



## ARE RAPE PUNISHMENTS IN INDIA SUFFICE?

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**ABSTRACT** "Murder is attack on the body of an individual, whereas rape is an attack on the mind and soul of an individual."

Right to live with dignity is enshrined in Article 21<sup>1</sup>. This ethos of article 21 is taken away where a person lost its dignity, confidence because of the sexual assault or advances by the perpetrator. Rape prima facie not only shatters the respect of women but it also depletes the dignity, self confidence and the attitude towards her whole life. This scar is something, which she embraces in her whole life. Rape laws have had a rollercoaster ride according to the need of the society. This journey is from Tuka Ram case to Nirbhaya case. This research paper entails the important aspects of rape. What is Comparative analysis of rape in India and other countries? Is punishment of rape sufficient in the contemporary India? Is death penalty solution?

**KEYWORDS :****INTRODUCTION**

Women enjoyed a stupendous plight in the Ancient India. She was to be considered as "Devi". As the time goes by, deadwood started to form and it led to the exploitation and degradation of the position of women. Throughout history, women had been fighting for equal rights and representation. Even though this led to certain imperative amendments in the law, there are a few areas that remain untouched. As it is known that the problem of rape is constant since antiquity throughout the Nations, which we know that, it's a horrifying crime. Also there are different statutory provisions and punishments provided to the assailants for instance: "castration" it is the removal of testicles of male or an animal in some countries. However, in most of the countries like India it is life imprisonment after Amendment Act of 2013. Punishment is death in rarest of the rare cases. All in all what are the provisions related to India in contrary to other countries. By looking at the procedures of some other countries related to rape, we could analyze what do they account for punishments? Why some countries have strict provisions related to the rape? And what is the condition in India? It is apparent fact that rape is ubiquitous as mostly women are affected worldwide.

----- Rape in America ----

Punishments---- It is imprisonment for life as in USA each state has their own law the sentence for assailant in USA under federal law range from a fine to 30 years or a life imprisonment. (Depends upon the damages in crime)

Rape in Canada  
Punishments

- An indictable offence and is liable to imprisonment for a term of not more than 10 years or, if the complainant is under the age of 16 years, to imprisonment for a term Of one year; or
- An offence punishable on summary conviction and is liable to imprisonment for a not more than a term of 18 months or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than 2years less a day and to a minimum punishment of imprisonment for a term of six months.

----- Rape in China ----  
Punishments -----

China awards the most rigorous punishment throughout the world they strictly punish them by giving death sentence or in some cases the rapists secure castration i.e. mutilation of their genitals

----- Rape in Afghanistan----  
Punishments -----  
In Afghanistan, the rapists straightly get a head shot by a victim.

----- Rape in North Korea----  
Punishments -----

As we all know that the country is well known for 'having no mercy' on any crime .rapist gets a direct head shot by a squad.

----- Rape in UAE ----  
Punishments -----

It is death by hanging by giving death within 7 days.  
----- Rape in UAE ----  
Punishments -----

Here, the rapist is hanged in front of the public so that becomes apprised of this odious crime.  
Rape in India, In India many laws have been reformed... simultaneously after the new kinds of rapes took place ,as we all are quite familiar with the Mathura rape case.

"Sexual violence against women and girls is rooted in centuries of male domination. Let us not forget that the gender inequalities that fuel rape culture are essentially a question of power imbalances." — UN Secretary-General António Guterres

**Rape in India**

Section 375:- Rape<sup>2</sup>

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 part 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:

Against her will.

Without her consent.

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.

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.

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.

With or without her consent, when she is under eighteen years of age. When she is unable to communicate consent.

**Explanations**

For the purposes of this section, "vagina" shall also include labia majora.

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.

#### Exceptions

A medical procedure or intervention shall not constitute rape. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

#### Section 376:- Punishment for rape<sup>1</sup>

Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten<sup>2</sup> years, but which may extend to imprisonment for life, and shall also be liable to fine.

Whoever—

being a police officer, commits rape, within the limits of the police station to which such police officer is appointed; or

in the premises of any station house; or  
on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

commits rape during communal or sectarian violence; or  
commits rape on a woman knowing her to be pregnant; or  
commits rape, on a woman incapable of giving consent; or

being in a position of control or dominance over a woman, commits rape on such woman; or

commits rape on a woman suffering from mental or physical disability; or while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:<sup>2</sup>

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

#### Explanations

For the purposes of this sub-section-  
"armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any Law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government, or the State Government;

"hospital" means the precincts of the hospital and includes the

precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

"police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861;

"women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

Section 376A:- Punishment for causing death or resulting in persistent vegetative state of victim<sup>1</sup>

Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.

<sup>1</sup> Criminal Law (Amendment) Act, 2013

Section 376AB:- Punishment for rape on woman under twelve years of age<sup>2</sup>

Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:<sup>2</sup>

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

<sup>2</sup> Criminal Law (Amendment) Act, 2018

Section 376B:- Sexual intercourse by husband upon his wife during separation

Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

#### Explanations

In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

<sup>1</sup> Criminal Law (Amendment) Act, 2013

Section 376C:- Sexual intercourse by person in authority<sup>1</sup>

Whoever, being—  
in a position of authority or in a fiduciary relationship; or  
a public servant; or

superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or

on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than 5 years, but which may extend to ten years, and shall also be liable to fine.

#### Explanations

In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375.

For the purposes of this section, Explanation I to section 375 shall also be applicable.

“Superintendent”, in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.

The expressions “hospital” and “women's or children's institution” shall respectively have the same meaning as in Explanation to sub-section (2) of section 376.

<sup>1</sup> Criminal Law (Amendment) Act, 2013

Section 376D:- Gang rape I

Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine;

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim;

Provided further that any fine imposed under this section shall be paid to the victim.

<sup>1</sup> Criminal Law (Amendment) Act, 2013

Section 376DA:- Punishment for gang rape on woman under sixteen years of age<sup>2</sup>

Where a woman under sixteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine:<sup>2</sup>

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

<sup>2</sup> Criminal Law (Amendment) Act, 2018

Section 376DB:- Punishment for gang rape on woman under twelve years of age<sup>2</sup>

Where a woman under twelve years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death:<sup>2</sup>

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.

<sup>2</sup> Criminal Law (Amendment) Act, 2018

Section 376E:- Punishment for repeat offenders I

Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376AB or section 376D or section 376DA or section 376DB and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.

<sup>1</sup> Criminal Law (Amendment) Act, 2013

<sup>2</sup> Criminal Law (Amendment) Act, 2018

Section 377:- Unnatural offences

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanations

Penetration is sufficient to constitute the carnal intercourse necessary for the offence described in this section.

## CONCLUSION

The laws regarding rape in India only cover the tip of the iceberg and fail to recognize as well as acknowledge the existence of the rest. Rape of men or homosexual rape is not even considered rape.

We have two aspects which are in opposite direction but are considered to be important. First aspect is, the punishments are too less for such a heinous offence, hence, it has failed to deter the crime. The cases of rape in India are rising every day, the majority of which goes unreported.

The second aspect which cannot be ruled out is if we give the death penalty in case of rape, it is very much likely for perpetrator to cause death of victim as, rape and murder has same punishment. If the legislature paves their way out to make it death penalty as punishment, then every perpetrator who thinks of committing rape on a victim will murder her too so that even her shadows can remain quiet. Both aspects are in opposite direction but somehow true.

Rape is the disease which comes from the crap that brain eats like wearing short clothes is wrong, man is superior and women is weak. The gigantic task falls upon the shoulder of the government to educate all people in mass level so that they can morally be right. To have a complete ban on pornography as their minds can't handle it. And another reason which cannot be missed out is unemployment, Justice Markandey Katju (retired SC Judge) also harp on the same strings as women are less in number in sex ratio. Who wants their daughter to be wedded to unemployed person? A person also has his own sexual needs, in order to fulfill that, they often commit rape.

There are massive changes and additions required in the current rape laws of our country. The law needs to change and adapt according to society.

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