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A Review of the Legislation of Rape in the Indian Penal Code

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Abstract

Chapter 16 of the Indian Criminal Code has a section on "Rape", which is mainly distributed in articles 375 and 376, of which Article 375 is mainly about the basic composition of the crime of rape, and Article 376 is mainly about the basic circumstances of the crime of rape and the special circumstances of the crime of rape and its statutory punishment. There are many similarities and differences between the provisions of rape crime in Indian Penal Code and that of rape crime in China. The research on the relevant laws and regulations of Indian Penal Code is also conducive to the improvement of relevant laws and regulations in China. The provisions of the Indian Penal Code on rape have distinct characteristics, among which there are obvious advantages in the expression of the provisions and the response to special circumstances. There are some problems to be improved in the identification standard, sentencing standard and legislative concept of rape crime. It can be perfected by improving the role of annotations and precedents, perfecting the penal system, and strengthening public education.

Keywords

Rape crime, Indian Penal Code, Criminal legislation, Protection of women's rights

1. Introduction

As the second largest developing country in the world, India has a great impact on global development, and its domestic rule of law has also attracted the attention of scholars around the world. In recent years, sexual assault cases have occurred frequently in India, and a series of cases represented by the "black bus gang rape case" in India have attracted worldwide attention. In order to adapt to the rapid development of the country, the issue of the protection of women's rights and interests in India has received more and more attention, and the legislative provisions in India are constantly changing. Among them, the provisions on the crime of rape in the Indian Penal Code is a prominent manifestation. This paper attempts to analyze the provisions of Articles 375 and 376 of the Indian Penal Code on the crime of rape, and explore the characteristics of them.

2. Legislative Content of the Indian Penal Code against the Offence of Rape

At present, India has formed a criminal law system to combat rape crime, with the Indian Criminal Code as the core, the Anti-Rape Act, the Protection of Sexual Assault of Minors Act and other acts and the jurisprudence of the Supreme Court and the High Court as the auxiliary. Article 375 of the Indian Penal Code mainly stipulates the basic circumstances of the crime of rape, and Article 376 provides detailed provisions on the basic law punishment of the crime of rape, various aggravating circumstances of the crime of rape and its legal punishment. The specific contents are as follows (Note 1):

2.1 Section 375 of the Indian Penal Code

In terms of content, Article 375 is mainly divided into two parts: general provisions and exceptions, and the specific provisions are as follows:

Article 375 first makes a specific explanation of the basic constitution of the crime of rape. a man committing the crime of "rape" needs to satisfy: (a) inserting his penis into a woman's vagina, mouth, urethra or anus to any extent, or forcing her to do so with him or any other person; (b) To any extent insert any object or part of the body (other than the penis) into the woman's vagina, urethra or anus, or force her to do so with him or any other person; Or (c) manipulate any part of a woman's body so as to insert it into the woman's vagina, urethra, anus or any part of her body, or force her to do so with him or any other person; Or (d) place his mouth against a woman's vagina, anus, urethra, or force her to do so with him or any other person. The provisions of the first part of Article 375, on the one hand, facilitate the understanding of judicial officials and the general public; On the other hand, it is also pointed out that the direct perpetrator of rape in the Indian Penal Code can only be a man.

Secondly, Article 375 provides that the basic offence of rape must satisfy one of the following circumstances: (1) Sexual intercourse with a woman against her will. (2) Having sexual relations with a woman without her consent. (3) Obtaining her own consent by threatening her with death or injury in order to have sex with her. (4) The man deceives the woman that he is her husband, knowing that he is not her husband, in order to obtain the opportunity to have sex with her; The woman consented to sex with him because she thought he was her husband or that she was legally married to him. (5) When consent is given, the woman is a person of unsound mind or in a state of intoxication, or the man himself or another person uses a drug that is stupor or unhealthy to render the woman unconscious and has sex with her. (6) If the woman is under 18 years of age, sexual activity with or without her consent constitutes rape. (7) Sexual intercourse with the woman when she is in a state of inability to give consent. "Consent" refers to a woman's willingness to participate in a particular sexual act through words, gestures, or any form of verbal or non-verbal means. However, the mere fact that a woman does not physically resist an act of sexual assault should not be construed as consent to the act. This regulation elaborates the basic crime constitution of rape crime, among which, items (1) ~ (2) are the provisions of the general circumstances of rape crime, and items (3) ~ (7) are the explanations of the circumstances constituting rape crime combined with specific circumstances.

Finally, Article 375 provides that the following two circumstances do not constitute rape: (1) Medical

treatment does not constitute rape. (2) Sexual intercourse or sexual activity between a man and his own wife does not constitute rape if the wife is under 15 years of age. The above provisions are exclusionary provisions for the identification of rape crime, which reflects the value orientation of Indian lawmakers for the identification of rape crime.

2.2 Section 376 of the Indian Penal Code

Article 376 is divided into three parts. Among them, the first part mainly stipulates the basic law of rape punishment and increased legal punishment; The second part mainly stipulates some special circumstances of rape crime and its legal punishment; The third part is the special provisions for rape in some Indian states. The details are as follows:

First, the basic provisions of Article 376 stipulate the basic law penalty for the crime of rape and a number of special circumstances for the crime of rape, and this article contains the following three elements: Paragraph (1) provides that, subject to the exceptions provided by law, whoever commits the crime of rape shall be sentenced to a term of imprisonment of not less than ten years, which may be extended to life imprisonment, and shall be fined. The fine shall be just and reasonable to the extent of meeting the victim's medical expenses and rehabilitation. It also provides that any fine imposed under this Article shall be paid to the victim. In the above provisions, the Indian lawmakers have made a clear interpretation of the Basic Law punishment for the crime of rape, and clearly stipulated the judgment criteria for the amount of fines, so as to facilitate the judicial staff to identify the penalty.

Section 376 (2) provides the following circumstances: whoever - (a) is a police officer and commits the offence of rape, (i) is within the confines of the police station to which the police officer is assigned; Or (ii) on the premises of any police station; Or (iii) a woman in the custody of or under the custody of the police officer, or (b) as a public officer, rapes a woman while in the custody of the public officer or under the custody of the public officer; Or (c) commit rape in the area as a member of the armed forces deployed in the area by the central or state Government; Or (d) being an officer or employee of a prison, juvenile detention facility or other place of detention or institution for women or children established by any law in force or pursuant to any law for the time being in force, rapes any prisoner of that prison, juvenile detention facility, place or institution; Or (e) being an administrator or staff member of a hospital, raping a woman in that hospital; Or (f) rape the woman as a relative, guardian or teacher of the woman or as a person in a position of trust or authority over the woman; Or (g) rape in the context of communal or sectarian violence; Or (h) rape a woman with knowledge of her pregnancy; Or (j) rape a woman who is incapable of giving consent; Or (k) being in a position of control or dominance over a woman and committing rape against that woman; Or (l) rape of a woman with a mental or physical disability; Or (m) the rape causes serious bodily harm to the woman or disables, disfigures or endangers her life; Or (n) repeated rape of the same woman; Such acts shall be punished by strict imprisonment, which shall not be less than ten years and may be extended to life imprisonment. In addition, a fine should be imposed.

Additional explanations are appended at the end of subparagraph (2), which states that "armed forces"

means the navy, the army and the air force, including any member of the armed forces constituted under any law for the time being in force, including paramilitary forces and any auxiliary forces under the control of the central or State Government; "Hospital" means the jurisdiction of a hospital and includes any jurisdiction that holds and treats persons during convalescence or manages institutions for persons in need of medical attention or rehabilitation; "Police officer" has the same meaning as given to it by the Police Act 1861 (No. 5 of 1861); "Institution for women or children" means an institution established and operated for the purpose of receiving and caring for women or children, whether called an orphanage, a home for neglected women or children, a home for widows or any other institution.

Under section 376 (3) of the Indian Penal Code, a person who rapes a woman under the age of sixteen shall be punished by a strict imprisonment of not less than twelve years, which may be extended to life imprisonment; And will be fined. This article is amended in accordance with Article 4 of Act No. 22 of 2018.

Throughout the first part of Section 376, there are both general provisions and special provisions, but generally speaking, it is relatively scattered, mainly because the specific provisions of the crime of rape in the Indian Penal Code have been added several times, such as the title of "rape" in section 3 of Act No. 43 of 1983 and the amendment of Section 376 of Section 375; Section 9 of Act No. 13 of 2013 amends sections 375, 376, 376A, 376B, 376C and 376D; Article 4 of Act No. 22 of 2018 amends the statutory penalty of Article 386. Several changes will make the Indian Penal Code like a patchwork garment, and the system will be reduced.

Second, Section 376A ~ 376E mainly provides for the special circumstances of the crime of rape. Specific provisions are as follows:

(1) Section 376A provides for the punishment of rape until the death or vegetative state of the victim, i.e., any person who commits an act of rape resulting in the death or vegetative state of the victim shall be punished by a strict imprisonment term of not less than twenty years, which may be extended to life imprisonment. Since section 376A, the Indian Penal Code summarizes the situation of rape cases in India and provides corresponding legal punishment according to specific circumstances. This article is a special provision for rape that leads to death or leaves the victim in a vegetative state.

(2) Section 376AB provides for the rape of a minor female under the age of twelve, that is, the rape of a minor female under the age of twelve shall be punishable by a strict imprisonment of not less than twenty years, which may be extended to life imprisonment and may be punishable by a fine; Or be sentenced to death. Among them, the fine imposed shall be paid to the victim, and the amount shall be fair and reasonable, and to meet the victim's medical expenses. This article is a general provision for the punishment of rape of a minor female under the age of twelve years and is applicable in most parts of the country.

(3) Section 376B provides for the offence of marital rape. That is, under the provisions of the Indian Penal Code, a husband who has sexual relations with his separated wife, whether under a separation order or otherwise, without the consent of his wife, is liable to imprisonment for not less than two years

but not more than seven years and is liable to a fine. The provisions of this article should have been established in the context of specific cases in India, reflecting the legislative thinking of legislators who intended to indicate that women's sexual autonomy was not an adjunct to marriage and that even married women had the right to decide whether or not to have sexual relations with their husbands.

(4) Section 376C provides for the offence of sexual abuse of a position of authority. That is, if a party in a position of authority or a public official or manager abuses his position or trusteeship relationship to lure or induce a woman in a vulnerable party or any woman in the place to have sexual relations with him, such behavior, even if it does not constitute rape, shall be punished by a strict imprisonment of not less than five years but not more than ten years, and shall be fined. At the end of the article, a detailed explanation of the application of the provisions of the article and the meaning of the words hospital, women's or children's institution is also provided for ease of understanding and application, namely: "Interpretation 1 - In this article, 'sexual intercourse' means any act referred to in paragraphs (a) to (d) of article 375." "Interpretation 2 - For the purposes of this article, Interpretation 1 to 375 shall also apply." "Interpretation 3 - In relation to a place of detention, prison or other detention or correctional home for women or children, 'supervision' includes a person who holds any office in such place of detention, prison, place or correctional home by virtue of which he exercises any power or control over his prisoners." "Interpretation 4-" hospital "and" institution for women or children "are expressed with the same meaning as in the interpretation of section 376 (2), respectively."

(5) Section 376D sets out the basic circumstances of the offence of gang rape, that is, if a woman is raped by more than one person, each of the gang rapists shall be deemed guilty of rape and shall be punished by a strict imprisonment of not less than twenty years, which may also be extended to life imprisonment, and by a fine. Section 376DA provides that where a woman under the age of sixteen is gang-raped, each of the gang rapists shall be deemed to have committed rape and shall be punished by imprisonment for life and a fine. Section 376DB provides that if a woman under the age of twelve is gang-raped, each of the gang rapists shall be deemed guilty of rape and shall be punished by imprisonment for life and a fine; Or the death penalty. This article is one of the three circumstances in which the death penalty is applied to the crime of rape in the Indian Penal Code, but the death penalty is only applicable to the case of gang rape of a female under the age of 12, and according to the legislative logic, the death penalty is not given priority to the application of this provision, it is worth considering whether it is reasonable.

(6) Section 376E provides for repeat offenders of rape. That is, whoever is convicted and punished for rape and subsequently commits rape shall be sentenced to life imprisonment; Or be sentenced to death. In order to prevent repeat rapists from committing rape and endangering society, the death penalty can be applied to repeat rapes because the circumstances are relatively bad and it is likely to be difficult to be reformed.

Third, some parts of India have made the application of punishment for rape more stringent, as follows: The penalties prescribed in this section are more severe than the statutory minimum sentences generally

applicable in the circumstances as provided for in the Indian Penal Code and give preference to the death penalty. The statutory minimum sentences set out in this article are longer than those set out in the Indian Penal Code for the same circumstances in other parts of India, and the preference given to the application of the death penalty shows that the intention of the legislator is to focus on protecting the sexual rights of women under 12 years of age and that severe penalties should be imposed for rape or gang rape of women under 12 years of age. (3) Section 5 of the Chhattisgarh Act No. 25 of 2015 (also known as Section 376F) provides that the person in charge of any workplace or any other person present who knows that a rape offence is being committed on the premises, has the capacity to prevent the rape from occurring, but fails to prevent the act from occurring or helps the offender to escape punishment by law, may be punished for his or her act, It is punishable by imprisonment for up to three years and a fine. In this article, the persons who have the obligation to control not only include the staff but also anyone who is able to help on the scene. The scope of the perpetrator has been expanded to a certain extent, reflecting the legislative idea that encourages everyone present when a rape case occurs to actively help to prevent the occurrence of danger.

3. The Legislative Advantages of the Rape Offence in the Indian Penal Code

The Indian Criminal Code plays a certain role in regulating the crime of rape. It provides different legal punishments for different cases of rape crime, which is conducive to cracking down on rape crime. At the same time, clear provisions have been made on common acts of rape and their legal punishments, such as marital rape and abuse of authority status sexual assault, which are conducive to dealing with typical cases of rape crimes and conform to the basic principle of statutory punishment, specifically discussed as follows:

3.1 Try to Avoid Ambiguity by Means of Explanation

The reason why the Indian Penal Code has been used since it came into force in 1862 has a great relationship with the four codification principles, namely comprehensiveness principle, utility principle, accuracy principle and universality principle, which were clearly put forward at the beginning of its enactment. In order to implement the above principles and avoid ambiguity in the criminal code, the legislator deliberately added explanations, explanations, annotations and other contents when compiling the criminal code. In today's Indian criminal law, there are as many as ten interpretations of the crime of rape, which mainly include: (1) In Article 375, the identification of vagina has been appropriately expanded (Note 2). (2) In section 375, the meaning of sexual consent is explained (Note 3). (3) Explain in the basic provisions of section 376 the meaning of the armed forces, hospitals, police officers, women's and children's institutions (Note 4). (4) The offence of marital rape is explained in section 376B (Note 5).

(5) In section 376C, the specific circumstances of the crime of abuse of authority, the identification criteria, the meaning of supervision, "hospital" and "institution for women and children" are explained respectively (Note 6). (6) A specific place of control is specified in section 376F (Note 7). Such a

provision first limits the judge's discretion and guarantees judicial justice. It is helpful for the judge to reduce the error of understanding the legal meaning because of the ambiguity of the text, and avoid the arbitrary expansion or limitation of the crime circle, and the situation of different sentences in the same case. In addition, it is often difficult for ordinary people to accurately grasp vague laws and regulations without special training. Adding some explanations can help people better understand the normative content, so as to realize what acts constitute crimes, so that people can abide by the law and avoid committing crimes based on the fear of punishment or the awe of the law. In addition, from the perspective of overall social benefits, judges decide cases according to law and citizens abide by the law is conducive to a country's political stability, social harmony and economic development.

3.2 Specify the Specific Content of the Crime of Rape in a Specially Prescribed Manner

Abuse of authority or advantageous position in public office to force women to have sex with them, marital rape, gang rape and other problems are more common in the field of rape. Section 376 of the Indian Penal Code addresses such issues and extends the concept to some extent, reflecting the determination of the Indian authorities to combat the crime of rape, as follows:

First, the issue of gang rape has been more clearly defined. The outbreak of the "Delhi gang rape" case in 2012 aroused the attention of the Indian authorities to the problem of gang rape, After much deliberation In Parliament, the provisions on Gang Rape were incorporated into the Indian Penal Code in Bill No. 13 of 2013 (Pande, 2014). The reasonableness of the provisions on gang rape in the Indian Penal Code is that: (1) the act of gang rape is explained more clearly, which is convenient for the public to understand and for the judge to determine the case. (2) Gang rape in general, gang rape of a female under 12 years of age, gang rape of a female under 16 years of age are clearly regulated in the Indian Penal Code, and different statutory penalties are provided for cases of infringement of legal interests. Among them, gang rape of women under the age of 12 is the worst and the most harmful, so the maximum penalty is death. (3) It provides for the punishment of gang rape and limits the amount of the fine, that is, "to meet the medical treatment and rehabilitation of the victim", so as to facilitate the judge to make a decision. Generally speaking, gang rape is worse than common rape. It is a sexual crime that repeatedly infringes on the sexual rights and interests of the same woman in a short period of time, causing greater physical and mental harm to women. Therefore, it needs to be regulated by more severe legal punishment.

Second, the use of the position of the advantage of the crime of rape has made more explicit provisions. Taking advantage of one's position to have sexual relations with others is a more common rape situation. The Indian Penal Code, in response to this hot issue, clearly stipulates in 376C "the crime of sexual assault by abusing one's position of authority", and makes a more detailed elaboration on this crime. This article has the following highlights: (1) The concepts of "sexual intercourse", "supervision", "hospital" and "institution for women or children" are elaborated in detail. For example, under the provisions of the Indian Penal Code, "supervision" in relation to a place of detention, prison, other place of detention or a correctional home for women or children includes a person holding any office in

that place of detention, prison or correctional home who, by virtue of his official status, may exercise any power or control over his prisoners; Hospitals include general hospitals, medical institutions and rehabilitation institutions. These provisions facilitate judges' determination of cases and ordinary people's understanding of legal concepts. (2) The Law specifically stipulates that even if it does not constitute rape, it should be punished with a strict imprisonment of not less than five years but not more than 10 years, and should be fined, reflecting the strict sanctions adopted by Indian lawmakers on the abuse of authority to commit sexual assault. From the perspective of legal interest protection, if an authority person has sex with a vulnerable party based on his position advantage, even if it does not violate the woman's sexual autonomy, it is also a blasphemy to his position integrity. Therefore, the law should focus on cracking down on it through legislation.

Third, the crime of marital rape has been clearly defined. According to the Indian Penal Code, a husband who forcibly has sex with his wife against her will in a separated couple is guilty of rape. This article is a response to the more common acts of marital rape, reflecting the legislative attitude that marriage is not a shield for the crime of rape, and that the sexual autonomy of married women is also worthy of protection. Marital rape is a hot issue in rape crime at present, and its harmfulness has attracted the attention of scholars all over the world. Some scholars have pointed out that marital rape is one of the most serious types of sexual violence that occurs at the family level. Female victims do not come forward to express their suffering because of the uncertain nature of the activity, the unwillingness to expose privacy issues, the inherent recognition of patriarchy or their developed economic dependence, resulting in laws that in most countries turn a blind eye to the plight of battered wives and mothers or even do not recognize marital rape as a crime (Vaishali & Madhu, 2020). The Indian Penal Code has made a bold and breakthrough response to this problem, which has positive significance of protection of rights. It deserves recognition.

4. The Legislative Dilemma of Rape in the Indian Penal Code

At present, although the provisions on rape crime in the Indian Criminal Code have been amended several times, they still cannot meet the social needs of combating rape crime. There are some imperfections in the identification standard of rape crime, sentencing standard and regulation on child marriage, which need to be discussed.

4.1 The Criteria for Identifying Rape are still Unclear

According to the Indian Penal Code, the basic criteria for rape include: "sexual intercourse with a woman against her will"; "Having sexual relations with a woman without her consent"; There are seven cases, including "threatening death or injury and obtaining her own consent to have sex." Such criteria are vague. Sexual consent is defined in section 376 Interpretation of the Indian Penal Code (Note 8). (b) but agree with the half-estimate as to whether the case can be identified as a woman; How to determine the degree of harm in the threat of harm; The expression of realistic judgment issues such as how to judge the consent expressed by women in non-oral communication is too vague, and there may be

difficulties in proving evidence and other inconveniences in judicial practice. How to determine whether the defendant constitutes rape in a specific case often depends on the judge's discretion, and the judge's subjective factors may lead to the weakening of fairness and justice in case judgment.

The specific practices in judicial practice also confirm the above views, combing the existing judgments, Finding that in judicial practice, the identification of rape crime is often based on the witness testimony of the victim (Krishnan, 1961), A victim's incriminating statement can only be overturned if there is clear evidence that the accused is not guilty of rape (Brijesh, 2013). However, in judicial practice, the victim's statement has a large subjectivity, and it is difficult to become the main evidence to judge the objective facts of the case. Therefore, in concrete practice, relying on the judge's discretion and only taking the victim's statement as the basis for the decision is extremely rigorous, which has caused obstacles to the identification of the truth of the case and the effective protection of the defendant's legitimate rights.

4.2 The Sentencing Standard of Rape Crime is not Scientific

According to the Indian Penal Code, the death penalty can only be imposed for the rape of a female under the age of 12, gang rape of a female under the age of 12, or repeat offenders of rape, which often leaves the perpetrators unpunished and fails to assuage the anger of the victims and society. (1) Under the provisions of the Indian Penal Code, the maximum penalty for rape resulting in death is only life imprisonment. However, in fact, the perpetrator not only violated the victim's sexual autonomy but also violated the victim's life legal interests, and the maximum penalty is only life imprisonment, which is consistent with the general rape that only infringes the victim's sexual autonomy, and the application of penalty is biased. (2) Under the provisions of the Indian Penal Code, the fine imposed for gang rape is limited to the medical and rehabilitation needs of the victim. But in fact, gang rape can cause both physical and mental damage to women. However, according to the existing legal provisions, there is no compensation for the mental damage of the victims, which may not enable the victims to get the compensation they deserve. In addition, there is no provision for death compensation in the current Indian criminal law. If gang rape results in death, according to the existing criminal law, the perpetrator does not need to pay the corresponding compensation. Such provisions may not appease the family of the victim, and may even result in the psychology of revenge, which is difficult to play the function of general prevention of punishment.

4.3 Child Marriage cannot be Effectively Regulated

According to the United Nations Children's Fund (UNICEF), child marriage is defined as a marriage or informal union in which one or both partners are under the age of 18. Child marriage is a human rights violation and although many countries have legislated against it, it is still very common globally, particularly in India (Xie, 2023). The reason for this phenomenon in India is closely related to the condoning of child marriage under the Indian Penal Code.

According to the current Indian Penal Code, "sexual intercourse or sexual activity between a man and his wife, even if she is under 15 years of age, is not rape." That is to say, as long as both men and

women exist in a marriage relationship and are not separated, even if the woman is under the age of 15, the husband's sexual relations with her do not constitute rape. This provision reflects the indifference of Indian criminal law to child marriage, which greatly hinders the protection of women's sexual rights in India.

According to UNICEF Senior adviser Nankali Maqsood, 45 percent of married women in India are married before the age of 18 (Christabella & Isha, 2022). "In areas where child marriage is prevalent, girls have difficulty in getting education and health care, and families are poor, so early marriage is unavoidable," she said (Xie, 2023). Some scholars have pointed out that: Most married women under the age of 18 in India come from poor families, and most of them and their families are illiterate (Christabella & Isha, 2022). Limited by their economic status and education level, girls believe that marriage at an early age is the only way out for them. Other scholars believe that most child marriages are pre-decided by parents and district officials, in many cases without the consent of the girls, because of the preference for sons (Meera, 2016).

The prevalence of child marriage in India can cause great harm to female minors in India. First, child marriage violates girls' sexual autonomy, but it happens all too often. In fact, child marriage can hold a girl's childhood and adolescence to a standstill by forcing her to assume adult roles and responsibilities before she is physically, emotionally and spiritually ready. In addition, child marriage often ends girls' chances of staying in school (Meera, 2016). Early marriage makes children more vulnerable to abuse and persecution and can also jeopardize children's rights to education, health and safety. Young girls who are married are more likely to drop out of school and have few jobs, so they are unable to support themselves. Third, women in child marriage are also more likely to experience domestic violence and be infected with HIV (Christabella & Isha, 2022). In conclusion, child marriage can cause great harm to women's physical and mental health. It is no longer just a bad habit influenced by traditional Indian thought, but has risen to the legal level and needs to be regulated by criminal law.

4.4 The Traditional Idea of Son Preference has a Greater Influence

From the perspective of legislative culture, one of the important reasons why Indian criminal law cannot effectively regulate the crime of rape is the thinking mode of "son preference" permeated in its legal culture. In the Delhi gang rape case in India, the defense lawyer said publicly, "Women are more responsible for rape than men." "A decent girl doesn't hang around at nine o'clock at night!" The defendant in the case also told the media: "Everyone is raping, there is no need to make a fuss." "A good girl doesn't wander around at nine o'clock at night, so girls are responsible for rape." Some highly educated politicians in India also said: "Women want to be raped, so men will assault them" (Gao, 2018). These words are all permeated with the idea of "male supremacy" in India.

The deep reason for this is mainly because India is a religious country, The ancient Indian Code of Manu, which is permeated with religious thoughts, still has a great influence on modern Indian thought (Zhang, 2019). According to the provisions of the Manu Code, women are absolutely dependent on men, have no independent status in the family, and have to abide by many "patriarchal" norms of

behavior. Throughout the entire Manu Code, the chapters of Books 3, 5, 8, and 9 have made a large number of extremely strict regulations on the behavior of women. As the Manu Code specifically states: "In her youth, a woman should follow her father; A husband in youth; The husband died from the son; Without children from her husband's kindred, without these kindred, from the king, women should never be free." "A woman must never seek to separate herself from her father, husband, and son; For by separating herself from them she will make both houses despised" (Liu, 2019). Influenced by India's preference for sons over girls, many citizens participate in today's legislative activities with a disregard for the protection of women's rights and interests. Due to the lack of attention to the protection of women's rights and interests, it is impossible to form a perfect guarantee mechanism in the provisions of legislation and the bills supporting the fight against rape crime, and the rape crime cannot be effectively controlled. Therefore, it is urgent to find effective breakthrough ways to advocate the value of equality between men and women in Indian society and enhance the attention of Indian society to the protection of women's rights and interests.

5. Measures to Improve the Provisions of the Offence of Rape in the Indian Penal Code

As mentioned above, there are many shortcomings in the current Indian Penal Code, such as unclear legislative provisions, unscientific sentencing, and inadequate legislative thinking to keep pace with The Times. The relevant legislative provisions need to be improved one by one based on factors such as the rapid development of India's national conditions, the ideological and cultural level of Indian nationals, and the current situation of judicial practice in India. In order to realize the basic criminal law thought of punishing crime and protecting human rights in the field of rape crime.

5.1 Enhance the Role of Explanatory Notes and Precedents

The lack of consent of the victim is the core characteristic of rape crime, but how to identify the consent of the victim is different in the theoretical and practical circles. Generally speaking, it can be summarized as the viewpoint of positive consent and the viewpoint of negative consent (Tian, 2019). At present, there is no consensus on which of these two views is, but it is certain that the theoretical and practical circles agree that the degree of infringement of the legal interests of association should be comprehensively measured according to the specific circumstances of the case, and the judgment should be made, and at the same time, the judge should prevent the use of vague concepts to arbitrarily expand the discretion, resulting in different judgments in the same case.

The above consensus has great enlightenment significance for the application of the Indian Penal Code - it can summarize and analyze the cases that have happened, dig out the previous trial experience, form annotations, explanations, and make it clear. At the same time, considering that case cases also play a greater role in the Indian legislative system and can interpret the determination of rape crime more vividly, the Supreme Court of India and the high courts of various states can clarify the specific application of the determination rules in rape crime by issuing case cases, so as to prevent judges from arbitrarily exercising their discretion and giving different sentences in the same case.

5.2 Improve the Criminal Punishment System for Rape

The current provisions of the Indian Criminal Code on the crime of sexual assault are not scientific enough in terms of legislative structure and the application of statutory punishment, and cannot realize the basic idea of criminal legislation that is compatible with crime, responsibility and punishment. In order to improve the specific provisions on the crime of rape in the Indian Penal Code and achieve the purpose of effectively combating the crime of rape, adjustments can be made in the following aspects:

First, the regulation structure of rape crime should be adjusted, divided into basic circumstances and aggravating circumstances, and the existing sentencing rules should be sorted out. The current Indian Penal Code provides for the general offence of rape, rape resulting in death or vegetative state, rape of a female under the age of 12, etc. In addition, various explanations and exceptions have been inserted in the legal punishments of different severity for the above cases. These provisions are all placed in Section 376, and the complexity makes the provisions on rape in the Indian Penal Code as a whole seem too confusing and difficult to form a system, which is not convenient for the public to grasp and the judicial staff to identify the crime according to law.

The stability of the Indian Penal Code itself is one of the main reasons for such a complex approach. Since the British Macaulay codified in the 19th century, the Indian Penal Code after years of baptism is still used today, at the same time, in order to ensure that it can meet the needs of today's social development, since the promulgation of the Indian Penal Code, it has been amended 78 times (Zhang, 2022), India generally adjusts its legislation by inserting an amendment bill on the basis of the original code system. Make it more adaptable to the requirements of today's times. However, the improvement of this "patch" type of amendment will inevitably lead to more detailed items in the Indian Penal Code after a few years, and it is difficult for people to fully grasp. Although it is unrealistic to overturn the original legislative system and carry out an overhaul in a short period of time, in the long run, it has become an inevitable trend to improve judicial efficiency by improving the legal system, considering the lengthy legal system of the Indian Criminal Code and the current situation of low case settlement rate (Liu, 2019).

In terms of the legislative provisions of rape crime, it can be divided into two main aspects: basic situation and aggravating situation. Gang rape, rape of a girl under the age of 12, rape of a woman under the age of 16, rape resulting in death or vegetative state are included in the aggravating circumstances. And the basic circumstances and aggravating circumstances of rape crime to provide different legal circumstances, to achieve punishment as the crime. For a few cases that are more vaguely defined, such as people who have the obligation to control and allow rape to occur, marital rape, etc., can be listed separately as special cases in the criminal law, and the corresponding legal punishment is provided. In this way, a relatively complete system can be formed to facilitate people's overall grasp of the law.

Secondly, expand the application of the death penalty and give priority to its application in some cases. First of all, if the act of rape resulting in death is regulated only by life imprisonment, it is inevitable

that the legal interest cannot be effectively protected. That is, if the perpetrator violates the life and right to health of the victim while committing rape, it cannot be protected at the same time only by the basic law that infringes on the legal interest of life and sexual autonomy. A combination of rape and negligent death or manslaughter would result in repeated evaluations. Therefore, it is reasonable to consider imposing the death penalty on the accused and give priority to the application of the death penalty in some particularly egregious circumstances when a heinous rape occurs or when a rape violates multiple legal interests at the same time and cannot be regulated by the basic circumstances of the crime of rape. Secondly, according to the provisions of the Indian Penal Code, the death penalty is provided for the perpetrator of repeated rape and the rape or gang rape of a woman under the age of 12, but according to the legislative logic, the death penalty is not the priority penalty applied in these egregious acts, and such a provision model is questionable. Because the perpetrator committed a very bad crime, and to a large extent there is a possibility of committing a crime again, if the application of the death penalty is not given priority, it is difficult to realize the functions of general prevention and special prevention of punishment.

Third, the mental damage compensation, death compensation, etc. will be included in the scope of fines in the case of gang rape. According to the current provisions of the Indian Penal Code, the scope of fines paid by the perpetrator of gang rape to the victim and her family is limited to medical and rehabilitation costs, and its scope is greatly limited, unable to achieve effective comfort for the victim and her family. Therefore, it is necessary to adjust the legislation, including reasonable compensation such as death compensation and mental damage compensation, in order to realize the appeasement effect on the victims and their families, and at the same time, it can prevent them from having the psychology of revenge, so as to realize the function of general prevention of punishment.

5.3 Strictly Enforce the Principle of Prohibiting Child Marriage

In order to combat the problem of child marriage in India and make the sexual autonomy of girls better protected in the criminal law, the following aspects can be addressed: (1) the provision in the Indian Penal Code that "sex between a man and a woman under 15 years of age on the basis of marriage is not rape" should be deleted. In fact, as early as 1978, the Indian government amended the Prohibition of Child Marriage Act, raising the marriage age from 15 to 18 for women and from 18 to 21 for men (Li, 2005). However, the Indian Penal Code has not made corresponding adjustments. It is not compatible with India's Child Marriage Prohibition Act and the current international mainstream thinking to abandon the harmful practice of child marriage. (2) Governments need to play their part in combating child marriage. The main reason for the high number of child marriages in India is that families are relatively poor and do not have good education, and these problems mainly need to be addressed by the government. To this end, some scholars point out that: the government's role in combating child marriage is huge, and it can help young girls get more opportunities to receive education; Making young women more likely to participate in society as leaders; They can also provide financial support for their families (Kanalya, 2001-2002). Given the large gap between the rich and the poor in India, the

poorer areas should be the focus of the fight against child marriage. On the one hand, the focus should be on economic development and efforts to lift people out of poverty. On the other hand, education should be strengthened to raise public awareness of the dangers of child marriage.

5.4 Advocate Gender Equality and Enhance Women's Social Status

Article 15 of the General Provisions of Article 3 of the Indian Constitution clearly stipulates that "gender discrimination is prohibited", but in reality, the idea of son preference in India still occupies a place in the mainstream values of society, which is also one of the ideological root causes of the high incidence of rape in India. Although the reasons for the high incidence of rape in India are closely related to its own political, economic and cultural status quo, the imperfect legal system caused by backward ideas is a major obstacle to the protection of female sexual autonomy in India. In order to solve this problem, it can be improved from the following aspects:

First, improve the legislative procedure on rape. First of all, it is necessary to improve the level of Indian lawmakers and strengthen the training of lawmakers, which is particularly important for India to combat rape. If the majority of Indian legislators have a "male supremacy" view and participate in the legislative work with this belief, it will undoubtedly be a disaster for the punishment of rape. In order to prevent the occurrence of this phenomenon, it is a powerful weapon to strengthen the training of legislative staff and enhance their consciousness of rule of law to prevent legislative staff from falling into the bondage of son preference. In the training process, it is necessary to let legislative staff realize that the life of the rule of law lies in fairness and justice, and women's sexual rights and interests are also worth protecting, and the traditional rule of law concept of "son preference" should not be used to influence the current legislative provisions.

Second, we should increase the proportion of female political participants so that they can really play an influential role in the legislative process. In today's Indian politics, although there are many outstanding female leaders such as President Draupadi Murmu, President Pratibha Patil, Prime Minister Indira Gandhi and so on, women are still at a disadvantage in politics across the country. First of all, the number of female leaders in India is still a minority. As of 2014, the proportion of female nominees and candidates in the Indian Rajya Sabha is only 11% (Gao, 2022). This ratio prevents female representatives from playing a significant role in parliament. Secondly, a survey shows that nearly 40% of female representatives are interfered by male family members in their work, and most of them have a false name in participating in political work, and it is the male role in the family that really controls the decision-making power (Liu, 2021). Because women are not taken seriously in politics, they do not have more opportunities to express their views, thereby promoting the legislative process and attracting attention to the protection of women's rights, which is one of the reasons for the lag in the provisions of the Indian Penal Code on rape.

Finally, solicit opinions widely. Today, women are relatively few in Indian politics, and without a wide public consultation, the voices of women in the Union Parliament alone are likely to be too weak to draw attention to the protection of women's rights. In addition, a wide range of public opinions can also

enable people to have an in-depth understanding of legal provisions, enhance people's awareness of the rule of law, and promote the implementation of relevant laws and bills to protect women's rights and interests. Only when Indian citizens have a heart of awe and trust in the law, can they promote people to abide by the law and act according to the law, so that women's sexual autonomy can be further effectively protected.

Second, strengthen the protection of Indian women. First of all, to strengthen the protection of women who have been sexually assaulted, we can take the following measures: (1) Establish a national fund to provide appropriate monetary subsidies to victims. (2) Equal attention is given to the physical and mental health of the victim and reasonable medical treatment is required in both cases. (3) To take appropriate educational measures to the victim, conduct correct guidance, and prevent the occurrence of revenge crimes. It is worth noting that at present, the "Justice School" program launched by a Dutch non-profit organization in India is a good practice of the above views, and the school provides free legal education training through crowdfunding for girls who have been sexually assaulted, encouraging girls to pass the exam to study in law school and become legal workers after graduation.

Second, protecting potential victims from sexual assault is also a major issue. Specifically, we can start from the following aspects: (1) Accelerate the process of the "toilet revolution". India's economic development in recent years is rapid, but the infrastructure construction can not match the rapid development of the economy, among them, the imperfect toilet is a major problem. According to statistics, as of 2008, 665 million people were still excreting in the open (Xiao, 2017). This situation will undoubtedly increase the incidence of sexual assault - women, especially those living in remote areas. There is a potential risk of sexual assault when going out at night or in the early morning. Therefore, the government needs to strengthen the construction of toilets and encourage people to go to the toilet, gradually abandon the bad habit of open defecation, and protect the legitimate rights and interests of women. (2) Strengthen education for Indian women and enhance women's awareness of self-protection. At present, the number of illiterate women in India is still not a small number, because these women have not received a good education, most of them still retain the traditional "male superiority" thinking mode, this thinking mode is easy to make them become the object of male vent. In this regard, education can be focused on rural areas where the economy is not developed to help women grow up. The specific practices are: the establishment of "literacy classes" for older women, funded by the government, free of charge to teach women without formal education cultural knowledge and legal knowledge, to improve their ideological level and self-protection awareness; For younger women, government funding guarantees that they can complete a certain number of years of systematic education, providing them with the opportunity to change their fate through knowledge, thereby contributing to social development.

Finally, it is important to educate all Indian citizens and gradually push Indian citizens to abandon the idea of "son preference". From the perspective of the "Delhi gang rape case", due to the influence of traditional Indian religious thoughts, Indian citizens still retain the idea of "son preference" in their

subconscious, which is very unfavorable to the fight against rape. In this regard, Indian citizens can be educated through various platforms such as social media, newspapers and magazines. Advocate the idea of gender equality in the whole society, combat the crime of rape, and then promote the development of Indian society.

6. The Similarities and Differences of Criminal Legislation on Rape in China and India

China and India are both Asian countries, one of the four ancient civilizations, and developing countries. They have many similarities in geography, history and development status, which provides soil for the mutual perfection of the criminal law of the two countries. As far as the offence of rape is concerned, there are many similarities and differences between the Criminal Code of the People's Republic of China and the Indian Penal Code, specifically:

First, the legislative provisions on the crime of rape in the criminal law of the two countries are the same mainly reflected in: (1) the identification standards for the crime of rape are not clear. It is not clear in the Indian Penal Code how to determine the absence of the consent of the victim, how to determine the violation of the will of the victim, how to determine the conduct in such a way as to cause the woman to feel death or injury. In the Criminal Law of the People's Republic of China, "against the will of women" has been a hot topic in the academic circle. This is something that China and India need to explore and improve together. (2) The death penalty is included in the statutory punishment for rape. The crime of rape is a serious crime that infringes on personal rights, and the reasonable application of death penalty can achieve the effect of matching crime and punishment. Therefore, in the criminal law of both countries, the legislative provisions on rape have considered the application of death penalty, which is also the common point of the legislative thoughts of the two countries. (3) Both reflect the attitude of heavier punishment for sexual assault cases where the victim is a minor. According to the Indian Penal Code: "If a woman is under 18 years of age, sexual intercourse with or without her consent constitutes rape"; "Whoever rapes a woman under the age of sixteen shall be punished by a strict imprisonment of not less than twelve years, which may be extended to life imprisonment, and shall be fined"; "Gang rape of a female under twelve years of age, each person who commits the gang rape shall be deemed to have committed the crime of rape and shall be punished by death or a strict imprisonment of not less than twenty years, which may be extended to life imprisonment, and shall be punished by a fine"; "In the case of the gang rape of a female under the age of twelve, each person who commits the gang rape shall be deemed guilty of rape and shall be punished by imprisonment for life and by a fine." Article 236 of the Criminal Law of the People's Republic of China also stipulates that "whoever has sexual relations with a young girl under the age of 14 shall be regarded as rape and given a heavier punishment." Whoever rapes a girl under the age of 10 or causes injury to a girl under the age of 10 shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death. Sexual assault of minors is a relatively severe rape situation, and the heavier statutory punishment stipulated in the criminal law implements the basic idea of

matching crime with responsibility and punishment, reflecting the special protection of the sexual rights and interests of juvenile women in both countries.

Second, there are different attitudes towards marital rape. Marital rape is explicitly included in the Indian Criminal code, but not in China. A husband and wife who are separated under Section 376B of the Indian Penal Code shall be convicted of rape if he has sexual intercourse with his wife without her consent. In the field of criminal law in China, some scholars have always advocated that marital rape should be included in the criminal law (Ma & Bai, 2015). But there has been no response from lawmakers. The essence of marital rape is marital sexual violence, which not only violates the sexual rights of the wife, but also destroys the civilized and harmonious marriage and family relations, thus leading to the imbalance of the rights and obligations of the husband and wife (Ji, 2014). It should be taken into account in the legislation of rape crime.

Third, the regulation is different. The provisions of the Indian Penal Code on the offence of rape are mainly concentrated in sections 375 and 376 of the subsection "Sexual offences". Article 375 is the basic provisions of the crime of rape, and Article 376 contains the basic law punishment of the crime of rape and many circumstances of the crime of rape and its legal punishment. However, the provisions of the crime of rape in the Criminal Law of the People's Republic of China are mainly concentrated in the fourth chapter of the crime of infringing on citizens' personal rights and democratic rights, in which article 236 stipulates the crime of rape and the crime of sexual assault by persons with nursing duties. Section 237 provides for compulsory indecency and humiliation, which is more concise than the Indian Penal Code. This is mainly due to the different national conditions of the two countries: India has been expanding the contents of criminal law provisions by inserting bills into criminal law provisions, which is convenient for the understanding of citizens and the application of judicial personnel, but it has also been criticized for too long provisions; In order to facilitate adjudication in China, relevant judicial interpretations and guiding cases have been issued to assist, so that the law will keep pace with The Times and the provisions of the criminal law will not be too lengthy.

In short, the crime of rape plays a vital role in the protection of women's rights and interests. Improving legislation is an effective way to regulate the crime of rape and promote social progress, and it is also an inescapable topic in the criminal law studies of China and India. The provisions on rape crime in the current Indian Penal Code have both their highlights and shortcomings, which is worth studying by combining theory with practice. However, the current academic research results on rape crime in India are mainly thematic research, such as "marital rape", "child marriage" rape crime of public officials as the theme of research, it is difficult to form a system. However, the frequent rape crime in India is in urgent need of systematic reform. Therefore, it is necessary to collect extensive data, put forward bold reform ideas, and promote the reform process of the Indian Criminal Code on rape crime.

7. Conclusion

China and India are both Asian countries, one of the four ancient civilizations, and developing countries. They have many similarities in geography, history and development status, which provides soil for the mutual perfection of the criminal law of the two countries. As far as the offence of rape is concerned, there are many similarities and differences between the Criminal Code of the People's Republic of China and the Indian Penal Code, specifically:

The similarities of the legislative provisions on rape in the criminal law of the two countries are mainly reflected in the following aspects: First, the standards for the identification of rape are not clear. It is not clear in the Indian Penal Code how to determine without the consent of the victim, how to determine against the will of the victim, how to determine that the conduct has caused the woman to feel death or injury; In the Criminal Law of the People's Republic of China, "against the will of women" has always been a hot topic in academic circles. This is something that China and India need to explore and improve together. Second, the death penalty is included in the statutory punishment for rape. The crime of rape is a serious crime that infringes on personal rights, and the reasonable application of death penalty can achieve the effect of matching crime and punishment. Therefore, in the criminal law of both countries, the legislative provisions on rape have considered the application of death penalty, which is also the common point of the legislative thoughts of the two countries. Third, both reflect the attitude of heavier punishment for sexual assault cases where the victim is a minor. Sexual assault of minors is a relatively severe rape situation, and the heavier statutory punishment stipulated in the criminal law implements the basic idea of matching crime with responsibility and punishment, reflecting the special protection of the sexual rights and interests of juvenile women in both countries.

The differences in the legislative provisions on rape in the criminal law of the two countries are mainly reflected in the following aspects: First, the attitudes towards marital rape are different. Marital rape is explicitly included in the Indian Criminal code, but not in China. A husband and wife who are separated under Section 376B of the Indian Penal Code shall be convicted of rape if he has sexual intercourse with his wife without her consent. In the field of criminal law in China, there have been scholars advocating that marital rape should be included in the criminal law (Ma & Bai, 2015), But there was no immediate response from lawmakers. The essence of marital rape is marital sexual violence, which not only violates the sexual rights of the wife, but also destroys the civilized and harmonious marriage and family relations, resulting in the imbalance of the rights and obligations of the husband and wife (Ji, 2014), which should be considered in the legislation of rape crime. Second, the regulation is different. The provisions of the Indian Penal Code on the offence of rape are mainly concentrated in sections 375 and 376 of the subsection "Sexual offences". Article 375 is the basic provisions of the crime of rape, and Article 376 contains the basic law punishment of the crime of rape and many circumstances of the crime of rape and its legal punishment. However, the provisions of the crime of rape in the Criminal Law of the People's Republic of China are mainly concentrated in the

fourth chapter of the crime of infringing on citizens' personal rights and democratic rights, in which article 236 stipulates the crime of rape and the crime of sexual assault by persons with nursing duties. Section 237 provides for compulsory indecency and humiliation, which is more concise than the Indian Penal Code. This is mainly due to the different national conditions of the two countries: India has been expanding the contents of criminal law provisions by inserting bills into criminal law provisions, which is convenient for the understanding of citizens and the application of judicial personnel, but it has also been criticized for too long provisions; In order to facilitate adjudication in China, relevant judicial interpretations and guiding cases have been issued to assist, so that the law will keep pace with The Times and the provisions of the criminal law will not be too lengthy.

In short, the crime of rape plays a vital role in the protection of women's rights and interests. Improving legislation is an effective way to regulate the crime of rape and promote social progress, and it is also an inescapable topic in the criminal law studies of China and India. The provisions on rape crime in the current Indian Penal Code have both their highlights and shortcomings, which is worth studying by combining theory with practice. However, the current academic research results on rape crime in India are mainly thematic studies, such as "marital rape", "child marriage", "rape crime of public officials" and other topics, and it is difficult to form a system. However, rape crimes occur frequently in India, which is in urgent need of systematic reform. Therefore, it is necessary to collect extensive data and put forward bold reform ideas to promote the reform process of rape crime in the Indian Criminal Code, and at the same time provide references for the road of criminal law reform in China.

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Notes

Note 1. The articles used in this article have been translated by the author in accordance with the English version of the Indian Penal Code, 2018, and the English version is the authorized text.

Note 2. that is, in the identification of rape, "vagina" also includes the labia majora.

Note 3. i.e., consent is an explicit consensual act by a woman when she expresses her willingness to participate in a particular sexual act through words, gestures or any form of verbal or non-verbal communication. However, the mere fact that a woman does not physically resist penetration shall not be regarded as consent to sexual intercourse with her.

Note 4. i.e., "Armed forces" means the navy, the army and the air Force, including any member of the armed forces formed under any law for the time being in force, including paramilitary forces and any auxiliary forces under the control of the central or State Government; "Hospital" means the jurisdiction of the hospital and includes any institution for the reception and treatment of persons during convalescing or for the management of persons in need of medical attention or rehabilitation; "police officer" has the same meaning as that given to it by the Police Act 1861 (No. 5 of 1861); "Institution for

women or children" means an institution established and operated for the purpose of receiving and caring for women or children, whether called an orphanage, a home for neglected women or children, a home for widows or any other institution.

Note 5. i.e., under the Indian Penal Code, a husband who has sexual relations with his separated wife, whether under a separation order or otherwise, without her consent, is liable to imprisonment for not less than two years but not more than seven years and is liable to a fine. The provisions of this article should have been established in the context of specific cases in India, reflecting the legislative thinking of legislators who intended to indicate that women's sexual autonomy was not an adjunct to marriage and that even married women had the right to decide whether to have sexual relations with their husbands.

Note 6. i.e., a party in a position of authority or a public official or manager, Abuse of position or trusteeship to induce or induce a woman in a vulnerable position or any woman in the premises to engage in sexual relations with him, such conduct, even if it does not constitute rape, shall be punishable by a strict imprisonment of not less than five years but not more than ten years and shall be punishable by a fine. At the end of this article, the application of the provisions of this article and the meaning of the terms hospital, women's or children's institutions are also explained in detail to facilitate people's understanding and application, namely: "Interpretation 1 - In this section, 'sexual intercourse' means any act referred to in paragraphs (a) to (d) of Section 375." Interpretation 2 - For the purposes of this section, Interpretation 1 to 375 shall also apply. Interpretation 3 - In relation to a place of detention, prison or other detention or correctional home for women or children, 'supervision' includes a person who holds any office in such place of detention, prison, place or correctional home by virtue of which he exercises any power or control over his prisoners. "Interpretation 4- 'hospital' and 'institution for women or children' are expressed with the same meaning as in the interpretation of section 376 (2), respectively."

Note 7. that is, a specific place as expressed in this offence, including any mode of transport owned, rented or otherwise used in that place for the transport of a sexually assaulted woman to and from her home and the place of work.

Note 8. i.e., "Consent is an explicit consensual act undertaken by a woman when she expresses her willingness to participate in a particular sexual act through words, gestures or any form of verbal or non-verbal communication." But the mere fact that a woman does not physically resist penetration should not be taken as consent to sexual intercourse with her. "