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“RAPE LAWS IN INDIA: LOOPHOLES STILL TO BE FILLED”

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ABSTRACT

“Rape is malum in se.”
“OUR MISSION YOUR SUCCESS”

In current India, the foundation of rape has prospered gigantically as of late, and directly it has become a national issue, it is a test to contemporary reasoning. This paper tends to the elements of rape, with specific reference to India. After the Delhi assault case, quantities of fights occurred and new laws were passed yet at the same time, the circumstance continues as before. In 2013 the meaning of rape was modified both in India and the United States of America. The paper analyzes as of late acquainted Indian law with lessen rape occurrences. This incorporates understanding the impact of socio-conduct factors that influence the commission of these episodes. The test of «Rape» ought to be tended to with a new look from multidisciplinary points of view adjacent to law and requirement. The combination of information investigations

and thoughts including sociological, social, mental, and strict viewpoints and empowering converging of devices from disciplines.

KEYWORDS: *rape, gang rape, marital rape, sexual offences.*

INTRODUCTION

*“On some positions, cowardice asks the question, “Is it safe?”
Expediency asks the question “Is it polite?”
And vanity comes along and asks the question “Is it popular?”
But conscience asks the question “Is it right?”
And there comes a time when one must take a position
That is neither safe, nor politic, nor popular,
But he must do it because conscience tells him it is right.”*

The above quote of Dr Martin Luther King Jr¹. urges one to ponder what is most important to us, independently just as all things considered. Rape, rape and boisterous attack of females all things considered, and financial layers have become basic episodes in India. Generally, these casualties remain mum because of all the disgrace present in our general public however when they do assemble the guts to move toward the legal framework it takes a lifetime for them to get the equity they merit. It has been over a long time since our freedom and we , despite everything, can't build up an appropriate and just equity framework for these blameless casualties.

Specifically, the paper breaks down the change of rape laws and the escape clauses that are a danger to our equity framework. The paper examines the social marks of disgrace and the conduct states of the general public and the people in question, it likewise shows the similar factual information that clarifies the conditions, or the viability of the laws identified with rape in India.

Evolution of Rape Laws in India

¹ Marry T and Frank L, *Quotations Martin Luther King junior*, (Feb 3, 2019, 10:00 am) <https://www.all-creatures.org/aro/q-king-martinluther.html>

The word 'rape' was first mentioned in the Indian Penal Code, the way our legal system deals with the crime of rape has changed repeatedly.

We would have to take a look at the Indian Penal Code to see how our 'anti-rape' laws have changed over time

1860: Indian Penal Code

The first time the term 'rape' was mentioned in our legal structure in 1860 when our Indian Penal Code was written. It made no mention of rape as a crime against a male since Section 377 covers that already.² The first change to this very 'general' outline of rape comes after the Mathura Rape Case in 1972.³

1983: The Criminal Law (Second Amendment)

On March 26, 1972, a young Adivasi girl, Mathura was raped by two policemen while in custody. But with this case, a new category of rape called 'Custodial Rape' was introduced to include rapes of women while in the custody of public servants.

2002: Amendment to Indian Evidence Act

Even though the 1983 Amendment prohibited 'character assassination', it didn't stop the cross-examination of rape victims. It was pointed out that women didn't feel comfortable about reporting rape because «the intention of the defence in rape trials had become to humiliate and degrade the sexual integrity and personal space of the victim» rather than to treat them as someone who had undergone mental and physical trauma and someone who had to be protected. Taking note of this, the Supreme Court asked the Law Commission to review our rape laws and recommend some changes.

² Indian Penal Code, 1860, No. 45, Act of Parliament, 1860

³ Tuka Ram and Anr vs the State of Maharashtra, 1979 S.C.R. 810 (India)

2012: Protection of Children From Sexual Offences (POSCO) Act

Statistics indicated that India saw a 336% increase in child rape cases from 2001 to 2011⁴. The National Crime Record Bureau statistics state that 48,338 child rape cases were recorded during this period. The brutality and violence of the case led to widespread protests around the country. The public wasn't only demanding a change in the law, but also a change in how the crime of rape was looked at. This forced the legal system of India to reconsider the existing laws and led to the realization that many other crimes that were specifically against women like stalking, acid attacks, and voyeurism were missing from our legal framework. To make sure something like the **Nirbhaya case**⁵ never happened again, the government wanted to amend the existing laws to cover all crimes against women and make punishments as harsh as possible.

2018: Criminal Law Ordinance

In January 2018, an 8-year-old girl, Asifa Bano was raped and murdered in the district of Kathua in Jammu and Kashmir. It made the rape of a child below age 16 punishable by a minimum of 20 years imprisonment but provided for the death penalty for the rape of anyone below age 12.

Causes of Increased Rape Cases in India

Rape, molestation and abductions, the crimes are numerous but have low conviction rates, this is one of the major reasons for the growing number of offences against women.

Brinda Karat, All India Democratic Women's Association, a member says,

“I have raised the issue in the Parliament several times that there is a need to step up the conviction rate in rape cases drastically. The poor legal system, a wrong understanding of policemen in these cases and lengthy procedures especially in child rape where after

⁴ Asian Centre of Human Rights, *India's Hell Holes: Child Sexual Assault in Juvenile Justice Homes* Times of India, April,22,2013

⁵ State through Reference vs Ram Singh & others 2014 D.H.C.C

horrifying rounds of investigation the victim starts feeling that she is an accused and should not have registered the case, are few reasons for low conviction rate”.

She further added in her judgement.

The mindset of the person in question

Rape is a domineering occasion in the casualty's way of life. It is such a demonstration of savagery, that is against the casualty's will. Until now, there has been minimal all around controlled research about the mental change of the person in question. Regardless of numerous progressions that have happened in the treatment of rape casualties, there still exists in our general public numbness about, and inner conflict towards the rape casualty, causing for much extra pressure.

Ann Burgess and Lynda Holmstrom characterized Rape Trauma Syndrome as a gathering of responses enthusiastic, physical, and conduct which is a progression of side effects experienced and announced by casualties of rape or endeavoured rape. It incorporates two phases: an intense, quick period of disturbance and complication; and a drawn-out procedure of rearrangement. The length of each stage can differ, and individuals may move to and fro between stages.

The attitude of society

We are glad for the way that India advances in the magnificence of its different culture. The nation loves Goddess. In any case, would we say we are pleased with the way that India has been named as the riskiest nation on the planet for ladies in the Thomson Reuters Foundation overview?

India is trying to claim ignorance of the way that a dominant part of its ladies don't have a sense of security alone in the city, at work, in business sectors, or at home, even though they have figured out how to adapt to this existential nervousness.

The mindset of the denounced:

Antonia Abbey, a social clinician at Wayne State University, has discovered that youngsters who communicated regret were less inclined to annoy the next year, while the individuals who accused their casualty were bound to do it once more. Heavy drinking, perceived pressure to have sex, a belief in “rape myths” — such as the idea that no means yes — are all risk factors among men who have committed sexual assault. A peer group that uses hostile language to describe women is another one.

In the interview with the Delhi gang-rape accused of 2012 as claimed to be one of the most brutal rapes in the history of the country, they glorified what they did.⁶

WHY MARITAL RAPE IS NOT A CRIME?

Marital Rape refers to unwanted intercourse by a man with his wife obtained by force, threat of force, or physical violence, or when she is unable to give consent. It is a non-consensual act of violent perversion by a husband against the wife where she is physically and sexually abused.

The marital rape exemption can be traced to statements by Sir Mathew Hale, Chief Justice in England, during the 1600s. He wrote

“The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife hath given herself in kind unto the husband, whom she cannot retract.”

In the present day, studies indicate that between 10 and 14% of married women are raped by their husbands: the incidents of marital rape soars to 1/3rd to ½ among clinical samples of battered women. Sexual assault by one’s spouse accounts for approximately 25% of rapes committed. It is a conscious process of intimidation and assertion of the superiority of men over women.

⁶ New York Times Sexual offence of rape date: 30/10/2017 <https://www.nytimes.com/2017/10/30/health/men-rape-sexual-assault.html>

Advancing well into the timeline, marital rape is not an offence in India. Despite amendments, law commissions and new legislation, one of the most humiliating and debilitating acts is not an offence in India.

Section 375, the provision of rape in the Indian Penal Code, has to echo very archaic sentiments, mentioned as its exception clause- “Sexual intercourse by a man with his wife, the wife not being under 15 years of age, is not rape.” Section 376 of IPC provides punishment for rape.⁷

CONCLUSION

This paper attempted a broad review of laws related to rape in India in the context of some recent enactments. While the enactments convey a positive picture of achievement, statistics show that there has been no actual reform in the area of protection of women’s rights. Laws appear to have been carelessly framed more as a gesture to pacify the women’s rights activists who were campaigning for reform than to bring about any positive change in the status and position of women. It had no real impact as it did not question the critical issues of the power balance between men and women, women’s economic rights, conservation notions regarding chastity and morality as well as their status within society.

The laws passed were fragmented and did not adequately define the problem and thus failed to meet the objective behind its formulation. There was an inadequate allocation of budget and personnel by the executive for effective implementation and monitoring of the laws passed. Sadly, in India, gender bias against women is prevalent to a great extent among the police force. First, it does not compare Indian anti-rape laws with the legal systems of other countries. Second, issues related to the incorporation of rape laws in the design of international law have been neglected.

⁷ By Priyanka India Law Journal

http://www.indialawjournal.org/archives/volume2/issue_2/article_by_priyanka.html