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LAW RELATING TO RAPE IN INDIAN PENAL CODE

“Rape is one of the most terrible crimes on earth and it happens every few minutes. The problem with groups who deal with rape is that they try to educate women how to defend themselves. What really needs to be how to defend them? What really needs to be done is teaching men not to rape go to the source and start there.”

- Kurt Cobain

Abstract

Even in the 21st century, the world has failed to provide a safe environment for women and children to live. As an Anti-Rape slogan goes “A safe society is when its rape free”. Rape is the most prevalent act of cruelty in the world. Rape means sexual intercourse with another person without their consent. It is almost impossible to provide correct statistics as this crime is most under-reported as well. 90% of the cases go unreported. Some of the forms are not even acknowledged, let alone reported, like marital rape. To fight this crime, which has become a pandemic of monstrosity, movements, marches, and protests are held. From these movements, Anti Rape slogans emerged. The Anti Rape slogans spread awareness against sexual assaults and highlight problems faced. The Anti Rape slogans become voices of people who are suppressed and cannot rise voices for their rights otherwise.

INTRODUCTION

“RAPE” is not just a word but a crime that involves life and death physically and mentally not only in India also to the other nook and corner of this world irrespective of the gender it is an endless tunnel of darkness that needs to be flashed of.

DEFINITION OF RAPE

"Sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation or fraud or at a time when she has been intoxicated or duped, or is of unsound mental health and in any case if she is under 18 years of age."¹

HISTORY OF INDIAN RAPE CASE

The Mathura rape case was a 1st incident of custodial rape on 26th march 1972.



RAPE CASES WITH FEMALE VICTIMS

Out of 32,000 reported victims in 2019 about

15% victims are children and 75% belongs to adults and middle age group of women.

IMPACT OF SECTION 375 IN IPC

“Section 375” constitutes of:

¹ Section 375 of the Indian Penal Code

The case is considered to be rape case when a Man has sexual intercourse with a women where the following any of the six conditions will be considered before taking actions

1. against her will
2. without her consent
3. With her consent, while placing her under fear of death or of hurt situation
4. With her consent, who is not her husband but believes herself to be lawfully married to him
5. With her consent, by intoxication or unwholesome substance she gives consent
6. with or without her consent, when she is under sixteen years of age.

According to section 375 rape the section consists of

- Sexual intercourse by a man with a woman
- The sexual intercourse must be under circumstances falling under any six clauses of section 375.

Sexual intercourse –to constitute this offence sexual intercourse by a man with a woman is necessary. A 'man' is defined by section 10 male human being of any age. Thus, a boy 12 years of age is capable of committing rape under this section, whereas a boy below the 12 but above 7 years of age enjoyed qualified immunity

CRIME UNDER RAPE AND MURDER

If a women had injuries in which she goes into vegetative state or if a women dies during a rape the man will be given with the death sentence or at the least rigorous imprisonment for 20 years thus the crime under rape and murder will be punished accordingly.

PROOFS WITH FORENSIC INVESTIGATIONS

Proofs to be claimed is the procedure to gather the information about the suspected rape with the forensic investigations, Biological evidences are taken into consideration

- ❖ Semen
- ❖ Blood
- ❖ Saliva

- ❖ Vaginal secretion
- ❖ Vaginal epithelial cells
- ❖ Bite mark of the victims on the rapist
- ❖ Nail scratch marks on the victim as well as rapist body
- ❖ Hair follicles

These evidences are recorded to provide proof that the rape took place without her consent.

GANG RAPE

The rape is said to be a gang rape when a group of people committing the crime under the section 376D ICP

The Supreme Court held that a woman cannot prosecute for gang Rape. The court held that the section 376(2) (g) provide that whoever commits gang Rape shall be punished. The explanation is only important that she was raped by one or more than one shall be deemed to have committed gang Rape with in sub section (2) of section 376

Punishment – Rigorous imprisonment of b/w 20years or may be death penalty depending upon the severity of the case involved

NIRBHAYA CASE

The Supreme Court rejected the convicts appeal and declared as “a barbaric crime” that had “shaken society’s conscience”; the court upheld the death sentence of the four rapists who indulged themselves in this incident. “Nirbhaya” meaning “FEAR LESS” that her struggle and death become a symbol of women’s resistance to around all around the globe.

“We lived in a society that teaches woman to be careful not to get raped instead of teaching men not to rape “

EXCEPTION – MARITAL RAPE IS NOT A CRIME

When the wife is above 15 years of age when the husband engages in sexual activities with or without the permission of wife it is not considered to be a rape. But when it comes to torturing activity for the wife that she could not tolerate anymore there is a punishment for the husband in jail terms for about two to seven years in addition to the fine amount.

Aggravated rape- The rape happening in special conditions like men having authorities and control over the victim due to any legal affairs

Conditions like rape due to mischievous activities of police officers, public servants, jail staffs.

IMPORTANT LANDMARK CASES

I. VISHAKA vs STATE OF RAJASTHAN AND ORS ²

It is a landmark case in which the sexual harassment happened in the work place. It took place in the year 1992. Bhanwari Devi was brutally gang raped by an upper cast man in Rajasthan. There was an underlying cause behind this case that is since the victim stopped the child marriage in her place with the help of the police officers. According to the article 14,15,19,21 of the Indian constitution right to work with human dignity, right to life and right to gender equality, the court declared such act should be considered as a violation of women's human rights.

STATISTICAL REPORTS

Seventy-seven rape cases were reported across India on an average day in 2020. Totally 28,046 increments happened on the year. Overall crimes against 3, 71,503 in the country last year 4,05,326 cases were requested in 2019 according to NCRB.

Total rape cases (2019) – 32033

Adult (18years above) – 27093

Minor (minor below 18) – 4940

² VISHAKA vs. STATE OF RAJASTHAN AND ORS (1997)6SCC241

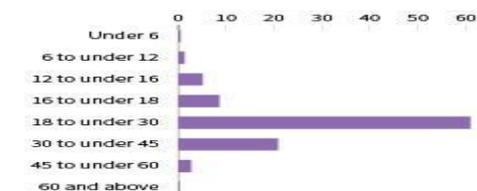
2019 rape rate (%) – 4.9 according to statics Rajasthan reported highest number of rape³

Rape cases in India

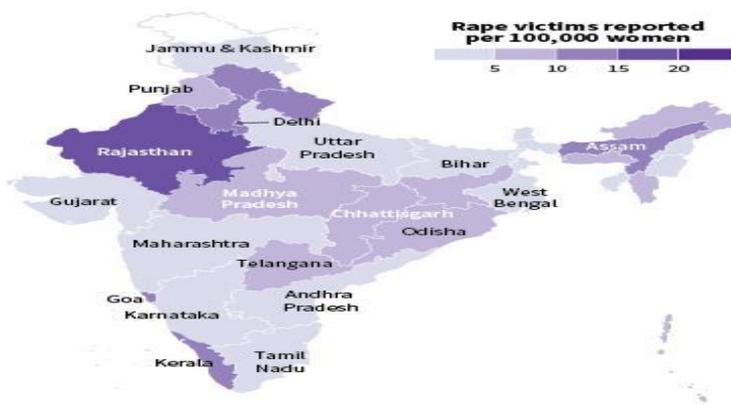
More than 145,000 rape cases were pending trial in Indian courts by end-2019, the latest year for which data is available.

Rape cases with female victims by age group

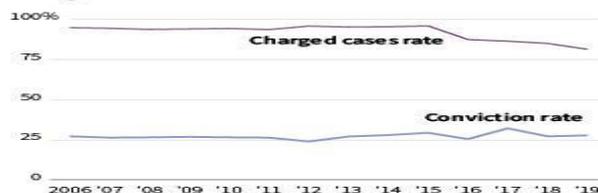
Out of the over 32,000 reported victims in 2019, about 15 percent of the victims are children.



Total rape cases reported by year



Charged cases and conviction rate



Mukesh & Anr. V State for NCT of Delhi & Ors.⁴

Facts

The case is famously known as the Nirbhaya case. In this case, a 23-year-old medical student was returning after a movie with her friend and took a bus. In the bus, she was gang-raped by six people and was brutally assaulted. After the rape, she along with her friend was thrown out of the bus naked. The girl died while she was being treated in a hospital in Singapore.

Judgment

In this case, the Supreme Court awarded death penalty to four of the accused among six. One of them being a juvenile was convicted by the Juvenile Justice Board and sent to the correctional home. The other one committed suicide before the judgment was delivered.

After this case, the need to amend certain provisions of Section 375 was felt so the Criminal Law (Amendment) Act, 2013 was brought into effect. Under the newly amended section, the

³ <https://www.reuters.com/>

⁴ Mukesh & Anr. v State for NCT of Delhi & Ors. (2017 6SS1) Cri L.J (S.C)

punishment of rape is at the least seven years which may extend to life imprisonment. Any man who is a police officer, medical officer, public officer or public servant may be imprisoned for at least 10 years if commits rape. Where rape leads to the death of the victim or entered into a vegetative state the punishment of life imprisonment extending to death has been prescribed. The punishment for gang rape is at least 10 years.

Harpal Singh & others v. State of Himachal Pradesh

Facts

In this case, the prosecutrix who was a girl under 16 years was sent by her mother to visit her ailing aunt in the village. While she was going the accused came to her and told her that her brother was lying sick in the dispensary. She rushed with him; there he along with two others locked her in a room. After that, they committed sexual intercourse with her against her will. She was later rescued by her family who decided to keep quiet. The matter was later on published in a newspaper and the police started the enquiry. The accused held that the girl was used to sexual intercourse and gave consent for the same.

Judgment

The Supreme Court found enough evidence which proved that she was less than 15 years old during the sexual intercourse and as such her consent was no consent at all. The accused were held liable for rape under Section 376 of the Indian Penal Code.

Tulsidas Kanolkar v. The State of Goa⁵

Facts

In this case, the victim was mentally impaired. The accused took advantage of her mental situation and had sexual intercourse with her. No one was aware of it until the family of the victim found out that she was pregnant. When asked who took advantage of her she pointed fingers towards the accused. The case was filed against him where he took the plea of consent in the form of submission to the act.

Judgment

⁵ AIR 1981 SC 361 Appeal (Cri) 298 of 2003

It was held that the accused took advantage of the mental retardation and helplessness of the patient. In such a scenario no question of consent arises because a mentally challenged girl cannot give consent. And submission does not imply consent which can also be due to fear or vitiated by duress or impaired due to mental retardation. The accused was asked to pay a fine of Rs. 10000 and punishment with 10 years of imprisonment.

PUNISHMENT OF RAPE

Whoever commits the rape shall be punished with imprisonment of either description for a term which shall not to less than seven years of imprisonment but which it may increase still life time and also liable for fine amount

2(a) a police officer who commits the rape

- Within the limit of police station which he was located
- Woman in custody
- In the premises of some other station

2(b) being a public servant and taking advantage of his position committing rape

2(c) being in management or in staff of jail and taking advantage of legal position and committing rape

2(d) being a management and staff of the hospital committing rape of patients or working staff

2(e) committing a woman knowing she was pregnant

2(f) committing rape on girl when she is below age of twelve

2(g) gang Rape shall be punished with imprisonment of seven years and also extend in to life time imprisonment of life

CONCLUSION

“RAISE THE VOICE FOR RAPE VICTIMS”

Average rape case per day is 87 rape cases in 2019 is the best example that proves the lack of humanity and state of mind. “As human being especially as a MAN it’s the complete responsibility of him to protect the women of the nation” is the mind set that has to be planted in each and every male in our nation not during their adulthood but right from their kinder garden it has to planted with the help of our law

“RAPE IS A TOOL OF WAR WHEN LEADERS BURY HEADS IN THE SAND”

-Judith Nyamani

Every nook and corner of this world speaks about rape crimes and harassment knowing the problem but only few knows the solution for it, the moto behind this article is to show to our own people that the solutions actually exist. “What the brain doesn’t know the eyes can’t see” is a quote that explains our lack of awareness regarding rape cases, thus through this article our awareness about rape cases will be enhanced.

“ACKNOWLEDGING OUR MOST IMPORTANT PROBLEM WITH THE SOLUTION IS LIKE PASSING A BEAM OF LIGHT IN THE DARK TUNNEL”