
FROM OUTRAGE TO ACTION: COMBATING RAPE IN INDIA

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ABSTRACT

This article examines the crisis of sexual violence against women in India and the evolving societal response. It analyzes key factors contributing to the prevalence of rape, including cultural attitudes, legal inadequacies, and law enforcement failures. The paper traces the trajectory from public outrage, sparked by high-profile cases like the 2012 Delhi gang rape, to sustained reform efforts.

The study assesses the impact of legislative changes, awareness campaigns, and grassroots initiatives in addressing this issue survivors.

While acknowledging progress, the article highlights persistent challenges in combating sexual violence. It argues for a multifaceted approach, emphasizing the need for continued legal reform, improved law enforcement, comprehensive education, and efforts to transform societal norms.

The paper concludes by proposing actionable strategies for policymakers, activists, and citizens to convert momentary outrage into sustained action. It underscores the importance of collective effort in creating a safer society for women in India, balancing critical analysis with a forward-looking perspective on achieving lasting change.

1.1 Introduction

In recent years, India has grappled with the pressing issue of sexual violence, prompting significant public discourse and governmental action. This article examines the Indian government's response to the problem, focusing on legal reforms, implementation challenges, and ongoing efforts to address this complex social issue. As, India has seen increased reporting and public awareness of sexual violence cases, particularly following high-profile incidents that have garnered national and international attention. These events have led to widespread calls for stronger legal protections, more effective law enforcement, and societal changes to combat sexual violence. The word "rape," also referred to as "balatkar," alone is horrifying. It is among the most prevalent criminal actions in India. The word "rape" is so horrifying, degrading, painful, and terrible that it completely wrecks the victim's psychology and affects their most private feelings. The Latin word "rapio," which meaning to take away, is where the word "rape" originates. Thus, taking anything from someone by force, which is obviously illegal, might be the literal definition of rape. To use force is to act in a way that is not authorized by another person. In the past, India held to the notion of Maatri Devo Bhava, which literally translates to "worshiping women or mothers."

1.2 Concept of Rape

Rape is a crime against society as a whole, not just against the individual woman. It throws a woman's psychology completely apart and sends her into severe emotional breakdowns. It is illegal to violate such fundamental rights.

The ultimate act of self-violation is rape. A woman has a horrific and humiliating occurrence in her life that makes her feel helpless and afraid of life itself. Rape is the most serious kind of sexual violence against women and is an extreme example on the spectrum of sexual violence against women.

Rape is not only a problem that affects one particular woman; it is a result of sexist ideals and beliefs. It is a social and political problem that is closely related to the disparities in power that exist between men and women. Rape is an aggressive act in which the victim is deprived of her autonomy. In the words of Kate Millett, "rape is a classic act of dominance where the emotions of anger, contempt, and the desire to shatter or violate personality" take place."

1.3 Historical Perspective of Rape

Rape de femme is a crime against a woman, and the crime of rape dates back to the dawn of humanity. Because their characteristics are homogeneous, men are not allowed to rape someone of the same sex. The act of same-sex partners engaging in sexual interactions is referred to as homosexuality in technical terms. Lesbianism is the term used to describe this type of sexual deviation between two females.

From now on, invasion of the female genitalia by a male organ constitutes the sexual crime of rape.

In Hinduism, According to Brihad, a man who rapes a woman from the same caste will lose all of his belongings, have his male genitalia removed, and be carried around on the back of an ass. that he would be put to death and have all of his possessions seized if the woman he had raped belonged to a higher caste, and that if she belonged to a lower caste, he would get half of his punishment.

According to Katyā, a man who has forced a woman to have sex with him should be executed because it violates the law in terms of proper behavior. When a man engaged in sexual activity through deception, he was punished by having all of his belongings taken, having the symbol of a woman's privates branded on his forehead, and being exiled from the community. The lady who had engaged in deceitful sexual relations and was raped was not punished in any way; instead, she was required to execute a penance known as krcchra or paraka in order to make up for seeing a man other than her husband. This penance had to be done until the woman completed it.

In islam, Men have been reminded by the Quran, in a variety of ways and situations, to respect the boundaries that God (Hudud Allah) has established for women and to respect their rights in marriage and divorce.

Men are always the ones who are repeatedly told, chastised, and scolded to treat women with generosity as well as with kindness, compassion, fairness, and justice. Men should part with grace, equality, and kindness, even in divorce situations where there is a significant likelihood of resentment and retaliation.

Hence, the literature of antiquity emphasizes the value of treating women with respect and dignity and forbids any form of physical violence against them. The sexual assaults were distinguished and categorized with clarity, and the recommended penalties ranged from light to severe based on the nature of the assault. The woman had never been something to be owned; instead, she had status parity with men, which came with plenty of protection.

1.4 Type of rapes

Aggravated rape:

The victim's or the offender's unique situation may be the cause of an aggravating rape.

Sexual assault committed by a someone with power or influence over the victim due to their legal status (such as a police officer, public servant, member of the military forces, or jail staff).

Rape by a person who holds a position of trust with the victim (e.g., caregivers, guardians, or hospital staff).

unique characteristics of the victims.

Rape with a violent background.

Such severe rape carries a severe prison sentence of between 10 years and life in prison as well as a fine.

Crime of rape & murder:

If the victim of the rape is so severely hurt that she passes away or enters a vegetative state, the accused faces the possibility of being executed or serving a life sentence in jail.

Gang rape:

According to section 376D of the Indian Penal Code, if multiple persons rape a woman simultaneously, they shall all face consequences for their crimes. The severe penalty is life in prison or 20 years in prison.

Repeat offenders:

According to the legislation (section 376E IPC), if someone is found guilty of rape a second time, they could get the death penalty.

1.5 Laws for Rape Crimes in India

According to Section 375 of the Indian Penal Code 1860, a male is considered to have committed rape when he has had sexual relations with a woman in any of the following situations:

1. Against her will
2. Without obtaining her consent
3. When the consent is obtained, that consent must not be by putting the person in fear of death.
4. When the consent has been obtained fraudulently by promising her to be husband in future.
5. When the consent is given by a person who is of unsound mind or intoxicated or unable to understand the nature of giving the consent.
6. When a girl is under 16 years of age, with or without her consent.

If any of the above conditions are met, rape is said to have been committed.

1.6 Punishment for Rape in India

According to Section 376 of the Indian Penal Code of 1860, rape carries a sentence of at least seven years in jail, with the possibility of a life sentence, as well as a fine.

Section 376A addresses penalties in the event that a victim in a persistent vegetative state passes away. Under such conditions, the maximum sentence is 20 years in jail, with the possibility of a life sentence.

Sexual relations between a husband and wife during a divorce is mentioned in Section 376B. The minimum sentence for the same offense is two years in jail, with a maximum sentence of seven years, along with a fine.

According to Section 376C, having sex with someone in a position of authority can result in a minimum of six years in prison, up to ten years, as well as a fine.

According to Section 376D, anyone found guilty of gang rape faces a minimum sentence of 20 years in jail, a maximum sentence of life in prison, as well as a fine.

The life sentence or death penalty for serial offenders is mentioned in IPC 376E.

According to Section 228A[2] of the Indian Penal Code, it is illegal to reveal the identity of a rape victim. Anyone found doing so faces up to two years in prison, a fine, or both.

1.7 Protection of Children from sexual offences Act, 2012(POSCO)

To adequately tackle the offenses of child sex abuse and exploitation, the Ministry of Women and Child Development enacted the POCSO Act in 2012. The Act was passed in order to shield kids from pornography, sexual harassment, and violence. Additionally, in 2019, this Act was revised to include provisions for tougher penalties for a variety of offenses that compromise a child's protection, security, and dignity.

Silent features of this Act:

The Act is gender neutral and prioritizes the child's best interests and welfare at all times to guarantee their physical, mental, intellectual, and social development as well as their health.

It describes various types of sexual abuse, such as penetrative and non-penetrative assault, sexual harassment, and pornography. It also suggests that some situations, such as when the victimized child is mentally ill or when the abuse is done by someone in a position of trust or authority—such as a family member, police officer, teacher, or doctor—may make the sexual assault more severe.

Under the act's abetment provision, anyone who trade children for sex crimes are also subject to penalties. They impose severe penalties that are tiered according to the seriousness of the offenses and have a maximum sentence of life in prison along with a fine.

Child pornography is defined as any visual representation of a child engaging in sexually explicit behavior, including pictures, videos, digital images, and computer-generated images

that are identical to real children.

1.8 Rights of rape victim

Right to zero FIR:

The phrase "zero FIR" refers to the ability to register a police report in any police station, regardless of the jurisdiction's incident site. Later, the same FIR should be forwarded to the investigating police station so that the inquiry can start there. Let's take an example where a girl was raped in West Bengal, she fled the country without reporting the occurrence, and she eventually arrived in Delhi.

She can now walk immediately to any police station in Delhi and submit a police report against the rapist if she wants to do so. West Bengal police would receive the same FIR from Delhi police. The term "zero FIR concept" refers to this idea.

Free medical treatment in any private hospitals.

No two - finger test during the medical examination:

Section 357C of the Code of Criminal Procedure states that neither government nor private hospitals are allowed to charge for the care of rape victims. First aid must be administered to victims instantly and without charge at all hospitals, whether they are public or private. If any of the hospitals, demanded a fee for the treatment of rape victims, then they shall be punished under section 166B of IPC (non - treatment of the victim) for up to 1 year & shall be liable for a fine or both.

No physician may do two finger tests in the course of a medical checkup. The code of criminal procedure's section 164A outlines the process for creating the report and the contents that must be included. In the case of Lillu Alias Rajesh and others v. State of Haryana, the Supreme Court upheld this decision, declaring that the interpretation of the two finger test and the right to privacy, mental integrity, and dignity are violated for victims of sexual assault. As such, it is prohibited.

A doctor's sole responsibility is to determine whether or not there are any injuries to the intimate areas. Has the victim been involved in the rape or not? Has there been any sexual

action recently? No doctor has the authority to inquire about the victim's prior activities. Remembering this.

A medical kit has been placed in every hospital as per a directive from the Ministry of Health, allowing for the collection of DNA samples for forensic analysis.

The report shall contain:

- Name and address
- Age
- Description of the material taken for the DNA Testing
- Marks of injury (if any)
- General mental condition
- Other reasonable material (if any)

A male physician will perform the examination; he needs permission to do so. He must also disclose the tools he utilized and the protocol he intended to follow during the assessment. He is unable to pass the two-finger test, though, or he would be charged with rape in accordance with IPC section 375 for putting an object in his private area.

Harassment free and time bound police investigation:

A female police officer or any other official is required by section 154(1) CrPC to record the statement. The officer will arrive at a time that works for you or that you have designated. And they will arrange for the location to suit your needs. In the victim's parents or legal guardian's presence, the female officer will record the statement.

The victim will be brought before the court by a female police officer, and the statement will be recorded in the magistrate's chamber in accordance with section 164(5A). In the event that

the rape victim lacks the mental capacity or intelligence to articulate the circumstances, a social interpreter and analyzer will be on hand to interpret the signs.

Trial with full dignity, speedy and protection:

According to Section 26 of the CrPC, a woman must preside over the court for the trial to be feasible. Furthermore, no question that disparages the victim's character may be posed.

According to Section 53A of the Indian Evidence Act, questions on prior sexual history are not relevant.

According to CrPC Section 327(2), a rape trial and investigation must take place in front of a camera.

According to Section 327(3) of the CrPC, the victim's statement before the magistrate is private and confidential.

According to CrPC Section 173(1A), the investigation must be finished within two months of the day the information was recorded.

Right to compensation:

Section 357A of the Code of Criminal Procedure is a new provision that outlines the victim compensation mechanism. This provision for creating a compensation plan was established by the Supreme Court in *Nipun Saxena v. Union of India*. The National Legal Service Authority created the guidelines for the compensation plan for female victims with this in mind.

1.9 Landmark Cases that Altered Rape Laws in India

1. Nirbhaya Case¹- It's the 2013 precedent-setting case. The Supreme Court's ruling in this case expanded the meaning of anti-rape legislation. After considering all the evidence, the Supreme Court sentenced four adults to death and ordered the youngster to a three-year reform program. Modified definition: Any penetration of a woman's body shall be considered rape. Rape had a minimum 20-year prison sentence and, in severe cases, a death sentence.

¹ AIR SC 2595

2. *Tukaram and another v. State of Maharashtra*²- The Supreme Court learned of the 1978 rape of a young tribal girl by two police officers in a Chandrapur district police station much later. Eventually, the Criminal Law of 1983 amends the Indian rape laws as a result of this case.
3. *Vishaka v. The State of Rajasthan*³- Five men gang-raped Bhanwari Devi because she was opposing child marriage. When she went to the trial court, all five of the defendants were found not guilty. Later, Vishakha, an organization dedicated to women's education and research, took up the issue of Bhanwari Devi and petitioned the Supreme Court on behalf of victims of workplace sexual harassment. The Supreme Court ruled that women's safety in the workplace must be prioritized, found the five defendants guilty, and redefined sexual harassment.
4. *R v. Feroz*- An unharmed 6-year-old child was sexually assaulted. But following that occurrence, she contracted gonorrhoea. It was decided that the accused in this instance committed rape.
5. *Premchand v. State of Haryana*- Because the Supreme Court in this case lowered the penalty for rape from a hundred years to five years, the decision was harshly criticized by the public. Subsequently, a review petition was also submitted, but it was unsuccessful because the Supreme Court issued a significant comment that properly supported its actions.
6. *State of Maharashtra v. Madhukar*⁴- In this instance, Madhukar, a police inspector, went to the girl's hut because he wanted to have a sexual relationship with her. He was able to have this dismissed after the inspector was the target of a complaint. The woman's easy virtue was taken into consideration by the top court, which ruled in favor of the inspector. This was overridden by the Supreme Court, which reversed the decision and said that every woman, regardless of her level of virtue, is entitled to her fundamental rights.
7. *State v. Deepak*⁵- Judges in session courts have determined that accepting consent for sexual relations does not equate to becoming a sex worker. The sex worker is still entitled to

² 1979 AIR 185, 1979 SCR (1) 810

³ AIR 1997 SUPREME COURT 3011, 1997 AIR SCW 3043, 1997

⁴ AIR 1991 SC 207

⁵ C No.55900/2016

request authorization before engaging in such activities.

8. *State of Punjab v. Gurmit Singh*⁶- The Supreme judge ruled that a judge should not determine a case and should not characterize a victim as having loose morals, even if the victim enjoys having sex.

1.10 Conclusion

Although women have a high social status in India, there are currently no strong laws protecting them. Although there are many regulations protecting their life, it seems like there are a lot of gaps in them. Statistics indicate that rape is a prevalent crime in India, and it is regarded as the most horrifying crime committed against women. Consent and will differ greatly from one another. The Indian Penal Code provides a precise definition of consent. However, the definition of the will remains ambiguous. The lack of a clear definition has led to the interpretation of consent and will as synonymous, resulting in a hazy court ruling that does not provide the victim with the justice they need. Thus, it is imperative that the Indian Penal Code adopt a clear definition of a will. The Indian Penal Code's Section 375 is one of the most discussed parts because of the rise in rape cases in India. Although the section has undergone considerable improvements in recent years, there are still a lot of issues that need to be resolved.

⁶ AIR 1393, 1996 SCC (2) 384, (1996) 1 SCJ 566