



Review Article

# An Overview of Rape Laws in the Realm of A Gender-Neutral Law

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Abstract	Manuscript Information
<p style="text-align: center;"><b>“God creates a person without discrimination of gender”</b></p> <p>Rape is one of the most heinous crimes against a women's body and civilized society. In the ancient period, rape was a crime against men and not against women since women were treated as the property of men. It was the first rape law known as Hamuurabi law which was coded to punish the offender by the king of Babylon/Mesopotamia. Before the passing of the Indian Penal Code 1860 by the colonial government, there was no rape law existed to punish the rapist. Rape may define; wanted, consensual, forcefully, battering, social rape, and non-consensual sexual acts or further acts of the man towards a woman and other man also. As per the demand of the civil society from time to time, the Government of India amended the law to punish the offender. After the incident of Nirbhaya and amendments in the Criminal laws in 2013 year on the recommendation of Justice Verma's committee, rape law was not limited only to penetration of the penis and was defined more extended so that any offenders who commit such crime, could not escape from the law and the same was adopted in the section 63 in the Bhartiye Nayay Sahita 2023. This research aims to find out the gap in the present existing rape laws and suggested through this study to amend the existing rape law for shielding women from the offense and offender and demands from the government to set up a gender-neutral law so that offenders must punish, belongs to any gender, if they commit any such offense.</p>	<ul style="list-style-type: none"> <li>▪ <b>ISSN No:</b> 2583-7397</li> <li>▪ <b>Received:</b> 22-07-2024</li> <li>▪ <b>Accepted:</b> 21-08-2024</li> <li>▪ <b>Published:</b> 20-10-2024</li> <li>▪ <b>IJCRM:</b>3(5); 2024: 171-176</li> <li>▪ <b>©2024, All Rights Reserved</b></li> <li>▪ <b>Plagiarism Checked:</b> Yes</li> <li>▪ <b>Peer Review Process:</b> Yes</li> </ul> <p style="text-align: center;"><b>How to Cite this Manuscript</b></p> <p>Sandeep. An Overview of Rape Laws in the Realm of A Gender-Neutral Law. International Journal of Contemporary Research in Multidisciplinary.2024; 3(5):171-176.</p>

**KEYWORDS:** Rape Laws in India, Gender Neutral, Violation of Indian Constitution, Ancient Rape Laws.

## 1. INTRODUCTION

In the ancient world, some written and customary laws existed and permitted rape. It is noted that there are four main elements found throughout the rape laws historical reviews which are reflected in the existing and current legislation and legal practice in the world.

The first elements stated about the legal status of women in the society. The second elements talk about the idea of virginity or honor of social value. The third one is related to equating a woman’s virginity to the honor of her family. The fourth one is

male rape which was a consequence viewing of rape as a crime against women as the property of men.<sup>[1]</sup>

*Rape, as it is generally defined, is an untoward, unwanted, and non-consensual sexual act or behavior of a man towards a woman or another man.*” A sexual assault is a gross violation of the autonomy of one’s body and the heinous crime against women and civilized society is rape.<sup>[2]</sup>

*“When a woman is ravished what is inflicted is not merely physical injury, but ‘the deep sense of some deathless shame.’”*<sup>[3]</sup>

Except as above, rape may be committed as forcefully *i.e.* it was committed by the offender to the victim forcefully, battering rape; it is committed upon the wife by the husband in the household, social rape; it is an obligation upon the women to keep happy of his men, consent with under pretense; misconception of marriage, marital rape, etc.

In India, there is no codified rape law in the India before the IPC enactment. In 1860, the British firstly coded criminal law which mentioned the offense of rape which was amended from time to time, and a new category had been merged *i.e.* custodial rape after the Matura case and PIL filed by sakshi vs Union of India in 1983 in which raised a question to the dignity of women and prevent the character assignation of women in a rape case by the defense, A report of 172 of the Law Commission of India, on the recommendation of Justice Verma committee in the year of 2013 and on the incident of Kathua rape case in Kashmir in 2018 various amendments were made in the criminal laws to stringent punishment to the offender as a death penalty and added a new offenses against the women. *i.e.* stalking, voyaging, sexual harassment, etc.

It is imperative to note that as reported in the news not only is the women is a victim of the heinous offense of rape but also beyond gender. It has been recorded in the past few years, lots of women have been found accused of violating the sexual autonomy of men in those wherein rape complaints have been lodged against men in the police station. Resources stated that 14k cases were registered by males as victims of sexual assault. However, existing sexual assault laws in the country are still not gender-neutral. Therefore, it violates the equal protection that must be given to victim irrespective of their gender<sup>[4]</sup>. In addition to the above, notably, there is no adjudication authority existing in the prevalent law that may provide complete justice to the men in case of sexual assault. The law is an emerging factor for changing society which must be changed as per the needs of the civil society and it must encompass the law of the land. Good law enlightens society protects the rights of victims provides social and complete justice and also punishes the offender without deviation from gender biases. God creates a person without discrimination of gender, and the same spirit is also mentioned in the Indian constitution and enshrines social and complete justice without biases of sex, gender, caste, race, etc. mentioned in Article 15 of the Indian constitution and gives the guarantee to

all the citizen to live with liberty under article 21. UDHR has also enshrined human rights as living with dignity.

### Statement of Problem

In the ancient world, there were no codified laws against the conduct of humans, as mounted society develops after lapses of time, humans create a society and they started with the social rules and after sometimes it converted into codified laws, the first codified law related to the offense of rape is Hammurabi law. Before the IPC, there is no codified law in India. Now, India has a codified rape law in the IPC and New Law *i.e.* BNS 2023 to protect women from the offenders to live a dignified life. Rape is not committed against the body of women but it is committed against the soul of the woman who was ravished by the person and it also offense against the entire society since victims suffer the trauma in their entire life.

Notably, numerous hot issues have happened in the past *i.e.* 1983 2002, 2013, 2018, and 2024 also in various parts of India, after such incidents numerous amendments were made in the legal framework on the demands of the society, out of this there are laws to prevent the offense *i.e.* POCSO ACT was enacted to prevent the offenses against the child as originally mentioned 16 years but after 2018 kathua incident the age of the child may be considered 12-year-old and hard punishment who commits the offenses. POCSO Act is gender neutral act against sexual assault cases, aggravated sexual assault, and sexual harassment cases. It is apposite to mention that citizens of India demanded the gender neuter law, it has been noted that lots of cases are reported of sexual assault of men, sexual harassment of men, and stalking also before the adjudicating authority to demand of justice. However, there are no laws to protect the men against these crimes. Further, if the person is below the majority, the offender may be prosecuted for a sexually related offense but if cross the minority then there is no mechanism to protect him. UK and USA etc. have laws that protect the person without bias of gender in sexual assault cases. However, in these circumstances, this study indicates the lacuna of sexual assault laws and its demand from the legislature to set up gender-neutral laws and also to amend the existing laws to shield the person.

## 2. AIM/OBJECT OF STUDY

This study aims to identify the lacuna and areas of rape law for improvement and proposes necessary amendments for making a gender-neutral law to protect women and men against sexual assault cases.

## 3. LITERATURE REVIEW

1. **An article was reviewed;** After reviewing the article it found that it discusses the legal framework and jurisprudence as enunciated in the Criminal law of India for the punishment of rape and provides a comprehensive analysis of crucial factors and relevant provisions of rape

<sup>1</sup> Duque, Maria Alejandra Gomez (2021). “Towards a legal reform of rape laws under international human rights law.

<sup>2</sup> The book titled “the Philosophy of Criminal Conduct” by Donald A. Andres 7 James Bonta.

<sup>3</sup> Justice Krishna Iyer quote,

<sup>4</sup> ipledar.in/punishment for rape in India.

and further provide the details of the lacuna of legislative amendments and certain hindrance in the delivery of justice to the victim of rape. Lastly, certain suggestive ideas to make an effective and implementation of laws relating to rape in criminal jurisprudence.

2. **Wikipedia Article;** the history of rape law in the world and further journal was reviewed which was published by Duque, Maria Alejandra Gomez (2021). "Towards a legal reform of rape laws under international human rights law.
3. **Law books and statute;** Bare acts of Indian Penal Code 1860, POCSO Act, and BNS 2023 for the definition of rape which is mentioned in section 375 IPC and Section 63 BNS and the constitution of India in respect of articles 14 15, and 21.
4. **Catena of judgment/Case laws/report;** related to rape laws which played a specific role to amend the rape definition from time to time on the demands of society. 172 Law Commission report.

#### 4. RESEARCH METHODOLOGY

The research methodology is a doctrinal and comprehensive analysis of primary sources, including government statutes and secondary sources such as journals, articles books, and case laws.

##### Research Questions/Hypothesis

1. Whether the present existing definition is sufficient to protect the person against sexual assault cases.
2. Whether amendments are required in the present existing definition of sexual assault law to set up as a gender-neutral law in civil society.

##### Rape Laws in the Ancient Periods

This Section focuses on rape laws in the ancient world; some written and customary laws existed and permitted rape. It is noted that there are four main elements found throughout the rape laws historical reviews which are reflected in the existing and current legislation and legal practice in the world. The first elements stated about the legal status of women in the society. The second elements talk about the idea of virginity or honor of social value. The third one is related to equating a woman's virginity to the honor of her family. The fourth one is male rape which was a consequence viewing of rape as a crime against women as the property of men <sup>[5]</sup>.

##### Origination of Rape Law in the World

In the ancient period, women were considered as the property of males, if the woman is married then rape crime was committed against her husband and if a woman is a virgin, then a crime was committed against her father.

The first code was framed in Mesopotamia by the king of Hammurabi as a Hammurabi code which punished the offender for committing rape of women.

*"if a man forces the (Betrothed) wife of another who has not known a male and is living in her father's house. And he lies in her bosom and they take him, that man shall be put to death and that woman shall go free"* <sup>[6]</sup>

*"197. If a man seizes a woman in the mountain, it is the man's crime and he will be killed. But if he seizes her in (her) house, it is the woman's crime and the woman shall be killed. If the husband finds them, he may kill them, there shall be no punishment for him"* <sup>[7]</sup>

Hittite laws also known as the 'Code of the Nesilim developed in 1650 and 1500 BCE, which are usually categorized as dealing with incest, adultery, or bestiality.

##### Rape Law in India

The word rape is not new to the world, even though most of the culture had recognized rap as a crime. In British India, the crown of the United Kingdom handed over the power of legislation to the East India Company and Supervisory power in the hand of Crown, given power handed over to East India Company and Macaulay agent of the Crown firstly set up the code and set up the penal norms in the Indian Penal Code 1860. After passing the year and needs of the hours, many amendments have been done to the penal code regarding the rape definition. In this article, it has been discussed changes in the rape law on the demands of the society and discussed the concept of gender-neutral law.

##### Indian Penal Code

In India, rape law begins with the enactment of IPC 1860 as mentioned in Section 375 to 376E of the Indian Penal Code as reflecting sexual offenses. Rape definition stated in the IPC that Sex without consent (Non-Consensual), with consent because under the pretenses. It defines a statutory rape of women who are below the age of sixteen and marital rape between married couples without consent however it was not recognized in the IPC, however, Courts remain unrecognized continuously and keep a lenient view as two-year punishment in case of desertion between the married couple. Gang rapes and repeat offenders were also given harder punishments. However, the age of women victim's changes from 16 to 18 years, and in the case of marriage, the consent of the wife if she is below 18 is not considered as consent.

##### Criminal Law Amendment, 1983

It was a famous rape known as the Mathura Rape Case (Tuka Ram vs State of Maharashtra). In this case; A girl who belongs to the Adivasi area was raped by a drunken police official when she in police custody. After completion of the trial in the lower

<sup>5</sup> Duque, Maria Alejandra Gomez (2021). "Towards a legal reform of rape laws under international human rights law.

<sup>6</sup> Robert Francis Harper, The code of Hammurabi king of Babylon, about 2250 B.C (1904) P 45.

<sup>7</sup> Hittite laws (also known as the 'Code of the Nesilim'; developed c. 1650–1500 BCE, in effect until c. 1100 BCE) are usually categorized by scholars as dealing with either incest, adultery or bestiality.

judiciary and judicial pronouncement. The lower court acquitted the police official and mentioned in the judgment that the victim is a loose moral. In the appeal, the appellate court reversed the finding of the lower court, and the apex court of India reversed the judgment of the Bombay High Court and held that the victim did not raise an alarm during the incident and she had not any visible injury on her body thereby indicate that she did not resist the advances. After pronouncing the said judgment, groups of women from all over the country protested and demanded a change in the existing rape laws, in view of the demand of social group and women, legislature changes was made in the evidence act under section 114 (A) in the 1983 and create a new category of custodial rape in the penal code while women in the custody in the public servants.

The presumption clause was mentioned in the laws; consent in sexual acts is an integral part of rape and the court must presume that the woman is saying truth when she stated that the act was nonconsensual. After this amendment, the identity of the victim is banned for publishing and also prohibited 'character assassination' of the victim in court.

A PIL filed by an NGO named Sakshi case <sup>[8]</sup> in which victims were not comfortable reporting the rape, the main issue in the PIL that to question and degrade the sexual integrity and personal space of the victim made by the defense instead of treating her with empathy. After highlighting the issue, the apex court asked the Commission of law to review the rape law in the existing penal code. and Law Commission 172 reports <sup>[9]</sup> recommended certain changes in the legal framework. The legislatures considered the commission's recommendation and inculcated section 155(4) in the Evidence Act and prohibited the reporting of rape victims.

### Protection of Children from Sexual Offences (POSCO) Act, 2012

It has been noted in the India, rape cases had been registered against the child and increased and reported. The Society demanded for need of a law which deals with the child rape cases. The Said Act covered the sexual intercourse with a girl below the age of 16 with or without consent and it falls under the statutory rape and criminalized sexual intercourse. It is inculcated in specific conditions in the POSCO Act under which a child could be tried such as making the police responsible for protecting the child during the trial and providing emergency medical treatment. Further legislature intended that the trial must be completed within one year after registering the complaint and mandating fast track court in the offence committed under this act against the child. Section 3 itself a gender-neutral and a similar provision as mentioned in clause 1 (a,b,c,d) of section 375 IPC and section 63 BNS. The Act is gender-neutral and it also made child pornography, abetment of child sexual abuse, non-penetrative assault, and sexual harassment an offense.

### Criminal Law Amendment Act, 2013

A brutal gang rape was committed in 2012 in capital of India against these widespread protests by the people in the entire country and people demanding the government to wide changes in the existing rape laws. The government constituted a committee in the chairmanship of retired Judge of Supreme Court of India Justice J S Verma and added a new clause; as voyeurism, stalking, acid attacks which were missing in the existing penal laws. It is a demand of society that cases like **Nirbhaya** don't happen in the future. The above-constituted committee and the following recommendation as reproduced;

*The Rape should be treated as a separate offence and it not be limited to the penetration of the mouth, vagina or anus and any nonconsensual penetration of sexual nature should be considered as rape.*

*In addition to above, a non-penetrative form of sexual conduct would be treated as a sexual assault which would be punishable with five year or with fine or both and in rarest of rare case of rape would give death penalty and age of consent must be increased from 16 to 18 years,*

*The legislative accepted the recommendation of committee and introduced the Criminal Amendment Act 2013. Through this Act, even a threat to rape is considered a crime. Section 375 was redefined and Section 354A, 354B, 354C, 354D has been added to the IPC which describes sexual harassment and new offence as stalking, voyerism and acid attack and also specifically mentioned that the past sexual history and character of women would be irrelevant and cannot be used as a evidence in the court proceeding. Minimum sentence of rape has been enhanced from 7 to 10 year in case of death offender will be punished with life imprisonment or death sentences. If accused is a minor so the age of being tried an adult for crime such as rape and murder was changed from eighteen to sixteen in pursuance of JJ Act.*

Section 375 of IPC <sup>[10]</sup> and section 63 of BNS <sup>[11]</sup> definition as reproduced as recommended by the committee;

A man is said to have committed the offence of rape, under the following circumstances;

- (A) If he inserts his penis, to any extent, in a woman's vagina, mouth, anus, or urethra, or if he in any way forces or makes a woman to do any such thing with him or any other person; or
- (B) If he inserts any object or a part of his body (not being the penis). To any extent, in the vagina, anus, or urethra, or forces a woman to do so with him or any other person; or
- (C) If any man manipulates in any manner any part of a woman's body, to cause such penetration, in the vagina, anus, or urethra, or forces a woman to do so with him or any other person; or
- (D) Applies or forces his mouth to the vagina, anus, or urethra of a woman, or forces a woman to do so with him or any other person.

<sup>8</sup> Wp (C) 33/1997 Sakshi vs union of India.

<sup>9</sup> 172 law commission of India Report.

<sup>10</sup> Ibid under section 375 of IPC 1860.

<sup>11</sup> Ibid under section 63 BNS 2023



After receiving the reports, the Government pondered the recommendation of the Committee and amended the IPC and redefined the rape definition, and added four types of rape under section 375 clause a to d, and if a man commits these four types of acts with or without consent of women it may be amount of rape. The government intends to scrap the colonial criminal laws and the government formed a committee under the chairmanship of vice-chancellor of NLU Delhi, justice of high courts, and eminent jurist for drafting the new criminal laws *i.e.* BNS, BNSS BSA. BNS itself reflects the same provision in section 63 BNS akin to section 375 of IPC. In these mentioned new laws, the government did not intend to set up a gender-neutral law for sexual assault case on the same priority of POCSO Acts, however government itself claims in the objective of BNS, BNS has many provisions as a gender-neutral but not sexual assault provisions.

### **Criminal Amendment Act 2018**

An eight-year-old girl child was kidnapped and raped in the kathua District in Jammu and Kashmir. Once again widespread protest was made in the entire country against this incident and to prevent these types of offenses, the government introduced an ordinance through Article 123 of the constitution of India and amendments were made in the POCSO Act and enhance the punishment *i.e.* 20 years if the rape committed anyone below the 16 years of age and if rape committed below the 12 years of age punishment will be the death penalty. The period of trial was reduced as 6 months from the one year.

### **New Criminal Law; Bhartiya Nayay Sahita 2023**

The Law Commission of India recommended to the government its need of time to change of colonial laws which is ineffective in present for providing the justice and it is trite laws which were drafted at the time of colonial Era and its needs to beef up the criminal justice system to provide the justice. The government intends to scrap the colonial era laws and formed a committee in the chairmanship of vice chancellor of NLU Delhi, high courts justice and eminent jurist of law for drafting new criminal laws. As per the present scenario, on the recommendation of government, these three laws *i.e.* BNS, BNSS BSA were drafted and passed by the parliament after recommendation of parliamentary standing committee after one year return. When the both house of parliament passed these laws and on the same day president of India was given ascent to this law and these laws would be effective and implementing from 01. July 2024,

In these new criminal laws, government, however itself is claiming in the objective of BNS, it consists a gender-neutral provisions but the government did not intend to set up some laws sexual assault laws *i.e.* rape, stalking, and sexual harassment as a gender-neutral law, BNS itself reflects the same provision in section 63 akin to section 375 of IPC. A definition of Section 375 IPC and section 63 BNS clause (a to d) itself reflects that the offence may be committed by any person *i.e.* women and transgender also, however, even the rape definition was started from the only a man committed these acts under this definition is rape.

### **Existing Definition of Rape Law is Violated the Article of Indian Constitution *i.e.* 14,15 and 21**

An Existing definition of rape law in the IPC and BNS which indicates that the offender always will be a man only. However, after amendments of criminal law in the year of 2013 and on the recommendation of Justice Verma Committee, the clause (a to d) of section 375 inserted and these clauses it extends beyond the inserting penetration, to any extent, in a woman's vagina, mouth, anus, or urethra. Clause b and C of section 375 IPC and 63 BNS, there is no requirement of inserting the penis for committing rape and may be committed through any objects, a man manipulated any part of a woman's body, causes penetration and applies or implies his mouth to the vagina, anus, or urethra of a woman, or forces a woman to do so with him or any other person. About such a definition, the acts may be committed by the person *i.e.* men, women, and transgender against the person.

Articles 14 and 15 enshrined; Equality before the law and Equal Protection of the Law, The State shall not discriminate against any citizen on the grounds of religion, sex, gender, race, place of birth caste respectively, and Article 21 stated that the right to life and liberty including the live with dignity, in this article it also includes that everyone has a right to protect himself and demand the social and complete justice against the state if any offense committed against him etc. further directive principle itself stated that the state shall not frame a law on ground religion, sex, gender, race, place of birth and caste.

This definition of rape law is violated articles 14, 15 and 21 of the constitution of India owing to this law only punish to a man if the offense committed, however, if the person (man, woman and transgender) commits these offences against the person then they are not covered under the definition of rape since it is punished only to man.

Further, there is no law if any woman committed stalking sexual harassment or sexual assault against the man. Even though constitution of India states about complete justice so these laws have a lacuna that must be filled up through the amendment these laws.

### **Suggestion for Amending Existing Provision of Rape Law In the Realm of Gender Neutral Laws**

In light of the circumstances in the present laws and scenario and considering the rape definition, it is not sufficient to punish the offender *i.e.* women and transgender since the present existing definition itself stated that only a man commits rape. If the legislature amends the existing rape law and mentions the person instead of man, the offender belongs to any gender, may be punished. This lacuna may be fulfilled akin to the POCSO Act; if person commits the offence against the child which is mentioned in section 3, 6 7 9 penetrate sexual assault and aggravate penetrate sexual assault and sexual harassment without discriminating of gender. But if the child become a major more than one day of minority then offender will not punish since offender is female and transgender. This is violating article 14 equality before law and 15 discriminations on the ground of sex and Article 21 also.

In addition to the above, after striking down the 377 by the apex court in the Navtej Singh Johar case, the government has completely scrapped the section 377 from the BNS. If any male does any acts which is against the nature of the body, then the offender could not be punished in the new laws so it's demanded of civil society that the law must be drafted and implemented in the spirit of gender neutrality so that offender must be punished at any cost. It is suggested to the legislature to amend the existing rape law and insert the person instead of man so that the purpose of social and complete justice may be fulfilled in the spirit of the constitution.

## 5. CONCLUSION

Hence, it is stated that the rape committed by the offender who may be male, female, or transgender, this offense is not only an offense against a woman who is a victim but also against the person and civil society. The offender should not acquit owing to the lacuna of law. The Constitution of India guarantees to all citizens complete justice but owing to the lacuna of law victims do not obtain complete justice.

Numerous complaints are reported of sexual assault, stalking, and sexual harassment of men before the adjudicating authority but it could not be concluded owing to the lacuna of existing law and mechanisms.

The Hon'ble Apex court has already declared the unconstitutional laws on grounds of articles 14,15 and 21 of the constitution of India owing to gender biases in the Joseph Sine and Navtej Singh Johar case.

## 6. CONFLICT OF INTEREST: No conflict

The view of the author is personal and not to heart the sentiment of any person.

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