

YATRA NAARYASTU PUJYANTE: PRIORITIZING WOMEN'S SAFETY OVER PATRIARCHAL NORMS

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ABSTRACT

India attained independence in 1947 and enacted its constitution in 1949. The preamble of the constitution asserts equality, and the Indian constitution, through Articles 14 and 51-A, permits the state to enact special legislation for the protection and respect of women. The NCRB has revealed that a rape occurs every 15 minutes in the country, despite the existence of laws designed to protect women from violations. Women endure domestic abuse, dowry-related fatalities, workplace sexual harassment, and severe sexual assault. The initiatives have been established to safeguard women in their workplaces and outside their residences, including emergency numbers and Nirbhaya money. These programs have been implemented by both federal and state governments to address breaches against women and girls. Sections 375 and 376 of the Indian Penal Code of 1890 {Now S. 63 & 64 of Bharatiya Nyaya Sanhita, 2023 (hereinafter referred as BNS, 2023)} delineate the definition of rape and the corresponding penalties for the offense.

Numerous case laws, such as the Vishaka and Sakshi guidelines, have established protocols for the protection of women in the workplace. The Nirbhaya case prompted a nationwide focus on judgment and justice in India. In 2024, the Kolkata case enhanced the comprehension of women's protection within medical institutions and universities. Women are unsafe in many environments; the government must implement appropriate measures to ensure their protection. Women must not endure physical abuse, and sexual assault against women shall incur penalties. Sexual intercourse must occur solely with consent; without consent, it constitutes a violation. This paper provides a detailed discussion on the age of consent and marital rape.

Keyword: *Section 375 of IPC, Section 63 of BNS, punishment for rape, women's safety, capital punishment, Art 15(3) of the Indian constitution, child protection and sexual harassment.*

1. INTRODUCTION

"We are deeply concerned about the virtual absence of conditions of safety for young doctors in public hospitals, especially women doctors who are more vulnerable because of the nature of work and gender. If a woman cannot go to a place of work and feel safe, we are denying them equal opportunity" – CJI DY Chandrachud

India attained independence from Great Britain in 1947, following the efforts of numerous civilians, including women, who participated in the struggle for liberation. However, after 78 years of independence, women in India still do not experience true freedom or autonomy.

"The day women can traverse the streets unimpeded at night, that day we can assert that India has attained independence" stated Mahatma Gandhi. In 2018, a woman was reported raped every 15 minutes nationwide, according to a government report. In 2012, over 25,000 rape incidents were reported to law enforcement authorities according to The National Crime Records Bureau (NCRB).¹ Does the constitution protect women from harassment in the workplace or at home? Article 15(3) specifies that it enables

¹ Economic Times, India's struggles with high rape cases, low conviction rates, The Economic Times (Aug. 16, 2024),

<https://economictimes.indiatimes.com/news/india/indias-struggles-with-high-rape-cases-low-conviction-rates/articleshow/112569012.cms?from=mdr>.

the state to establish particular provisions for the protection of women and children.²

The Special Marriage Act of 1954, the Indian Penal Code of 1860 (Now BNS, 2023), the Dowry Prohibition Act of 1961, the Sexual Harassment of Women at Workplace Act of 2013, and the Code of Criminal Procedure of 1973 {Now Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred as BNSS, 2023)} are among the laws designed to protect women; yet, their effectiveness in safeguarding women's rights remains questionable. Every woman requires protection, regardless of her faith, race, or age.

The objectives established for this research article are:

1. To comprehend women's safety and the prevalence of harassment and rape against women in society, regardless of age.
2. To clarify the penalties prescribed under section 376 of the Indian Penal Code (Now S. 64 BNS, 2023) and the POCSO Act for safeguarding women from male aggression and patriarchal oppression.

The research questions based on the above research objective are:

1. How is rape defined under Indian laws and the cause of harassment and rape is interpreted in this society, is there a remedy to stop women from being harassed?
2. What is the punishment given by the laws to the accused person who has raped and murdered women?

Hypotheses kept aligned with the question and objectives while drafting this research paper are:

1. Rape is defined as the sexual abuse of a woman who has not given her consent for intercourse with men; an accused can be a man or a group of men. Society mainly thinks that the cause of rape is due to dressing and exposure to women's bodies but watching pornography is the main cause of rapists physically abusing women. This can be reduced only by blocking all pornography on the internet and giving severe punishment to rapists.

2. In India, we have punishments severely and strictly under the special law and the Indian penal code of 1806 under sections 375, 376, 376A, 376AB, 376C, 376D, 376DA, 376DB and 376E of the IPC (Now S. 63, 64, 66, 65, 68, 70, 71 of BNS, 2023) and POCSO Act of 2012.

This work employs a purely doctrinal research methodology. Doctrinal research, also referred to as library-based research, largely entails the examination and interpretation of legal statutes, case law, and scholarly literature. This approach is optimal for examining the theoretical and intellectual aspects of law. It methodically delineates legal ideas and principles. In doctrinal study, primary sources encompass statutory provisions, court decisions, and authoritative literature. Secondary sources such as commentaries, articles, and legal summaries are necessary. The research process involves the identification, collection, and critical assessment of various sources. The objective is to draw logical conclusions and offer insights into the legal inquiries being examined. This article seeks to provide a comprehensive and cohesive overview of the legal framework pertinent to the subject matter discussed.

The legislation concerning women's safety has been handled within the realms of building and criminal law. Article 15(3) of the Indian Constitution pertains to the establishment of particular provisions for the safeguarding of women and children, whereas Article 51-A asserts that every citizen shall refrain from actions that demean the dignity of women.³ Section 376 of the Indian Penal Code (Now S. 64 of BNS, 2023) addresses the offenses of rape and gang rape perpetrated by men against women. Additional specific legislation comprises The Protection of Women from Domestic Violence Act of 2005, The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act of 2013, and The Protection of Children from Sexual Offences (POCSO) Act of 2012.

The essentials of rape have been discussed and interpreted in preceding case laws such as *Himachal Pradesh v. Mango Ram (2000)*⁴, *Queen vs. Flattery (1877)*⁵, *Bhupender Singh v.*

² Constitution of India, 1950

³ The Indian Constitution, 1950

⁴ AIR 2000 SC 2798

⁵ 2 QBD 410

*Union Territory of Chandigarh (2008)*⁶, *Tulsidas Kanolkar vs. State of Goa (2003)*⁷, and *State of Maharashtra vs. Prakash (1992)*⁸. In these case laws, rape is defined as a lack of a woman's consent and requires a sound mind for consent. Several landmark judgments deal with this issue.

Several landmark judgments deal with rape and gang rape. Some examples are *Mukesh & Anr. vs. State for NCT of Delhi & Ors. (Nirbhaya Gang Rape Case) (2017)*⁹, *Independent Thoughts v. Union of India (2017)*¹⁰, and more. This paper's literature study examines the Indian government's provision of safety and the extent of safety required by women in their daily lives. India has numerous laws and landmark rulings concerning women's safety and sexual assault. The document further examines the sanctions imposed by the government via legislation and judicial scrutiny.

2.WOMEN SAFETY IN SOCIETY

Women's safety is a significant and contentious issue; no woman feels secure, yet society perceives India as a safer environment for women, both within and beyond their homes. Women are unable to pursue their objectives, even in the presence of several patriarchal men who seek to undermine them both physically and mentally. The crime data indicates that every 15 minutes, a woman is raped to death or succumbs to dowry-related homicide “*crimes against women- The most prevalent types of crimes reported include - Cruelty by Husband or His Relatives- 31.4%, Kidnapping and Abduction of Women- 19.2%, Assault on Women with Intent to Outrage her Modesty- 18.7%, Rape-7.1%*¹¹ this report shows women suffering day to day life 30% of women age ranging between 15-49 suffer physical, sexual or domestic violence”.

Numerous laws exist to safeguard women; nevertheless, not all legislation enacted by Parliament is functional within the Judiciary, as prior judgments indicate a necessity for amendments to existing laws. In one of the case

*State of Punjab v. Gurmit Singh*¹² and *Dileep Singh v. State of Bihar*¹³ In a particular case, the court determined that the accused would be held accountable for rape under Section 376 of the IPC (Now S. 64 of BNS, 2023) due to the absence of permission from the female victim. “*Will avoid giving night duties to women doctors*¹⁴” This was reported on NDTV following the egregious Kolkata doctor rape case in 2024, illustrating that women remain unsafe even in their professional environments. Women are subjected to bullying by men on social media through the use of derogatory or obscene language, the manipulation of images, and pornography, which is a significant catalyst for sexual harassment and rape, as evidenced in the *Ritu Kohli case*¹⁵ Manish Kathuria is accused of misusing Ritu Kohli's name online, employing filthy and insulting language. She subsequently received a call and filed a petition with the Delhi police, who registered the case under Section 509 of the Indian Penal Code (Now S. 79 of BNS, 2023). However, they were unable to provide adequate support, leading to an amendment of Section 66E of the Information Technology Act.

3.CONSIDERING WOMEN CONSENT

The consent of a woman or girl is crucial in sexual intercourse, as rape, as defined under Section 375 of the IPC (Now S. 63 of BNS, 2023), characterizes the absence of consent from women or girls as constitutive of rape, as established in the case of *Tulsidas Kanolkar v. The State of Goa*¹⁶ The victim was mentally unwell, which the accused used to engage in intercourse with her, resulting in her pregnancy. The court determined that the victim's mental instability precluded her from providing informed consent, thereby classifying the accused's actions as rape. In a marital partnership, a wife engaging in more than 15 instances of intercourse with her husband is deemed lawful until the 2013 Amendment, according to Exception 2 of Section 376 of the IPC (Now S. 64 of BNS, 2023). To quote the words of Justice Krishna Iyer in the case of *Rafiq v. State of*

⁶ (2008) 8 SCC 531

⁷ (2008) 8 SSC 590

⁸ AIR 1992 SC 1275

⁹ (2017) 6 SCC 1

¹⁰ (2017) 10 SCC 800

¹¹ NCRB report 2023

¹² 1996 AIR 1393 SCC(2)384

¹³ AIR 2005 SC 203

¹⁴ Indo-Asian News Service, "Avoid Giving Night Duties To Women Doctors": Bengal After Kolkata Horror, <https://www.ndtv.com/india-news/west-bengal-after-kolkata-rape-and-murder-case-will-avoid-giving-night-duties-to-women-doctors-6361720>.

¹⁵ Manish Kathuria Vs. Ritu Kohli, C.C. No. 14616/2014

¹⁶ AIR 2004 SC 978

*UP*¹⁷ he said that “the murderer kills the body of the victim but whereas the rapist kills the soul of the victim”

The Criminal Law (Amendment) Act, 2013, introduced significant modifications, notably raising the age of consent for sexual intercourse with women or girls from 16 to 18 years. However, Exception 2 of the Act permits non-consensual intercourse by a husband with his wife aged above 15 years, which is contentious in relation to Section 3 of POCSO. The case *Independent Thought v. Union of India*¹⁸ It is asserted that the legislation discriminates against married girls compared to unmarried girls, as the parliament has raised the age of consent to 18 years, applicable to both categories. Exception 2 of the Act is deemed unreasonable and infringes upon the dignity of the girl, as a man engaging in intercourse with his wife under 18 years of age is classified as rape.

4. SEXUAL HARASSMENT

Sections 354 and 354A of the IPC (Now S. 74 & 75 of BNS, 2023) address sexual offenses against women. Sexual harassment is described under section 354A of the IPC (Now S. 75 of BNS, 2023) as soliciting sexual favors, viewing pornography, or displaying it to women without their consent. The prevalence of patriarchy in India is the primary cause of sexual harassment, as societal norms continue to normalize male superiority. Media representations often depict the degradation of women's modesty by dominant males as heroic, thereby influencing men to emulate such behavior. Additionally, economic necessity plays a significant role, as many women have attained financial independence. However, there are still some women who are dependent on their husband money, promoting pornography and inadequate safety in public places example *Nirbhaya case*¹⁹ and the recent Kolkata doctor rape case.

The seminal ruling regarding sexual harassment is *Vishaka v. State of Rajasthan and others (1997)*²⁰ which made 2013 Amendment the Supreme Court issued guidelines for sexual

harassment in the workplace “*Vishaka Guidelines*”. These standards were established to safeguard women in the workplace, offer resources in instances of sexual harassment, and implement suitable measures for addressing such harassment; a complaint committee was also instituted within these guidelines. The Vishaka Guidelines were subsequently superseded by The Sexual Harassment of Women at the Workplace (Preventive, Prohibition and Redressal) Act, 2013. The word "aggrieved women" in the POSH Act also encompasses schoolgirls, as stated in the case of *Pawan Kumar Niroula v. Union of India and others*²¹.

5. INDIA ON PROVIDING SECURITY TO WOMEN

The Indian government has established numerous projects and initiatives to safeguard women both within and outside their homes:

1. Nirbhaya funding allocated for the security and safety of women following the Delhi gang rape incident.²²
2. A 24-hour toll-free helpline for women in peril is provided at 181.
3. The Investigation Tracking System for Sexual Offences (ITSSO) facilitates the tracking of cases and the monitoring of the investigative process within a two-month timeframe for sexual offences.²³
4. The Supreme Court, in the Kolkata rape case, has established the National Task Force to guarantee the protection of women in the workplace.²⁴

Both the central and state governments have established initiatives to ensure the safety and security of women in the workplace. Special laws enacted by Parliament under Article 15(3) for the protection of women in the nation are as follows:

- *Women-Specific legislation*²⁵

¹⁷ AIR 559 1981 SCR (1)

¹⁸ AIR 2017 SC 4904

¹⁹ AIR 2017 SC 2161

²⁰ AIR 1997 SC 3011

²¹ 2022 LiveLaw (Cal) 15

²² Mukesh & Anr. V. State for NCT of Delhi & Ors. AIR

2017 SC 2161

²³ Criminal Law (Amendment) Act of 2013

²⁴ Economic Times, India's struggles with high rape cases, low conviction rates, The Economic Times (Aug. 16, 2024)

²⁵ Laws Related to Women, National Commission for

1. Protection of Women from Domestic Violence Act, 2005
2. Dowry Prohibition Act, 1961
3. Indecent Representation of Women (Prohibition) Act, 1986
4. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)
5. Prohibition of Child Marriage Act 2006
6. Protection of Children from Sexual Offence Act, 2012
7. Commission of Sati (Prevention) Act, 1987.

- **Educating the Society**

Every male must comprehend women and the challenges they face; sex education should be integrated into their schooling, enabling girls to discern between appropriate and inappropriate touch. Working women encountering difficulties with a male or group of men must be trained to seek assistance, as women in India continue to face challenges in contacting the government-provided helpline. Instruct men and boys about the necessity of safeguarding women by refraining from verbal and physical harassment. In the case of **Laxman Naik v. State of Orissa**²⁶ a 7-year girl was sexually assaulted by her uncle this shows that women and girls are raped and murdered not by strangers but mostly by their know person "Approximately 75% of rapes are committed by someone the survivor knows"²⁷

6. PUNISHMENT IMPOSED UNDER INDIAN LAW

The Indian government has enacted significant legislation to safeguard women, particularly regarding their safety and security. Under Section 375 of the Indian Penal Code (Now S. 63 of BNS, 2023), 'rape' is defined as the penetration of the penis into the vagina, urethra, anus, or mouth of a woman. If a man engages in this act without the woman's consent, he will be subject to punishment under Section 376 of the Indian Penal Code of 1860 (Now S. 64 of BNS, 2023). The accused shall face imprisonment for a minimum of seven years, which may reach to life

imprisonment, a period of ten years, or a monetary fine.

Section 376(1) (Now S. 64 of BNS, 2023) prescribes a ten-year imprisonment term for rape. Section 367(2) (Now S. 64 of BNS, 2023) encompasses police and government officials, military personnel in their custody, jail staff and managers, relatives, pregnant women subjected to rape, individuals unable to provide consent, those in positions of superiority, and cases where rape results in the victim's death or involves physically challenged individuals. According to section 376(3) (Now S. 64 of BNS, 2023), the punishment for the rape of a juvenile under 16 years of age is imprisonment for a term of up to two years or life imprisonment, together with a fine.

A. Judiciary in conviction of rape and murder

There are numerous landmark judgements pronounced for rape and murder in the case of **Mukesh & Anr. V. State of NCT of Delhi & Ors.**²⁸ This incident is primarily referred to as the Nirbhaya case, in which a 23-year-old medical student was raped by six men, including a 17-year-old kid. She was subjected to severe sexual abuse and ultimately succumbed to cardiac arrest a month later following medical care. The court imposed the death penalty on four individuals, one of whom was a minor. Referred to the detention facility by the Juvenile Justice Board, the other individual subsequently committed suicide.

The consent of the victim is mandatory but if she is below 15 years no such consent will be valid as said in the case of **Harpal Singh & others v. State of Himachal Pradesh**²⁹ The child was raped by a local villager who claimed she had consented to intercourse. However, the evidence presented indicated that she was 15 years old, and the Supreme Court ruled that consent is invalid in this context, rendering the perpetrator guilty under Section 376 of the Indian Penal Code (S 64 BNS, 2023).

In the case of **Laxman Naik V. State of Orissa**³⁰, A girl was sexually raped by her uncle, resulting in severe injuries and her subsequent murder; this was accepted as corroborative evidence by the

Women <http://ncw.nic.in/important-links/List-of-Laws-Related-to-Women>.

²⁶ 1994 SCC(3) 381

²⁷ Tania Allen, (Aug. 23, 2008),

https://barcc.org/assets/pdf/Media_Kit_SV_Fact_Sheet.pdf

²⁸ AIR 2017 SC 2161

²⁹ AIR 1981 SC 361

³⁰ 1994 SCC(3) 381

court, leading to the imposition of the death penalty on the perpetrator. In ***Mathura Rape case***³¹ “these case brought changes in society and major amendments were made by the judgement section 114(A) of the Evidence Act (S. 119 of *Bharatiya Sakshya Adhiniyam, 2023*)” this asserts that the court shall assume that in the absence of consent, no consent was provided. In this instance, the girl was denied justice on the grounds that she had purportedly consented to the police officer; this case is also referred to as a custodial rape case.

Sakshi vs. Union of India and Ors.³² A public interest litigation case was initiated by an NGO to safeguard minors from sexual assault and to elucidate the concepts of rape and sexual violence. The Supreme Court dismissed the case but promulgated guidelines known as the “*Sakshi Guidelines*” to ensure the protection of children during trials, including provisions for videotaping testimonies and prohibiting direct contact with the accused.

India has imposed capital punishment in certain instances for individuals convicted of rape and murder; however, some judicial authorities oppose capital punishment, citing violations of Articles 19, 20, and 21 of the Indian Constitution. In contrast, countries such as the United Arab Emirates, which execute rapists, experience lower rates of rape, a practice not adopted in India.

7.CONCLUSION & SUGGESTION

In India, women lack genuine independence and require equal protection to feel safer than males. Men must attain sufficient education to cultivate regard for women; only academic qualifications will not suffice for earning respect. India has established numerous laws and initiatives to protect women; however, violence against women persists. Legislation alone cannot transform societal norms; it is society that must evolve for women to feel secure within the country. The incidence of rape and murder remains unaltered, and the Kolkata rape case serves as a stark reminder to a complacent society that women in India are unsafe, regardless of their age.

The legal and judicial penalties are significant in society; nevertheless, not all women receive

justice. The discourse persists online through hashtags, advocating for equality for both genders.

³¹ 1979 SCR (1) 810

³² Writ Petition (Crl) No33, 1997, with SLP (Crl) Nos

1672-1673, 2000