illiteracy, lack of awareness, patriarchal ideologies and disturbance in the family are the main causes for happening rape in the Indian society. In remote areas cases of rape are not reported at all because of lack of awareness among the women so they accept the dominance of men upon them. We have many cases in which girls tolerate the brutality since long time but the case is registered only when the girl is raped in the vegetative state. Nowadays even little girls who have not attained the age of puberty were raped at many places. If person thinks that the dress of women is the reason for happening rape then why are little girls of 8 years and 6 years raped. In most of the cases the perpetrators are known person of the ladies not the strangers, stranger perpetrators are less rather than the known to women who are involving in rape cases. If we can argue about the illiteracy of persons that it is the reason of rape but rape cases are also reported in hospital and school. So we cannot solely say that only the illiterate people are doing such offences. Some people are doing rape for taking revenge from the girl, for example a boy proposed a girl and girl reject him or insult him then boy starts thinking about her and begins the plan to insult her. This is also the reason to inspire the offences of acid attack, kidnapping and rape. In such cases usually boys kidnap the girl and rape her to outrage the modesty of girl and sometimes throw acid on the face of girl to spoil the life of girl. In Indian penal code punishment for rape, acid attack and kidnapping are provided but still this kind of offences happening at large extent. Even a death penalty is available in Indian penal code for the offences like rape but day by day the offence of rape are increasing in India. In this work my first point is introduction and then punishment for rape in India which are the punishment provided in the Indian statutes for rape offences and third point is rape and murder I will focus upon the case law in which rape and murder is happened then fourth point is conclusion. The third point is mainly focused upon Nirbhaya gang rape case.

## **Punishment for rape in India**

Rape is an offence which is against the soul of the women. To understand the punishment for rape in India, we have to understand the definition of rape in Indian statutes. Offences related to human body, coin related offences and against the public and private person are defined under Indian penal code, 1860. All offences related to human body and there definitions as well as punishments are prescribed in the code. Indian penal code, 1860 is written by Lord Thomas Babington Macaulay in 1860 and it came into force in 1862. In Indian penal code the definition for rape is prescribed under section 375. Section 375 describes that any person who does, against the will of girl penetrate his penis in the vagina, anus and urethra of girl it will amounts to rape. It is also provided in the definition of rape that if any person penetrates any part of his body and any object into the vagina, urethra and anus of woman and compel girl to do so with him against the free consent of the girl and against her will that will also amount to rape. Section 376 of Indian penal code 1860 defines the punishment for rape. In this section if person in any armed forces like police and army rapes a girl in his custody and any person from hospital management and jail management rapes a girl inferior to them and their colleagues as well as normal visitors shall be punished with imprisonment which shall not be less than 10 years and extend to life imprisonment which means remaining life of the person. There are five more sections which are defining about the various kinds of punishment for different kind of offence of rape. These are section 376A to 376E. In these sections sexual intercourse by a husband with his wife during judicial separation amounts to rape and shall be punished with imprisonment for 2 years and shall be extended to 7 years and fined. If girl is raped by two or more persons then every accused is treated as different accused and given them sentence equally to all the punishment and definition are provided in section 376D of Indian penal code. There are also provisions which providing the definition and punishment in case that if the vegetative state of girl is the result of rape and if person is in authority doing rape and for repeat offenders. We have these definitions and punishment for rape in Indian penal code and we have protection of children from sexual offences. The capital punishment for rape is available only in few cases. In many states the punishment for rape is death penalty.<sup>1</sup>

## **Rape and Murder**

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<sup>1</sup>S.N. Misra, Indian Penal Code (20<sup>th</sup> ed. 2016)

In this point we will discuss about the case law which are related to rape and murder. Delhi gang rape case is one of those cases and it is very important case because it shook the nation and crossed all the brutality level. There is brief Facts of the case; a 23 year old girl on 16<sup>th</sup> December, 2012 was returning to home after watching movie in cinema with her friend. Firstly they took an auto and asked the driver of auto-rickshaw to drop them at their home but he refused because of late night and then he Drop them at bus station. The tinted window bus was standing at that place and culprits pretended that many passengers were coming to sit in the bus. There were six accused one was minor named Mohammed Afroz and one was driver of the bus named Ram Singh and other four named; Mukesh Singh, Vinay Sharma, Pawan Gupta and Akshay Thakur. The minor one requested the victim by calling "come sister come" and they sat on the bus. They locked the window and started beating the male friend of victim, he resisted but he was hit by the iron rod and became unconscious then they thrashed the girl to the rear side of bus and did rape with her and penetrate iron rod into her genitals. She was resisted by biting them but they did rape with her in very cruel manner. After doing rape with her, accused thrashed them out of the bus and left them for dying. Then one policeman came on bike and rescued them. As per the doctors report victim was brutally raped and her genitals and urethra were badly affected and had internal bleeding, because of brutality was done to victim and she died on 29<sup>th</sup> December, 2012. Police arrested the culprits from different locations. After the death of victim, people united at India gate for protest and demand the death sentence for the culprit. Delhi government promised for life imprisonment of accused. After this case fast track court was established on order of Delhi High Court for dealing with rape and sexual offences. The first fast track court was inaugurated on 2 January 2013 by chief justice of India, at Saket court complex in South Delhi. The minor accused was faced a trial in juvenile court and given maximum punishment of three years in juvenile protection home. On 10 September 2013 accused were convicted under the offence of rape, murder, kidnapping, unnatural offence, destruction of evidence and attempt to murder of victim's male friend. They were sentenced for death punishment by the fast track court. They appealed to the Delhi high court but Delhi high court upheld the death punishment given by the fast track court. Then they appealed to the Supreme Court by special leave petition, but Supreme Court also upheld the punishment of death sentence order. Accused person appealed for review petition and them mercy petition to the president but they were not given any sympathy because their act was very brutal, in any case there should be

no sympathy for them. On 20<sup>th</sup> March 2020, at 5:30 a.m. the four adult convicts were executed by hanging at Tihar Jail.<sup>2</sup>

### Changes after this incident

After the incident there was protest in Delhi near India gate, in view of widespread of protest government took some steps to curb the sexual offences against the woman. Government of Karnataka announced the launch of 24/7 dedicated helpline (1091) to be operated by the state police to register sexual abuse complaints from women.<sup>3</sup>The government of Tamil Nadu also announced 13-point action plan to ensure safety of women in Tamil Nadu and said that incidents of sexual assault would be treated as a grave crime, and probes would be entrusted to top police officials. The chief minister also said that daily hearings would be conducted in all sexual abuse cases in the state for speedy trials at special constituted fast-track courts, and women prosecutors would be appointed as government counsels.<sup>4</sup> We can see that the idea of fast-track courts for speedy trials of rape and sexual offences against women were firstly taken up after the Delhi gang rape case. Jammu and Kashmir government also announced plans to change the state's laws against sexual offences and gender crimes. The government of Himachal Pradesh decided to set up state and district level committees to review progress of all cases of crimes against women. Justice Verma committee was appointed by the central government to submit the report within 30 days to suggest amendments to criminal law to sternly deal with sexual assault cases. This committee received 80,000 Suggestion and submitted its report after 29 days. With the recommendation of the committee the large punishment for rape is death sentence instead of life imprisonment. On 3<sup>rd</sup> February 2013, the criminal law (Amendment), ordinance 2013 was promulgated by President Pranab Mukherjee. It provides for amendment of the Indian penal code, Indian Evidence Act, and the Code of Criminal Procedure.1973 on laws related to sexual offences. After the amendment; In case of gang rape there is minimum punishment of 20 years earlier it was 10 years. On 22 December 2015, RajyaSabha passed the juvenile justice bill, which proposed that the accused who are above 16 years of age will be treated as an adult in the court of law. These are the major changes which is result of Delhi gang rape case. Centre government and state governments took many steps to curb the sexual crime against women.

<sup>2</sup>Mukesh and anr.vs state for NCT of Delhi and ors (2017) 6 SCC 1 : (2017) 2 SCC (Cri) 673

<sup>3</sup> Helpline launched for women to report sexual assault cases". *The Hindu*. Chennai, India. 4 January 2013.

<sup>4</sup> Delhi gang-rape case: Jayalalithaa for harsher punishment for rape". *The Economic Times*. 2 January 2013

## Conclusion

The rape law was amended and harsh punishment for rape was set by the amendment of Indian penal code in 2013. Amendment of 2013 of Indian penal code was the result of Delhi gang rape case. Fast-track courts were established for speedy trials of rape and sexual offences. Many steps have been taken by central government and state governments to curb the sexual offences against the women, but after the Nirbhaya case there were many cases which was only reported in Delhi. We have recent examples of two cases which shook the nation was Kathua gang rape, rape and murder of 8 year old girl and Priyankareddy case victim was veterinary doctor in Hyderabad who was brutally raped and killed by the culprits later they were encountered by the police. After analyzing the facts of many cases, we can conclude that the foremost reason for rape is failure of administration. We can see that in Kathua gang rape case two police men were also involved. There were changes in the laws but not any change in the conditions. So far the major question of the paper is concerned that Are the punishment for rape is enough in India? Yes, the punishment for rape is enough in India but as per the indication of report of JS Verma committee that the failure of government and police is the root cause of crime against women. In many cases convictions of criminal were not done because the Charge sheet made by the police official are prepared in such a manner that conviction cannot be possible. It was happened only because of corrupt police officials. At lower level sub inspector is the higher authority to file a charge sheet. Higher officials should be appointed to deal with sexual offences against the women. Sex education should be given to the children in school because of prevention of child rape or sexual offences against the child. Death punishment should be given to those who raped the girls of below 12 years, lower house passed the bill of 2018 called criminal law amendment bill in which culprits who rape girls below 12 years that will be punished with death and that bill also passed in upper house by Voice Vote. Four states also passed this law in their assembly. These states are Madhya Pradesh, Rajasthan, Haryana and Arunachal Pradesh. Sex education should be given and administration has to work properly and there should be increase in the accountability only then the crimes against the women can be curbed.