

## COMPARATIVE STUDY OF INDIAN RAPE LAWS WITH OTHER COUNTRIES.

**Supriya Lav Pansambal**

Research Student

Dr. B. A. M. University,

Aurangabad, Maharashtra, India.

**Dr. S. R. Katari**

Asst. Professor,

Law College,

Osmanabad, Maharashtra, India.

### India :

#### Indian Legal System:- An Overview -

India is a country where women hold high status in the society but still we do not have strict measures to protect them.[1] Rape is a stigma which exists in the society from a long time. Rape in India is a cognizable offence. The word rape is legally defined u/s 375 of Indian Penal Code, 1860. It defines the rape and also prescribes its punishment. Whenever a man penetrates or does sexual intercourse with a woman without her consent or will it amounts to rape. Penetration here means that only a slightest of the touch of penis to vagina amounts to rape, unruptured hymen of woman does not prove that rape was not committed. There are exceptions to it also i.e. when a man does sexual intercourse with his wife who is above 15 years of age. The rape law under Indian Penal Code had gone through a lot of amendments.

In 1983, amendment was made and S. 376(2) i.e. Custodial rape, S. 376(A) i.e. marital rape & S. 376(B to D) i.e. Sexual Intercourse not amounting to rape were added. In 2012, after 'Delhi Gang Rape Case' on recommendations of Justice Verma Committee, the Criminal Law (Amendment) Ordinance, 2013 was promulgated and came in force from the very same day, i.e. w.e.f. 3 February 2013. It provides for amendment of the Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure, 1973, on laws related to sexual offences. The ordinance provides for the death penalty in cases of rape, several new laws were passed, and six new fast-track courts were created to hear rape cases.

In 2013 after 'Delhi Gang Rape Case' amendment was made by Criminal Amendment Act, 2013. Section 370 of Indian Penal Code (IPC) has been substituted with new sections, 370 and 370A which deals with trafficking of person for exploitation. If a person (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person, by using threats, or force, or coercion, or abduction, or fraud, or deception, or by abuse of power, or inducement for exploitation including prostitution, slavery, forced organ removal, etc. will be punished with imprisonment ranging from at least 7 years to

imprisonment for the remainder of that person's natural life depending on the number or category of persons trafficked. Employment of a trafficked person will attract penal provision as well.[2]

The most important change that has been made is the change in definition of Rape under IPC. The definition is broadly worded with acts like penetration of penis, or any object or any part of body to any extent, into the vagina, mouth, urethra or anus of another person or making another person do so, apply of mouth or touching private parts constitutes the offence of sexual assault. The section has also clarified that penetration means "penetration to any extent", and lack of physical resistance is immaterial for constituting an offence. Except in certain aggravated situation the punishment will be imprisonment not less than seven years but which may extend to imprisonment for life, and shall also be liable to fine. In aggravated situations, punishment will be rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

A new section, 376A has been added which states that if a person committing the offence of sexual assault, "inflicts an injury which causes the death of the person or causes the person to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean the remainder of that person's natural life, or with death." [3] In case of "gang rape", persons involved regardless of their gender shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life and shall pay compensation to the victim which shall be reasonable to meet the medical expenses and rehabilitation of the victim. The age of consent in India has been increased to 18 years, which means any sexual activity irrespective of presence of consent with a woman below the age of 18 will constitute statutory rape.

The Judiciary in India is burdened with a lot of work and therefore judgment of the rape cases comes very late. Sometimes it comes so late that either of the parties had died. So, there should be speedy trials in rape cases so that the victim gets justice as it is rightly stated that "Justice delayed is justice denied."

#### **Australia :**

#### **The Australian legal system: An overview -**

It is Every jurisdiction in Australia has its own legislation for sexual offences. Gender neutral legal terminology is predominantly used to describe the victims (complainant) and perpetrators (defendant) of sexual assault. However, it should be noted that sexual assault is a gendered crime - men are overwhelmingly the perpetrators and women the victims, although the reverse of this can also be true.

**Common law and statute-based law :-**

In Australia there are two sources of law :

- statute-based law and
- common law.

**Common law** is formed from the decisions of judges; it is based on the principles and reasoning used by judges in determining the outcome of a case. If a judge makes a decision about a case and at a later date the courts hear a case involving similar circumstances, the judge in that case must follow the reasoning used by the judge in the previous case. This is known as the system of precedent, or “like cases are treated alike”. Lower courts are bound by the decisions of higher courts.

**Statute-based law** is law created by State, Territory and Commonwealth Governments (legislature), and takes the form of legislation or “Acts”. State, Territory and Commonwealth Governments have the power to legislate in a wide range of areas. Legislation often acts to reverse common law principles (e.g., if they are outdated) and also limits the decisions judges can make and how they apply the law. However, the content of legislation is often ambiguous, or may be interpreted in a number of different ways. Judges and magistrates consequently still need to interpret the meaning of legislation when applying it to a case.

High Court judges also have the power to declare a piece of legislation as unconstitutional, or as falling outside the legislative jurisdiction of the relevant State, Territory or Commonwealth Government (Australian Capital Territory Government, 2001)

It is well established that sexual assault is one of the most - if not the most - difficult offences to successfully prosecute (i.e. to obtain a conviction); approximately 85% of sexual assaults never come to the attention of the criminal justice system. Of those offences that are reported, only a small proportion proceed to trial, with an even smaller percentage of these cases resulting in a successful conviction. According to research, this difficulty in obtaining successful convictions may be attributed to a number of factors, including:

- low rate of reporting sexual offences;
- attrition of sexual assault cases at various stages of the justice system and trial procedure;
- treatment of complainants throughout the trial;
- distrust of women/survivors by the criminal justice system;

- difficulty in obtaining evidence/providing sufficient evidence (e.g., the availability of forensic medical or DNA evidence); and
- belief in sexual assault myths and stereotypes.

But in the last 30 years, there have been major changes to the law concerning sexual offences in every state and territory in Australia. These changes generally reflect a shift away from a reliance on common law to guide judicial decision-making and, more specifically, a shift in how the offence of sexual assault is understood. There have been a range of changes introduced that encompass many aspects of sexual assault and rape laws. However, some of the major developments include :

- a move towards a more statute-based model of law (i.e., legislation made by government);
- a shift in the previous conceptualisation of sexual assault (these shifts in the understanding of sexual assault have resulted in consent becoming the key focus and matter of contestation in a sexual assault trial).
- acknowledgement of the circumstances in which a complainant is incapable of giving consent, or that undo any consent given, and the representation of this in the legislation of various states; for example:
  - use of force;
  - threats of violence or force;
  - use of fear/intimidation; and
  - complainant is asleep or otherwise unconscious (including as a result of voluntary consumption of drugs/alcohol);
  - introduction of limitations in regard to the type of evidence that may be introduced about a complainant (such as in relation to their sexual history), in order to minimize the traumatic nature of the trial process for the complainant; and
  - recognition that rape in marriage constitutes a criminal offence.

While these reforms have resulted in many positive changes to the way sexual assault cases are handled by the criminal justice system, victim/survivors navigating the legal system still encounter significant difficulties and barriers throughout the court process, often as a direct result of the way in which criminal offences are structured, as the next section will explore.[4]

America :

**Statutory Rape Laws by State : -**

Most states do not refer specifically to statutory rape; instead they use designations such as sexual assault and sexual abuse to identify prohibited activity. Regardless of the designation, these crimes are based on the premise that until a person reaches a certain age, he is legally incapable of consenting to sexual intercourse. Thus, instead of including force as a criminal element, these crimes make it illegal for anyone to engage in sexual intercourse with anyone below a certain age, other than his spouse. The age of consent varies by state, with most states, including Connecticut, setting it at age 16. The age of consent in other states ranges from ages 14 to 18.

Some states base the penalty for violations on the age of the offender, with older offenders receiving harsher penalties. For example, California, Maryland, Missouri, Nevada, and New York reserve their harshest statutory rape penalty for offenders who are age 21 or older.[5]

**References -**

- [1] Article:- Change in "Definition of Rape" in India, By- Manjeet Sahu, 31 October, 2011, Published by Legal Service India.
- [2] Source- Wikipedia- Criminal Amendment Bill,2013- Section 7, Criminal Law (Amendment) Ordinance, 2013
- [3] Source- Wikipedia- Criminal Amendment Bill, 2013- Section 8, Criminal Law (Amendment) Ordinance, 2013
- [4] Article:- Sexual Assault Laws in Australia, By-Bianca Fileborn, published by the Australian Institute of Family Studies February 2011, 12pp [ISBN 978-1-921414-55-8] ACSSA Resource Sheet.
- [5] OLR Research Report - April 14, 2003, 2003-R-0376 By : Sandra Norman-Eady, Chief Attorney Christopher Reinhart, Associate Attorney Peter Martino, Research Fellow.