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# **HUMAN RIGHTS AND SEXUAL VIOLENCE:** **REFORMING RAPE LAW IN CONTEMPORARY INDIA**

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## **ABSTRACT**

An ongoing effort to balance criminal jurisprudence with constitutional morality and human rights principles is reflected in the evolution of laws that govern the rape cases in India. Rape under the Penal Code of India was substantially redefined by the Amendment made in the year 2013 by Criminal Law, which strengthened penalties and broadened the definition of consent. The replacement of IPC by the Bharatiya Nyaya Sanhita (BNS) 2023 is an amendment of law that penalized the offences in India and also which reorganized sexual offenses under a contemporary legal framework. This essay uses a human rights perspective to critically analyze rape law under both statutes, emphasizing consent, equality, dignity, procedural protections, and survivor involvement. Full legal empowerment is still threatened by structural constraints, especially the marital rape exception and implementation gaps, despite the fact that statutory reforms show progress toward survivor-centric justice. The paper makes the case that institutional accountability, constitutional principles, and legislative reform must all be in line for true empowerment.

**Keywords:** IPC, Bharatiya Nyaya Sanhita, Human Rights, Rape Law, Legal Empowerment, Consent, Survivor Justice.

## I. INTRODUCTION

One of the most serious abuses of human dignity and bodily autonomy is sexual violence. There are significant some case of gang rape that have been made to India's economy a dark reality, especially the case of 2012 that was happen in the National capital of India i.e., Delhi that create brutal harsh reality and a negative impact on India people mind regards to the sexuality harm<sup>1</sup>. The Criminal Law (Amendment) Act, 2013 clarified consent, increased penalties, recognized more types of penetration, and broadened the definition of rape.

As part of a larger overhaul of criminal law, the IPC was replaced in 2023 by the Bharatiya Nyaya Sanhita (BNS)<sup>2</sup>. The BNS's passage presents a chance to reevaluate whether India's legal system actually empowers survivors or only serves to further punitive goals, even though it mainly keeps the content of post-2013 rape provisions.

In order to determine whether legal reforms sufficiently advance equality, dignity, access to justice, and survivor agency, this paper assesses rape law under both the IPC and BNS from a human rights standpoint.

## II. CONCEPTUAL FRAMEWORK: LEGAL EMPOWERMENT AND HUMAN RIGHTS

Legal empowerment is a term that refers to the manner in which people obtain the capacity to comprehend and engage with legal systems in order to protect their rights. In cases of rape victims, legal empowerment encompasses:

- Access to justice system
- Prevention of re-victimization
- Conformity of respect and autonomy
- People's participation in legal matters

In the context of human rights, rape contravenes:

- Rights to *life* and personal liberty (Article 21)
- Equal rights for all persons without discrimination (Article 14 & 15)
- Exemption from torture (International law)

CEDAW and UDHR are some international conventions that obligate states to safeguard women from gender related violence. Rape laws should therefore be interpreted in light of equality, dignity, Non - discrimination, and the availability of efficient remedies to the victim

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<sup>1</sup> *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1 (India) (SCC Online).

<sup>2</sup> *Bharatiya Nyaya Sanhita*, No. 45 of 2023, §§ 63–70, *India Code* (2023).

or the person who suffered from commit of rape offence.

### **III. RAPE LAW UNDER THE INDIAN PENAL CODE**

The idea of legal empowerment via a human rights framework, and evaluate the current rape law system under the IPC and Bharatiya Nyaya Sanhita in terms of how it promotes the autonomy and dignity of rape survivors<sup>3</sup>.

#### **A. Definition and Consent**

Further, Section 375 of the IPC, as amended in 2013, expanded the scope of the definition of rape to cover up the different categories of without consensual penetrations. The definition of consent was explained as " a clear indication of consent to involve in a sexual act as expressed by a person's words or behaviour". Additionally, the modified clause clarified that agreement is not implied by the lack of physical opposition.

The Supreme Court confirmed and agrees that the main element to commit a crime of rape is a lack of consent of person as same is highlight in a case of Kaini Rajan v. State of Kerala. In the case of Gurmit Singh, the Supreme Court emphasized that if the prosecutrix's testimony is reliable, it is sufficient to convict<sup>4</sup>.

The Indian Evidence Act's Section 53A rejects patriarchal notions of character by forbidding the use of the survivor's prior sexual history as proof of consent. This was a significant step in the direction of adjudication based on dignity.

However, in cases when the wife is older than eighteen, immunity for marital rape is still granted under exception provision no. 2 of section 375 of Penal code of India. Adult marital rape is still not considered a crime, notwithstanding the Supreme Court's reading of this clause to include underage wives in Independent Thought v. Union of India.

#### **B. Punishment and Aggravated Offences**

Section 376 IPC provides for rigorous imprisonment for ten years or more, which may also extend to imprisonment for the lifetime of the offender who commit the offence. Aggravated offenses include custodial rape, gang rape, and rape of minors.

In Mukesh v. State (NCT of Delhi) (Nirbhaya case), the Supreme Court mainly upheld the death sentence for aggravated rape that resulted in the death of the rape survivor, signifying the stern attitude taken by the judiciary in rape cases<sup>5</sup>.

Though stringent punishment is indicative of deterrence, in order to assess the empowerment

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<sup>3</sup> *Indian Penal Code, 1860, § 375 (as amended 2013).*

<sup>4</sup> *State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 (India) (SCC Online).*

<sup>5</sup> *Mukesh, (2017) 6 SCC 1.9*

of rape survivors from a human rights perspective, it is necessary to examine whether the severity of punishment results in empowerment.

### **C. Procedural Safeguards and Survivor Rights**

Various survivor-centric provisions have been incorporated after the 2013 reforms:

- In-camera trials as per Section 327 of the CrPC<sup>6</sup>.
- Protection of the victim's identity through Section 228A of the IPC.
- Compensation to the victim as per Section 357A of the CrPC.
- Prohibition of the 'two-finger test'.

Furthermore, the facility of filing 'zero FIR' and registration of FIRs is also helpful.

## **IV. RAPE LAW UNDER THE BHARATIYA NYAYA SANHITA, 2023**

The Bharatiya Nyaya Sanhita, 2023, re-codifies rape laws, which are substantially similar to the amended IPC<sup>7</sup>.

The definition of rape, standard for consent, and aggravated forms of rape are substantially similar.

The procedural reforms in Bharatiya Nagarik Suraksha Sanhita (BNSS) place significant emphasis on time-bound investigation and forensic evidence. The procedural reforms in BNS are aimed at addressing one of the main reasons for diminished faith in the justice system for survivors of rape<sup>8</sup>.

The BNS act ensure to manage the marital rape exception, which reflects the legislative reluctance to penalize non-consensual sex in marriage, which is against human rights principles and constitutional equality and autonomy.

## **V. LEGAL EMPOWERMENT: A HUMAN RIGHTS ANALYSIS**

Legal empowerment is not limited to criminalization; it involves enabling the survivor to exercise rights and access legal recourse and proceedings.

### **A. Recognition of Autonomy**

The expanded definition of consent recognizes bodily autonomy and is in keeping with human rights principles. The courts have moved away from stereotypes that equate silence and past intimacy with consent.

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<sup>6</sup> *Code of Criminal Procedure, 1973*, § 327(2).

<sup>7</sup> *Bharatiya Nyaya Sanhita, 2023*, §§ 63–70.

<sup>8</sup> *Bharatiya Nyaya Sanhita, 2023*, §§ 63–70.

### **B. Access to Justice**

Making it compulsory to register FIRs and providing compensation to victims have improved access to justice. In *Union of India* case, the Supreme Court mainly focused on strengthening the protection of the identity of the survivor of sexual assault, which is important for privacy and dignity<sup>9</sup>.

### **C. Participation and Agency**

Recognizing interim compensation in *Bodhisattwa Gautam* is an important acknowledgment of the rights of the survivor beyond conviction<sup>10</sup>.

However, the rate of conviction is low because of hostile witnesses and evidentiary issues.

## **VI. TRANSFORMATIVE JUSTICE APPROACH FOR RAPE CASES**

Transformative justice is an entirely new approach to addressing crime compared to the conventional criminal justice framework. Transformative justice aims to provide a much more holistic approach that involves the concepts of healing, inclusion, responsibility, and prevention.

This transformative justice approach goes beyond the punishment aspect to address other issues, including the dignity of the victim and the prevention of any future crimes through societal change.

### **A. Survivor Involvement in Justice Processes**

The inclusion of survivor involvement in the justice process is one of the major components of transformative justice. The conventional justice process tends to ignore the role of the survivor by considering him/her only as a means of providing information, not as an individual who needs to be recognized as a person having his/her own voice and rights.

### **B. Mental Health Care and Rehabilitation**

While sexual abuse has physical effects, it also comes with long-lasting impacts on a psychological level. Victims can suffer from post-traumatic stress disorder (PTSD), anxiety, depression, feelings of isolation, and poverty. If the criminal justice system only prioritizes punishing the perpetrator, it ignores such crucial aspects.

According to transformative justice, it is essential for the system to include rehabilitation processes that cover:

- Access to counselling services that cater to victims of sexual abuse

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<sup>9</sup> *Nipun Saxena v. Union of India*, (2019) 2 SCC 703 (India).

<sup>10</sup> *Bodhisattwa Gautam*, (1996) 1 SCC 490.

- Rehabilitation assistance in education, employment, and financial matters
- Establishment of secure spaces where victims can recover and move forward
- Implementation of appropriate compensatory measures

### **C. Community Accountability**

The approach of transformative justice recognizes the fact that acts of sexual violence, among other offenses, cannot be considered individual acts because their roots lie in wider social perceptions and practices. Issues such as gender disparity, victim blaming, and societal taboos play a role not only in the perpetuation of such acts but also in deterring victims from reporting them.

### **D. Prevention Strategies**

One significant advantage of transformative justice is its preventive nature. Rather than being concerned solely with addressing crimes when they happen, transformative justice stresses the importance of preventing any harm from happening in the first place.

These prevention methods could involve:

- Incorporating awareness of gender sensitivity and consensual education in academic programs and workplaces
- Enhancing institutional systems to detect and remedy warning signs of violence
- Equipping law enforcement officials and members of the judiciary with knowledge about handling sensitive situations
- Encouraging public initiatives that debunk myths and promote social respect.

### **E. Emphasis on Healing and Transformation**

The hallmark of transformative justice is its emphasis on healing and transformation. In addition to ensuring accountability, the framework also aims to:

- Rehabilitate the victims of the crime
- Fix any existing injustices in the social systems
- Create a new culture based on dignity, equality, and mutual respect.

## **VII. RECOMMENDATION FOR LEGAL REFORMS**

Any substantive response to the problem of sexual violence in India cannot solely rely on its recognition through statutes, but should be accompanied by substantive, procedural, and socio-legal reforms. Though various changes have been made via the Indian Penal Code of 1860 and the Bharatiya Nyaya Sanhita of 2023, there are several deficiencies that still persist.

### **A. Marital Rape as a Crime**

One of the most prominent flaws in the Indian criminal system is the survival of the marital rape exception, which means that rape between husband and wife in the context of a marriage is not treated as an act of rape. The marital rape exception is based on archaic concepts of implied consent and privilege, which cannot be reconciled with contemporary constitutional principles.

- Criminalization of marital rape is necessary in order to:
- Ensure the protection of sexual autonomy and consent in marriage
- Bring domestic legislation in line with constitutional rights
- Comply with India's international legal obligations

The courts have gradually moved towards recognizing the idea that marriage does not eliminate individual rights. In *Independent Thought v. Union of India*, the Supreme Court of India has interpreted the marital rape exception in cases of minor wives in light of the overriding concept of consent. Nevertheless, an amendment to the laws is necessary<sup>11</sup>.

### **B. Gender-Neutral Provisions in Rape Laws**

The current laws regarding rape in India are mainly gendered, wherein women are seen as victims while men are considered the aggressors. This is because women are statistically more likely to be raped than other genders, but this does not mean that no one else can ever be the victim of rape or sexual violence.

Incorporating gender-neutral provisions in the law could:

- Provide equal rights to all genders
- Improve reporting rates among disadvantaged sections of society
- Raise awareness about sexual violence

However, these changes should be done in a way that maintains their effectiveness without compromising the safety of women.

### **C. Reforms to the Process**

Apart from substantive changes, legal reforms need to ensure proper functioning of the criminal process as well, which itself sometimes becomes a reason for misery for the survivors.

#### **(a) Pro-survivor Investigation Procedures**

Investigations should be carried out with an aim to minimize trauma and maintain respect for the survivor. This will include:

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<sup>11</sup> *Independent Thought v. Union of India*, (2017) 10 S.C.C. 800 (India).

- Taking down the statement in a supportive atmosphere
- Making sure that the female police officer(s) are present
- Not probing into their previous sexual life unnecessarily

In *State of Punjab v. Gurmit Singh*, the Supreme Court stressed on conducting of in-camera proceedings and being sensitive while dealing with rape cases<sup>12</sup>.

#### (b) Timely Trials

Adjudicatory delays often make the survivors not opt for seeking justice. Time-bound investigations and speedy trials through special courts help:

- Reduce the trauma caused by delays
- Increase conviction rate by analyzing the evidence quickly
- Strengthen faith in the justice mechanism.

#### **D. Support Systems for the Victim**

A comprehensive legal system needs to be supported by systems that help the survivor outside the court room as well.

#### **E. Awareness and Education**

Reforms will not be able to achieve success unless there is a shift in social consciousness. Prejudiced attitudes, victim blaming, and stigma are still impeding reporting and judicial proceedings.

Activities that should be undertaken in this context include:

- Awareness-raising campaigns focusing on consent and gender equality
- Including sexual education and legal education in the syllabus of institutions
- Training workshops for law enforcement agencies, courts, and medical professionals
- Engaging communities in challenging detrimental customs and traditions.

#### (a) Counselling

The victim should get proper psychological counselling to overcome trauma and heal.

#### (b) Legal Aid

Legal help at no cost will enable the survivor to successfully through all the legal processes involved. The right to legal aid is an essential aspect of fair trials as per Article 21.

#### (c) Rehabilitation

Rehabilitation includes:

- Compensation
- Education and job opportunities

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<sup>12</sup> *State of Punjab v. Gurmit Singh*, (1996) 2 S.C.C. 384 (India).

- Protection

The need for compensatory justice was emphasized in the case of *Delhi Domestic Working Women's Forum v. Union of India*<sup>13</sup>.

## VIII. CONCLUSION

The development of rape law from the IPC to the Bharatiya Nyaya Sanhita has witnessed incremental development towards a more survivor-centric approach. The amendments of 2013 have greatly expanded the law of consent, thereby making the law more aligned with constitutional morality.

But legal empowerment has not yet achieved its full potential. The implementation of the law, the continuation of the marital rape exception, and the stigma associated with rape have all affected the fulfillment of the human rights obligation.

Harmonizing the law with constitutional morality, the constitution, and the law is necessary to develop a truly survivor-centric strategy. The survivor must be seen as a person with rights rather than as a helpless victim of rape in order to accomplish the goal of legal empowerment.



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<sup>13</sup> *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 S.C.C. 14 (India).