

GANG RAPES IN INDIA AND THE CHANGING QUANTUM OF PUNISHMENT: AN ANALYSIS OF THE VERDICTS FROM MATHURA TO NIRBHAYA

Written by *Dr. Banamali Barik*

Asst. Professor in Mayurbhanj Law College

Abstract:

Rape is the most heinous and inhuman offence. It is not only a crime against the person of a woman but is also a crime against the entire society. The form and measure of punishment is influenced by societal mores and values. The determination of the right measure of punishment is often a point of great difficulty and no hard and fast rule can be laid down. However, the courts while trying cases always keep in mind the need of maintaining proportion between the nature and impact of an offence and the penalty. While imposing punishment, courts are guided either by the “Crime Test” or the “Rarest of the Rare Test”. Very often for similar fact situations the quantum of punishment differs. It is essential that, while determining the quantum of punishment, the rights of the criminal, the rights of the victim of crime and also the society’s cry for justice against the criminals should be taken into consideration. The present paper reveals the changing quantum of punishment brought about by the various Criminal Law Amendments, following the verdicts since the Mathura case to the Nirbhaya case. With this background, the Criminal law Amendment Act 2018 will also be analyzed.

Introduction:

The word ‘rape’ is derived from the Latin term ‘*rapio*’ which means to seize. Thus, rape literally means a forcible seizure and that is the essential characteristic feature of the offence. In common parlance, it means intercourse with a woman without her consent by force, fear or fraud. In other words, rape is violation with violence of the private person of a woman. It is an outrage by all canons.¹

According to Halsbury’s **Law of England:**

1. Phul Singh v. State of Haryana, AIR 1980 Sc 249; 1980 Cri LJ 8.

“It is not necessary to prove the completion of sexual intercourse by the emission of seed; intercourse is deemed complete upon proof of penetration only. The slightest degree of penetration is enough. If penetration cannot be satisfactorily proved, the defendant may be convicted of attempted rape; if the intent is not proved, he may be convicted of indecent assault”.²

Generally, rapists are regarded as sadistic persons and the ‘forcible rape’ a manifestation of aggressive personality.³ This may be so in many cases but not necessarily in all. Some rapists may be lacking in ethical or moral principles or a sense of social responsibility. They may be immature men who believe that sexual conquest is a sign of adulthood and virility.⁴ Another psychological factor, sometimes deep-rooted in childhood experiences and deprivations, may be because the offender is harbouring a feeling of considerable hostility towards the opposite sex.

The offence may also be the result of the weakening of self-control under social circumstances, e.g., acute mental illness, influence of alcohol or drugs. Social restraints may not only disappear in situations of war and communal rioting but to use the act of rape as a symbol to express conquest and domination over the victim and her people may be an additional motivating factor. There may be cases of victim-precipitated rapes as well.⁵

Justice Krishna Iyer defines it as the “Deathless shame and must be dealt with as the greatest crime against human dignity”. The offence of rape may be defined in its simplest terms, as “The ravishment of a woman, without her consent, by force, fear or fraud”.⁶ It is the “Carnal knowledge of a woman by force against her will”. The word ‘rape’ is defined in the Chambers’ Twentieth Century Dictionary as the act of seizing and carrying away by force; carnal knowledge of a woman without her consent. According to Dr. Hari Singh Gour, “Rape is essentially a ravishment of a woman without her consent.

2. Halsbury’s Laws of England, 4thedn. Para 1228, at 653.

3. J. Paul De River, *Crime and the Sexual Psychopathy*, (Charles C. Thomas, 1958) at 222.

4. Morris Polosiowe, *Sex and the Law*, (1951) at 165.

5. Ahmad Siddique, *Criminology-Problems & Perspectives*, 4th end. (Lucknow: Eastern Book Co. Pvt. Ltd., 1997) at 418-19.

6. Mozley & Whiteley’s, *Law Dictionary*, 7thedn. (1962).

It is a complete definition of the offence and the five clauses appended under section 375 of IPC, are merely explanatory of non-consent, which is the essence of the crime". Ordinarily, rape is violation, with violence of the private person of woman-an outrage by all means.⁷ The offence falls under the definition of rape if a man has sexual intercourse with a woman against her will or without her consent.⁸

The quantum of punishment, in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with socio-economic status, religion; race, cast or creeds of the accused or the victim are irrelevant considerations in sentencing. Protection of society and deterring the criminals is the avowed object of law and that is required to be achieved by imposing an appropriate sentence.

The key elements in the sentencing principles in India are as follows:

- The maximum punishment prescribed should not automatically follow upon a conviction;⁹
- In judging adequacy of sentence, the nature of the offence, the circumstances of its commission, the age and character of the offender, injury to individuals or to society, effect of the punishment on the offender, are some amongst many other factors which would ordinarily be taken into account by courts;¹⁰
- The court has to bear in mind the necessity of proportion between an offence and the penalty;¹¹
- Where the court imposes the maximum sentence allowed under the law, it should record its reasons for doing so;¹²

7. Phul Singh v. State of Haryana, AIR 1980 SC 249.

8. Ejaj Ahmed, *Sexual Offences* 2nd edn. (1975) at 7.

9. Prem Chand Santramdas v. State of Bihar, AIR 1951 SC 14.

10. Ramashraya Chakravarti v. State of MP AIR 1976 SC 392.

11. Adamji Umar Dalal v. State of Bombay, AIR 1952 SC 14.

12. Harnam Singh v. Emperor, AIR 1926 Lah 239(2)(240).

- In order to judge the appropriateness of the sentence, the court should take into account subsequent, which the convict acquired.¹³

The courts are required to respond adequately to the loud cry for justice by the society upon commission of heinous crime of rape on innocent helpless girls of tender years, by imposition of proper sentence in another.

Gang rape is dealt with on Section 376(2) (g) IPC, which provides that whoever commits gang rape, shall be-

1. Punished with rigorous imprisonment for term which-
 - (a) Shall not be less than 10 years, but
 - (b) May be for life, and
2. Also liable to fine.

But the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for term of less than 10 years.

Where the victim has suffered ignominy of sexual assaults by 3 persons, such an act has been described as 'gang rape' under section 376 IPC.

By Explanation 1 to Section 376(2), it is provided that when a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons is deemed to have committed gang rape within the meaning sub-section (2) of Section 376, IPC.¹⁴

Gang rapes prior to Mathura case:

Some modern psychiatrists and criminologists comprehend that rape is an exceptional crime, a product of a sick and perverted mind. Normal men do not rape women. Justice Krishna Iyer in the case of *Rafiq V. State of U.P.*,¹⁵ made a remark that, "a murderer kills the body, but a rapist kills the soul". Prior to Mathura case the gang rapes were increasing menacingly in the country. Some leading gang rape cases are discussed below.

13. *Tahsildar Singh v. State of Bihar* AIR 1958 All 214.

14. *Pratap Mishra v. State of Orissa*, AIR 1977 Sc 1307.

15. (1981) SCR (1) 402.

In *Ram Harnam Singh, Sheoji Singh v. State*,¹⁶ the court held that an act of helpless resignation in the face of inevitable compulsion is not consent in law. On the evening of 18th August, 1957, Kalu Ram tenant of the accused was required to provide his wife Mrs. Surti, aged 19 years to satisfy the carnal (knowledge) lust of the accused Ram Harnam Singh and his guests on the eve of entertainment party arranged on the occasion of transfer of Ch. Mauji Ram, Dy. Superintendent, jail, Gurgaon. The girl protested vehemently against this outrageous demand, but under pressure of her husband, she was induced to surrender her chastity. Three accused persons like Ram Harnam Singh, Ch. Mauji Ram and Balbir Singh ravished her during the night and she died almost immediately. Her shrieks were heard by some advocates living in the neighborhood.

Refuting the defence contention, that the girl was a consenting party and she surrendered her body to the three persons willingly and with the approval of her husband, the High Court while holding the accused liable for the offence of rape, very nicely, distinguished between 'consent' and 'submission' as shown below:

- (i) A mere act of helpless resignation in the face of inevitable compulsion, quiescence, (still) non-resistance, passive giving in, when volitional faculty is either clouded by fear or vitiated by duress, cannot be deemed to be "consent" as understood in law.
- (ii) Consent, on part of a woman as a defense to an allegation of rape, requires voluntary participation, not only after the exercise of intelligence, based on the knowledge, of the significance and moral quality of the act, but after having freely exercised a choice between resistance and assent.
- (iii) Submission of her body under the influence of fear or terror is no consent. There is a difference between consent and submission. Every consent involves a submission but the converse does not follow and a mere act of submission does not involve consent.
- (iv) Consent of the girl in order to relieve an act, of a criminal character, like rape, must be an act of reason, accompanied with deliberation, after the mind has weighed as in a balance, the good and evil on each side, with the existing capacity and power to withdraw the assent according to one's will or pleasure.

16. AIR 1958 Punj. 123.

- (v) A woman is said to consent, only when she freely agrees to submit herself, while in free and unconstrained, possession of her physical and moral power to act in the manner she wants. Consent implies the exercise of a free and untrammelled (not hampered) right to forbid or withhold what is being consented to; it always is a voluntary and conscious acceptance of what is proposed to be done by another and concurred in by the former.¹⁷

In *Director of Public Prosecution v. Morgan*,¹⁸ the House of Lords by a majority of 3 to 2 held that in a case of rape a person cannot be convicted if he acts under a mistaken belief that the woman was consenting which negates the subjective mental element which the prosecution must prove in the first instance, even though his mistake is not based on reasonable grounds.

The appellant Morgan was a senior NCO in the royal Air Force, and the other three appellants were younger and junior members of that service. On the night of the offence, Morgan invited the other three to come to his house and have intercourse with his wife the prosecutrix. The young men, who were complete strangers to Mrs. Morgan, were at first reluctant but were persuaded that Morgan's invitation was intended seriously when he told them stories of his wife's sexual aberrations and provided them with contraceptive sheaths to wear. They said that Morgan told them to expect some show of resistance on his wife's part but that they need not take this seriously since it was a mere pretence whereby she stimulated her own sexual excitement.

Mrs. Morgan was awakened from sleep. Her husband and the other men in part dragged and carried her into another room that contained a double bed. She struggled and screamed and shouted to her son to call the police, but one of the men put a hand over her mouth. Once on the double bed the appellants had intercourse with her in turn finishing with her husband. During intercourse with the other three she was continuously being held, and this, coupled with her fear of further violence, restricted the scope of her struggles, but she repeatedly called out to her husband to tell the men to stop. Immediately afterwards, Mrs. Morgan drove to a hospital and complained that she had been raped.

17. K. D. Gaur, *The Indian Penal Code*, 4th edn. (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2009) at 653.

18. (1975) 2 All ER (HL).

The tree men were charged with committing rape and Morgan for aiding and abetting rape. The accused advanced a defence of consent. They said that Mrs. Morgan's sexual cooperation and enjoyment was manifestation of her consent. Any element of resistance on her part was, no more than a plaything.¹⁹

In *Pratap Mishra and Others v. State of Orissa*,²⁰ Pramila Kumari, aged 23 years, was living with Bata Krishna Rout as his concubine. She was in the 5th month of pregnancy. Pramila and Bata Krishna went on a pleasure trip to Nandan Kanan, a pleasure spot. They acquired a Cabin in Tourist Lodge. Pratap Mishra and other NCC students of Orissa University of Agriculture and Technology came to Nandan Kanan for a pleasure trip and were in the same Tourist Lodge.

In the evening when Mr. Rout was taking meal inside the lodge, Pratap Mishra and others came to the window and requested them to open the door. Mr. Rout asked them to come after they had finished their meals. They returned after a while and requested to open the door. It was alleged that as soon as the door was opened, Bata Krishna was dragged away to a distance of about 15 ft. Pratap Mishra was said to have raped Pramila under threat and in spite of protest. Two others repeated this. While the third person was doing the act, the Chowkidar turned up. The police came and the woman lodged her first information report. A few days later, the woman had an abortion which was attributed to rape.

The Session Judge as well as the High Court convicted the accused. In the appeal before the Supreme Court the plea taken by the accused was that there was implied consent. In the opinion of the court taking all the circumstances into account, the sexual intercourse by the accused with the prosecutrix was done with the facit consent of the prosecutrix. The Supreme Court set aside the conviction. An idiot girl, though consenting in intelligence, is not necessarily incapable of consenting. For, notwithstanding her imbecility, she may have strong animal instinct. In such a case, her consent would exonerate the accused.²¹

19. *Supra* note 17 at 650-51.

20. AIR 1977 SC 1307.

21. B. C. Pathak, *Rape Law and Flaw*, (Allahabad: Gogia Law House, 1988) at 30-31.

Mathura gang rape case:

The Supreme Court in *Tukaram v. State of Maharashtra*,²² which is popularly referred to as the Mathura rape case. In this case, Mathura, a 18- year-old Harijan orphan girl, was living with her brother. Both of them worked as labourers to earn a living. Mathura developed a relationship with one Ashok and they decided to get married. Mathura's brother filed a complaint of kidnapping in the Desai Ganj Police Station. On his complaint, Mathura, Ashok and two others with whom Ashok was living, were brought to the police station. Statements of Mathura and Ashok were recorded and when they were about to leave, the accused asked Mathura to wait in the police station and told Ashok and others to move out. Immediately thereafter, Ganpat, one of the police constables on duty, took Mathura to a toilet and raped her despite protest and stiff resistance. The second constable Tukaram went to Mathura and sexually molested her. He also wanted to rape her, but was unable to do so for the reason that he was in a highly intoxicated condition.

In the meantime, Ashok and two others who were waiting outside saw that the lights of the police station were turned off and its entrance door was closed from within. They went behind the police station and started shouting for Mathura. Tukaram then came out and told them that Mathura had already left. But, immediately thereafter, Mathura came out from the rear of the police station and informed the others that the accused Ganpat had compelled her to undress herself and had raped her. The Bombay High Court convicted the accused Ganpat to five years rigorous imprisonment and Tukaram to one year rigorous imprisonment. The Bombay High Court had observed that there was a difference between 'consent' and "passive submission' and held that mere passive or helpless surrender of the body and its resignation to others lust induced by threats or fear cannot be equated with the desire or will, or can furnish an answer by the mere fact that the sexual act was not in opposition to such desire or volition. The High Court also took note of the fact that there was a complaint filed by her brother, who was pending in the police station and she was alone in the police station in the middle of the night. Her subsequent conduct in immediately reporting the matter not only to her relatives but also the members of the crowd, also established that she was subjected to forcible sexual intercourse.

22. AIR 1979 SC 185.

The Supreme Court, however, held that Mathura could not have been overawed in the police station, especially since her relatives were waiting outside. Further, no injuries were found on Mathura after the incident and the absence of injuries indicated that the alleged intercourse was a peaceful affair. The Supreme Court disbelieved Mathura's version that she put up a stiff resistance and shouted loudly for help. They described it as a 'tissue of lies' and a concoction on her part. Accordingly, both the accused Ganpat and Tukaram were acquitted of the charges of rape.²³

Gang rapes the post Mathura case:

Gang rape is covered under clause-2 of Section- 375, IPC. Explanation-1, to the section states that where a woman is raped by one or more in group of persons, each of the persons shall be deemed to have committed gang rape, when the offence is committed in furtherance of their common intention. In *Uttam Kumar v. State*,²⁴ the Bombay High Court held that rape by two person will be sufficient to constitute the offence of gang rape. Involvement of a group of persons is not necessary.

State of Orissa v. DamburuNaiko,²⁵ was one such case before the Supreme Court that involved the issue of gang rape. In this case, the victim was kidnapped into the forest. Her eyes were covered with a piece of cloth and the accused threatened to kill her if she cried out aloud. Thereafter, she was made to lie down on the ground and she was raped by each one of them. The High Court acquitted the accused on the ground that if there was a gang rape, there could be several injuries on the person of the victim which were absent. So, the High Court concluded that the victim was a consenting party. The Supreme Court reversed the finding of the High Court and held that when the victim was made to lie down on the ground at the threat of her life and gang rape committed on her, she was absolutely helpless. The medical evidence corroborated that she had injuries on her private parts. The fact that there were no further injuries is not material. When gang rape is committed on her at the threat of her life, she cannot be expected to go on resisting, except to resign to her fate and succumb to their assault. The accused were convicted for rape.²⁶

23. P S APillai, *Criminal Law*, 9thedn. (New Delhi: Butterworths India, 2000) at 718-19.

24. 1991 Cri LJ 1644 (Bom).

25. AIR 1992 SC 1161.

26. Supra note 23 at 730-31.

In *Baldev Singh & Others v. State of Punjab*,²⁷ the prosecutrix was gang raped and beaten by the accused when she was going to her house. All the three appellants were convicted and sentenced to 10 years rigorous imprisonment. The High Court upheld the sentence. The appellants had already gone for 2 years imprisonment. The accused and prosecutrix and the appellant are married and the prosecutrix has two children also. The incident is now 14 years old and it was stated before the court that both the parties have entered into a compromise. Therefore, the accused should be acquitted. The apex court took all the above listed factors into consideration and reduced the sentence of the accused to that much which the accused had already undergone.

Verdict of Nirbhaya case, a popular known as Delhi gang rape case-2012:

Delhi gang rape case-2012, involved a rape and fatal assault that occurred on 16th December 2012 in Munieka, a neighborhood located in the southern part of New Delhi, when a 23-year old female physiotherapy intern was beaten and gang raped in a private bus in which she was travelling with a male friend. The victim later died due to her injuries. The incident generated widespread national and international coverage and was widely condemned, both in India and abroad. Subsequently, public protests against the Government of India and the Government of Delhi for failing to provide adequate security for women took place in New Delhi, where thousands of protesters clashed with security forces. Similar protests took place in major cities throughout the country demanding stricter laws and speedy justice.

The gang rape in Delhi took place on the night of 16th December 2012. The victim, a 23 year old physiotherapy intern took a ride home in a private bus that night, with her friend. There were six other on the bus, including the driver. The victim and her friend were beaten up when they raised their suspicions as to route of the bus to the destination. The woman was later raped by all the men while the bus was moving and her friend was beaten unconscious. After the beatings and rape, both the victims were thrown out of the moving bus by their perpetrators and left on the side of road, partially clothed. Later, a PCR van arrived at the scene after receiving a call from a passerby. The victims were taken to the Safddarjung Hospital in Delhi for treatment. Medical investigation of the woman suggested she was penetrated by a blunt object,

27. (2011) 13 SCC 705.

probably a rod-like object that had caused extensive damage to the internal organs of the victim. Two blood-stained metal rods were retrieved from the bus on police inspection, which the medical staff later confirmed to be the object used for penetration that had caused serious injuries to the victim's genitals and the abdomen. Within a day of the commission crime, arrests were made by the Delhi police in the case and all the accused including a juvenile were arrested.

At the trial, there was a huge demand for speedy trial and immediate prosecution in the matter. While five of the accused were tried for the crime before the Additional Session Judge in the Special Fast Track Court, the sixth accused, who was a juvenile at the time of the crime, was tried before the Juvenile Justice Board. However, during the trial, one of the accused, Ram Singh was found dead in his prison cell. The remaining accused were booked for rape, murder, kidnapping, destruction of evidence, and the attempted murder of the woman's male companion under Section 120-B, 365, 366, 307, 376 (2)(g), 377, 396, 302, 397, 201 and 412 of the Indian Penal Code, 1860.

In sentencing, the juvenile defendant was found guilty of rape and murder of the victim under the Juvenile Justice Act by the Juvenile Justice Board on the 31st of August, 2013. He was sentenced to three years imprisonment in a reform facility. The remaining four accused, after the death of Ram Singh (committing suicide), were found guilty of rape, murder, unnatural offences and destruction of evidence by the fast-track court. They were sentenced to death penalty by the court on 13th September 2013.²⁸

A Supreme Court bench comprising Chief Justice Dipak Mishra and Justices R Banumathi and Ashok Bhushan rejected the pleas of three of the four convicts Mukesh (29 years), Pawan Gupta (22years) and Vinay Sharma (23years), and upheld the capital punishment awarded to the four convicts by the Delhi High Court and trial court. "Death penalty is cold-blooded killing in the name of justice," said the three convicts' counsel A P Singh, when making his plea to the SC. Still, the SC wasn't swayed.

28. Kanchi Kaushik, Criminal Law (Amendment) Act, 2013: Sexual Offences, (8th April, 2015; available at [https://en.wikipedia.org/wiki/Criminal-Law_\(Amendment\)-2013](https://en.wikipedia.org/wiki/Criminal-Law_(Amendment)-2013), accessed on 16.10.2018.

The top court bench said all pleas of the convicts were taken into account during hearing of their appeals against the Delhi HC order and that no new ground has been raised by them in review petitions to warrant reconsideration of the death penalties awarded to them in May 2017. At the time, in its ruling upholding the death sentence, the Supreme Court had said that the “brutal, barbaric and diabolic nature” of the crime could create a “tsunami of shock” to destroy a civilized society. A juvenile, who was among the accused, was convicted by a juvenile justice board. He was released from a reformation home after serving a three years term.²⁹

Shakti Mill’s gangrape case:

A 22-year old photojournalist was brutally raped by five persons including a miner when she was clicking pictures of a worn out mill called Shakti Mill’s in Mumbai. Awarding death penalty to the three, the court said, “If this is not the case where death sentence prescribed by law is not valid, which is?” judge asked:

I am constrained to hold that the mitigating circumstances like young age of accused, there socio-economic conditions and non-existing chances of their reformation, pale into insignificance in the light of the aggravating circumstances. Hence this case, without any doubts, falls into the category of the “rarest of rare”. Therefore, if the object of punishment is to be achieved, then here in the case, only maximum punishment will send message to the society and also to similar likeminded persons. To show leniency or mercy in the case of such heinous crime and on the accused that have shown no repentance or remorse after exhibiting extreme depraved mentality would be a travesty of justice. This court cannot do so.³⁰

29. *Supreme Court upholds death sentence for Nirbhaya gang rape-murder convict*, Times of India, New Delhi (9th July 2018).

30. Kanti, *Judicial Stand on rape and gang rape- How the quantum of punishment is decided*, (28th February, 2018); available at <https://blog.ipleaders.in/punishment-gang-rape-india/> accessed on 16.10.2018.

Changing quantum of punishment of rape law through the Criminal law amendments:

Former Chief Justice and Chairman of Law Commission of India, Dr. P.B. Gajendragadkar delivering the valedictory address before the National Correctional Conference on Probation in October, 1971 said, “Law cannot be defined in decisive and finalist terms because law is a living institution, it is dynamic and changes from time to time.....”

Dr. Kiran Bedi (former Joint Commissioner of Police) said, “ The use of alcohol which is gaining greater acceptance among the reasons for increased violence against woman as sex symbol are main reasons for increased violence against women in India. Gang rape is a pre-planned and pre-mediated act of crime. The death penalty is necessary in such certain cases to do justice against the crime.” But death sentence would mean a fewer number of convictions which are already miserably low. Death penalty would require more clinching and convincing evidence, which may be quite difficult to be made available in rape cases.³¹

Amendments made in law of rape vide act 43 of 1983, taking a serious note of the inadequacy of the law of rape manifested in a number of judgments of the apex court³² and its failure to safeguard the rights of the innocent victims against the heinous crime against humanity and public criticism, the Parliament in 1983 extensively amended the law of rape so as to make the law more realistic.³³ By the Amendment Act section 375 and 376 of IPC, were extensively amendment and certain more penal provisions were incorporated for punishing those who molest a woman under their custody or care.³⁴

31. Rajeev Kumar, “Death Sentence for Rape?” (2015) Vol. XLII (1) Indian Bar Review 1 at 122.

32. *Tukaram v. State of Maharashtra*, AIR 1979 SC 185; (1979) 1 SCR 810; 1978 CAR 413; 1978 Cr LJ 1864; *SidheshwarGanguly v. State of West Bengal*, AIR 1958 SC 143; 1958 SCR 749; 1958 SCJ 349; 1958 Cr LJ 273; *BharwadaBhoginbhaiHirjibhai v. State of Gujarat*, AIR 1983 SC 753;(1983) 3SCC 217; (1983) 3 SCR 280; 1983 Cr LJ 1096; 1983 CAR 343.

33. The Government of India in 1979 referred to the Law Commission of India for revision of the law of rape, which submitted its report for changes both in substantive and procedural laws. A comprehensive Criminal Law (Amendment) Bill, 1980 was introduced in Parliament, which culminated into the Criminal Law (Amendment) Act 43 of 1983.

34. Vide Criminal Law (Amendment) Act 43 of 1983.

Besides substantive law procedural provisions under law of Evidence and Criminal Procedure Code were also added to strengthen the law. Some of the important changes brought about by the Act 43 of 1983.³⁵

After Criminal Law (Amendment) Act, 1983, section 376-punishment for rape reads:(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.³⁶

Section 376, provides the punishment for rape. The section consists of two clauses. The first clause is in respect of rape generally. The second deals with instances of custodial rape. The question as to what amounts to 'adequate and special reasons' came up for consideration before the Supreme Court in *State of Karnataka v. Krishnappa*.³⁷ In this case a 49-year-old man raped a 7-8-years old girl. The trial court convicted him and sentenced him to 10-years rigorous imprisonment. But the High Court reduced the sentence to four years rigorous imprisonment on that the accused was 'unsophisticated and an illiterate' citizen belonging to a weaker section of society and that he was a 'chronic addict to drinking'. The Supreme Court reversed the order of the High Court, observing that the reasons given by the High Court were 'neither special nor adequate'. The Court held that:

The measure of punishment in a case of rape cannot depend upon the social status of the victim or accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and gravity of the criminal act.

35. Supra note 17 at 643.

36. Supra note 23 at 727.

37. 2000 Cri LJ 1793.

Crimes of violence upon women must be severely dealt with. Public abhorrence of the crime needs reflection through the imposition of appropriate sentence by the court....court should impose such sentence for proved offences by others.³⁸

Clause 2 of section 376 deals with instances of:

- (1) Rape committed by a police officer on a woman in his custody or in the custody of a police officer subordinate to him, within the limits of the police station to which he is appointed to or in the premises of any other police station;
- (2) Rape by a public servant, who taking advantage of his official position, rapes a woman in his custody or in the custody of his subordinate;
- (3) Rape committed on the inmates of any jail, remand home, place or institution by the management or staff of such jail, remand home etc;
- (4) Rape of a woman in a hospital by the management or staff of the hospital;
- (5) Rape of a pregnant women;
- (6) Rape of a woman under 12 years of age;
- (7) Gang rape.

In all the above-mentioned instances, a minimum sentence of 10 years rigorous imprisonment is provided. Similar to the earlier clause, the proviso to the section states that the court for adequate and special reasons to be mentioned in the judgment, may prescribe a lesser sentence.³⁹

Against the backdrop of the nation-wide outrage over the tragic Delhi gang-rape, Nirbhaya incident on 16thDecember 2012 propelled the Government of India to drive the issue of violence against women to the center-stage of political discourse. Consequently, on 22nd December 2012, the Government of India appointed a three-member judicial committee headed by the former Chief Justice of India, Justice J. S. Verma, who passed away on 22nd 2013, Justice Leila Seth and Gopal Subramaniam requesting them to submit a report within 30 days.

38. Supra note 23 at 729-30.

39. Ibid. at 730.

The key objective of the Commission was to review for possible amendments to the criminal law and suggest measures for faster trails and harsher penalties for vicious offences related to violence against women. Taking further cognizance of the strident storm of public protests in general and a tribute to Nirbhaya in particular on 23rd 2013, the commission submitted its recommendations by identifying ‘lack of good governance’ as the cause of violence against women. The commission goes on to criticize the government, the abysmal and old-fashioned police system alongside public apathy in taking violence against women, and thereby, recommends dramatic transformation in legislations. The recommendations are based on more than 70,000 suggestions received from stakeholders, social activists and public comprising eminent jurists, legal professionals, NGOs, women’s groups and civil society through varied method: emails, posts and fax. A 631-page report consisting of 14 chapters (excluding Introduction, Methodology and Conclusions and Recommendations) include recommendations on laws related to rape, sexual harassment, trafficking, child sexual abuse, medical examination of victims, police, electoral and educational reforms.⁴⁰

Based on some of the recommendations of the Justice Verma Committee report, an anti-rape Ordinance was enacted and signed by the Honourable President of India, Mr. Pranab Mukherjee on 3rd February 2013. The Criminal Law (Amendment) Bill, 2013, passed in the Parliament (Lok Sabha)⁴¹ and Rajya Sabha⁴² respectively on 19th and 21st March, 2013) replaced the promulgated Ordinance, which lapsed on 4th April 2013. However, as per the Gazette Notification, New Delhi, Tuesday of 2nd April 2013,⁴³ the word ‘bill’ has been replaced by the word ‘Act’.

40. Bhattacharyya, “*Space and Culture, India*”
<http://www.spaceandculture.in/index.php/spaceandculture/article/view/11/2> accessed on 12.09.2018.

41. The house of people, the lower house of the Parliament of India.

42. The council of states elected by the state ‘assemblies; the upper house of the Parliament of India.

43. The Gazette of India, Department of Publication, Ministry of Urban Development, Government of India, <http://egazette.nic.in/RecentUploads.aspx?Category=1>, accessed 16th April 2013.

Criminal Law (Amendment) Act, 2013, popularly known as the Anti-rape Act, amends the Indian Penal Code (IPC),1860, the Code Criminal Procedure (Cr.PC), 1973, the Indian Evidence Act (IEA), 1872 and the Protection of Children from Sexual Offences Act (PCSO), 2012. In a way, the Act is a radical expression of the fifty-seventh session of the Commission on the Status of Women held at the United Nations Headquarters, New York, March 04.15.2013 as both the interventions focus on violence against women with particular emphasis on women's safety and security. Sadly, even after the declaration by the United Nations in 1993, that any type of violence against women is a violation of human rights, incidents of violence against women continue to be reported, which definitely is a tip of a very ugly iceberg. Yet, many more cases go unreported for various reasons. The elusive goal of the commentary however, is to highlight those issues of the Act linked to women's safety and mobility in public spaces.⁴⁴

Now the comparison between the existing laws (before new amendment), Justice Verma Committee Report recommendation and Criminal Law (Amendment) Act, 2013:

Punishment for gang rape:

Definition	Existing Laws, before amendment	Justice Verma Committee report	Criminal Law(Amendment) Act,2013
Where a person is raped by one or more in a group of persons acting in furtherance of a common intention, each of these persons shall be deemed to have committed the offence of gang rape, regardless of their gender.	10 years to life imprisonment and fine, IPC, 1860.	Imprisonment for life shall mean imprisonment for the rest of that person's natural life.	20 years to life imprisonment (rigorous imprisonment) and fine payable to the victim, that is reasonable to meet medical expenses.

Sources: Verma, J. S., Seth,L., and Subramaniam, M.)2013, January, 23) Report of the Committee on Amendments to Criminal Law; The Criminal Law (Amendment) Bill, 2013 no. 63-c of 2013.

44. (Bhattacharyya, "Space and Culture, India" <http://www.spaceandculture.in/index.php/spaceandculture/article/view/11/2> accessed on 12.09.2018.

President gives assent to Criminal Law (Amendment) Act, 2018:

President Ram Nath Kovind has given to the Criminal Law (Amendment) Act, 2018, that provides for stringent punishment, including the death penalty for those convicted of raping girls below the age of 12 years. The amendment replaces the criminal law amendment ordinance promulgated on 21st April after the rape and murder of a minor girl in *Kathua* and another woman *Unnao*. “This Act may be called the Criminal Law (Amendment) Act, 2018. It shall be deemed to have come into force on the 21st day of April 2018,” a gazette notification said.

The President’s assent, amended the Indian Penal Code, Indian Evidence, 1872, Code of Criminal Procedure, 1973 and the protection of Children from Sexual Offences Act, 2012. The President’s assent, given on Saturday, came after Parliament approved the amendment to the law last week. The Home Ministry drafted Criminal Law (Amendment) Act stipulates stringent punishment for perpetrators of rap, particularly of girl below 16 and 12 years.

The death sentence has been provided for rapists of girls less than 12 years. The minimum punishment in case of rape of women has been increased from rigorous imprisonment of seven years to 10 years, extendable to life imprisonment. According to the new law, in case of rape of a girl less than 16 years, the minimum punishment has been increased from 10 years to 20 years, extendable to imprisonment for rest of life, which means jail terms till the convicts “natural life”.

The punishment for the gang rape of a girl below 16 years will invariably be imprisonment for the rest of life of the convict. Stringent punishment for rape of girl less than 12 years has been provided with the minimum jail term being 20 years which may go up to life in prison or death sentence.

The gang rape of girl less than 12 years of age will invite punishment of jail term for the rest of life or death, the Act says. The measure also provides for speedy investigation and trial. It has prescribed the time for investigation of all cases of rape, saying it has to be mandatorily completed within two-month. The deadline for the completion of the trial in all rape cases will be two months. A six-month time limit for the disposal of appeals in rape cases has also been prescribed.

There will also be no provision for anticipatory bail for a person accused of rape of girl less than 16 years.⁴⁵

Conclusion:

The Indian Penal Code which came into being as long back as in 1860,⁴⁶ and its amendments have sufficient provision to administer justice to control this particular kind of crime. But to the scheming and crafty criminals the hands of law are too short to catch hold of them. The famous jurist Ploscowe suggested that the legal definition of rape should be revised like, “The extensiveness of legal concept of rape, therefore, causes a waste in human resources through the excessive penalization of what may be normal behavior in a man’s cultural or social milieu”.⁴⁷ According to Crime statistics in India-2016, the majority of cases under crimes against women reported under ‘cruelty by husband or his relatives (32.6%), followed by assault on women with intent to outrage her modesty (25.0%), kidnapping & abduction of women (19.0%) and *rape* (11.5%). But total gang rape cases (All India) have reported-2167, No. of victims in registered-2171 and crime rate-0.4.⁴⁸

Most of Indian women maintain a delusion of safety barrier by drawing on boundaries to their bodies and personal spaces through the practices of Indian femininity while accessing and negotiating public spaces.⁴⁹ Stringent punishment by way of capital punishment or long term imprisonment is provided to those who commit the extreme/heinous cases of ‘rape and murder’ and ‘gang rape and murder’. But it is not the sole way to curb the crime rate. The Criminal Law (Amendment) Act, 2018 has prescribed speedy investigation, completion of the case, disposal of appeal in stipulated time and no provisions for anticipatory bail (rape of girl less than 16 years) in other ways.

45. Available at <https://indianexpress.com/article/India/President-Kovind-gives-assent-to-the-crimi...> (Accessed on 19.10.2018).

46. Act No, 45 of 1860) Received the assent of the Governor General on 6th October, 1860.

47. P. Varma, *Sex Offences in India & Abroad*, at 37.

48. Crime in India-2016, *Statistics*, National Crime Records Bureau, Ministry of Home Affairs, Government of India.

49. S. Phadke, “*You can be lonely in crowd: The production of safety in Mumbai*” 2005 12(1) at 41-42.; “*Dangerous liaisons-Women and men: Risk and reputation in Mumbai*” 2007 Economic and Political weekly, at 1510-18.; “*Why loiter? Women and risk on Mumbai streets*” 2011 New Delhi, Viking Penguin.

Besides prescription of severe punishment, there are several other factors that influence the course of justice. These include the role of judiciary at time of trial, investigation of police, medical reports of doctor, media and other information agencies. There is also need for improving the public-police co-operation as well as the readiness of the public to help the rape victim just after the incident. The interplay of these factors will support the changing quantum of punishment brought about by new criminal law amendment.

