



# INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

## TO ANALYSE THE AMENDMENTS MADE IN THE LAWS AGAINST RAPE IN INDIA AND STUDY THE PUBLIC AWARENESS FOR THE SAME.

- A PAPER BY GIRL UP NEEV

This Research is undertaken by the Following members of Girl Up Neev

Tanisha Srivastava

Ishika Jain

Nimisha Soni

Lakshita Gandhi

Mahek Shah

### Abstract

Rape laws in India have been a topic of debate since 1800s. In this paper, we aim to study the laws against rape and sexual harassment in India. The paper states the reformations made throughout the years and compares the law with other countries. Primary data collected through the sample size highlights some problematic areas in the judicial system, specifically regarding rape laws. It was noted that Marital Rape in most cases isn't recognised in the eyes of the law. The sample insisted on capital punishment to be issued, indifferent to the age of the victim. Along the same lines, all convicts regardless of their age should be treated the same. It was also recognised that implementation of the law takes decades, rather than being a priority, where the victim ultimately suffers while the accused runs free.

## Introduction

Rape is one of the most horrific crimes that still exists in our society. In India rape happens in every few minutes but only a small percentage of cases get reported. The laws against rape became stricter after the Delhi gang-rape case in 2012, yet the number of cases are increasing as the years go by. In 2019, around 87 more cases were reported daily which was 7 percent higher than in 2018. So, the question that arises here is, “Why isn’t the number of cases decreasing even after implementing more number of laws?” This research paper shows an analysis of several laws against rapes in our country as well as a comparison between laws of different countries. It is high time that severe actions are taken against such rapists and we as a society stop accusing the victims. The laws need to be implemented in such a way that it delivers a strong message to every individual that rape is not acceptable and the person who commits it will be punished severely.

## Problem Solution

Understanding the history of laws against rape, sexual harassment and their amendments since 1860. This paper compares the Indian laws with other countries and suggests some reforms which can be made in the former.

## Study Objective

1. To study the amendments made in Indian laws against rape and sexual harassment.
2. To analyse the laws and regulations of other countries with Indian laws.
3. To study public awareness about Section 376.

## Data Collection Method

It is a process of accumulating and processing information for further analysis by the researcher. To evaluate objectives of the study, the data required has been collected from one hundred and one people for this study through the primary method of data collection. The tool used for collecting the data was “Google Survey Form.”

## Amendments made throughout the history:

### 1. Amendment made in Indian Penal Code 1860

At the time of writing of IPC in 1860, first-time rape word was mentioned in our legal structure. Section 375-376E of the Indian Penal Code refers to ‘sexual offense’ which defined rape as sex without consent, with consent but under the fear of death or with consent but under pretenses. At the time of rise of feminism, after independence in 1970, the rape by police, army, security forces and known persons became prominent issues. The 1860 version of the IPC ignored sex without consent between the husband and wife (marital rape). The concept of aggravated rape and the first change in IPC became a very ‘general’ outline of rape after the “MATHURA RAPE CASE” in 1972.

## 2. Amendment made after Nirbhaya Case in 2012

What happened on December 16, 2012?

The woman and her friend Pandey were returning home after watching the movie "Life of Pi" on the night of December 16, 2012. They boarded an off-duty charter bus at 'Munirka bus stand' where six other men were there including the bus driver. The bus started moving in an off-route direction and few men shut the doors of the vehicle. Suspecting something wrong, when Pandey raised an objection, he was shouted down and a scuffle broke out as the men who were drunk started molesting her. Her friend was knocked down with a rod, and the men dragged her to the back of the bus and repeatedly gang-raped for over an hour. As she fought back, one of the juvenile attackers inserted an iron rod into her private parts, pulling and ripping her intestines apart. The bus driver drove all over Delhi while this was happening. After the attack, both of them were thrown out of the bus to die at the side of the road. The two were found half-dead by a passer-by who informed the Delhi Police. She was taken to the 'Safdarjung Hospital' where doctors found she had only five percent of intestines left inside her body. She succumbed to her injuries on December 29, 2012. In her statement to Police, she said she wanted justice against the six attackers. The incident led to widespread demonstrations and protests across the country and led to the change in laws for violence against women.

### What happened to Nirbhaya's attackers?

All the six men in the Nirbhaya rape case, including the juvenile, were convicted by the court. All the accused were identified as 'Ram Singh', 'Mukesh Singh', 'Vinay Gupta', 'Pawan Gupta', 'Akshay Thakur' and a juvenile. 'Ram Singh', the bus driver, committed suicide on March 11, 2013, in 'Tihar Jail' during the trial. The minor was tried separately in a juvenile court and was given the maximum sentence of three years' imprisonment in a reform facility. In September 2013, the trial court had awarded capital punishment to 'Mukesh', 'Akshay', 'Pawan' and 'Vinay'. Subsequently, the three convicts besides Akshay had sought review of the judgment but it was dismissed. The order on the review petition filed by Akshay was dismissed by the Supreme Court on December 18, 2019.

On 21<sup>st</sup> March, 2013, the rape law in the country was amended. The new tougher anti-rape law "Criminal Law (Amendment) Act, 2013" to punish sex crimes redefined rape and made punishments more stringent - including death for repeat rape offenders.

### Reforms to Law on Rape

- The 2013 Act expanded the definition of rape to include oral sex as well as the insertion of an object or any other body part into a woman's vagina, urethra, or anus.
- The punishment for rape was also made stricter. The courts' discretion to give rapists a sentence lesser than the minimum of seven years was abolished. Separate punishments for repeat offenders were also introduced, including the possibility of the death sentence.

- Fast-track courts were also set up for rape cases, which were to conduct trials on a day-to-day basis and not stretch them over several months. Trials also need to be completed within two months of the charge sheet now.

### **New Sexual Assault Offences**

Previously, the IPC had to tackle sexual assault offences using the archaic section 354: “outraging the modesty of a woman.”

Now, under sections 354A-D, stalking, voyeurism, unwanted sexual advances and touches are all specific offences – which helps ensure that these extremely dangerous behaviours can no longer be ignored or trivialised.

### **Provisions on Acid Attacks**

The 2013 Act also introduced provisions specially criminalising them, and for protecting victims of these attacks.

But despite the stricter law, weak policing and investigation hasn't deterred rape, and it is still the fourth-most common crime against women in India, according to government statistics. In the absence of systemic and procedural reform, the law has failed to attain its primary objective which is evident by the similar brutal cases in recent weeks.

### **3. Amendments made after Mathura Case**

Mathura was a 16 years old orphan tribal (Adivasi) girl living with one of her two brothers. Mathura occasionally worked as a domestic helper with a woman named Nushi. She met Nushi's nephew named Ashok who wanted to marry her, but her brother did not agree to the union and went to the local police station to lodge a complaint on 26th March 1972, alleging that Mathura, a minor, was kidnapped by Nushi, her husband Laxman and Ashok. The report was recorded by Head Constable Baburao. After receiving the complaint, the police authority brought Ashok and his family members to the police station. Following general investigation, Mathura, her brother, Ashok, and his family members were permitted to go back home. However, as they were leaving, Mathura was asked to stay behind while her relatives were asked to wait outside. Mathura was then raped by the two policemen and when her relatives and the assembled crowd threatened to burn down the police chowki, the two accused policemen, Ganpat and Tukaram, reluctantly agreed to file a Panchnama (legal recording of evidence).

The courts ruled that there was no locus standi (legal standing) in the case to rule in favour of Mathura. Eventually this led to Government of India, amending the rape law.

## **Legal Reforms: The Criminal Law (2nd Amendment) Act, 1983**

1. This Amendment Act made a statutory provision in the face of Section 114 (A) of the Evidence Act made in 25 December 1983, which states that if the victim says that she did not consent to the sexual intercourse, the Court shall presume that she did not consent (as a rebuttable presumption of law).
2. Section 376 (Punishment of Rape under Indian Penal Code) underwent a change with the enactment and addition of Section 376(A), Section 376(B), Section 376(C), Section 376(D) IPC, which made custodial rape punishable (which were further amended in 2013 after Nirbhaya Rape Case).
3. Besides defining custodial rape, the amendment shifted the burden of proof from the accuser to the accused, once intercourse was established; which also added provisions for in-camera trials, the prohibition on the victim identity disclosure and tougher sentences.

### **4. Amendments made after Asifa Bano Case**

In January 2018, an 8-year-old girl named Asifa Bano was kidnapped from her village and was raped continuously for 3 days. After the 3rd day, Asifa was murdered in the district of Kathua in Jammu and Kashmir. The main accused was Sanjhi Ram who was the priest of the temple along with his son and nephew who were juveniles. This case led to national aggression as the matter was related to a child and especially because the incident took place inside the temple by the priest of the temple. This incident pressurized the government to make the immediate policy change in the India Legal System. Several state assemblies such as Madhya Pradesh, Haryana, Rajasthan, and Arunachal Pradesh passed the anti-rape laws for committing rape of minor girls after the Kathua rape and Unnao rape case incidents. Following this, the President of India gave assent to The Criminal law Amendment Act, 2018 on 21st April, 2018. This brought amendments in four major Acts of the Criminal Law that are as follows:-

#### **Indian Penal Code**

After the amendment of 2018, the punishment for the rape of women under section 376(1) is increased from a minimum of seven years to a minimum of ten years. Section 376DA and 376DB have been added by the amendment which deals with punishment for gang rape on women under 16 years and 12 years of age respectively. The punishment in such cases has to be imprisonment for life and in case of gang rape on a woman under 12 years of age, the death penalty can also be awarded.

#### **The code of criminal procedure, 1973**

If the person is accused of rape on a woman of 16 years of age, he shall not be granted anticipatory bail under section 438 by a High Court or a Court of Session. The amendment has provided speedy trial and investigation which has to be mandatorily completed within two months. The appeal in rape cases has to be disposed of within six months. Two changes have also been made in section 439 of the code, a proviso has been inserted which states that the High Court or the Session Court has to give notice to the public prosecutor within 15 days of which it receives the bail application of an accused of raping a girl under 16 years of age.

Subsection 439(1A) has been inserted which makes the presence of informant or a person authorized by him mandatory during the hearing of bail application of the accused in such cases.

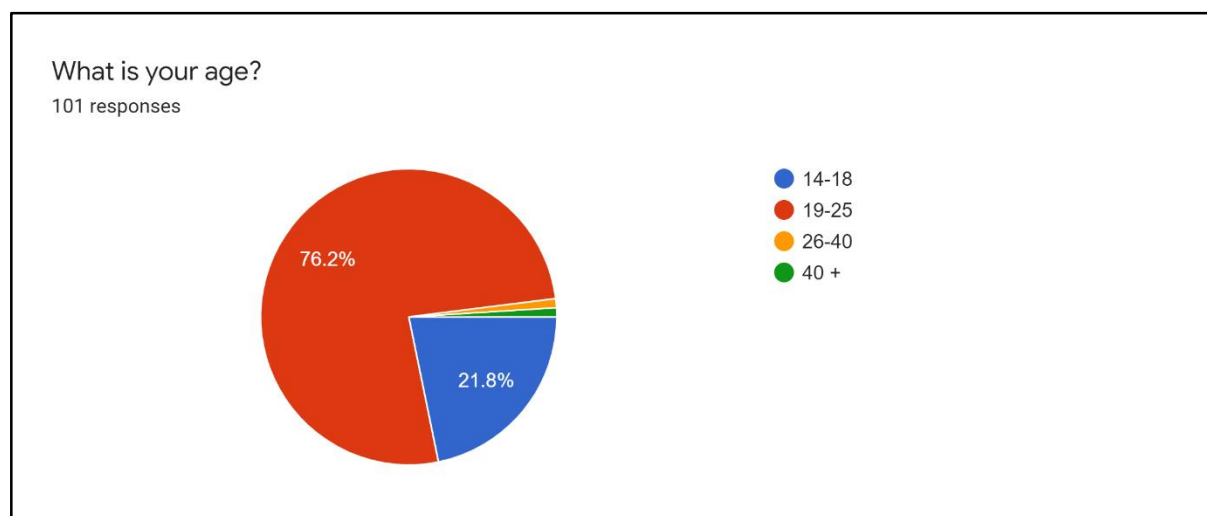
### **The protection of children from sexual offences act, 2012**

Section 42 of the Act deals with the alternative punishment has been amended to include Sections 376AB, 376DA, and 376DB.

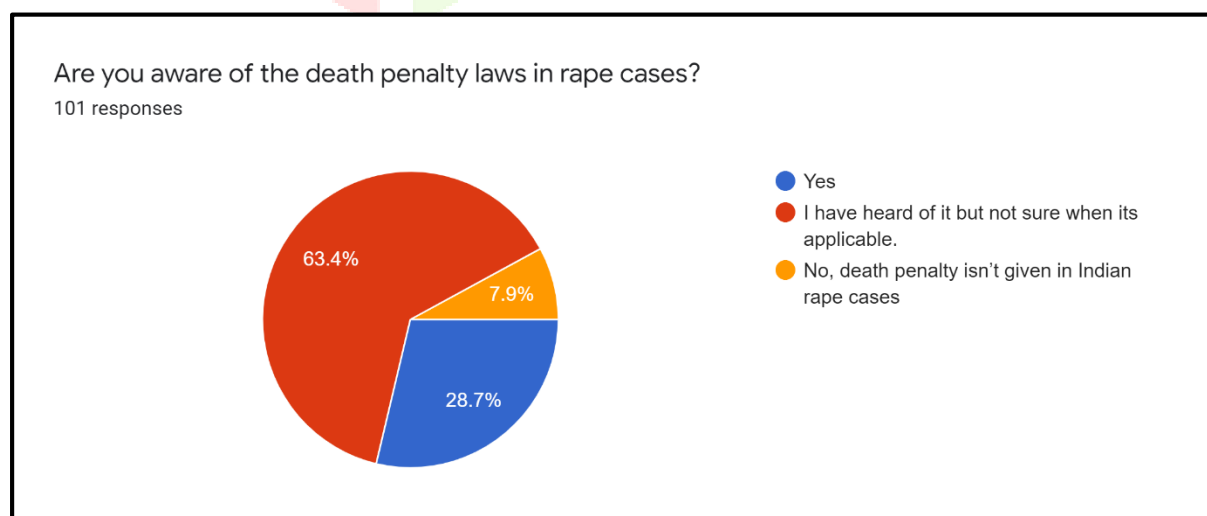
### **The Indian evidence act, 1872**

53A and Section 146 have been amended to make the provision of the Act to align with the amendments in the other Acts.

### **Primary Data**

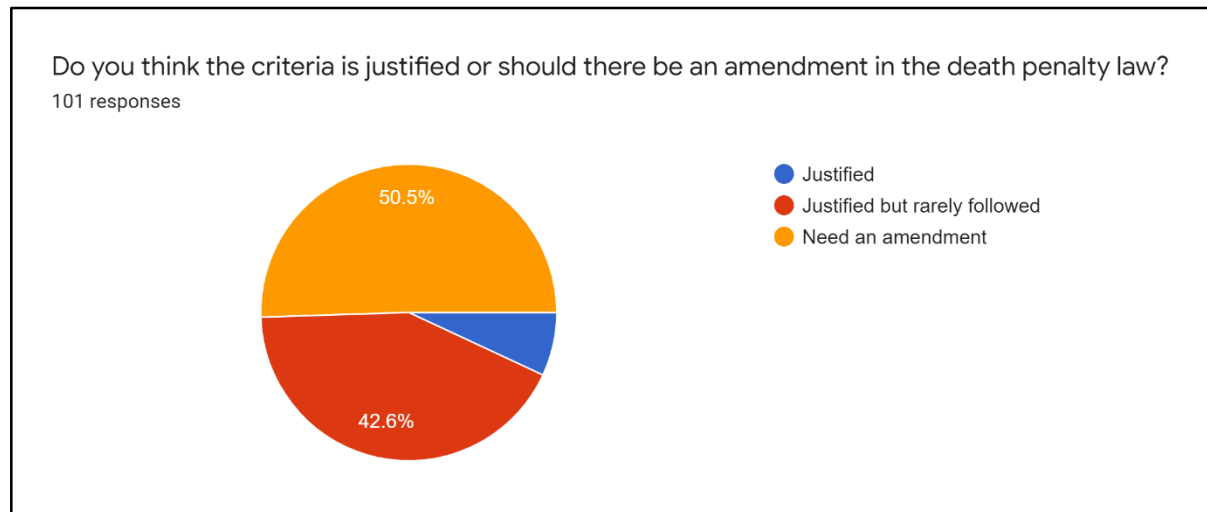


This research mostly signifies opinions of young adults. Hence, putting forward the view of the future generation.



In April, 2018, the Section 376A of the Indian Penal Code allows Capital Punishment for anyone convicted of raping children under the age of 12. As seen by our research, 71.3% of the sample is uninformed about the extent of punishment levied on rape convicts.

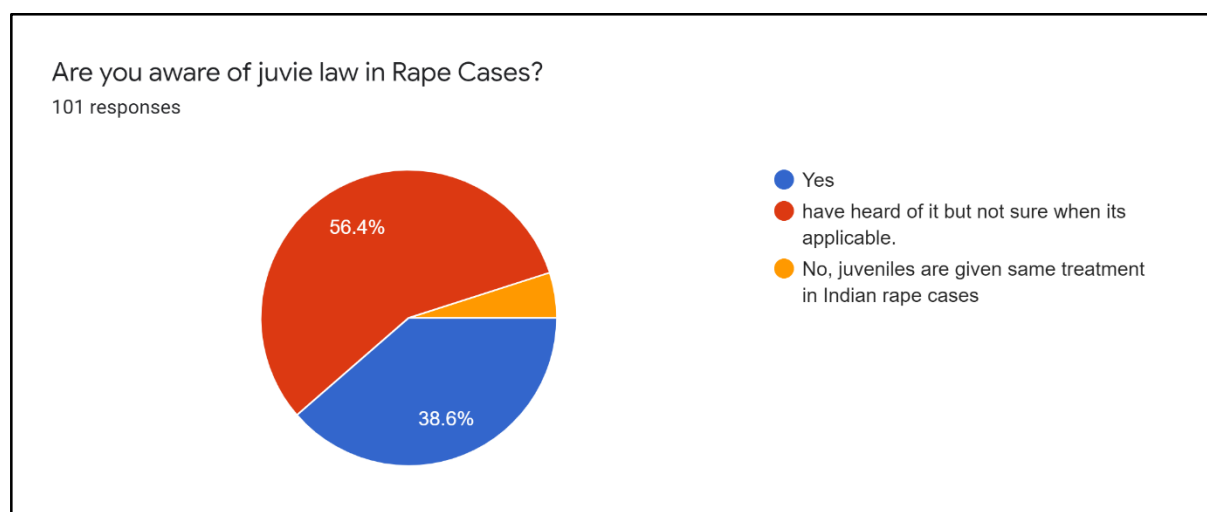
Implication: This unawareness implies a lack of executed convicts portrayed in the media as well as stigma related to rape cases hindering dissemination of information. Punishment's role is to act as a specific deterrence by frightening an individual defendant with punishment or as a general deterrence by frightening the public with the punishment of an individual defendant.



42.6% of the sample finds the court unable execute the victim whereas 50.5% of the sample agrees that an amendment is required.

Implication: Lack of faith in the judicial system which is formed by scrutinizing the previous cases adjudicated in the court.

Sample opinion: Harsher punishment in the form of death penalty has been prominently suggested. Standing argument has been about the crime being the same indifferent to a child below 12 or above. The victim, regardless of their age, has not only been physically but mentally abused, consequences of which will follow them throughout their life. The crime is heinous enough to warrant capital punishment for all those convicted and not just whose victims are below a certain age.



In March, 2013, “Anti-Rape Bill” or Criminal law (Amendment Act) 2013 was passed. Consequently, in 2015, the Indian parliament passes a bill allowing the trial of juveniles between 16 and 18 years of age as

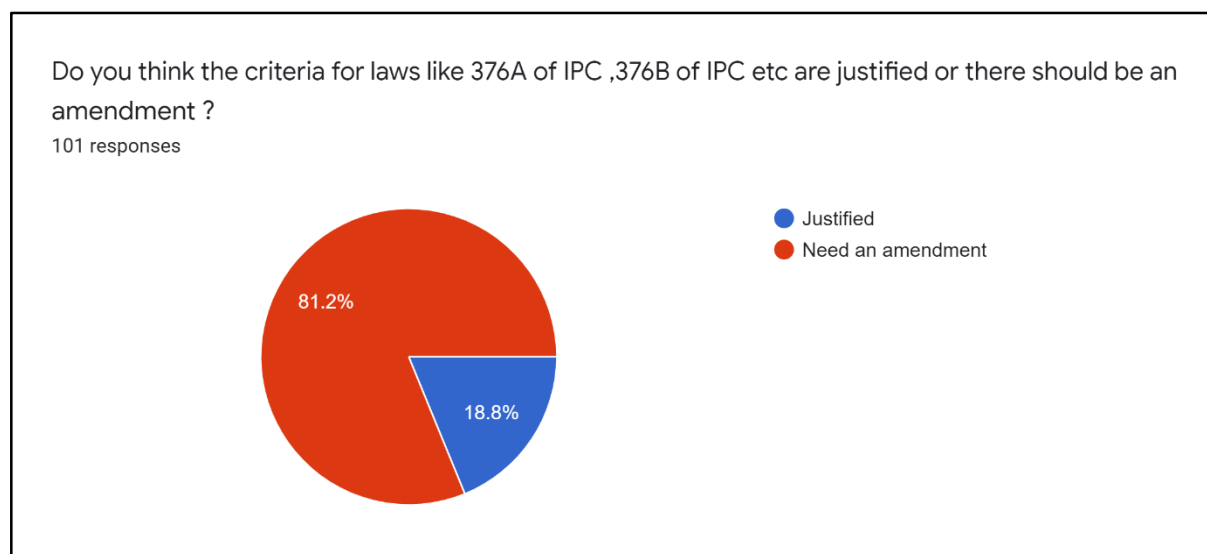


adults for serious crimes like rape or murder. Previously, juveniles (those under 18) could be levied a maximum sentence of only three years in a reform facility.

According to the National Crime Records Bureau (NCRB), there have been 1,614 rapes, 1,456 other sexual assault offenders that were juveniles and 1,614 cases of rape were against juveniles in 2017 in India.

56.4% of the sample is uninformed whereas 5% is misinformed about consequences of Rape on juveniles.

Implication: This data implies a lack of media representation and hence, failing of the punishment levied on the convicts to its full extent. Punishment's role referred here is to act as a specific deterrence by frightening an individual defendant with punishment or as a general deterrence by frightening the public with the punishment of an individual defendant.



81.2% of the sample is unsatisfied with the current law and its implementation. Keeping in mind previous convicted cases and array of those which are still pending decision, sample put forth following notes.

Opinions displayed include:

The proposed laws although in their respect ensure a strict punishment for the culprits, the reality is that unfortunately they are not followed i.e., their implementation is not that strong. As seen in the recent cases involving rape, the culprit burns the body of its victim to erase any sort of evidence. These sections of IPC can only work if the authorities have any evidence with them concerning the matter. Since there is no evidence left, most of the culprits are set free. Thus, in order to ensure this doesn't happen, an amendment should be made wherein law for erasing evidence should also be included within these provisions and whoever found to be guilty of it will face a strict punishment. Further, the executive should ensure that no law is flouted and that all the provisions are duly followed in compliance with the statutory provisions of the concerning law.

Adjudication of crimes can take multiple decades without any reprieve for the victims. The victim for the duration before the verdict suffers through lack of sensitivity and questioning of their dignity by the court as well as the public at large.



Sentence convicted is often lacking deterrence properties and hence not equitable in any form to the crime committed. Harsher punishment, most prominently capital punishment, is concluded by the sample as appropriate sentence for extreme cases.

Section 375 of the Indian Penal Code (IPC) considers the forced sex in marriages as a crime only when the wife is below age 15. Hence, Marital rape isn't recognised if not under 376B of IPC. These disregards a large segment of victims.

## Comparison with other countries

### Germany

According to the preceding statute, as specified in Section 177 of the Criminal Code (in German), victims were allowed to protect themselves against an act of rape. It was not necessary to simply say 'No' to find the defendant guilty, and there was no effort to establish what constituted consent.

When determining whether rape has happened, all physical and verbal signs from the victim will be taken into account, in principle, suggesting that saying "No" could show a lack of consent and, thus, rape.

The new legislation classifies groping as a sex crime and makes it easier for large groups to sue assaults committed. An Indian court has ruled that groping a child cannot be deemed sexual assault as long as there is no "skin-to-skin contact" or "sexual intent."

### China

One such country that offers strict penalties for rapists is China. Rapists are first made to go through genital mutilation and are sentenced to death after that.

Whoever has sexual intercourse with a girl under the age of 14 is considered to have committed rape and to be punished more harshly. It was always a crime, punishable, regardless of whether or not young women were prostitutes.

No matter whether underage women were prostitutes or not, it was still a rape, punishable by death sentence.

Whereas in India, after the Anti-Rape Bill of April 2013, culprits are liable to imprisonment (14 years), imprisonment for entire life and even the death sentence in the rarest of rare cases. The amendment has extended to cover several other forms of rape-related sexual harassment.

### Iran

In public, either by hanging or shooting, the rapist is killed. The aim is to demonstrate to the public that rape is not tolerated and to raise awareness against it. In order to seek justice, victims are permitted to shoot the rapist publicly. It is worth noting that more than 15 percent of Iranian executions are actually cases of rape.

If the survivor permits it, rapists will also prevent the death penalty. Nevertheless, even though the survivor helps the abuser to stop the death penalty, the abuser is still responsible for 100 lashes or life imprisonment.

In the Indian Penal Code (IPC), 1860, the offence of rape is covered from Sections 375–377. According to the IPC, a man is said to commit "rape" if he inserts his penis, uses his mouth, any body part or any other object in a woman's vagina, mouth, anus or urethra or makes her do any of the above to him or anybody else under the following conditions: against her will; against her consent; when a woman, or her loved one, is threatened with hurt or death; when consent is taken by a man pretending to be her husband; if the woman is of unsound mind, or if she has been drugged; if she is under 16 years of age (under 14 years in Manipur); if a wife is under 15 years of age (under 13 years in Manipur).

## Conclusion

The laws in our country have undergone a lot of changes after the Independence and till this date, it is still reforming to safeguard its citizens. From this study, we understand that rape is a one of the most horrific crimes that persists in our country and needs to be curbed through strict regulations and laws. Through the primary data collected, we infer that there is a need of awareness about the laws in our country. Suggestions collected state that the implementation is not strong and needs to be tighten when compared with other countries.

