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NYAYAVIMARSHA

ROADMAP TO RAPE LAWS: A COMPARATIVE ANALYSIS OF THE INDIAN PENAL CODE , 1960 AND THE BHARTIYA NYAYA SANHITA, 2023

Introduction

Women are revered in India and compared to goddesses such as Ma Sarasvati, Ma Laxmi, and Ma Durga. The title "Ma" elevates them to a maternal position and draws attention to their function as protectors and caregivers. Rape continues to be a social evil and one of the most heinous crimes committed in the modern day, regardless of knowledge or advancements in society. On the other hand, the number of rape cases has steadily increased in recent years. Rape victims not only endure excruciating physical and psychological pain, but they also face social marginalization and rejection because they are victims of uncontrollable circumstances.

To guarantee that justice is done and that there are fewer rapes in the future, those guilty for these crimes must be subjected to the harshest punishments available. The status of women in our nation is appalling in spite of this. 31,000 rape incidents were reported nationally in 2022; however, this figure probably only accounts for a very small portion of actual attacks that remain undetected. Peer pressure, embarrassment, and a general lack of education and understanding are among the problems that women face. Both the Indian Penal Code of 1860 and the Bhartiya Nyaya Sanhita of 2023 punish rape and carry severe penalties.

THE BHARTIYA NYAYA SANHITA

In August 2023, during the Monsoon Parliament session, the Ministry of Home Affairs introduced three additional criminal measures. December 25, 2023 saw the repeal of the Indian Penal law, 1860 ("IPC") and the adoption of the Bhartiya Nyaya Sanhita, 2023 ("BNS") as the country's new penal law. The three statutes in question were the Bhartiya Sakshaya Act, the Bhartiya Nyaya Sanhita, and the Bhartiya Nagarik Suraksha Sanhita. These laws will replace the Indian Evidence Act of 1872, the Code of Criminal Procedure of 1973, and the Indian Penal Code of 1860. With these new steps, the Criminal Procedure Code

of India would be fully redesigned, with British-enacted clauses being eliminated. Starting on July 1st, 2024, the following laws will be implemented.ⁱ

Section 63 of the BNS, 2023 defines the offense of rape law as follows: "A man is said to commit "rape" if he—

- (a) protrudes his penis in any way into a woman's mouth, urethra, anus, or vagina; or he coerces her into doing so with him or another person;
- (b) protrudes any object or body part—other than the penis—into a woman's vagina, urethra, or anus;
- (c) manipulates her body in a way that causes penetration into any of those areas;
- (d) applies his mouth to a woman's vagina, anus, or urethra, or requires her to do so with him or another person in situations that fit into any of the following seven categories:
 - (i) ignoring her desires.
 - (ii) without obtaining her consent.
 - (iii) with her consent, if such consent was obtained by making her or any other person in whom she has an interest fearful of injury or death.
 - (iv) with her consent, if the man is aware that she does not view him as her spouse and that she is only providing her consent because she believes she is legally married to another man.
 - (v) with her consent if, at the time of the consent, she is mentally sick, drunk, or has been administered any stupefying or unwholesome substance by him directly or through another, and she is unable to grasp the nature and implications of what she is consenting to.
 - (vi) with or without her consent, while she is under the age of eighteen.
 - (vii) should she be unable to give her consent.

Explanation 1. — For the purposes of this section, the term "vagina" shall include the labia majora.

Explanation 2. — A woman gives her explicit, voluntary consent to participate in a certain sexual act by verbal or nonverbal cues such as words or gestures;

But for that reason alone, a woman will not be considered to have granted her consent if she does not physically oppose the act of penetration.

Exception.1: Receiving medical care, including surgery, is not considered rape.

Exception 2: It is not considered rape if a man engages in sexual relations with his own wife and she is not younger than eighteen.ⁱⁱ

Exception 2, which says that nothing is deemed rape if it is committed by a husband and wife when the wife is older than eighteen, is the only place in which the definition of rape law in the Bharatiya Nyaya Sanhita, 2023 differs from the India Penal Code, 1860. The wife in the previous act was at least fifteen years old, with one exception.ⁱⁱⁱ

The India Penal Code, 1860 will be replaced by the Bharatiya Nyaya Sanhita, 2023. These are the characteristics of the bill:^{iv}

- The Indian Criminal Code, 1860 has undergone multiple sectional streamlinings since the Bharatiya Nyaya Sanhita, 2023 (BNS) replaced the antiquated, fragmented portions. Under the BNS, the portions have been trimmed from 511 to 368.

The bundling of offenses against women and children into a single chapter (Chapter V) has resulted in harsher sanctions.

- A number of additional offenses, such as armed rebellion, terrorism,^v and subversive actions, have been added to the BNS, 2023 list of forbidden ones.

Moreover, other provisions have been removed, including section 306, which mandated the penalty of any "attempt to suicide." The Mental Health Act would then be updated as a result.

The sedition^{vi} provision of the Indian Criminal Code was removed because it was being abused.

RAPE LAWS UNDER INDIAN PENAL CODE, 1860

"Section 375 of the Indian Penal Code, 1860" established the crime of rape in 1860. On January 1st, 1862, fifteen months after it was passed, the Code went into effect. Before 1860,

there existed fragmentation in the law. Personal laws governed it for the most part. The Law Commission, which was established by the Charter Act of 1833 to codify Indian law, was headed by Lord Macaulay. As a result, in 1860, the Indian Penal Code was passed. Since the

law describes the offenses and their corresponding penalties, it is substantive. The Criminal Procedure Code, which was adopted in 1861, unifies the rules governing the criminal justice system's procedural aspects.

Section 375 of the Indian Penal Code, 1860 defines rape as:

"If a man has intercourse with a woman under any of the following five circumstances—aside from the ones that are later accepted—it is deemed that he has committed rape: Firstly: Not to her advantage.

Secondly: in her unconscious state, and without her consent.

Thirdly: Based on her consent, as long as it was obtained by making her fear damage or death.

Fourth: She gives her consent, and he knows it, since she sees him as someone different from the man she is or feels she is married to.

Fifth: With or without her consent, if she is younger than nine years old.

Reasoning To be considered as necessary for the conduct of the rape crime, penetration is sufficient.

One exception is when a man has sex with his spouse; this is not considered rape.

The Indian Penal Code, 1860, specifically addresses the idea of rape in Sections 375^{vii} and 376^{viii}. It defines "rape" as when a man engages in sexual activity with a woman against her will or without her agreement by deception, fraud, or compulsion. There are two exclusions from this section. One is that treatments or operations related to medicine do not qualify as rape. Another caveat is that a man's sexual conduct towards his spouse do not qualify as rape if the woman is not eighteen years of age or younger. This idea sheds more light on the idea of marital rape.

Examining the fundamental provisions of an act that qualifies as rape under Section 375^{ix} comprises:

- Against her will: Sexual activity performed on a woman under false pretences of marriage but against her will is considered rape. The similar thing happened in Deelip
- Singh v. State of Bihar^x, where the woman first opposed the act but eventually agreed to it when she was promised marriage.
- Without consent: Unless it is covered by one of the several exceptions to this Section, it is considered rape when a male has sex with a woman without her consent.
- Consent by deception: permission for sexual activity must be freely given; in other words, it cannot be obtained through deception, compulsion, or fraud. Everything listed above would result in a claim of rape against the man.

According to this definition of rape, a convicted employee faces a minimum term of ten years in prison, with the possibility of an additional five years.^{xi} Those found guilty of rape offenses could also have to pay a fine.

RAPE LAWS UNDER BHARTIYA NYAYA SANHITA, 2023

Offenses against women and children are covered in a consolidated Chapter V of the Bhartiya Nyaya Sanhita, 2023. Sections 63^{xii} through 70^{xiii} contain provisions pertaining to rape. Moreover, Sections 74^{xiv} to 79^{xv} address actions that can transgress women's modesty. These behaviours include voyeurism,^{xvi} sexual harassment,^{xvii} and the use of force against women, among other related offenses.

Greater jurisdiction over a variety of crimes concerning women and children is vested in the Bhartiya Nyaya Sanhita. It ensures that women receive justice by extending the penalties and making the process more logical. The BNS, 2023, stipulates that raping a juvenile carries a minimum punishment of 20 years. Numerous offenses, such as gang rapes,^{xviii} have been listed, and the corresponding penalties range from fines to life in prison with a maximum sentence of 20 years. The concepts of sexual assault^{xix} and aggravated rape, which have sentences of seven and ten years, respectively, are likewise covered by the BNS, 2023.

One of its main objections, meanwhile, is that it continues to legitimize marital rape because no new legislation has been passed in this area. While it is now illegal for a man to rape his wife while they are separated, marital rape is still permitted in our county, and a woman

cannot use any kind of defence to stop it. The amount of progress society has made in terms of women's protection is really depressing. Married women are still not protected from their spouses in any way.

PERSONAL PERSPECTIVE

Rape is a grave offense. It leaves society and its expectations of women permanently wounded, depriving women not just of their purity but also of their autonomy over their bodies and even of their lives. The public holds the woman who was raped accountable and scrutinizes her, questioning her behaviour, appearance, and even possible social relationships. The goal of victims is to stop being victims just because they reported the abuse. In addition to the already severe bodily, emotional, and mental harm, that is a hefty price to pay.

“Indians are not empathetic enough to recognize when anything like this is wrong. While rape is illegal in India, the country lacks the awareness and courage to condemn it.”

In such a forlorn nation, the government's proposal to enhance the BNS, 2023 measures pertaining to women's and children's protection appears to be a light of hope. It reiterates the government's support for women in the neighbourhood. Laws against rape are becoming more restrictive, which helps society discourage people from considering committing such heinous crimes.

CONCLUSION

In summary, the evolution of India's rape laws since the country's independence is a reflection of the continuous struggle against sexual assault and to uphold the rights and dignity of victimized individuals. Numerous historical instances in India led to stringent legislative amendments, including the 2019 Criminal Law (Amendment) Act. The Vishaka case established guidelines for addressing sexual harassment in the workplace and led to the development of regulations that described steps for both prevention and restitution. However, other recent instances—like the rape incidents in Kathua and Unnao—highlighted the urgent need for a promising legal framework, which India has not been able to deliver, and demonstrated institutional flaws in protecting vulnerable individuals, especially minors.

However, the Bharatiya Nyaya Sanhita, 2023 expedites trials for cases of sexual abuse, improves victim protection, and streamlines criminal procedure, failed to address the current discussion surrounding the necessity of gender-neutral laws and the non-recognition of

marital rape as a crime, which continues to impede attempts to successfully prevent sexual violence. Regardless of gender or age. The three new criminal bills' introduction marks a

significant turning point for 2023. Their objective is to abolish colonial practices from India and implement laws and regulations that are in line with the principles that our country, India, now adheres to. These new bills need to be treated very gently because they have brought about enormous changes to the criminal procedure in society. For the sake of the nation, it is challenging to strike a balance between rejecting British reforms and upholding national policies.

India can work toward a society in which everyone is guaranteed dignity, safety, and access to justice by placing a high priority on the values of gender equality, human rights, and responsibility.

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^v Bharatiya Nyaya Sanhita, 2023 (s. 111)

^{vi} Indian Penal Code, 1860 (s. 124A)

^{vii} Indian Penal Code (s. 375)

^{viii} Indian Penal Code (s. 376)

^{ix} Indian Penal Code (s. 376)

^x *Deelip Singh @ Deelip Kumar v. State of Bihar* [2005] 1 AIR 203

^{xi} Penal Code (n. 8)

^{xii} Bharatiya Nyaya Sanhita, 2023 (s. 63)

^{xiii} Bharatiya Nyaya Sanhita, 2023 (s. 70)

^{xiv} Bharatiya Nyaya Sanhita, 2023 (s. 74)

^{xv} Bharatiya Nyaya Sanhita, 2023 (s. 79)

^{xvi} Bharatiya Nyaya Sanhita, 2023 (s. 76)

^{xvii} Sanhita, 2023 (n. 14)

^{xviii} Bharatiya Nyaya Sanhita, 2023 (s. 70)

^{xix} Sanhita, 2023 (n. 14)