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Nirbhaya Rape Case: Why did we need The Criminal (Amendment) Act, 2013

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ABSTRACT

As we all aware about the Nirbhaya Rape Case which was occurred on 16th December, 2012 which was a heinous crime. This was not only the single case which was heinous in nature. In India, almost every day these types of crimes occurred or taken place. But this incident throws the light on the existing laws which were not sufficient to dealing with these types of heinous crime. After this incident, an act or legislation came into force on 3rd February, 2013 i.e. The Criminal Law (Amendment) Act, 2013. This act is popularly known as Nirbhaya Act because this act was passed after Nirbhaya case in the purview of sexual offences. After the commencement of this act, many legislation were amended like Indian Penal Code, Indian Evidence Act, Criminal Procedure Code and other legislations related to sexual offences. In Indian Penal Code, there were already provisions mentioned regarding sexual offences, then, why we need this Criminal Law (Amendment) Act, 2013, how it affects other legislations and sexual offences in India, what changes made in other statutes or acts related to this Criminal Law (Amendment) Act, 2013. Did this Act affect sexual offences rate in India. We will discuss in this article. After enactment of this act, India able to protect the children and women from these types of crimes.

I. BRIEF FACTS OF THE NIRBHAYA RAPE CASE

Nirbhaya rape case was infamous Delhi gang rape case which was occurred or taken place on 16th December, 2012 night. Nirbhaya and her male friend were returning from a movie theatre at Saket. When they were waiting for bus, one of the culprit or offender convinced them to get on an empty bus with shaded or tinged windows. They were assaulted by six men or males, one of them was minor whose age was 17 and he was also a juvenile. Her male friend was also beaten up by them when he was trying to protect nirbhaya. The victim was sexually violate her body was mutilate, her intestines were pulled out and her private parts were also mutilated or injured. The victim died on 29th December, 2012 after failure of multiple organs, internal

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bleeding and cardiac arrest.²

II. THE CRIMINAL LAW (AMENDMENT) ACT, 2013

The Criminal Law (Amendment) Act, 2013 is also known as Nirbhaya Act. This act was passed by the Lok Sabha and Rajya Sabha on 19th March and 21st March, 2013 respectively. This act also changed and has impact on Indian Penal Code, Criminal Procedure Code, the Protection of Children from Sexual Offences and Indian Penal Code. The main objective of this act is to protect children and women from the sexual offence and rarest of the rare crime. This act also inserted new sections regarding heinous crime against women and imposing punishment on these offences. These kinds of offences are generally come under the category of the cognizable offences and Non- Bailable offences. So, the offenders get hard or strict punishment for the grievance offence. This act also increased the existing punishment of these offences against women and children. Now, how it affects the other legislations and its provisions.

III. AMENDMENTS IN DIFFERENT LEGISLATIONS

Growing rape cases in India continuously, now it has time to be amending the many existing legislations and insert new provisions in the legislation is necessary. So, in 2013 after the commencement of this act, many legislations were amended and new provisions were inserted.

(A) Indian Penal Code, 1860

In IPC, there were many provisions or sections inserted and many existing provisions amended. The Criminal Law (Amendment) Act, 2013 has inserted specific provisions which directly deal with the sexual offences. Before this act, there were no specific provisions regarding sexual offences which were a loophole or lacuna of this act.

- **Section 100(7)** – An act of throwing or administering acid or attempt to throw acid which may cause the grievous hurt or other consequences of such act.
- **Section 166A** – This section makes a “*Public Servant criminally*” liable if he:
 - a) Knowingly disobeys any direction of law which prohibits him from requiring the attendance of any person at any place for investigation of any matter relating to an offence.
 - b) Knowingly disobeys any direction of law which regulating the matter of investigation shall be conducted.

² Soma Singh, FACTS OF THE CASE (NIRBHAYA CASE STUDY), <http://lawtimesjournal.in/facts-of-the-case-nirbhaya-case-study> (last visited on 12th March, 2021).

- c) Fails to record any information given to him under Section 154(1) of CrPC, Section 354D, 370, 370-A, 376-A to 376-E or Section 501 of the IPC. The punishment in this case shall not be less than 6 months which may extend to 2 years and also liable to fine.
- **Section 166B** – This section deals with *“Punishment for non-treatment of victim”* and imposes criminal liability on hospitals which were run by Central or State Government or local bodies to provide the medical treatment or first aid or free of costs medical treatment to victims of any offence falling under Sections 326-A, 376-A to 376-E. Failure to obey these statutory obligation the punishment given that may extended up to 1 year of imprisonment or with fine or both.
 - **Section 228A** – This section punishes the *“disclosure of identity of the victim”* of rape which comes under Section 376 to 376-E of IPC. The punishments imposed on the offender are imprisonment which may extend to 2 years and fine. This section aims to protecting the victim of such crimes which may resultant in humiliation or exploitation of a person or his reputation.
 - **Section 370 and 370A** – Section 370 deals with the *“Trafficking of Person.”* The section punishes importing, exporting, buying, selling or disposing of a person as a slave by using threat, force, any other form of coercion, abduction, practising fraud, deception, abuse of power or inducement. The punishment imposed for trafficking shall be rigorous imprisonment not less than 7 years which may extend to 10 years and fine also. Section 370-A deals with the *“exploitation of a trafficked person”*. If a person knows that a minor has been trafficked and then engages with such minor for sexual exploitation in any manner, then he is liable for rigorous imprisonment not less than 5 years which may extend to 7 years and liable for fine also.
 - **Section 326A and 326B** – These sections deal with the *“voluntarily causing grievous hurt by using causing or throwing or attempting to throw acid”* to any person with the intention to causing partial, permanent damage, burns, maims, deformity, disfigures or disables any part of the body of such person. This section imposes minimum punishment i.e. imprisonment not less than 10 years which may extend to life and fine also. In 2015, there was a case *Laxmi v. Union of India*,³ in this case it was held by the Court in case of acid attack victims get minimum compensations of Rs. 3 lakhs to be made available for each victim.

³ AIR 2015 SC 3662

- **Section 354A** – Section 354A deals with the “*sexual harassment*” and punishment for sexual harassment, in this section if a man committing physical contact and advances involving explicit and unwelcome sexual overture, request for sexual favours, showing pornography to woman against her will or making sexually coloured marks then, he will be liable for sexual harassment. Punishment for sexual harassment is description of term, rigorous punishment for 3 years or one year simple imprisonment or fine or both.
- **Section 354B** – This section deals with “*Assault*”, if a person uses criminal force to any woman or abets her to denude or convince her to be naked shall be punished with imprisonment not less than 3 years which may extends to 7 years and fine also.
- **Section 354C** – This sections mention offence of “*Voyeurism*”, any person who watches or captures the image of woman who is engaging in her private act. Where she would not being observed by either perpetrator or any other person. On his first conviction, he will liable for imprisonment not less than one year and fine also. If he will convict for the same offence subsequently, then he will be liable for imprisonment not less than 3 years which may extend to 7 years and fine also.
- **Section 354D** – This section deals with offence of “*Stalking*”, any man who stalks or follows a woman and contact or attempts to contact her or such woman to foster personal interaction repeatedly despite a clear disinterest by such woman or monitors e-mail or any other form of electronic communication use by such woman. The punishments for stalking on first conviction are a description of a term which may extend to 3 years and fine. If he will convict for the same offence subsequently, then he will be liable for imprisonment not less than 3 years which may extend to 7 years and fine also.
- **Section 375** – This section specifically deals with the provision of “*Rape*”. This section provides that a man is said to commit for rape if he penetrates his penis or inserts any object, any part of the body of woman or applies his mouth to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do some with him or any person. Section 376 defines punishments for rape which are rigorous imprisonment not less than 7 years which may extend to life imprisonment and liable for fine.
- **Section 376A to 376E** – These sections covers wide area of offences related to rape. Section 376-A defines the “*death of the victim*” by injury caused to woman while committing rape or which results in the woman to be in persistent vegetative stage.

Section 376-B defines “*sexual intercourse*” by a husband or man with his wife during the separation. Section 376-C, it deals with “*Custodial rape*” by a public servant, superintendent or manager of jail, management or staff of the hospitals or in fiduciary relationships. Section 376-D defines “*Gang Rape*” where a woman is raped by one or more person with common intention. Section 376-E applies on “*Repeat Offender*” who already convicted earlier or before under Section 376, 376-A or 376-D.⁴

(B) Criminal Procedure Code, 1973

Criminal Procedure Code also amended or inserted new section by The Criminal Law (Amendment) Act, 2013. These are as follows:

- **Section 26** – This section provides “*Power of courts to trial offences under IPC*”. It may be tried by the High Court, the Court of Session or any other court where an offence is shown in the schedule as triable by Magistrate then it can be tried by the Court of Session. The Clause (b) of this section states that when the court is mentioned in any other law or legislation that offences under the law shall tried by this or that Court and no other Court.
- **Section 54A** – It states that the court having jurisdiction on the request of the officers in charge of police to identification of arrested person by any other person for the purpose of investigation in the manner as the court may deem fit.
- **Section 154** – It states that every information given to the police officer relating to the commission of an offence. It is oral, it has to be reduced to writing as required by this section (First Information Report). It shall be signed by person who giving it.
- **Section 160 (Proviso)** – It states that no male person under the age of 15 years, above the age of 65 years, a woman, mentally or physically disabled person shall be required or necessary to attend at any place other than the place in which such male or woman resides.
- **Section 161 (Proviso 2 and 3)** – It provides that any statement of a woman against whom an offence is alleged to have been committed or attempted under Section 354, Section 354A to 354D, Section 376, Section 376A to 376E or Section 509 of IPC shall be recorded by any woman officer or woman police officer.
- **Section 164 (5A)** – Judicial Magistrate shall record the statement of the person whom offence has been committed under Section 354, Section 354A to 354D, Sub-section 1 and 2 of Section of 376, Section 376A to 376E or Section 509 in the IPC in the manner

⁴ K D Gaur, Indian Penccode, 6th Edition, Re-print in 2018

prescribed in the Sub-section 5 of this section and as soon as the commission of the offence is brought to the notice of the police. If the person who is making the statement is temporarily or permanently physically or mentally disabled, the magistrate shall take the assistance of an interpreter or a special educator shall be video graphed in the recording of statement and shall be considered a statement in lieu of examination-in-chief as specified under Section 137 of the Indian Evidence Act, 1872.

- **Section 173 [(1A) and (2(h))]** – Section 173(1A) says that the investigation in relation to an offence under sections 376, 376A to 376E of IPC shall be completed within two months from the date on which the information was recorded by the officer in charge of police station. Section 173[2(h)] states the report of medical examination of woman has been attached where investigation relates to an offence mentioned under Section 173(1A) of CrPC.
- **Section 197 (Explanation)** – For the removal of doubts, no sanction shall be required in case of a public servant of any offence alleged to have been committed under Section 166A, 166B, 354, 354A to 354D, 370, 375, 376, 376A to 376E or 509 of the IPC.
- **Section 198B** – This section says that no court shall take cognizance offence punishable under Section 396B of IPC where the persons are in a marital relationship until and unless the facts are satisfying upon a complaint which constitutes the offence or made by the wife against her husband.
- **Section 273 (Proviso)** – Where the evidence related to the age of 18 years who is alleged to have subjected to rape or victim of offence of rape or any other sexual offences to be recorded. The court may take appropriate measures to ensure that the woman or victim is not resisted by the accused and at the same time ensuring the right of cross-examination of accused.
- **Section 309(1)** – Every inquiry or trial the proceedings shall be continued from day-to-day until every witness in attendance have been examined unless the court adjourns same beyond the following day to be necessary for reason to be recorded. Provided that all the inquiry or trial shall be completed within a period of two months from the filing date of the charge sheet related to Section 376A to 376D, 376DA or 376DB of IPC.
- **Section 327(2)** – The inquiry or trial of rape or an offence comes under Section 376, 376A to 376D of IPC shall be conducted in camera. Provided that the presiding judge may think fit or an application made either by the parties to allows any particular person to access the room or building used by the court.

- **Section 357B** – The compensation payable by the State Government shall be in addition to the payment of fine to the victim. If an offence comes under Section 326A, 376AB, 376D, 376DA or 376DB of IPC.⁵

(C) The Indian Evidence Act, 1872

In the growing phenomenon of rape or sexual offences against women needed some changes and inserted new sections in Indian Evidence Act.

- **Section 53A** – This section was inserted by Section 25 of the Criminal Law (Amendment) Act, 2013. This section has been brought into evidence law as **“Presumption of absence of consent in rape matters”**. It is a method of protecting the honour of the victim of a rape or her sexual experience with any person in past. This section applies to an attempt to prosecution for offences under Section 354, 354A to 354D, 376, 376A to 376E of the IPC or an attempt to commit any such crime or offences.
- **Section 114A** – This section was substituted by Section 26 of the Criminal Law (Amendment) Act, 2013. Now, this section deals with the **“Presumption of absence of consent in prosecution of rape”**. This section is broad and it covers all the clauses of section 376(2) of IPC. The question in issue is whether it was without the consent of the victim, woman. If she states in her statement or evidence that she did not consent before the court. The court has to presume that there was no consent of woman or victim of rape. In the explanation of this section, it mentions the word **“Sexual intercourse”** which means any of the acts as mentioned in Clause (a) and (b) of Section 375 of IPC.
- **Section 119** – This section also substituted by Section of this Act. Before the amendment, this section read as **“Dumb Witness”**. Now, this section deals with the **“Incapability of verbal communication”**. If a witness who is not capable to speak, may give his evidence in any other manner in which he can make it intelligible like by writing or by signs or other form in the open court. The evidence which has been given is to be deemed as oral evidence, when a witness is unable to communicate verbally, the court has to take the assistance of a special educator or an interpreter for recording the statement and such statement must be video graphed.
- **Section 146** – This section also substituted by Section 28 of this Act, section 146 of the Evidence Act deals with the **“Lawful questions in cross-examination”**. In a cross-examination a witness can be asked all questions relating to relevant facts. The witness

⁵ S.N. Misra, The Code of Criminal Procedure, 22nd Edition, 2020

can also be question to his character such as to test veracity, to discover who he is, what is his position in life, to shake his credit by injury his character which means to expose his respectability.⁶

(D) The Protection of Child from Sexual Offences, 2012

- **Section 42** of this Act was substituted, now it states that where an act or omission constitutes an offence punishable under this act or any other act or legislation and although anything contained in law for the time being in force, the offender found guilty of such offences shall be liable under this act or IPC which is greater in degree.⁷
- **Section 42A** states in case of inconsistency between the provisions of this act and provisions of any other law for the time being in the force, the provision of this act shall be overriding effect on the provision of any such law to the extent of inconsistency in addition no in derogation of the provision of any other law.⁸

IV. WHAT IS THE RATE AND SITUATION OF SEXUAL OFFENCES IN INDIA AFTER THE COMMENCEMENT OF THIS ACT?

This incident of gang rape case was changed whole Indian Criminal Justice System but the situation of the India is same before the commencement of this Act. In 2013, the rape cases were increased by 26% which was the highest in the last years and in the same year this act was passed and the number of rape cases were increased continuously. In India, the average rate of reported cases for rape is 6.3% per 1,00,000 people. So, what is the benefit of this act when numbers of rape cases go higher? After the commencement of this act, we studied a lot of barbaric incidents at different or various places or parts of India like Kathua rape case, Laxmi acid attack case, Hathras gang rape etc. and much more. 99% of rape cases and crime against women and children were not reported in India.⁹ The amendment has brought so many changes under which the culprits or offenders can get rigorous punishments and death penalty. This act inserted specific provisions which help women in reporting the cases. The act does not have any lacuna but its implementation fails very badly. India reported 1,48,185 reported rape cases in 2019 and the crime rate was increases to 45% at the same year. So the situation is worst in

⁶ Dr. Avtar Singh, Principles of the Law of Evidence, 23rd Edition, 2018

⁷ The Bare Act of Protection of Children from Sexual offences. Section 42 – where an act...greater in degree.

⁸ Official Gazette of India, Published by Authority, <https://www.iitk.ac.in/wc/data/TheCriminalLaw.pdf> (last visited on 16th March, 2021)

⁹ Sujan Bandyopadhyay, A Closer Look at Statistics on Sexual Violence in India, <https://m.thewire.in/article/society/a-closer-look-at-statistics-on-sexual-violence-in-india/amp> (last visited on 18th March, 2021)

India to protect women and children from sexual offences.¹⁰

V. CONCLUSION

In my opinion, the Criminal Law (Amendment) Act, 2013 was not have so much effect on the sexual offences against children and women because in 2013, India had reported so many cases in last 15 years especially in Delhi, Rajasthan and North-East part of the country. This act has been brought so many amendments but the implementation of this act fails. According to me, the provisions of this act are sufficient to punish an offender but the offender gets punishment for his act? No, because the trial system of Criminal Justice System is very long and time taking. In Nirbhaya Rape case, the offenders got punishment after 7 years from the incident occurred. So, in the Criminal Law (Amendment) Act, 2013, there were no provisions regarding the speedy trial after the offences committed. There were also so many cases where the justice got delayed. But also we cannot denied that the act provided so many provisions in favour of women and children, covers wide area of offence against them and protect their reputation also from exploiting and imposes rigorous punishments on the offender.

¹⁰ Crimes Against Children Increased 4.5% In 2019: NCRB Data, <https://thelogicalindian.com/crime/crimes-against-children-increased> (last visited on 18th December,2020)