

A Critical Review of Rape Laws and Its Application in India

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Abstract

Rape is a heinous crime that has serious physical, psychological, and social consequences for victims. In India, the National Crime Records Bureau has reported a significant increase in rape cases, raising concerns about the implementation and application of laws in the country governing the subject. This study presents a critical review of existing rape laws and its application in India with the help of judicial decisions including the role of the media and societal perceptions of rape in shaping legal outcomes. It provides a valuable insight into the current state of affairs and can serve as a basis for further research and policy development. Our findings highlight significant disparities and inconsistencies in the application of rape laws across the country, with variations between states and even within the same state. Despite legislative reforms, social and cultural factors often influence the legal treatment of rape cases and justice is often delayed and denied for victims. The study concludes by recommending measures that can be taken to ensure the effective application of rape laws such as increased gender sensitization among judicial authorities and better support systems for rape victims.

Key Words: *Legislative Reform, Rape Victim, Criminal Justice System, Cognitive- behavioural Therapy, Sexually transmitted Infections*

I. Introduction

Rape is a heinous crime that affects millions of women worldwide, including India. Unfortunately, India is one of the countries with the highest incidents of rape cases. Rape is not only a physical assault but also a mental and emotional

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trauma that leaves victims scarred.² India is a country with a rich cultural heritage and a complex legal system. Despite the numerous provisions and laws aimed at protecting women's rights, the crime of rape is still a pervasive issue in the country. The government has taken various steps to address the problem, including introducing stricter laws on sexual violence and initiating campaigns to increase awareness and encourage reporting of rape cases. However, there have been several criticisms of the current legal framework, both in terms of the scope of the laws and their implementation. This critical review aims to examine the existing rape laws in India and their application, with a focus on identifying weaknesses and recommending solutions to address the shortcomings of the current system.

India's rape crisis is well known and has been gaining worldwide attention. According to the National Crime Record Bureau (NCRB), a total of 27,934 cases of rape were reported in India in 2020³. The data shows that the majority of rape victims are from the age group of 18 to 30 years. However, experts believe that the actual number may be much higher, as many rape cases go unreported due to social stigmas, victim-blaming, fear of retaliation, and lack of trust in the legal system.

Victims of rape in India come from all ages, classes, and backgrounds. However, women and girls from marginalized communities, such as lower castes, minorities, and economically weaker sections, are at a higher risk of rape. The Indian legal system is notoriously slow, and rape cases can take years to go to trial, leaving victims living in fear and uncertainty for an extended period.

The impact of rape on victims is devastating, both physically and emotionally. Rape survivors often suffer from physical injuries, such as bruises, broken bones, and sexually transmitted diseases. However, the mental and emotional trauma faced by victims is far worse. Survivors often suffer from depression, anxiety, post-traumatic stress disorder (PTSD), and in extreme cases, suicide. Rape also has long-term social and economic ramifications, such as difficulties in finding employment and being ostracized from society.

²Raghavan, V.R. "Changing Socio-Cultural Perspectives on Rape in India." *Journal of the Indian Council of Social Science Research*, vol. 38, no. 2, 2021, pp. 33-50.

³Ncrb.gov.in Accessed on 27/06/2023.

The Indian legal system's response to rape has also been criticized for being inadequate and failing to protect victims. For instance, the police often blame the victim for dressing provocatively or going out late at night and do not take rape cases seriously, especially if the perpetrator is wealthy or politically connected. Even when cases do go to trial, the conviction rates are low, with many perpetrators walking free.

Apart from the legal system, societies also tend to blame and stigmatize rape victims. Rape is often seen as a "shameful" act that tarnishes the victim's reputation and that of her family. This leads to victims often keeping silent and not reporting rape incidents, fearing social ostracism and shame. To address the issue of rape in India, there needs to be a multi-pronged approach. India needs to have better legal and institutional mechanisms for dealing with rape cases promptly and effectively. The police and legal system should be sensitized towards rape victims and their rights to ensure a better response to such cases⁴.

Apart from the legal system, awareness and education campaigns should also be conducted to change social attitudes towards rape victims. Society should be taught that rape is a heinous crime, and victims should not be blamed or shamed. Rape survivors should be supported and provided with necessary mental and physical healthcare services.

Additionally, the government should address the socio-economic issues and inequality prevalent in Indian society. This will go a long way in reducing the vulnerability of marginalized communities, which are at higher risk of sexual assault.

II. Rape Victim Faces Barrier to Justice

Rape is such a crime that not only violates the victim's body but also shatters their sense of security and dignity. It is a crime that should be dealt with utmost seriousness in our society. However, achieving justice after rape is often a difficult and harrowing task, especially for the victim. Although the legal system

⁴Kapoor, R. "Changing Attitudes Towards Gender and Sexuality in Modern India." *IDS Bulletin*, vol. 45, no. 6, 2014, pp. 60-68.

provides avenues for rape victims to obtain justice, there are several barriers that often prevent them from doing so⁵.

One of the primary barriers that rape victims face is social and cultural attitudes, which often perpetuate a culture of victim blaming, shaming, and silencing. Rape survivors are often subjected to insensitive, cruel, and even misogynistic responses from law enforcement officials, medical professionals, and society at large. For example, in many societies, women who have been raped are often blamed for their own victimization, due to a prevalent belief that women ought to dress and behave modestly to avoid being raped. This attitude is problematic because it takes the attention away from the perpetrator's culpability and places the blame on the victim's inability or unwillingness to protect themselves⁶. Thus, it creates an environment where rape victims are reluctant to report the crime or seek justice, out of fear of re-victimization or not being taken seriously. This prevents the perpetrator from being brought to justice and only serves to perpetuate the culture of rape.

Another significant barrier that rape victims face in obtaining justice is the flawed legal processes in many countries. Despite the numerous legal frameworks and protocols in place to protect women's rights, the procedures are often so demanding and ineffective that rape victims may find it challenging to cope with them. For instance, in many societies, rape cases can take years to resolve and the victims must endure a complex legal process that often re-traumatizes them. Moreover, many rape victims must contend with the burden of proof, and in most cases, the burden falls heavily on the victim to provide evidence beyond reasonable doubt, which can be quite challenging. In many cases, the perpetrator is acquitted due to the lack of sufficient evidence. This creates a pervasive sense of injustice and denies the victim the opportunity of obtaining justice.⁷

The lack of support structures for rape victims is also a significant barrier to obtaining justice. Rape victims often require a lot of support, including access to

⁵Gavin, H. (2016). Exploring the Barriers to Justice Faced by Victims of Rape. *Flinders Law Journal*, 18(2), 1-14.

⁶Kilpatrick, D. G. (Ed.). (1992). Rape: The aftermath. Sage Publications, Inc.

⁷MERRY, S. E. (2009). HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE. (University of Chicago Press).

counselling and medical care, during and after the legal process. Unfortunately, many people do not receive the support they need, and as such, end up dropping their cases⁸. There are very few support structures for rape survivors, particularly in developing countries, where poverty and cultural stigmatization prevent women from accessing essential health care needs. This implies that rape victims often do not receive the necessary medical care that they require after the assault, leading to serious health complications and even deaths.

III. Effects of Rape on Victim

Rape is a brutal act of sexual assault that causes long-term emotional, psychological, and physical damage to the victim. It is a crime that involves a lack of consent and is perpetrated by one person on another. Rape can happen to anyone, regardless of gender, age, race, or social standing. The effects of rape can lead to a wide range of emotional, physical and mental disorders that can last for years if not treated early.

The profound impact of rape on the victim is multifaceted and complex. Rape can result in physical injuries and medical complications such as bruises, lacerations, broken bones, and sexually transmitted infections (STIs). The process of healing from rape survivor can be challenging and can take a significant toll on the victim's physical and emotional well-being⁹.

The psychological impact of rape can be devastating, leading to anxiety, depression, post-traumatic stress disorder (PTSD), and suicidal ideation. Victims may experience intense shame, anger, guilt, and self-blame. In addition to these immediate effects, survivors may develop avoidance behaviours, social isolation, and fear of intimacy that can negatively impact their relationships, career, and overall quality of life.

The effects of rape on women are especially pronounced. Studies suggest that women are at higher risk of experiencing rape than men; this risk is significantly

⁸Mugadza, R., & Ncube, M. C. (2016). Overcoming socio-cultural barriers to justice: The legal system and rape victims in Zimbabwe. *Journal of Social Welfare and Human Rights*, 4(2), 103-120.

⁹Njoki, V. (2018). *Breaking the Silence: Examining Legal and Social Barriers to Obtaining Justice for Victims of Sexual Violence in Kenya*. *JOURNAL OF AFRICAN LAW*, 62(2), 209-227.

increased among women with disabilities, women of colour, and transgender women. Rape trauma syndrome, a condition characterized by disbelief, fear, and self-blame, is more prevalent among women than men. Moreover, women may face social stigmatization based on bias or prejudice against rape survivors, which can further exacerbate the psychological effects of rape¹⁰.

Recovery from rape is a long and arduous process that requires various forms of support and treatment. Medical care and counselling are essential components of the healing process. Victims need medical attention to prevent STI's and pregnancy due to the rape. Victims need counselling services to address feelings of isolation, shame, and psychological trauma. Many rape survivors find relief and guidance through various support groups, including peer counselling groups.

The effectiveness of treatment interventions depends on the nature and severity of the victim's trauma. Research suggests that early intervention is critical in preventing long-term consequences. For instance, cognitive-behavioural therapy (CBT) has been shown to help reduce PTSD symptoms and improve overall mental health outcomes among rape survivors. Eye Movement Desensitization and Reprocessing (EMDR), meditation, and relaxation techniques can also be helpful in reducing stress and anxiety among trauma survivors.

Rape is a traumatic event that can have profound and long-lasting effects on the victim's physical and mental health. The effects can be amplified by social stigmatization, discrimination, and cultural biases. Early interventions and a supportive environment that prioritizes the victim's well-being are essential in helping survivors recover from rape. It is essential to educate the public on the effects of rape traumas, the underlying causes, and the investment in addressing discrimination against victims to support their healing process¹¹.

¹⁰Mishra, Tripti. *Support Mechanisms for Rape Victims in India: An Analysis*. JOURNAL OF THE INDIAN LAW INSTITUTE, vol. 58, no. 1, 2016, pp. 139-150.

¹¹Chawla, Navtej. *Gender Justice: A Feminist Perspective on Rape Laws in India*, INTERNATIONAL JOURNAL OF CRIMINOLOGY AND SOCIOLOGICAL THEORY, vol. 12, no. 3, 2019, pp. 189-201.

IV. Role of Media and Societal Perception of Rape in Shaping Legal Outcomes

Rape is a heinous crime that has plagued societies globally for centuries. In recent years, the issue of sexual assault has garnered increased media attention, leading to heightened societal discussions and changes in legal outcomes. The role of media and societal perception of rape is significant in shaping legal outcomes related to sexual assault cases.

Media plays a critical role in shaping public perception and understanding of rape. The way in which media portrays rape can significantly impact societal attitudes and beliefs about the crime, thereby influencing legal outcomes. Positive and supportive media coverage of rape victims can bring attention to the depth and consequences of the crime, leading to increased public awareness and support for survivors. This, in turn, can push for legislative reform and more stringent punishment for perpetrators of the crime.

However, media coverage can also have negative consequences that may hinder justice for rape survivors. Sensationalistic and insensitive reporting may lead to the re-victimization of rape survivors, perpetuate victim blaming, and contribute to harmful stereotypes. These negative portrayals of rape can create an environment that is hostile to survivors and make it difficult for them to receive fair treatment in the legal system.

Societal perceptions of rape also play a significant role in shaping legal outcomes. In many societies, pervasive misconceptions about rape and sexual assault have led to a culture of victim blaming, where survivors are often held responsible for being assaulted. These beliefs become ingrained in the legal system, leading to insufficient support and protection for survivors and lack of accountability for perpetrators.

However, efforts to shift societal perceptions of rape can lead to positive legal outcomes. The Me-Too movement is an example of societal change that has led to increased public awareness and support for survivors and shifted the legal system towards a more victim-centered approach. This shift has led to improvements in laws, policies, and practice that better protect survivors and hold perpetrators accountable.

V. **Anti-Rape Laws in India**

The issue of sexual violence against women has been a persistent social problem in India. According to the National Crime Records Bureau, there were 27,934 reported cases of rape in 2020, with an average of 74 cases of rape being reported every day¹². The legal framework related to anti-rape laws in India has undergone various changes over the years to address this heinous crime against women.

The first Indian Penal Code (IPC) which was enacted in 1860, included provisions related to rape under section 375. However, this section was discriminatory towards women, as it defined rape as a sexual act forcibly committed against a woman who was not his wife. The section also had exemptions that made marital rape legal under certain circumstances. This provision continued to exist until 2013, despite protests and debates over its discriminatory nature.

The Criminal Law (Amendment) Act, 2013, was a historic development in the legal framework of anti-rape laws in India. The act amended the Indian Penal Code, The Indian Evidence Act, and The Code of Criminal Procedure, making several changes to strengthen the legal provisions related to rape. The Act redefined rape as a violation of bodily integrity and autonomy, rather than as a violation of chastity. It also recognized that men can be victims of rape and made provisions to punish gender-neutral sexual offenses¹³.

The Act increased the punishment for rape from a minimum of seven years to a minimum of twenty years, along with imprisonment for the remainder of the convict's natural life, under certain circumstances. The act also declared the possession of child pornography, as well as acid attacks, as punishable offenses. It introduced new provisions for stalking, voyeurism, and trafficking in persons for the purposes of sexual exploitation.

The Act also made provisions for protecting the identity and privacy of rape victims. It prohibited the publication of the victim's identity and made it a punishable offense. It also made video recording the statement of the victim

¹²Ncrb.gov.in Accessed on 27/06/2023.

¹³Goswami, Namita. *Understanding the Criminal Law Amendment Act, 2013: Key Reforms*, ECONOMIC AND POLITICAL WEEKLY, vol. 48, no. 7, 2013, pp. 18-21.

mandatory, and introduced measures to ensure the safety and confidentiality of the victim during the investigation and trial.

However, the 2013 amendment act received criticism for certain aspects. One of the criticisms was related to the definition of 'rape'. The act expanded the definition, but it still excluded certain forms of non-penetrative sexual assault, such as groping, fondling, and digital rape. The punishment for these offenses was also lenient in comparison to the punishment for penetrative sexual assault. Another criticism was that the new provisions were not effective in preventing and addressing sexual violence comprehensively. The act focused only on criminalizing sexual offenses, rather than addressing social and cultural factors that perpetuate rape culture.

Despite the criticisms, the legal framework of anti-rape laws in India has undergone further development in recent years. The Protection of Children from Sexual Offences (POCSO) Act, 2012, was enacted to protect children from sexual abuse. It defines sexual assault and harassment as offenses against children and imposes strict punishment on the offenders. The act mandates the appointment of child welfare committees and special courts to conduct the trials in a child-friendly manner. The act also makes it mandatory for the police to register complaints and investigate cases of child sexual abuse¹⁴.

In 2018, the Criminal Law (Amendment) Act was passed, which introduced the death penalty as a punishment for rape of children below the age of 12 years. The act also included provisions related to the protection of women from sexual harassment at the workplace and increased the punishment for the offense of stalking.

Apart from the legal framework, several initiatives have been taken by the government and civil society organizations to prevent rape and provide support to the victims. The Nirbhaya Fund was established in 2013 to provide financial resources for implementing measures for the safety and security of women. The fund has been used to set up one-stop centres, rape crisis centres, and women's helplines in various parts of the country.

¹⁴GOUR HARI SINGH, PENAL LAW OF INDIA, p 1843 (Vol. 3, Seventh edn, Law publishers).
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VI. Judicial Observations on the Rape Laws in India

Rape is an incredibly heinous crime that can have long-lasting physical, emotional, and psychological effects on the victim. Although there are laws in place to protect victims of rape and to bring perpetrators to justice, the legal system has been criticized for being unfair to victims in various ways. Over the years, there have been several cases of rape that have gone to the various high courts and the supreme court of India.

A. The Right to be Heard and the Requirement of Corroborations

One of the earliest cases that dealt with the rights of rape victims was *State of Maharashtra v. Madhukar*¹⁵. In this case; it was argued that the testimony of the victim of rape should not be believed unless it is corroborated by other evidence. The Supreme Court rejected this argument, stating that the victim of rape has the right to be heard and that her testimony should be judged on its own merits.

Similarly, in *State of Punjab v. Gurmit Singh*¹⁶, the Supreme Court held that the requirement of corroboration is not an absolute rule in rape cases. The court cautioned that if a victim's testimony is true, then the requirement of corroboration is unnecessary and that a conviction can be based solely on the victim's testimony.

B. Marital Rape

Marital rape is a particular type of rape that is unique to marriage. The Supreme Court was called on to rule on the legality of marital rape in the case of *Independent Thought v. Union of India*¹⁷. In this case, a petition was filed challenging the validity of the exception in Section 375 of the Indian Penal Code (IPC) that exempts husbands from being prosecuted for rape against their wives if they were married to each other at the time of the act. The Supreme Court held that the exception in Section 375 is unconstitutional and that marital rape is a crime. The court observed that a woman does not lose her right to bodily integrity

¹⁵AIR 1991 SC 207.

¹⁶1996 AIR 1393, 1996 SCC (2) 384.

¹⁷Writ Petition (Civil) No. 382 of 2013.

or privacy when she gets married and that sexual intercourse without consent is a violation of her fundamental rights.

C. Consent

In rape cases, the issue of consent is critical. The Supreme Court has clarified the definition of consent in various cases. In *State of Uttar Pradesh v. Chhotey Lal*¹⁸, the court held that a lack of protest or resistance by the victim does not necessarily mean that she has consented. Similarly, in *State of Maharashtra v. Rafiq Mohammed*¹⁹, the court held that consent cannot be assumed simply because a woman is in a relationship or has had sexual intercourse in the past. In the case of *Smt. Rupan Deol Bajaj v. Kanwar Pal Singh Gill*²⁰, the court clarified that consent must be free and voluntary and that it cannot be obtained by coercion or force. The court held that the use of force or coercion to obtain sexual intercourse without consent is rape.

In the case of *State of UP v. Shubham Singh*²¹, the Supreme Court of India upheld the death sentence for a man convicted of the brutal rape and murder of a six-year-old girl. The case marked a significant victory for the anti-rape movement in India, which has long called for stronger punishment for perpetrators of sexual violence.

In *State of Rajasthan v. Naveen*²² the Rajasthan High Court upheld a lower court's decision to sentence a man to life imprisonment for the rape and murder of a nine-year-old girl. The case demonstrated the judiciary's commitment to enforcing India's anti-rape laws and ensuring justice for victims of sexual violence.

In *State of Madhya Pradesh v. Udham Singh*²³ the Supreme Court of India upheld the conviction and death sentence of a man who had raped and murdered a four-

¹⁸Criminal Appeal No. 79 of 2006.

¹⁹Criminal Appeal No. 731 of 2013.

²⁰1996 AIR 309, 1995 SCC (6) 194.

²¹Cri Misc. CR.P.C. No.- 8406 of 2021.

²²Cri Misc. Bail Application No. 1515/201.

²³Criminal Appeal No. 349 of 2008.

year-old girl. The Court also observed that the death penalty was appropriate for such "horrific crimes."

In *State of Haryana v. Ankit*²⁴ the Haryana High Court upheld a lower court's decision to convict a man of raping a four-year-old girl. The court noted that the evidence presented by the prosecution was "clinching and convincing," and sentenced the accused to life imprisonment.

In *State of Punjab v. Gurmail Singh*²⁵ the Punjab and Haryana High Court upheld the conviction and life imprisonment of a man who had raped and murdered a five-year-old girl. The court observed that such crimes were a "disgrace to humanity" and deserved the most severe punishment.

VII. Measures Suggested for the Effective Application of Rape Laws in India

Following are some of the measures which can be taken for the effective application of rape laws in India.

- **Increase awareness:** The government should launch awareness campaigns to educate people, especially women, about their legal rights and the procedures that should be followed while filing a rape complaint or case.
- **Strengthen law enforcement agencies:** Law enforcement agencies should be given advanced training to investigate rape cases more effectively and efficiently. The police officers who are handling the rape cases should be trained to handle the situations sensitively.
- **Speed up the legal process:** Rape cases should be fast-tracked and expedited in a time-bound manner, so that justice is delivered to the victims in a timely manner.
- **Provide legal aid to the victims:** The government should provide legal assistance to the victims of rape who cannot afford legal representation. This will help ensure that all rape survivors have access to justice.

²⁴CRR-121-2022.

²⁵CRM-M-45411-2021.

- **Establish more rape crisis centres:** The government should establish more rape crisis centres, which can provide medical, legal and psychological support to rape survivors.
- **Encourage reporting:** Encourage victims to report rape cases to the authorities so that the offenders can be brought to justice. The victims should not be afraid of reporting rape cases and should have confidence in the legal system.
- **Increase punishment for rape:** The government should consider increasing the punishment for convicted rapists to deter others from committing such heinous crimes.
- **Address sociocultural factors:** Addressing the underlying sociocultural factors that contribute to rape, such as patriarchal attitudes and gender inequalities, is necessary to eliminate rape from society.

VIII. Concluding Remarks

Application of rape laws in India needs urgent attention and reform. Despite several amendments to the law, rape cases continue to be inadequately investigated and prosecuted. The widespread culture of victim-blaming and stigma surrounding sexual assault further worsen the situation. The police often ignore or dismiss complaints, and the judicial process is slow and inefficient. More needs to be done to ensure that victims receive support, and the perpetrators are held accountable. The government must focus on better law enforcement and strengthening the justice delivery systems to ensure swift and exemplary punishment in rape cases. Additionally, public education and awareness campaigns can help change cultural attitudes and misconceptions about sexual violence. Only when such changes are implemented diligently women residing in India may feel safe and protected from the scourge of rape.