

# Comparison of Rape Laws before and after Criminal law Amendment Act 2013

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**Abstract:** - Offence of Rape is a disgrace that exists from time immemorial. According to UNICEF, one in ten girls around the world experience rape or sexual assault. And according to WHO estimates, 7% of the women have been assaulted, not including intimate partners, but laws and justice systems still continue to fail them across the world. Day by day rape rate in India is increasing much higher than other Crimes. Sexual intercourse of a man with women without her consent amounts to rape. Causes for increase in rape cases are due to low conviction rate for the same. The law of rape is not just a few sentences but it is a whole book, wherein we can't just go to the last part to understand (as observation made by Retd. Joint Commissioner Kiran Bedi). The paper is a comparison and a critical analysis of the rape laws in India before and after the Criminal Law Amendment Act of 2013 which not only introduced many new sexual offences but also made punishments and penalties more stringent in an effort to curb the increasing instances of sexual offences against women in the cities of India. And also give brief description of punishment of rape in other countries.

**Key Words:** -Assaulted, Sexual Intercourse, Conviction.

**Introduction:** -

As Per National Crime Record Bureau, South Africa has the highest rape rate. Laws related to rape are of many in nature. It has been enacted whenever it is necessary for preventing the modesty of women and Children. Out of these Laws, Indian Penal Code, 1860 consist of penal provisions for offence of Rape committed by an individual, Code of criminal Procedure, 1973 and Indian Evidence Act, 1872 identifies the convicts by proving their guilt of committing such offence to punish under punitive Acts. Amendments of these Laws are framed from time to time in-order to make strict provisions, so that it demolishes the intention of criminal in committing such crimes. . Now a day, the reported number of Rape cases on higher officials and celebrities are growing and it is clearly identified and punished with the help of both technologies and Medias.

Law relating to Rape has undergone several changes through The Criminal Law Amendment Act, 1983 and Criminal Law (Amendment) Act 2013.

The Criminal Law (Amendment) Act, 2013 was passed by the Lok Sabha on 19th March, 2013 and by the Rajya Sabha on 21st March, 2013. It received the assent of the President on 2nd April, 2013 and was deemed to have come into force on the 3rd of February, 2013.<sup>2</sup> The Act coming into force has dashed the hopes of

millions of Indians of who had fervently desired truly progressive and comprehensive laws on sexual offences. Though the Act has implemented several much-needed measures, it has ignored several more.

### **Rape: Meaning**

The word rape is derived from the Latin term *rapio*, which mean 'to seize'. Thus rape literally means a forcible seizure. It signifies in common terminology, "as the ravishment of a woman without her consent, by force, fear, or fraud" or "the carnal knowledge of a woman by force against her will." In other words, rape is violation with violence of the private person of a woman.

In the Indian Penal Code, Section 375 defines rape.

Taking note of the inadequacy of law of rape and its failure to safeguard the rights of the innocent victims against the heinous crime, the Parliament in 1983 and 2013 extensively amended the law of rape so as to make the law more realistic.

### **Amendment of the Provisions of the Indian Penal Code, 1860**

The Criminal Law (Amendment) Act, 2013 that came into force on the 3<sup>rd</sup> of February, 2013 amended as well as inserted new sections in the IPC with regard to various sexual offences. The new Act has expressly recognized certain acts as offences which were dealt under related laws. New offences like, acid attack, sexual harassment, voyeurism, stalking have been incorporated into the Indian Penal Code.

### **Sexual Offences**

#### **Sexual Harassment – Section 354A**

Sexual harassment is bullying or coercion of a sexual nature, or the unwelcome or inappropriate promise of rewards in exchange for sexual favors. The critical factor is the unwelcomeness of the behaviour, thereby making the impact of such actions on the recipient more relevant rather than intent of the perpetrator.

The essentials of the offence of sexual harassment as defined in the case of *Vishaka v. State of Rajasthan* AIR 1997 SC3011 are –

1. physical contact and advances involving unwelcome and explicit sexual overtures; or
2. a demand or request for sexual favours; or
3. making sexually coloured remarks; or
4. forcibly showing pornography; or
5. any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

According to the Indian Constitution, sexual harassment infringes the fundamental right of a woman to gender equality under Article 14 and her right to life and live with dignity under Article 21.

### **Existing Provisions**

Before the passing of the Act, the provisions in the IPC that dealt with sexual harassment existed but there was no such provision that clearly laid down the punishment for sexually harassing a person. The provisions were–

**Section 209:** Obscene acts and songs, to the annoyance of others like:

- a) does any obscene act in any public place or
- b) sings, recites or utters any obscene song, ballad or words in or near any public place.

Punishment: Imprisonment for a term up to 3 months or fine, or both.

**Section 354:** Assault or use of criminal force on a woman with intent to outrage her modesty.

Punishment: 2 years imprisonment or fine, or both.

**Section 376:** Rape

Punishment: Imprisonment for life or 10 years and fine

**Section 509:** Uttering any word or making any gesture intended to insult the modesty of a woman.

Punishment: Imprisonment for 1 year, or fine, or both. (Cognizable and bailable offense)

### **Provisions after Amendment**

Section 354A – Sexual harassment has been made a gender neutral offence whereas earlier, a man who makes unwelcome sexual advances, forcefully shows pornography or demands/requests sexual favours from a woman commits the offence of sexual harassment simpliciter under section 354A; this is punishable by imprisonment of up to three years. Making sexually coloured remarks also amounts to sexual harassment, which is punishable by imprisonment for up to one year.

### **Assault or Use of Criminal Force to woman with intent to disrobe – Section 354B**

#### **Existing Provisions**

There was no specific provision regarding this offence. The act was dealt under Section 354. Outraging a woman's modesty was punishable with imprisonment for maximum 2 years and fine under IPC.

## **Provisions after Amendment**

Section 354B – If a man assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked in any public place, he commits an offence under section 354B, which is punishable with imprisonment between three and seven years.

This section deals with a very specific offence and adds to and supplements the provision dealing with the offence of outraging the modesty of a woman. This is a welcome provision in view of the fact that many cases have been reported in the news of women being stripped in public as an instrument of punishment mostly in backward areas.

## **Voyeurism – Section 354C**

Voyeurism is the act of watching a person engaged in private activities. If a man watches a woman engaged in private activities, when the woman does not expect anyone to be watching, he has committed the offence of voyeurism.

## **Existing Provisions**

There was no specific offence under IPC. However, under Information Technology Act, 2000 both men and women were protected and punishment for the act was up to 3 years and/or fine up to Rs. 2 lakh.

## **Provisions after Amendment**

Section 354C – Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished. Under Section 354C, such a person is liable.

In case of first conviction, imprisonment is not to be less than one year, but may extend to three years, and shall also be liable to fine, and on a second or subsequent conviction, punishment with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

## **Stalking – Section 354D**

It means following a person and making or attempting to make contact for personal interaction, despite a clear disinterest being displayed by the other person. Stalking may be committed both physically and through electronic media.

## Existing Provisions

No specific offence under IPC.

## Provisions after Amendment

Section 354D – Stalking has been made a specific offence under this new section. If a man stalks a woman, he may be punished with imprisonment of up to three years for the first time, and five years for the subsequent convictions. However, the offence is subject to certain exceptions like where a person can show that the acts done were in pursuance of some law, amounted to reasonable conduct or in order to prevention of some crime.

As per the definition in Section 354D the offence was gender-neutral offence, making the crime of stalking punishable for both the gender whether male or female. However, the Amendment Act of 2013 changed “Whosoever” to “Any Man” making the offence of Stalking a gender-specific offence. Section 354D of the Ordinance of 2013, was highly inspired from the definition of ‘Stalking’ in Section 2A of the Protection from Harassment Act, 1997 passed by British Parliament on 25<sup>th</sup> November 2012.

Under the Act, the offence is limited to the physical act of following or contacting a person, provided that there has been a clear sign of disinterest, or to monitoring the use by a woman of the internet, email or any other forms of electronic communication.

## Rape: - Section 375

### Old Provision

According to Article 375 : - A man is said to commit” rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following 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 sixteen years of age.

Explanation - Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception- Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.”

### **After Amendment**

A man is said to commit “rape” if he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or 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 to do so with him or any other person; or manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any of body of such woman or makes her to do so with him or any other person; or applies his mouth to the vagina, anus, urethra of a woman or makes her to 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.

Explanation I - For the purposes of this section, “vagina” shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception I.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.’

### **Punishments across the Globe: -**

Let us look at the punishments for rape convicts in different countries:

**Saudi Arabia:** Being an Islamic country, the legal system of Saudi Arabia is based on Sharia – Islamic law. The punishment for rape, or for that matter any other crime like murder, drug trafficking, sodomy, robbery, and apostasy are public beheading. It is said that while beheading, the victim is given a sedative. This is done in a public place where the victim is made to kneel down facing Mecca and his head is beheaded with a single stroke by the police.

**China:** In China too, strict punishment is given to rapists. Rape is a brutal crime and a death penalty is declared once the rapist is convicted. This is done by firing a single bullet at the spinal cord joining the neck. Another punishment given to the rapists in China is castration. The same punishment is given for other heinous crimes too. It is worth noting that the court proceedings are very quick.

**North Korea:** In North Korea too, there is no leniency when it comes to punishing a rapist. The offender is either shot in his head or vital organs by a firing squad. This kills the convict relatively quickly and provides instant justice to the victim.

**Afghanistan:** Even in Afghanistan, the Islamic law is followed for punishing the rape accused. The rapist is either hanged to death or shot dead by a bullet in the head. The punishment is given within four days of the crime.

**Iran:** According to Islamic law, death penalty is essential for rapists. In Iran too, a rapist is given a death sentence. Even for other crimes, death is the penalty. Sometimes, the rape victim settles the case by taking compensation. In such a case, the rapist gets away with 100 lashes and sometimes imprisonment.

**France:** The rape laws and punishments are more defined and extensive in France. An individual, if found guilty of aggravating a rape incident, is liable to 10 years of imprisonment. If the rape victim dies, the term is increased to 30 years. A rapist is given a life imprisonment if the victim undergoes any kind of torture and is subjected to acts of barbarism even after the rape.

**USA:** In USA, punishments are enacted depending on the different types of sexual assault, which also include rape. Punishment is categorised as 1st, 2nd and 3rd degree rape punishments. The maximum sentence for rape is life imprisonment, which could be 30 years in jail.

**Greece:** In Greece, the rapist is punished with incarceration.

**Russia:** In Russia, the years of imprisonment for a rapist are three to six years. If the victim is below 18 years or suffers from any health problem after the rape, the period of imprisonment becomes four to 10 years. If the victim dies after rape, the imprisonment years increase from eight to 15 years. The convict is also banned from taking up any occupation or job for 20 years. The rapist would get 12 to 20 years of imprisonment if the victim is under 14 and she dies after the rape.

**Israel:** In Israel, a rape convict gets imprisoned for minimum four years and a maximum of 16 years.

**United Arab Emirates:** In United Arab Emirates too, the punishment, is death. The rapist is hanged till death and this punishment is meted out within seven days of the crime.

**Egypt:** In Egypt too, the culprit is hanged till death.

**Netherlands:** Any kind of sexual assault or forced sex, including french kiss, is considered as a rape in Netherlands. The punishment for the rapist ranges from four to 15 years of imprisonment depending on the age of the victim. Even the rape of a prostitute or any harassment done to her is given much priority in Netherlands.

### **India's New Anti-rape Law**

Considering the punishments meted out in other countries, India is too soft on convicts. In fact, before 2013, rape was not considered a major crime. The highest degree of punishment that could be given to the convict was imprisonment for seven years. This was possible only when the culprit was arrested and proved guilty. After the Nirbhaya incident, the Parliament passed the Anti-rape Bill. Now, an act of rape is liable to life-long imprisonment and even death penalty in extreme cases. According to the new law, not only rape but other acts like sexual harassment, molestation, acid attacks, stalking and voyeurism are also liable to stringent punishments. The new law has the provision of awarding minimum 20 years of rigorous imprisonment, which can be extended to life imprisonment to those found guilty of gang-rape. Out of the six men arrested in the

infamous Nirbhaya rape case of December 2012, four of the accused adults were awarded death penalty in March 2014. It took almost two-and-half years for the judiciary to give the verdict.

**Conclusion: -**

Change in life style, living standards, disparity in economic growth due to urbanization and changes in social ethos and lack of concern for moral values contribute to a violent approach and tendencies towards women, which has resulted in an increase in crime against women. Day by day rape rate in India is increasing much higher than other Crimes. Sexual intercourse of a man with women without her consent amounts to rape. Causes for increase in rape cases are due to low conviction rate for the same. After 2013 amendment punishment of rape is minimum 20 years of rigorous imprisonment, which can extended to life imprisonment to those found guilty of gang rape. After that rape cases are increasing day by day, there is a need to change the mentality of human being in whole society.

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