

THE CRIMINAL LAW (AMENDMENT) ACT, 2018 WITH LANDMARK CASES

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ABSTRACT

Child abuse is the physical and psychological maltreatment of a child. It is usually done by a person who is in power in respect of the child. In India, more of such cases reveal that the child abuse is generally done by a person who is known to the child. India is largely populated and large number of them is below the age of 18 years.

Child abuse is of various forms, one of which is sexual violence, which is a serious and heinous crime. Not much of the legislation in India has been able to punish the offenders or give proper justice to the victim of such abuse.

Sexual violence against women (minor) has been committed year after year in increasing numbers and the legislation fail to make stringent laws to deal with such matters. The famous Nirbhaya Case, Unnao Rape Case, Kathua Rape Case are the major highlights of the county. Well there have also been cases where the victim was unable to bring up any recourse against the offender. Sometimes victims don't even file the cases due to fear.

However, with the growing crimes and atrocities against women the laws of the country has changed. The new laws made are stricter and interpretation of which is a must. They show a ray of light to the victims that justice is delayed but never denied and every person who commits such offence against the women will be punished.

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INTRODUCTION

The Indian Penal Code, 1860 governs the substantive part and the Code of Criminal Procedure, 1973 along with Indian Evidence Act, 1872 governs the procedural part of the criminal laws of the country. These statutes were amended several times so that the crime rates decrease in the country. In the year 2013, the Criminal Law (Amendment) Bill, 2013 more popularly known as Anti-rape bill, is now law. The Criminal Law (Amendment) Act, 2013 was passed on laws related to sexual offences also known as 'Nirbhaya Act'. The Act is deemed to be the most important act for the criminal laws of India.

NIRBHAYA RAPE CASE

A 23 year woman who was working in an outsourcing firm during the night hours was travelling in a public private bus with a friend after watching a movie on the night of December 16th, 2012. She was brutally raped again and again and tortured to a horrific state with a iron bar by the six men travelling along in that bus including a juvenile who were drunk, while the bus drove through the streets of Delhi. After this, she was thrown out of the moving bus and they even tried to ride the bus over the blood soaked victim who was in a petrified state.

This incident shook the nation and a widespread protest and anger took over the streets of Delhi where everyone was raising their voices against the discrimination towards women, the assault and sexual violence against women and the treatment of women in the country. Everyone wanted just one thing, justice for Nirbhaya. There were candle marches, banners and boards reading **"We want justice"; "Hang the Rapist"; "We are ashamed, save our girls"** and so on.

The aftermath of this was reviewing the laws against sexual violence and crimes committed towards women.

The punishment of gang rape was settled to 20 years of imprisonment with a chance of life imprisonment and in case of repeat offenders it may lead to death penalty. Also crimes such as voyeurism, stalking was to be treated with tougher punishment.

INCIDENTS THAT TOOK PLACE LATER....

After Nirbhaya case, again the brutal rape incident happened in the holy land of goddesses and law which we know as a name of Kathua rape case and Unnao rape case. After these incidents, the Criminal Law (Amendment) Act, 2018 is passed to amend the Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Indian Evidence Act, 1872 and Protection of Children from Sexual Offences Act, 2012.

KATHUA RAPE CASE

An 8 year old girl was kidnapped and brutally gang raped in a temple by the main accused Ram who was the custodian of the temple, his son Vishal, two nephews, 2 police officers and a friend on January 10, 2018. It was a conspiracy planned and executed so as to terrorize and removed the minority community in the Jammu region which comprised mainly of Muslims.

Later on January 14, she was killed and on January 17 her body was found in the forest.

It was also found out that the girl was intoxicated by the crime branch reports which led her unable to resist the assault and murder.

It created an outrage in the country and the shock and terror of sexual violence against women in the country had no ends. The people were protesting, there were candle marches and banners around reading **“Stop Child Sex Abuse”**; **“Punish the guilty in Kathua”** and so on. The lawyer of the victim’s family, the lady who took up this case was threatened each day of her life after she came out in support of the case. She was given police protection later for the safety of her and her family. The 7 accused were charged with murder and rape and it was also directed that the accused should be interrogated in presence of family members, while the SC transferred the case to a fast track court in Pathankot, Punjab.

UNNAO RAPE CASE

The victim was a 17 year old who was raped by MLA Kuldeep Sengar at his residence when she went to his house seeking a job along with Shashi Singh on June 4, 2017.

The girl was again kidnapped and raped by a separate group between June 11, 2017- June 20, 2017. The victim went on to Yogi Adityanath residence and pleaded him to take matter into hands and to give her justice. She prayed that she might kill herself if the rapists were not put behind the bars. -

The nation started a widespread march in order to get her justice and raised their voices through social media, public display and open letters to the government to get her justice. Everyone wanted a better society for women and changes to be made in the laws dealing with sexual violence against women.

In February, the victim's father was assaulted by the MLA's brother Atul Singh after he was put in jail on April 3 under the Arms Act.

Later a twist taking turn happened in the case, when the victim's father died on April 9, 2018. It was found that he earlier complained of stomach ache and vomit and later he was assaulted by Atul Singh and others which led to his death.

Atul Singh was charged with culpable homicide not amounting to murder (section 304), voluntarily causing hurt (Section 323), intentional insult with the intent to provoke breach of peace (Section 504) of IPC.

The State government transferred the case to the CBI after 10 months of the crime. On April 13, the MLA Kuldeep Sengar was arrested and subsequently Shashi Singh who took the victim to MLA's house was also arrested.

At present, the MLA Kuldeep Sengar, his brother Atul Singh and his aides are in police custody for raping the victim and conspiring to assault and kill her father while he was in police custody.

CHANGES MADE IN RESPECT OF SEXUAL VIOLENCE AFTER THE THREE PREVIOUS LANDMARK CASES

Amendment to the Indian Penal Code

1. Section 166A of the act deals with public servant disobeys the direction under law and Section 228A of the act deals with disclosure of identity of the victim of certain offences, have been amended to include the newly inserted IPC provisions Section 376 AB, Section 376 DA, Section 376 DB.
2. In Section 376(1) deal with the punishment for rape of a woman in all circumstances except which is mentioned in Section 376(2). Earlier the punishment for rape was rigorous imprisonment of minimum 7 years which may extend to life imprisonment and also liable for fine. After 2018 amendment, the punishment for rape is rigorous

imprisonment of minimum 10 years, but which may extend to life imprisonment and also liable for fine.³

3. Section 376 (2) (i) has been omitted.
4. After the amendment, the new sections were inserted i.e.
 - a. Section 376 (3) stated that punishment for rape on woman under sixteen years of age is rigorous imprisonment of minimum 20 years, but which may extend to life imprisonment and also liable for fine.
 - b. Section 376 AB stated that punishment for rape on woman under twelve years of age is rigorous imprisonment of minimum 20 years, but which may extend to life imprisonment and also liable for fine or with death.
 - c. Section 376 DA stated that where a woman under 16 years of age is raped by one or more persons constituting a group or act done in common intention, each of those persons shall be punished with life imprisonment and with fine.
 - d. Section 376 DB stated that where a woman under 12 years of age is raped by one or more persons constituting a group or act done in common intention, each of those persons shall be punished with life imprisonment and with fine, or with death.

Amendment to the Code of Criminal Procedure, 1973

The Section 26, 154, 161, 164, 173, 197, 309, 327, 357 B, 357 C, and First Schedule of Code of Criminal Procedure, 1973 has been amended to include the newly inserted IPC provisions Section 376 AB, Section 376 DA, Section 376 DB. In Section 374, 377, 438 and 439, the new sub-section was inserted into each of the respective sections. Here, we see the few amended section in which major and important amendment has been made along with sections in which new sub-section were inserted into it.

1. Section 374 deals with the appeals from convictions by the accused and Section 377 deals with the appeal by the State Government against sentence. The amendment inserted sub-section (4) in Section 374 as well as in Section 377 stated that when an appeal has filed

³ Refer to <https://blog.ipleaders.in/criminal-law-amendment-act-2018/>

against a sentence passed under section 376 of Indian Penal Code, the appeal shall be disposed of within 6 months from the date of filing of such appeal.

2. Section 438 deals with provisions concerning anticipatory bail. The amendment inserted sub-section (4) stated that if a person is accused of rape on a woman under 12 years and 16 years of age, he shall not be granted an anticipatory bail by a High Court or a Court of Session.⁴
3. Section 439 deals with special powers of High Court or Court of Session in granting bail.
 - a. The amendment inserted the second proviso stated that the High Court or Court of Session has to give notice of the application for bail to the Public Prosecutor within 15 days from the date of receipt of the notice of such application.
 - b. The amendment also inserted sub-section (1A) stated that the informant or any person authorised by him shall be mandatorily present at the time of hearing of the application for bail.

Amendment to the Indian Evidence Act, 1872

Section 53A of the act deals with the evidence of character or previous sexual experience not relevant in certain cases and the proviso of section 146 of the act deals with the evidence of character or previous sexual experience not relevant in certain cases, has been amended to include the newly inserted IPC provisions Section 376 AB, Section 376 DA, Section 376 DB.

Amendment to the Protection of Children from Sexual Offences Act, 2012

Section 42 of the act deals with alternative punishment, has been amended to include the newly inserted IPC provisions Section 376 AB, Section 376 DA, Section 376 DB.

⁴ supra 1