

SEXUAL CRIMES AGAINST WOMEN UNDER THE INDIAN PENAL CODE, 1860 (IPC) AND CRIMINAL LAW AMENDMENT ACT 2013

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Crimes against Women under the Indian Penal Code, 1860 (IPC)

- The Indian Penal Code, 1860, lays down the provisions to penalise the culprit for the heinous offences against women. Various sections under IPC specifically deals with such crimes.
- 1. Acid Attack (Sections 326A and 326B)
- 2. Rape (Sections 375, 376, 376A, 376B, 376C, 376D and 376E)
- 3. Attempt to commit rape (Section 376/511)
- 4. Kidnapping and abduction for different purposes (Sections 363–373)
- 5. Murder, Dowry death, Abetment of Suicide, etc. (Sections 302, 304B and 306)
- 6. Cruelty by husband or his relatives (Section 498A)
- 7. Outraging the modesty of women (Section 354)
- 8. Sexual harassment (Section 354A)
- 9. Assault on women with intent to disrobe a woman (Section 354B)
- 10. Voyeurism (Section 354C)
- 11. Stalking (Section 354D)
- 12. Importation of girls upto 21 years of age (Section 366B)
- 13. Word, gesture or act intended to insult the modesty of a woman (Section 509)

CRIMINAL LAW AMENDMENT ACT 2013

The nation-wide outrage over the brutal gang-rape and subsequent death of the physiotherapy intern in India's very own capital city, New Delhi was the driving force behind the passing of the Criminal Law (Amendment) Act, 2013. It has been known all over as one of the most concrete steps taken by the Indian government to curb violence against women. Major amendments by the Act, not only widen the ambit of certain offenses but also recognize new offenses like acid attacks which earlier lacked a specific provision and definition in the Code. The Act is deemed to be one of the most important changes that have been made in the existing criminal laws namely the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act.

The Criminal Law (Amendment) Bill, 2013, more popularly called the Anti-Rape Bill, is now law. The Act came into force on 3rd February, 2013 following the outrage of the entire nation behind the homicidal gang rape that took place in New Delhi on the night of 16th December 2012. The protest in the Delhi after the barbarous Rape Incident indicated the whole of India, the enormity as well as the seriousness for an immediate reform in Rape Laws.

CRIMINAL LAW (AMENDMENT) ACT, 2013

The Criminal Law (Amendment) Act, 2013, an Indian legislation passed by the Lok Sabha on 19 March 2013, and by the Rajya Sabha on 21 March 2013, provides for amendment of Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure, 1973 on laws related to sexual offences. The Bill received Presidential assent on 2 April 2013 and deemed to have come into force from 3 February 2013. It was originally an Ordinance promulgated by the President of India, Pranab Mukherjee, on 3 February 2013, in light of the protests in the 2012 Delhi gang rape case.

REASONS FOR THE ENACTMENT

The nation-wide spread outrage over the brutal gang rape and subsequent death of the physiotherapy intern in India's very own capital city, New Delhi was the driving force behind the passing of the Criminal Law (Amendment) Act, 2013 that sought to amend the existing laws regarding sexual offences in India. The Act is deemed to be one of the most important changes that have been made in the existing criminal laws namely the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act.

FACTS

- The gang rape in Delhi took place on the night of 16th December 2012. The victim, a 23 year old physiotherapy intern took a ride home in a private bus that night, with her friend. There were six other people on the bus, including the driver.
- The victim and her friend were beaten up when they raised their suspicions as to route of the bus to the destination. The woman was later raped by all the men while the bus was moving and her friend was beaten unconscious.
- After the beatings and rape, both the victims were thrown out of the moving bus by their perpetrators and left on the side of the road, partially clothed. Later, a PCR van arrived at the scene after receiving a call from a passerby. The victims were taken to the Safdarjung Hospital in Delhi for treatment.
- Medical investigation of the woman suggested she was penetrated by a blunt object, probably a rod-like object that had caused extensive damage to the internal organs of the victim. Two blood-stained metal rods were retrieved from the bus on police inspection, which the medical staff later confirmed to be the object used for penetration that had caused serious injuries to the victim's uterus, genitals and the abdomen.
- Within a day of the commission crime, arrests were made by the Delhi police in the case and all the six accused including a juvenile were arrested

TRIAL AND VERDICT

- There was a huge demand for speedy trial and immediate prosecution in the matter. While five of the accused were tried for the crime before the Additional Sessions Judge in the Special Fast Track Court, the sixth accused, who was a juvenile at the time of the crime, was tried before the Juvenile Justice Board.
- However, during the trial, one of the accused, Ram Singh was found dead in his prison cell. The remaining accused's were booked for rape, murder, destruction of evidence, and the attempted murder of the woman's male companion under Sections 120-B, 365, 366, 307, 376 (2)(g), 377, 396, 302, 397, 201 and 412 of the Indian Penal Code, 1860.

CONVICTION AND SENTENCING

- The juvenile defendant was found guilty of rape and murder of the victim under the Juvenile Justice Act by the Juvenile Justice Board on the 31st of August 2013. He was sentenced to three years imprisonment in a reform facility.
- The remaining four accused, after the death of Ram Singh, were found guilty of rape, murder, unnatural offences and destruction of evidence by the fast-track court. They were sentenced to death penalty by the court on 13th September 2013.

CONSEQUENCES

- **Amendment of the Provisions of the Indian Penal Code, 1860**
- The Criminal Law (Amendment) Act, 2013 that came into force on the 3rd 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* 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. (Cognisable and bailable offense)

PROVISIONS AFTER AMENDMENT

- Section 354A – Sexual harassment has been made an offence where as 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 25th 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.

Acid Attack Section 326 A and 326 B

- The Criminal Law (Amendment) Act, 2013 incorporated Section 326A and 326B with an intend to make specific provision for punishment in the case of acid attack.
- Section 326A focuses on voluntarily causing grievous hurt by using acid. In the view of this section, whosoever causes permanent or partial damage or burns, disfigures or disables any part of the body of a person or causes grievous hurt by throwing or administering acid with an intention to cause such injury or hurt will be punished with imprisonment of at least **ten years** which may extend to life imprisonment with fine.
- Section 326B has more legislative focus on the act of throwing or attempting to throw acid with the intention of causing grievous hurt. The punishment under this section is imprisonment of not less than **five years** with fine which may extend upto seven years.
- **Essential Ingredients of Acid Attack**
- The following are the requisites of an acid attack-
 1. permanent/partial damage/deformity/burn/disfigure/disable any part of the body of any person; or
 2. Grievous hurt by throwing acid; or
 3. By using any other means;
 4. There must be an intention to cause injury or hurt.

- **Rape – Section 375 and 376**
- Justice Krishna Iyer in the case of *Rafiq v. State of U.P.*, made a remark that, “*a murderer kills the body, but a rapist kills the soul*”. The Parliament by means of Amendment Act, 2013 has enlarged the ambit of rape by making certain non-penetrative act as offence amounting to rape. The Amendment Act, 2013 repealed the Ordinance (Amendment) Act, 2013 which was having wider ambit, thereby raising serious questions regarding the lacunas or loopholes that the judiciary could confront in future.

Existing Provisions

- Sections 375, 376 and 376 A-D of the IPC cover rape. However, medical examination was not an exception under the old provision. Rape under the IPC had been interpreted to mean only penile-vaginal intercourse.

Provisions after Amendment

- Section 375 – Under the new section, a man is said to commit rape if there is:
- Penetration of penis into vagina, urethra, mouth or anus of any person, or making any other person to do so with him or any other person;
- Insertion of any object or any body part, not being penis, into vagina, urethra, mouth or anus of any person, or making any other person to do so with him or any other person;
- Manipulation of any body part so as to cause penetration of vagina, urethra, mouth or anus or any body part of such person or makes the person to do so with him or any other person;
- Application of mouth to the penis, vagina, anus, urethra of another person or makes such person to do so with him or any other person;

- the 2013 Act expands the definition of rape to include oral sex as well as the insertion of an object or any other body part into a woman's vagina, urethra or anus.
- The punishment for rape is ten years at the least, and may extend up to life imprisonment. Any man who is a police officer, medical officer, army personnel, jail officer, public officer or public servant commits rape may be imprisoned for at least ten years. A punishment of life imprisonment, extending to death has been prescribed for situations where the rape concludes with the death of the victim, or the victim entering into a vegetative state. Gang rape has been prescribed a punishment of at least 20 years under the newly amended sections.
- The new amendment defines 'consent', to mean an unequivocal agreement to engage in a particular sexual act; clarifying further, that the absence of resistance will not imply consent. Non-consent is a key ingredient for commission of the offence of rape. The definition of consent therefore is key to the outcome of a rape trial, and has been interpreted systemically to degrade and discredit victims of rape.
- **Exceptions to the Section**
- Marital rape, a contentious issue among feminist groups in India, is an exception to section 375, provided that the wife is not under 15 years of age.
- Supreme Court of India in the case **of Independent Thought vs Union Of India on 11 October, 2017**
- The issue before us is limited but one of considerable public importance – whether sexual intercourse between a man and his wife being a girl between 15 and 18 years of age is rape? Exception 2 to Section 375 of the Indian Penal Code, 1860 (the IPC) answers this in the negative, but in our opinion sexual intercourse with a girl below 18 years of age is rape regardless of whether she is married or not. The exception carved out in the IPC creates an unnecessary and artificial distinction between a married girl and an unmarried girl and has no rational nexus with any objective sought to be achieved. The artificial distinction is arbitrary and discriminatory and is definitely not in the best interest of the girl child. The artificial distinction is contrary to the philosophy and ethos of Article 15(3) of the Constitution as well as contrary to Article 21 of the Constitution and our commitments in international conventions. It is also contrary to the philosophy behind some statutes, the bodily integrity of the girl child and her reproductive choice. What is equally dreadful, the artificial distinction turns a blind eye to trafficking of the girl child and surely each one of us must discourage trafficking which is such a horrible social evil.
- An exception also has been provided for the purpose of medical examination. In April, 2013, the Supreme Court criticised present medical tests for rape survivors, and has castigated the standard two-finger test in the case of *Lillu @ Rajesh v. State of Haryana*
- Justices BS Chauhan and Kalifulla have directed the centre to provide better medical tests that do not violate the dignity of rape-survivors, thus preventing a “second rape”.

- **Gender-neutral or Gender-specific Offence**

- Earlier the offence of rape, i.e. 'sexual assault' was not gender neutral offence, while now also this offence is women centric. Only a man is assumed to be capable of committing such offence and that too against a woman only. The aspect of gender neutrality is required in following aspects:

1. Neutrality with respect to the victim

- Often the members of the marginalised sex like 'Transgender' are also victim of this offence and as such they cannot claim any protection because the crime of rape is not gender neutral

2. Neutrality with respect to the perpetrator

- During the war in Iraq it surfaced that many women officers also involved themselves in torturing the prisoners by variant sexual assaults

3. This shows that even women can be perpetrator of such crimes. There are two occasions when the need for gender neutrality arises even in India. Firstly, when during some communal or casteist violence a woman is found to be participus criminus. Secondly, when a transgender person is an offender. The recent case of Pinki Pramanik, where her partner filed a case of rape against her, shows the very real possibility of female to male transgender persons or male to female transgender persons (either pre- or post- transition) causing sexual assault on a woman.

4. Marital Rape

- The absence of law on marital rape (sexual assault), would also fail the objective as married women cannot be protected. The law under 376-A and exception under 375 should be deleted equate marital rape and sexual assault. As the S. 3 of DVA is only applicable in grave life threatening scenario the need for consent of woman isn't important leaving her as an object of sex.

CRITICISM OF THE ACT

- The Criminal Law (Amendment) Act, 2013 has been strongly criticised by several human rights and women's rights organisations for not including certain suggestions recommended by the Verma Committee Report like, marital rape, reduction of age of consent, amending Armed Forces (Special Powers) Act so that no sanction is needed for prosecuting an armed force personnel accused of a crime against woman. The Government of India replied that it has not rejected the suggestions fully, but changes can be made after proper discussion.
- Critics of the 2013 Act run the gamut of political and ideological affiliations. One of the most notable omissions of the Act is its failure to criminalize marital rape—as recommended by the Verma Committee—which places India in the company of a select group of nations, including China, Pakistan and Saudi Arabia. In the fervent debate that preceded the 2013 Act, opponents insisted that criminalizing marital rape would destroy the institution of marriage, and allow women to fabricate claims of rape, since rape within marriage was “difficult to prove.” The remedy espoused by the self-styled saviors of marriage is divorce or prosecution for cruelty, but not for rape. However, such “justifications” ignore the very specific harms induced by the crime of rape, which violates a woman's physical integrity and sexual autonomy by forcing her to submit to unwanted intercourse.

Conclusion

- The Criminal Law (Amendment) Act, 2013 has been known all over as one of the most concrete steps taken by the Indian government to curb violence against women. Major amendments by the Act in the Indian Penal Code, not only widen the ambit of certain offences but also recognises new offences like acid attacks which earlier lacked a specific provision and definition in the Code.
- The definition of rape has been amended to include not just peno-vaginal intercourse but the insertion of an object or any other body part into a woman's vagina, urethra or anus, and oral sex. This responds to a longstanding demand of women's rights groups. The issue of rape by different means was highlighted in the Delhi gang-rape case, where an iron rod was inserted into the young woman's body.
- Despite its flaws, the Act bears a progressive insight to make an impact and fight a battle against violence against women. However, the Act by itself is not sufficient to redress and seek justice for violence against women. For this, the Government of India needs to make colossal investments in building necessary infrastructure to deal with the crimes supplemented by meaningful reforms in judiciary (building fast track women's courts, more engagement of women lawyers, women doctors to examine victims) and modernisation of the police system across whole of India.
- The 2013 Act should be viewed as a mere placeholder in the ongoing struggle against sexual and gender-based violence in India. The most overwhelming prospect is the overhaul of prevailing attitudes to rape and sexual offenses in a populace ostensibly grappling with moral "confusion," as economic modernization necessitates far-reaching changes in gender roles while social attitudes remain steeped in moral conservatism and misogyny.
- There are already ample laws prescribing deterrent punishment for offences against women. What is actually required is a concrete legislation, this was however, partially achieved through the passing of the Criminal Law (Amendment) Act, 2013; to infuse sensitivity, understanding and more significantly, the mindset among police, executives to implement the laws more in spirit than in letter. Only then deterrent punishment can be awarded in crimes against women.
- On 15 march 2014, the execution of two was stayed by the SC till march 31 – pawan and mukesh gupta. Death sentence upheld by the High court of delhi. Fell into the rarest of rare category.

CRIMINAL LAW AMENDMENT ACT, 2018

A report by the “Thomson Reuters Foundation” ranked India as the most dangerous country for women due to sexual violence, human trafficking, child labour, child marriage, and female foeticide. According to the National Record Crime Bureau (NRCB) in its annual report of year 2013 states that approx **24,923** rape cases were reported across India in 2012. And in **98%** cases, the accused was found to be a relative of the victim. The per capita rate of assault is most minimal, as a rule of assault, goes unreported. But rape cases like **Kathua rape** case and the **Unnao rape case** incidents triggered and widespread hatred in public. And feeling of condemnation results in media attention, and public protest demonstrated for the sake of justice. this increases the willingness to report the rape cases, and this led the government of India to bring some changes in the existing penal laws. Hence, there was an indispensable need for this Criminal Amendment Act.

Criminal Law Amendment Act, 2018

- The Ministry of law and justice introduced the criminal law amendment bill 2018 in Lok Sabha on July 23, 2018, and the same was passed on 30 July and 6 August by Lok Sabha and Rajya Sabha respectively. This bill aims to provide grievances to the victim, who has been sexually assaulted and ensure the death penalty for those who, convicted for raping a girl below 16 or 12 years. It replaced the ordinance promulgated by the President of India in April and also did relevant amendments in:
 1. IPC 1860
 2. Cr.PC 1973
 3. Evidence act 1872
 4. Protection of Child from Sexual Offences (POCSO) 2012

SALIENT FEATURES OF CRIMINAL LAW AMENDMENT ACT, 2018

- This Act brings relevant changes for the protection of a girl from the heinous crime of rape in our penal laws. They are as follows:
- Anyone who commits the offence of rape shall be punished for the minimum period 10 years earlier it was for 7 years.
- If any person rapes a girl, who is below 16 years of age, shall be punished for a minimum period of 20 years.
- If a person rapes a girl, who is below the age of 12 years, shall be deemed to be punished rigorous imprisonment for 20 years or imprisonment for life or maybe liable for the death penalty.
- In case if the offence of rape, is committed with the girl age below 16 years, the **anticipatory bail** will not be granted to the accused.
- Convicted persons bound to compensate the victim, and such compensation will be used for the victim's medical expenses and for rehabilitation. And the compensation will be just and reasonable.
- If the offence of rape, is committed by the **Police Officer**, irrespective of the place shall be punished for rigorous imprisonment which is not less than 10 years.
- In the matter of rape, the police are under compulsion to complete the **Investigation** within the period of **2 months** after the FIR lodged.
- The offence of rape, time to dispose the appeal starts after 6 months.
- Act provides to punish accused convicted of gang rape of woman below 16 years of age shall be given rigorous imprisonment for life and liable for fine.
- The Act also provides to punish accused convicted of the gang rape of women, who is below the age of 12 years shall be given rigorous imprisonment for life and with fine or with the death penalty.

AMENDMENTS IN INDIAN PENAL CODE

Criminal amendment act 2018 inserts **three new sections** in IPC-

- 376AB
- 376DA
- 376DB
- And amend **three sections** of IPC-
- 166A
- 228A
- 376

SECTION 376AB

- This section was inserted just after Section 376A and provides that whoever commits rape with a woman, who is under 12 years of age shall be punished with rigorous imprisonment for a term which shall not be less than 20 years, and it may extend to life imprisonment which impliedly intends to introspect what he had been done is thoroughly illegal and off-base, or in legal sense, reminder for that person natural life, and with fine or death penalty. And also liable to pay compensation and such compensation shall be reasonable and just, to meet the medical expenses and for victim rehabilitation.
- Additionally, commands that any payment by the denounced under this section will be paid to the person in question (victim)

SECTION 376DA

- After Section 370D, 376DA section inserted and states that when a woman under the age of sixteen years raped by one or more person constituting a group or done some action for the pursuance of common intention, each of that person deemed to commit the offence of rape and shall be punished with imprisonment for life which shall impliedly intends to introspect what he had been done is thoroughly illegal and off-base, or in legal sense, reminder for that person natural life, and with fine or death penalty. And also liable to pay compensation and such compensation shall be reasonable and just, to meet the medical expenses and for victim rehabilitation.
- Additionally, commands that any payment by the denounced under this section will be paid to the person in question (victim).

SECTION 376DB

- This section states that where a woman who, is below the age of 12 years is raped by one or more person constituting a group or action for the pursuance of common intention, each person shall be deemed to commit the offence of rape, and punished with life imprisonment which impliedly intends to introspect what he had been done is thoroughly illegal and off-base, or in legal sense, reminder for that person natural life, and with fine or death penalty. And also liable to pay compensation and such compensation shall be reasonable and just, to meet the medical expenses and for victim rehabilitation.
- Additionally, commands that any payment by the denounced under this section will be paid to the person in question (victim).

AMENDED SECTIONS

Section 166A

- This section deals with public servant disobeying directions under the law, fails to record FIR punishment of 6 months.
- And clause (c), is substituted with section 376AB, 376B, 376C, 376D, 376DA and 376DB.

Section 228A

- This section deals with disclosure of the identity of the victim of certain offences, and sub section 1 of this section was substituted with Section 376AB, 376B, 376C, 376D, 376DA, and 376DB.

Section 376

- This section deals with the punishment for rape and under this section, the sub-section 1 was substituted as “*whosoever commits an offence of rape shall be punished for the term not less than 10 years or which may extend to life imprisonment and with fine*”.
- And by this amendment in section 376, sub-section 2 clause (a) sub-section 1 has been repealed.
- After sub-section 2 of section 376, new sub-section inserted namely “3” which provides that whoever commits the offence of rape with a woman, who is under the age of sixteen years shall be punished with rigorous imprisonment for a term not less than 20 years, and shall extend to imprisonment for life, and with fine or death penalty. And also liable to pay compensation and such compensation shall be reasonable and just, to meet the medical expenses and for victim rehabilitation.
- Additionally, commands that any payment by the denounced under this section will be paid to the person in question (victim).

THE CRIMINAL AMENDMENT ACT, 2018 AMENDS TWO SECTIONS OF THE INDIAN EVIDENCE ACT, 1872

Section 53A

This section deals with the evidence of character or previous sexual experience not relevant in certain cases substituted with Sections 376AB, 376B, 376C, 376D, 376DA, and 376DB.

Section 146

- This section deals with questions lawful in cross-examination (what are the questions must be asked by the Police Officer) when a witness is cross-examined, he may in addition to the question hereinbefore referred to, be asked any question which tends-
 1. Tend to test the veracity.
 2. To discover who he is and what is his position in life.
 3. To sake his credit, by injuring his character, although the answer might tend directly or indirectly to criminate him, might expose him to a penalty or forfeiture.
- Provision 3 or this section were substituted with section, 376AB, 376B, 376C, 376D, 376DA and 376DB.

AMENDMENT IN CODE OF CRIMINAL PROCEDURE BY THE CRIMINAL AMENDMENT ACT, 2018 FOLLOWING SECTIONS OF CR.PC HAS BEEN AMENDED THESE ARE:

Section 173

- In this section there is an amendment in sub-section (1A) which provides that rape of a child may be completed within 3 months, this sub-section was substituted with “*an offence under section 376AB, 376B, 376C, 376D, 376DA, and 376DB or section 376E of the Indian penal code shall be completed within 2 months*”.

Section 374

- In section 374 of Cr.PC, after sub-section (3), the following sub-section inserted i.e, sub-section (4) and read as when an appeal has been filed against a sentence passed under Section 376, 376A, 376AB, 376B, 376C, 376D, 376DA, and 376DB or Section 376E of the Indian penal code the appeal shall be disposed within period of 6 months from the date of filing of such appeal.

Section 377

- In Section 377 of the code of criminal procedure, after sub-section (2), new sub-section was inserted i.e. sub-section (3) and read as when an appeal has been filed against a sentence passed under section 376, 376A, 376AB, 376B, 376C, 376D, 376DA, and 376DB or section 376E of the Indian penal code the appeal shall be disposed off within a period of 6 months from the date of filing the appeal.

Section 438

- In Section 438 of the Code of Criminal Procedure, after sub-section (3), new sub-section inserted i.e. sub-section (4) and provides that nothing in this section shall apply to any case involving the arrest of a person on accusation of having committed an offence under sub-section (3) of Section 376, 376AB, 376DA, 376DB of the Indian penal code.

Section 439

- In Section 439 of CrPC, after sub-section (a), (1) provision, another provision was added and says that “the high court and the session court shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of Sections 376, 376AB, 376DA, 376DB, give notice of the applicant for the bail to the public prosecutor within a period of 15 days from the date of receipt of such notice.
- And after sub-section (1) of Cr.PC following sub-section was inserted i.e. (1A) which provides that the presence of the informant or any person authorized by him, shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of sections 376, 376A, 376DA, 376DB.

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT, 2012

By the Criminal Amendment Act, 2018 there is a change in Section 42 of POCSO Act, 2012. This section deals with **Alternative Punishment** and Sections 376A, 376C, 376D were substituted with 376A, 376AB, 376B, 376C, 376D, 376DA and 376DB of Indian penal code.

TUKA RAM AND ANR VS STATE OF MAHARASHTRA, AIR 1979 SC 185 (MATHURA CASE)

Facts of the case:

- In Mathura rape case, a young tribal girl named Mathura was allegedly raped by two policemen while she was in custody. It was the incident of custodial rape, took place on March 26th, 1972, where the girl was raped in Desai Gunj Police Station in Maharashtra.

Issues raised:

- This case raised so many issues in the context of Indian rape laws that were earlier existed in prevalent Criminal law like the issue of consent, the question of burden of proof, the reference to two-finger test and the reference to the girl's sexual history.
- **What was held?**
- Sessions Court passed the judgment in favor of defendants and held them not guilty. It was held that Mathura gave her consent voluntary as she was habituated to sexual intercourse. Learned Sessions Judge found that there was a major difference between “sexual intercourse” and “rape” so, it was a case of sexual intercourse in which she had consented voluntary and not rape. Thus, Case was further appealed in the Bombay High Court which took note of all the findings arrived during the trial in Sessions Court. High Court appreciated the observation given by the learned Sessions Judge that there is a major difference between sexual intercourse and rape but they forgot to observe that there is a world of difference between “consent” and “passive submission”. On the ground of such observations, the court held that the defendants were guilty of rape and the consent given was not voluntary and it was due to serious threats by policemen.

Court Observed :

Mere passive or helpless surrender of the body and its resignatess to the other's lust induced by threats or fear cannot be equated with the desire or will, nor can furnish an answer by the mere fact that the sexual act was not in opposition to such desire or volition.

Later, the case went to the Supreme Court, where court acquitted the accused and set aside the judgment passed by the Bombay High Court. The Court stated that no marks of injury were found on the person of the girl, there were no signs of any struggle, any resistance, also from the shreds of evidence it can be shown that the girl had not been put in fear of death or hurt so the consent would be considered as free or voluntary. Also, the girl was habituated to sex so, it may be possible that she might have incited the cops. So, it was concluded and held by the Supreme Court of India that the sexual intercourse which was in question in the given case is not proved to amount to rape.

- **Legal Changes brought in the Indian rape law:**

- Due to such rationale behind the judgment, so many protests and huge public outcry took place which ultimately led to the amendment in Indian rape law. At the time when Mathura rape case did take place, the rape laws in our country were heavily biased towards rapists. The main question which was raised after this judgment was regarding the concept of consent because earlier it was so difficult for women to prove that she had not consented to any sexual intercourse. So, after the judgment of this landmark case, the Criminal Law (Second Amendment) Act, 1983 came which brought so many changes in the Indian rape law like:
- Criminal Law (Second Amendment) Act, 1983 inserted section 114(A) in the Indian Evidence Act, 1872 which states that in a prosecution for rape where it has been already proved that the sexual intercourse by accused did take place, if the victim says that she had not consented to the sexual intercourse then Court shall presume that she did not consent as a rebuttable presumption of law.
- Section 376 of Indian Penal Code, 1860 underwent a change in which sections 376(A), 376(B), 376(C) and 376(D) were added which were further amended by Criminal Law Amendment Act, 2013.

- Act added the provision for “custodial rape” under section 376(2) of Indian Penal Code, 1860 for the offenses which take place when a victim is in the custody of the state.
- The Person liable under section 376(2) shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine.
- Act amended the idea of burden of proof which always lies on the prosecution. After the amendment, in cases of rape where sexual intercourse was already established, the burden of proof will lie on the accused.
- The Act introduced section 228A in the Indian Penal Code, 1860 which prohibits any publication regarding the identity of rape victims and any matter through which victim’s identity could be known, subsequently amended by Criminal Law Amendment Act, 2013.
- So, Mathura rape case was monumental in context of both social and legal perspective which sparked huge protests and public outcry for the very first time in India for the cases of rape at a very large level and which further led to so many reforms in the Indian rape law via the Criminal Law (Second Amendment) Act, 1983.

VISHAKA VS. STATE OF RAJASTHAN AND ORS., JT 1997 (7) SC 384 (BHANWARI DEVI CASE)

Facts of the Case:

- This was a landmark case regarding the protection of women against sexual harassment at workplace. It was the incident of 1992 where a lower caste social worker for the women's development programme in Rajasthan named Bhanwari Devi who was trying to stop a child marriage in her village was allegedly gang-raped by five men of the upper-class community. She went to the police station to lodge a complaint against the offenders but no thorough investigation was launched.

Issue raised:

- This landmark case raised so many questions in the context of sexual harassment which take place at a workplace. The issue raised whether the employer has any responsibility in cases of sexual harassment by its employee or to its employees at a workplace?
- **What was held?**
- To get justice, she took her case to the Trial Court where Court acquitted the accused for the reason of lack of the medical shred of evidence and other reasons. Due to which so many women's groups and organizations went for appeal against the judgment. The result of which, a public interest litigation was filed in the Supreme Court of India on the issue of sexual harassment at the workplace. This judgment had its basis in so many international treaties which had not been adopted in the municipal law.
- Supreme Court held that the sexual harassment of a woman at a workplace would be violative of her fundamental rights of gender equality and right to life and liberty under Articles 14, 15, 19 and 21 of the Indian Constitution. The court concluded that such Act would be considered as a violation of women's human rights.

Legal changes brought after the case:

- After this verdict, a statutory vacuum was observed which proposed the route of judicial legislation in the context of sexual harassment at workplace. The case laid down so many guidelines and requirements which need to be fulfilled by the employer as well as other responsible persons or institutions:
- For preventing the acts of sexual harassment in the workplace, it should be the duty of the employer or any other responsible person to prescribe for procedures and settlements.
- Formation of a complaint committee at all workplaces.
- Such committee has to be headed by a woman employee only and should have NGO or third-party participation.
- Half of the members of a committee should be comprised of women only.
- All complaints regarding sexual harassment of a woman employee would be dealt by this committee only, appropriate action in this regard shall be initiated by the employers in accordance with the concerned law.
- The committee would advise and recommend to the victim for the further course of action.
- Provides for the definition of sexual harassment which includes any:

“Unwelcome sexually determined behaviour & demands from males employees at workplace, such as: any physical contacts and advances, sexually colored remarks, showing pornography, passing lewd comments or gestures, sexual demands by any means, any rumors/talk at workplace with sexually colored remarks about a working woman, or spreading rumours about a woman’s sexual relationship with anybody.”

So, these guidelines were the first of its type which created for the gender equality rights of women, which should be free from harassment in both public and private employment. This judgment led the Indian Government to enact the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 which came into force from 9 December 2013. This Act superseded the Vishaka Guidelines for prevention of sexual harassment introduced by the Supreme Court of India.

MUKESH & ANR. VS. STATE FOR NCT OF DELHI & ORS.,

- **Facts of the case:**

- A 23-year-old trainee physiotherapist woman was brutally got raped repeatedly by five adult men and a juvenile on the night of 16th December 2012 onto a moving bus in the capital of our country. She got attacked with an iron rod due to which she had her intestines pulled out. Later, in spite of receiving all the possible treatments, she died in the hospital in Singapore.

What was held?

- One accused hanged himself in the jail while other four adults were sentenced to death. A Bench of Justices Dipak Mishra, R Banumathi, and Ashok Bhushan were unanimously passed the judgment of Death penalty to all the accused except juvenile. The juvenile who was equally involved in the incident and raped the woman was convicted and sentenced to three years in a reformation center. Such an incident where humanity is treated with irreverence, which created a shock in the collective conscience sparked nationwide revulsion and various legislative reforms in rape laws.

Aftermath:

- After the incident, a panel was set up under the chairmanship of JS Verma (former Chief Justice of India) for analyzing criminal laws and to suggest all the possible amendments which can be made to enhance punishment in case of assault of extreme nature and brutality against women in criminal law. Within a month, the panel was ready with its report consisting of so many recommendations for changing India's rape laws.
- As per the recommendations of the Justice Verma Committee, Criminal Law (Amendment) Act, 2013 has passed which provides for the amendment of Indian Penal Code, 1860; Code of Criminal Procedure, 1973, Indian Evidence Act, 1872 and Protection of Children from Sexual Offences Act, 2012 in relation of sexual offences related laws. Act widened the scope of rape's definition and provided for capital punishment in rape cases that cause the death of the victim or leave her in a permanent vegetative state. Act also provides for several new offenses to make laws more stringent.

STATE OF MAHARASHTRA VS. MADHUKAR NARAYAN MARDIKAR, AIR 1991 SC 207

Facts of the case:

- This is the case where a police inspector of Bhiwandi town police station alone in uniform in the night went to the hutment of a woman named Banubi. There, he tried to ravish her. The woman resisted but still, he managed to falsely make out with her as if he carried out a prohibition raid. Inspector advocated that he raided her hutment on the ground that she was engaging with the dealing of illicit liquor.
- The departmental inquiry took place against the inspector, in course of which it came out that Banubi was a woman of easy virtue. She also had extramarital affairs.

What was held?

- High Court of Bombay held that he cannot be removed from his service since Banubi was a woman of immoral character. Court held that, *“she was an unchaste woman so, it would be unsafe to allow the career of that inspector to be put in jeopardy upon the uncorroborated version of such a woman who makes no secret of her illicit intimacy with another person.”*
- Supreme Court overruled the judgment and gave the order of removal of his service. Supreme Court opined that *“even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. Therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown overboard.”* So, she is very much entitled to protect her in case of any attempt to violate her as a person. Also, while deciding the cases of rape, past history of victim's sex life does not matter, she is very much entitled to the protection of the law.

Note: Though this case has not brought any legal amendment in the context of protection of women against violence but by virtue of Article 141 of Indian Constitution it would be binding on all the courts within the territory of India.

INDEPENDENT THOUGHT VS. UNION OF INDIA AND ANR.,

Facts of the case:

- Independent Thought, one of the leading NGOs which deals with the child rights, had filed a public interest litigation in the Supreme Court of India. It challenged the constitutional validity of exception 2 to section 375 (*Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape*) of the Indian Penal Code.

Issues raised:

- Whether sexual intercourse between a husband and wife, where she is between 15 and 18 years of age would amount to rape?
- Whether section 375, exception 2 is violative of fundamental rights of a girl child?

What was held?

- In the judgment, Supreme Court has criminalized the sexual intercourse with a minor wife whose age lies between 15 and 18 years. The Court opined that the exception 2 in section 375 is violative of Articles 14, 15 and 21 of the Indian Constitution which allows intrusive sexual intercourse with a girl who is below 18 and above 15 years on the ground of marriage. Such exception clause in Indian rape laws negates the very purpose of Prohibition of Child Marriage Act, it violates the provisions of Protection of Children from Sexual Offences Act (POCSO) in context of the age of consent and some other international conventions to which India is a signatory. In this landmark verdict, Supreme Court has struck down section 375, exception 2 of the Indian Penal Code. Now, the law cannot protect a man who is engaged in sexual relations with his wife where she is between 15 and 18 years because irrespective of the status of a child whether married or not, she will always remain a child.

LAXMI V. UNION OF INDIA

- This [case](#) was filed because earlier, in the case of [Naeem Khan v. State, 2013](#), the issue of acid attack under [Section 307](#) came into limelight when Laxmi, a 16-year-old girl, was made a victim of an inhumane acid attack by the accused. Acid attack in terms of motive and emotions is regarded as a 'crime of passion' which is fueled by revenge or jealousy. It is presumed to be done as throwing acid is an easy way of taking revenge from a woman by disfiguring her physical body for demands like sexual favours, marriage proposals and dowry demands. Perpetrators of acid attacks by disfiguring and causing extreme physical and mental suffering to victims fulfil their desires of revenge and jealousy. The accused was held guilty and compensation to the victim was provided under [Section 357\(1\)\(b\)](#) for the physical and mental agony she went through. So, the case of Laxmi was filed to reimburse victims for their damages and help them get the required medical treatment. The punishment mentioned in the IPC is not enough for the victim to get justice because the trauma and pain of the survivor are far greater.
- After being a victim to an acid attack herself, the victim Laxmi filed a PIL in the Supreme Court. In response to that PIL, a number of orders and directives were passed by the legislative and the Supreme Court of India in the form of guidelines for humane provisions and redressal of such acid-attack survivors. The changes in the Indian jurisprudence ranged to various statutes and did not limit to IPC.

The guidelines of the court

- The amendment was made in the [Code of Criminal Procedure, 1973](#) through which [Section 357A](#) was inserted by the Act-5 of 2009 requiring every state government, in coordination with the central government, for the purpose of compensation to the victim or their dependents, to prepare a scheme for providing funds who have suffered loss or injury as a result of the crime. Under the directive issued by the Supreme Court regarding the minimum compensation, it was made clear that compensation of Rs. 3,00,000/- for every acid attack victim to be given by all States and Union Territories of India.
- IPC experienced the addition of Section 326A which states voluntarily causing hurt by use of acid, etc and Section 326B which states, voluntarily throwing or attempting to throw acid, etc. This was made due to the increasing cases of acid attack against women in India

RITU KOHLI CASE

- In 2001, the first case of Cyberbullying was reported in India. The case was reported by Ms Ritu Kohli against the illegal act of Manish Kathuria for stalking her on the internet using some social chatting website. He misused her name and often used obscene and offensive language. He invited individuals to chat with her on the phone and disturbed her at her residence. After some time, she started receiving calls from different states and foreign countries, in which, people were talking salaciously with her. She reported the case to Delhi Police after not being able to find a solution herself. Her case was filed by the Police under section 509 for Insult to the modesty of women by the means of word, gesture or action. This law brought an Amendment to the Information Technology Act under section 66E because section 509 of IPC could not deal with such cases.

CONCLUSION

After going through various amendments and newly inserted Sections in IPC, Cr.PC, The Indian Evidence Act and in The POCSO Act. As we read that the criminal amendment act 2018 just intends to shield the women from a horrifying offense i.e., sexual assault. As the wrongdoing rate of committing sexual assault has expanded with legitimately relative merciless of people. In most of the rape cases, matter goes unreported and the lack of legal merit, social reasons are there which creates hinderances for the victim to access justice. But after doing relevant changes in these penal laws Government of India seeks to provide, welfare for all the women and feeling of safety, as it is necessary due to the recent cases that took place like Kathua rape and Unnao rape cases, these cases generating a pathetic situation for women in which women think that they are not safe even in their houses, as in most of the cases the accused found to be her relative or a known person of the victim so there is absolute need for the law regarding women and child safety.

THANK YOU