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PRIORITIZE WOMEN SAFETY THAN PATRIARCHAL MEN

Affra Mohamed Mubarak¹

I. ABSTRACT

India gained its independence in 1947 and adopted the constitution in 1949. The preamble of the constitution states equality, and the Indian constitution under Articles 14 and 51-A allows the state to form special laws for protecting women and respecting women. The NCRB has issued a stating that there is rape reported every 15 minutes in the country there are laws that are made to protect women against violation. Women suffer domestic violence, dowry death, sexual harassment in the workplace and brutally raped. The schemes have been made to protect women in their workplace and outside their houses like emergency numbers and Nirbhaya funds these schemes are made by both central and state governments for violations against women and girl children. Sections 375 and 376 of the Indian Penal Code of 1890 define rape and punishments for rape.

There are numerous case laws have given guidelines to protect women in the workplace like the Vishaka guideline and the Sakshi guideline. The Nirbhaya case made the whole of India turn toward judgment and justice. In 2024, the Kolkata case made an understanding of women's safety in the medical field hospitals, and universities. Women are not safe in any place proper precaution needs to be taken by the government to protect women. Women shouldn't be physically abused and sexual assault toward women will be punishable. Sexual intercourse can be done only with consent without consent will be a violation. Further, age for consent and marital rape has been discussed in detail in this paper.

II. KEYWORDS

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

¹ Government Law College, Tiruchirappalli

III. 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 got its independence from Great Britain in the year 1947 when many civilians in India fought to get freedom from Great Britain civilians including women also who took part in the war against Britain does India still consider women independent, the answer is no after 78 years of independence still women in India haven't got freedom no women can enjoy the freedom or independence.

“The day women can walk freely on the road at night, that day we can say India has achieved independence” quoted by Mahatma Gandhi. In 2018, a woman is been reported raped across the country every 15 minutes as per the government report. In the year 2012, more than 25,000 rape cases were reported to police officials as per The National Crime Records Bureau (NCRB)². Does the constitution help women from harassment in their workplace or inside their house Article 15(3) states “makes it possible for the state to create special provision for protecting women and children³”.

A list of laws that protect women is the Special Marriage Act of 1954, the Indian Penal Code of 1860, the Dowry Prohibition Act of 1961, the sexual harassment of Women at Workplace Act of 2013, the Code of Criminal Procedure of 1973 and more but is it effective in protecting women. Every woman needs to be protected irrespective of her religion, race and age.

IV. RESEARCH OBJECTIVES

1. To make an understanding of women's safety and how women are harassed and raped in society irrespective of their age.

² 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>.

³ Constitution of India, 1950

2. To elucidate the punishment given under section 376 of the Indian penal code and the POCSO Act for protecting women against men/patriarchal.

V. RESEARCH QUESTIONS

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?

VI. RESEARCH HYPOTHESES

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 and POCSO Act of 2012.

VII. RESEARCH METHODOLOGY

This paper utilizes a strictly doctrinal research approach. Doctrinal research, known as library-based research, primarily involves the study and analysis of legal statutes, case law, and academic writings. This method is ideal for exploring the theoretical and conceptual dimensions of law. It systematically presents legal doctrines and principles. In doctrinal research, primary sources include statutory materials, judicial decisions, and authoritative literature. Secondary sources like commentaries, articles, and legal summaries are also essential. The research process entails identifying, gathering, and critically evaluating these sources. The goal is to form logical conclusions and provide insights into the legal questions being studied. This paper

aims to deliver a thorough and unified view of the legal structure relevant to the topic addressed.

VIII. LITERATURE REVIEW

The legislation on women's safety has been addressed under construction and criminal law. In the Constitution of India, Article 15(3) deals with enacting special regulations for the protection of women and children in India and Article 51- A "states that every citizen shall practice derogatory to the dignity of women"⁴. Under the Indian Penal Code, Section 376 deals with rape and gang rape of women by men. Other special Acts include 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 (2000⁵)*, *Queen vs. Flattery* ⁶(1877), *Bhupender Singh v. Union Territory of Chandigarh (2008)*, *Tulsidas Kanolkar vs. State of Goa (2003)*, and *State of Maharashtra vs. Prakash*⁷ (1992). 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)*, *Independent Thoughts v. Union of India (2017)*, and more. The literature review in this paper deals with the Indian government providing safety and how much safety women needs in their daily lives. India provides plenty of laws and landmark judgments related to women's safety and rape. The paper also analyzes the punishment provided by the government through law and judicial review.

⁴ The Indian Constitution, 1950

⁵ *Himachal Pradesh v. Mango Ram (2000)*, AIR 2000 SC 2798

⁶ *Queen vs. Flattery* 1877, 2 QBD 410

⁷ *State of Maharashtra vs. Prakash*, air 1992 sc 1275

IX. WOMEN SAFETY IN SOCIETY

Women's safety is a major topic and very controversial topic to discuss no women feel safe but society considers it as safer for women to live in India both inside and outside their house. Women can't live life according to their desires even if there are many patriarchal men around the society to break them down physically and mentally. According to the crime report, every 15 min a woman is been raped to death and dowry death "*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%*⁸ this report shows women suffering day to day life 30% of women age ranging between 15-49 suffer physical, sexual or domestic violence".

There are plenty of laws for protecting women however, not all laws made by the parliament are effective in the Judiciary through preceding judgement describes the need for changes in existing law. In one of the case *State of Punjab v. Gurmit Singh*⁹ and *Dileep Singh v. State of Bihar*¹⁰ the court held that the accused will be liable for rape under section 376 of IPC as there was no consent given by the girl. "*Will avoid giving night duties to women doctors*¹¹" This was published in NDTV after the horrible Kolkata doctor rape case in 2024 this incident shows that women are not safer even at their workplace. Women are also being bullied by men through social media by using vulnerable words or obscene words, they misuse the pictures by morphing, and pornography is the major start of such sexual harassment and rape as said in the case Ritu Kohli case ¹² accused Manish Kathuria misused Ritu Kohli on the internet used obscene and offensive word in internet in her name she even received a call later filed a petition to Delhi police they file under 509 of IPC but couldn't support so Amendment to section 66E of Information Technology Act

⁸ NCRB report 2023

⁹ *State of Punjab v. Gurmit Singh*, 1996 AIR 1393 SCC(2)384 JT 1996(1)298 1996 SCALE (1)309

¹⁰ *Dileep Singh v. State of Bihar*, AIR 2005 SC 203

¹¹ 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>.

¹² *Manish Kathuria Vs. Ritu Kohli*, C.C. No. 14616/2014

X. CONSIDERING WOMEN CONSENT

The consent of the woman or girl is essential in intercourse as rape under section 375 of IPC defines the non-consent of women or girls as considered to be raped under the case *Tulsidas Kanolkar v. The State of Goa*¹³ the victim was mentally unstable and accused used it and had intercourse with her made her pregnant the court held that the victim was mentally unstable were she cannot give her sound mind consent and later considered accused action as rape. In a marital relationship, if the wife is above 15 intercourses with her husband is considered valid until the 2013 Amendment as per exception 2 of sec 376 of IPC. To quote the words of Justice Krishna Iyer in the case of *Rafiq v. State of UP*¹⁴ 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, there were many changes brought after this 2013 amendment increased the age of consent for intercourse with women or girls from 16 to 18 years whereas in exception 2 of the Act the non-consensual husband with his wife age above 15 years which is controversial to section 3 of POCSO. The case *Independent Thought v. Union of India*¹⁵ held that it is discriminating the married girl and unmarried girls as the parliament has increased the age to 18 years for consent which will apply to both married girls and unmarried girls exception 2 of the Act is unreasonable and violates the integrity of the girl a man having intercourse with his below 18 years old wife is considered to be a rape.

XI. SEXUAL HARASSMENT

Section 354 and section 354A of the IPC deals with sexual offences against women. Sexual harassment has been defined under section 354A of the IPC states that asking for sexual favour watching pornography or showing it to women against her will. The cause of sexual harassment is due to the prevalence of patriarchy as the culture in India hasn't changed as male superiority is normalized, the women as per the media shows degrading the modesty of women by male dominant is considered to be heroic

¹³Tulsidas Kanolkar v. The State of Go,AIR 2004 SC 978,2003 (8) SCC 590

¹⁴ Rafiq v. State of UP, 1981 AIR 559 1981 SCR (1) 402 1980 SCC (4) 262 ACT

¹⁵Independent Thought v. Union of Indi,AIR 2017 SC 4904

which influences the men in reality to do the same, most common thing is economic need as women are now financially independent. However, there are still some women who are dependent on their husband money, promoting pornography and inadequate safety in public places example *Nirbhaya case*¹⁶ and the recent Kolkata doctor rape case.

The landmark judgement given for sexual harassment is *Vishaka v. State of Rajasthan and others* (1997)¹⁷ which made 2013 Amendment the Supreme Court issued guidelines for sexual harassment in the workplace "*Vishaka Guidelines*" This guidelines were framed to protect women at the workplace, provide facilities in case of sexual harassment and to take appropriate action for any such harassment in the workplace, a complaint committee was also introduced in this guidelines. The Vishaka Guidelines were later replaced with The Sexual Harassment of Women at the Workplace (Preventive, Prohibition and Redressal) Act, 2013. "The term aggrieved women mentioned in the POSH Act also refers to school girls" as said in the case of *Pawan Kumar Niroula V. Union of India and others*¹⁸.

XII. INDIA ON PROVIDING SECURITY TO WOMEN

The Indian government have set up many schemes and initiatives to protect women both inside and outside their houses the central government have set up

1. Nirbhaya funds for the security and safety of the women after the Delhi gang rape¹⁹
2. Women helpline which is available 24hrs to women in danger toll-free number 181
3. The Investigation Tracking System for Sexual offence (ITSSO) helps to track the case and monitor the investigation process within two months in sexual offence²⁰

¹⁶ Mukesh & Anr. V. State for NCT of Delhi & Ors. AIR 2017 SC 2161

¹⁷ Vishaka & Ors. V/S State of Rajasthan, AIR 1997 Sc 3011

¹⁸ Pawan Kumar Niroula V. Union of India and others, 2021

¹⁹ Mukesh & Anr. V. State for NCT of Delhi & Ors. AIR 2017 SC 2161

²⁰ Criminal Law (Amendment) Act of 2013

4. Also, the Supreme Court in the case of the Kolkata rape case has introduced the National Task Force to ensure safety of women in the workplace²¹.

Not only the central government but also the state governments have set up some schemes for the safety and security of women in the workplace. There are also special laws made by the parliament under Article 15(3)²² for the safety of women in the Nation they are as follows

Women- Specific legislation²³

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.

A. Educating the Society

Every man needs to understand women, and the struggle they go through, sex education needs to be implemented in their school life a girl child needs to understand what good touch and bad touch are. If a working women fall into trouble with a man or group of men she needs to be educated to seek help women in India are still struggling to call the helpline provided by the government. Educate men and boy children that women need to be protected by not disturbing them and assaulting them verbally and physically. In the case of *Laxman Naik v. State of Orissa*²⁴ a 7-year girl was sexually assaulted by her uncle this shows that women and girls are raped and

²¹ Economic Times, India's struggles with high rape cases, low conviction rates, The Economic Times (Aug. 16, 2024),

²² Constitution of India,

²³ Laws Related to Women, National Commission for Women <http://ncw.nic.in/important-links/List-of-Laws-Related-to-Women>.

²⁴ *Laxman Naik v. State of Orissa*, 1995 AIR 1387, 1994 SCC(3) 381

murdered not by strangers but mostly by their know person “Approximately 75% of rapes are committed by someone the survivor knows”²⁵

XIII. PUNISHMENT IMPOSED UNDER INDIAN LAW

The Indian government have made great laws to protect women considering their safety and security under Indian Penal Code section 375 defines the term ‘rape’ as the penetration of the penis into the vagina, urethra, anus or mouth of women is stated as rape if any man does this to a woman without her consent then accused will be liable for punishment under section 376 of the Indian Penal Code of 1860. The accused will be liable for imprisonment for not less than seven years may extend to life imprisonment or a term of ten years or a fine.

Section 376(1) imprisonment for ten years for rape section 367(2) includes police and government officials, military personnel under their custody, staff and managers of jails, relatives, raped pregnant women, and those who cannot give consent, under superiority, rape leads to the death of the victim and the physically challenged. Under section 376(3) punishment for rape of a minor who is under 16 years imprisonment is up to two years or life imprisonment and 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.*²⁶ This is mostly known as the Nirbhaya case where a 23-year medical student was raped by 6 men including 17 years old minor, she was raped and brutally assaulted by them the girl died after a month of treatment in cardiac arrest. The court sentenced death to four of them and one among them was juvenile Sent to the correctional home by the Juvenile Justice Board and the other person 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*

²⁵ Tania Allen, (Aug. 23, 2008), https://barcc.org/assets/pdf/Media_Kit_SV_Fact_Sheet.pdf.

²⁶ *Mukesh & Anr. V. State of NCT of Delhi & Or*, AIR 2017 SC 2161

²⁷ the girl was raped by the village local stating that she had given consent for intercourse after the evidence provided the SC held that she was 15 years and even if the consent is given it is not valid and the accused is liable under section 376 of IPC.

In the case of *Laxman Naik V. State of Orissa*²⁸, a girl was sexually assaulted by her uncle the girl was brutally injured and murdered; this was taken as corroborative evidence by the court and awarded the death penalty to the convict

In *Mathura Rape case*²⁹ “these case brought changes in society and major amendments were made by the judgement section 114(A) of the Evidence Act” which states that the court shall presume that if no consent was given then presume no consent was given. In this case, the girl was not given justice stating she had given consent to the police official this case is also known as a custodial rape case

*Sakshi vs. Union of India and Ors.*³⁰ It was a public interest litigation case filed by an NGO to protect minors and children from sexual assault to make an understanding of rape and sexual violence the Supreme Court dismissed the case but issued guidelines called “*Sakshi Guidelines*” to protect the child during trial like videotaping, testimony and no direct contact with accused.

However, India has given capital punishment in some cases to the accused person convicted for rape and murder but, there are some justice does not prefer capital punishment as it violates Art 19, 20 and 21 of the Indian constitution whereas in other countries like the Arab Emirates who hang the rapist to death have lower rape rate in their country which is not implemented in India.

XIV. CONCLUSION & SUGGESTION

In India, women are not truly independent women need equal protection and feel safer than men. Men need to be educated enough to respect women, just with the marks and degrees they will never be given respect. India has set up many laws and

²⁷ Harpal Singh & others v. State of Himachal Pradesh, AIR 1981 SC 361

²⁸ Laxman Naik v. State of Orissa, 1995 AIR 1387, 1994 SCC(3) 381

²⁹ Tuka Ram And Anr V. State of Maharashtra, 1979 AIR 185, 1979 SCR (1) 810

³⁰ Sakshi v. India and ors, Final Decision on Writ Petition, Writ Petition (CrI) No33, 1997, with SLP (CrI) Nos 1672-1673, 2000; ILDC 868 (IN2004)

schemes to protect and safeguard women but the violence against women has not changed, the law alone cannot change the society it is the society itself that needs to change women to feel safer staying in the country, the rate of rape and murder haven't reduced yet the Kolkata rape case is a reminder to the sleeping society that the women in India are not safe irrespective of their age

The punishment imposed by the law and judiciary is remarkable in society but not all women have justice the name continues with hashtags on the internet to let society be free for both genders.

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