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Criminal Law Responses to Sexual Offences: A Comparative Study of Consent and Coercion Doctrines in Bangladesh, Sweden, and India

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ABSTRACT

This article conducts a critical examination of criminal law theories pertaining to sexual offenses, as well as a comparative analysis of consent and coercion doctrines throughout Bangladesh, Sweden, and India. Taking into account changing international human rights norms, this study investigates how different jurisdictions interpret and implement consent and coercion as aspects in sexual crime prosecution, revealing considerable variations due to unique socio-legal, cultural, and historical settings. In Bangladesh and India, consent theories are heavily established in patriarchal ideology, with victims frequently being held responsible for proving non-consent, whilst coercion doctrines are hampered by narrow definitions that jeopardize effective legal protection. In contrast, the Swedish legal system exemplifies a progressive affirmative consent test, emphasizing the importance of express, voluntary assent but also taking into account a larger variety of coercive elements such as psychological pressure and incapacitation. The analysis demonstrates how restricted understandings of consent and coercion in South Asian legal systems impair victims' rights while creating prospects for impunity, limiting victims' access to justice. Recognizing a more victim-centered approach in Swedish legislation that is more in accordance with international human rights benchmarks, this paper highlights critical policy reform outcomes. It proposes legal change and adjustment in Bangladesh and India to offer total protection from sexual violence, as well as the reform of consent and coercion doctrines to a affirmatively oriented approach. Overall, this comparative research emphasizes the need of culturally sensitive yet rights-based reforms in criminal law responses to sexual assaults as a means of advancing gender justice while also safeguarding victims' dignity across countries.

Keywords: *Affirmative Consent, Bangladesh, Coercion, Comparative Criminal Law, Sexual Offences.*

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I. INTRODUCTION

Sexual offenses are one of the world's most serious human rights challenges. Laws addressing these offenses are critical to maintaining people's freedom, respect, and safety. The laws governing these offenses primarily address two concepts: consent, which determines whether a person consented to sex lawfully and voluntarily, and coercion, which investigates situations in which consent is removed by force, threats, or undue pressure.² Individuals throughout the world know that laws based on previous legal frameworks, which are largely based on restrictive ideas of consent and physical force, fail to adequately address sexual assault.³

These concepts have resulted in significant changes, with a focus on affirmative consent and more inclusive concepts of coercion, ensuring that local laws keep up with evolving international human rights norms such as the Istanbul Convention and recommendations from the Committee on the Elimination of Discrimination Against Women (CEDAW).⁴ These alterations take place differently in different places, cultures, civilizations, and laws. Some nations, including as Sweden, have established new consent laws that prioritize victims' wishes and acknowledge all types of coercion, not only physical force. However, several South Asian nations, like Bangladesh⁵ and India,⁶ continue to use customary techniques to shape how sexual crime laws are read and executed. These disparities in legal systems highlight the need for extensive research that compare how consent and coercion laws are formed and administered in different areas, as well as how this affects victims' rights and access to justice. Most countries acknowledge consent and coercion as important concepts in sexual crimes, but they are interpreted differently among jurisdictions. Although there are some recent regulations in India and Bangladesh, consent is understood narrowly, and coercion is often associated with physical force. As a result, victims face little protection.⁷ In contrast, Sweden has an affirmative norm that defines consent as freely granted, with a broader interpretation of forceful behavior that demonstrates care for what victims require.⁸ This research looks at Bangladesh, India, and Sweden. It wants to discover how different

² MacKinnon, C. A. (2020). Rape Redefined. *Harvard Law & Policy Review*, 10(2), 431–449.

³United Nations. (2021). Handbook for Legislation on Violence against Women. <https://www.un.org/womenwatch/daw/vaw/handbook/>

⁴ Council of Europe. (2011). Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). <https://www.coe.int/en/web/istanbul-convention>

⁵ Chowdhury, F. D. (2021). Rape and the Legal Process in Bangladesh: A Socio-Legal Study. *Asian Journal of Comparative Law*, 16(1), 89–112. <https://doi.org/10.1017/asjcl.2021.2>

⁶ Banerjee, S. (2020). Reimagining Consent in Indian Rape Law: Towards a Gender-Just Framework. *Indian Journal of Gender Studies*, 27(3), 297–317. <https://doi.org/10.1177/0971521520944415>

⁷ *Ibid* 5

⁸ Holmberg, S. (2021). Affirmative Consent and the Law: Sweden's Shift Towards Sexual Autonomy. *Feminist Legal Studies*, 29(2), 231–252. <https://doi.org/10.1007/s10691-021-09478-7>

definitions of consent and coercion affect how successfully laws may be enforced, what proof is necessary, and victims' rights. It aims to give relevant information on how laws could be improved, particularly in South Asia, and to contribute to worldwide discussions about altering criminal law for sexual offences.

The paper addresses two fundamental research topics. First, how do the consent and coercion theories differ across Bangladesh, Sweden, and India in terms of legal definitions, judicial interpretation, and application? Second, how does doctrinal difference affect victims' rights in terms of burden of proof, reporting hurdles, and prosecutorial effectiveness? This research tries to answer these concerns by revealing the shortcomings and strengths of various legal paradigms and suggesting strategies to harmonize these doctrines with international human rights principles and socio-cultural realities.

This study combines doctrinal legal analysis with comparative law research. It carefully studies statutory wording, case law, and current legislative changes in Bangladesh, Sweden, and India. Secondary material includes scholarly literature, international human rights commission reports, and feminist legal critique, which augment the study and place doctrinal examination within larger social and cultural contexts. The multidimensional approach allows for a critical evaluation of how the legal rules governing consent and coercion work in practice, as well as what they represent in terms of victim protection and justice.

The article provides a comparative analysis, synthesizing findings and critically assessing the impact of various doctrines on prosecution outcomes and victims' rights, as well as concrete proposals for legal reform to align consent and coercion doctrines with international standards and improve victim-centric justice. It concludes with reflections on the broader implications of this comparative study and recommendations for future research.

II. THEORETICAL AND CONCEPTUAL FRAMEWORK

A. Defining Consent and Coercion

The principles of coercion and consent are crucial to sexual offense legislation, serving as essential boundaries for distinguishing between legal and criminal sex. In legal terms, consent is defined as a voluntary, informed, and unequivocal agreement to participate in sexual conduct. Legal systems have generally functioned on a "no means no" premise, assuming the presence of consent until clearly denied by the complainant.⁹ This technique has been frequently criticized for imposing an excessive evidential burden on victims in order to prove

⁹ Temkin, J., & Krahe, B. (2008). *Sexual Assault and the Justice Gap: A Question of Attitude*. Hart Publishing.

resistance, so entrenching victim-blaming narratives and allowing offenders to gain from quiet or inactivity.¹⁰ In contrast, the affirmative consent paradigm, sometimes known as the "yes means yes" approach, demands clear, voluntary, and affirmative consent for all sexual activities, shifting the focus away from victim resistance and toward real mutual agreement. This approach recognizes that permission is more than just the absence of a "no"; it is also the presence of an enthusiastic "yes". Passivity, silence, or fear-induced obedience do not constitute valid consent, according to legal systems that employ this criterion, such as Sweden.¹¹

Coercion, on the other hand, appears to be the use of force, intimidation, manipulation, or exploitation of authority to persuade someone to participate in undesired sexual behavior. Most legal systems have typically limited coercion to physical force or threats of immediate harm.¹² However, contemporary interpretations include psychological coercion, economic reliance, and power imbalance scenarios in which people may consent to sexual advances out of fear or a lack of true choice.¹³ It is presumptuous to see these changing definitions as crucial to determining the sufficiency of legal theories for victim protection and justice administration. A narrow or outmoded definition of either idea risks eliminating a large spectrum of nonconsensual contacts from legal protection, maintaining institutional impunity for sexual abuse.

B. International Standards of Human Rights

International human rights law is driving the development of national legal norms on sexual violence, notably in terms of consent and coercion. Mechanisms such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Council of Europe's Istanbul Convention set universal standards for combating gender-based violence and require state parties to ensure that legislation protects victims' autonomy and dignity.¹⁴

In General Recommendation No. 35, the CEDAW Committee explicitly urged states to criminalize all nonconsensual sexual acts, with consent defined as a "voluntary agreement given as a result of the person's free will, assessed in the context of the surrounding

¹⁰ McGlynn, C., & Munro, V. E. (2010). *Rethinking Rape Law: International and Comparative Perspectives*. Routledge.

¹¹ Ekholm, D. (2020). Affirmative Consent and the Law: Sweden's Shift Towards Sexual Autonomy. *Feminist Legal Studies*, 28(3), 301–319. <https://doi.org/10.1007/s10691-020-09443-1>

¹² Bergen, R. K. (2006). *Violence Against Women: Classic Papers*. Pearson.

¹³ UN Women. (2015). *A Framework to Underpin Action to Prevent Violence Against Women*. United Nations Entity for Gender Equality and the Empowerment of Women. <https://www.unwomen.org>

¹⁴ *Ibid* 4

circumstances."¹⁵ This is a clear departure from the usual concept, which is centered on the victim's physical power or resistance.

Similarly, the Istanbul Convention, while locally enforceable in Europe, has gained normative clout worldwide. Article 36 of the Convention urges nations to prosecute sex acts performed without agreement and to adopt a consent model that respects the victim's free choice without needing physical proof of resistance.¹⁶

International criminal law has likewise supported wide definitions of coercion. In the Akayesu case,¹⁷ the International Criminal Tribunal for Rwanda stated that coercion can occur in any scenario involving pressure, fear, or psychological oppression, broadening the legal definition of physical force. Collectively, these human rights instruments encourage courts to use affirmative consent models and acknowledge contextual coercion, so that the law may preserve individuals' sexual autonomy while also validating the various forms of pressure that render meaningful consent invalid. The legal definition and use of coercion and consent is deeply rooted in patriarchal social institutions and gendered customs. Criminal law in many countries has served to support and reflect cultural myths that perpetuate women's sexual subordination while reaffirming male sex entitlement.¹⁸ Such cultural myths are manifested in legislation and court judgments that disbelieve victims, require physical resistance evidence, and pathologize female sexuality.¹⁹

These dynamics are particularly pronounced in South Asian nations such as Bangladesh and India. The Indian Penal Code's colonial roots, as well as its reproduction in Bangladesh, have cemented outmoded concepts of consent, under which absence of opposition is seen as implicit permission. Victims are often assessed based on their morality, sexual past, and compliance to idealized feminine values, which undermines their right to justice and perpetuates a culture of impunity.²⁰ Furthermore, cultural ideals of male dominance and female submission influence both the legal system and public opinion. The judicial unwillingness to accept non-bodily coercion including manipulation, blackmailing, or economic necessity is proof of this.²¹ Even subsequent legal changes in India, such as those imposed after 2012, are hampered by the continuation of patriarchal practices among law

¹⁵ Para 9 of the CEDAW Committee. (2017). General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19. CEDAW/C/GC/35.

¹⁶ *Ibid* 4

¹⁷ *The Prosecutor vs. Jean-Paul Akayesu*; Case No. ICTR-96-4-T

¹⁸ Smart, C. (1989). *Feminism and the Power of Law*. Routledge.

¹⁹ Nussbaum, M. C. (1999). *Sex and Social Justice*. Oxford University Press.

²⁰ Kapur, R. (2005). *Erotic Justice: Law and the New Politics of Postcolonialism*. GlassHouse Press.

²¹ Agnes, F. (2011). *Law, Justice and Gender: Family Law and Constitutional Provisions in India*. Oxford University Press.

enforcement, the judiciary, and society. Feminist jurisprudence and gender-sensitive legal reasoning, on the other hand, promote a contextualized, intersectional, and experience-based analysis of consent and coercion that acknowledges how socioeconomic differences in power, cultural coercion, and historical subordination affect one's ability to freely and informed consent.²²

III. BANGLADESH: CONSENT AND COERCION IN SEXUAL OFFENCE LAW

A. Legal Framework Overview

The legal structure governing sexual offenses in Bangladesh is mostly based on the Penal Code of 1860, a colonial statute first created by the British and duplicated throughout South Asia. Despite several modifications, the general form and vocabulary of the legislation have remained substantially intact, reflecting outmoded and patriarchal views of sexual violence.²³ The most significant legislation involving rape is Section 375 of the Penal Code, which defines rape and lists the situations under which sexual intercourse is considered illegal.

Section 375 defines rape as when a man has sexual intercourse with a woman who is not his wife without her consent, against her will, or under coercive circumstances such as threat of death or bodily harm, intoxication, unsoundness of mind, or when the girl is under the age of 16.²⁴ However, this phrase is gender-specific, allowing only males to be abusers and only women to be victims, depriving male and non-binary victims from legal protection.²⁵ The law also maintains the marital rape exception, which exempts sexual intercourse inside marriage from the rape definition unless the woman is under 13 years old (Section 375, Exception).²⁶

Following a public uproar over high-profile incidents of sexual abuse, the Women and Children Repression Prevention Act 2000 (Amended in 2003) was passed to provide for harsher penalty and a faster trial. It, however, primarily mirrors the Penal Code provisions without expanding the legal concept of consent or coercion. Although the 2020 amendment made the death sentence applicable to rape, there have been no modifications to evidentiary criteria or definitions of consent and coercion.²⁷

²² Crenshaw, K. (1991). Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color. *Stanford Law Review*, 43(6), 1241–1299. <https://doi.org/10.2307/1229039>

²³ *Ibid* 5

²⁴ The Penal Code, 1860 of Bangladesh

²⁵ Islam, M. R. (2018). Sexual Offences and the Challenge of Legal Reform in Bangladesh. *Bangladesh Journal of Law*, 18(2), 45–67.

²⁶ *Ibid* 23

²⁷ HRW. (2021). Bangladesh: Rape law reform falls short. Human Rights Watch. <https://www.hrw.org>

B. Consent Doctrine

The consent doctrine in the legal framework of Bangladesh is based on an antiquated notion of sexual autonomy that has been heavily affected by Victorian morality and colonial legal history. Section 375 of the Penal Code includes "consent" as one of the determinative elements in the definition of rape but does not define it as such, leaving much to judicial discretion. The legislation distinguishes between absence of consent and consent acquired by intimidation or representation, but it does not define consent as voluntary, willing, or continuous. Bangladeshi courts have historically relied on physical resistance or clear indicators of non-consent to prove rape, essentially putting the responsibility on the victim to demonstrate that she fought the sexual act.²⁸ For example, in *State v. Abdul Khalek* (1999), the court highlighted physical injuries and ripped clothes as proof of lack of consent, supporting erroneous ideas that true rape requires strong resistance.²⁹ This standard fails to account for the fact that many victims, particularly women, are more likely to freeze, submit in terror, or be too startled to resist due to threats, pressure, or violence. The lack of an affirmative permission criterion precludes these facts and restricts the law's protective role.³⁰ Furthermore, the societal stigma associated with sexual violence in Bangladesh leads to underreporting, as victims fear skepticism, character assassination, or reprisal.³¹ To this is added the continued judicial trend to use moral character assessments on the victim. In *State v. Mizan* (2002), the court lowered the accused's sentence in part due to the victim's "questionable" behavior and delayed report, meaning that a woman who deviates from societal standards may be less credible or deserving of legal protection.³² This form of reasoning reveals fundamental patriarchal prejudices and violates the values of fairness and justice.

Without specific legislative direction or affirmative legal definitions, consent in Bangladesh is a difficult and uncertain doctrine mediated by judicial subjectivity, societal bias, and institutional inertia. To align the doctrine with international human rights principles and provide justice for victims of sexual abuse, the legislation must be amended to include an affirmative consent test.

C. Coercion Doctrine

The legal concept of coercion under Bangladesh's rape legislation is equally restrictive and out

²⁸ *Ibid* 5

²⁹ Huda, S. (2005). *Sexual Offences in South Asia: Legal and Cultural Dimensions*. University Press Limited.

³⁰ *Ibid* 13

³¹ Amnesty International. (2020, December). Let's talk about "yes": Consent laws in Europe. Retrieved from <https://www.amnesty.org/en/latest/campaigns/2020/12/consent-based-rape-laws-in-europe/>

³² Khan, M. (2017). Gender Justice and the Courts: A Review of Rape Cases in Bangladesh. *Journal of Law and Society*, 44(3), 267–289.

of date. Section 375 of the Penal Code defines rape as sexual intercourse under only a few coercive conditions, such as fear of death or damage, drunkenness, or insanity. While these categories include some of the most severe kinds of coercion, they do not encompass psychological, economic, or social pressure, which is widespread in many situations of sexual assault.³³

The legislation fails to account for power disparities, such as those between employers and domestic workers, instructors and students, or community leaders and vulnerable persons, which might call any consent into doubt, regardless of its form. Manipulation, emotional blackmail, and reputational threats are not considered coercive situations that might invalidate consent.³⁴ Courts seldom investigate the wider environment in which coercion is alleged to occur. They focus on physical threats or proof, restricting the scope of judicial investigation and exempting a wide range of coercive experiences from legal protection.³⁵ Not only does such a narrow paradigm prevent victims from taking legal action, but it also contributes to a high percentage of acquittal based on inadequately broad legal standards.

D. Challenges and Critiques

Sexual offenses laws of Bangladesh have drawn a lot of criticism for its inefficiency, prejudice against women, and failure to protect victims. Human rights groups have criticized the state's harsher rape penalties, such as the death penalty, as being just symbolic and ineffectual in the absence of thorough legislative change.³⁶ Critics criticize that punitive populism diverts attention from structural concerns such as weak investigation processes, prosecution ineptitude, and judicial insensitivity.³⁷

The burden of proof placed on the complaint is one of the procedural obstacles. Even while international jurisprudence holds that a victim's statement should be adequate if found to be credible, courts nonetheless require corroborating evidence, such as eyewitness testimony or medical records.³⁸ Poor and rural women are disproportionately impacted by this need since they do not have access to legal or medical assistance.³⁹

Additionally, victims are put through intrusive and degrading examinations, such the two-

³³ Nahar, S. (2020). Rape and Resistance: Gender, Power, and the Law in Bangladesh. *South Asian Legal Studies*, 12(1), 101–122.

³⁴ *Ibid* 24

³⁵ *Ibid* 31

³⁶ *Ibid* 26

³⁷ Amnesty International. (2020). Bangladesh: Rape and justice crisis. <https://www.amnesty.org/en/documents/asa13/3060/2020/en/>

³⁸ CEDAW. (2017). General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19. UN Committee on the Elimination of Discrimination against Women.

³⁹ *Ibid* 32

finger test, which national courts and international authorities have declared to be unlawful and a breach of human dignity. It has been claimed that the technique is being used in some regions despite a 2018 High Court ban on it because of a lack of medical expertise and enforcement.⁴⁰ Furthermore, victims' institutional assistance is lacking. Victim shelters are underfunded, legal help is scarce, and judges and police officers seldom get gender-sensitive training.⁴¹ These structural flaws contribute to a culture of impunity and result in incredibly low conviction rates, which are believed to be less than 3%.⁴² To overcome these obstacles, legal reform must go beyond criminalization and incorporate victim-centered, rights-based strategies that broaden the definitions of coercion and consent, eliminate obstacles to evidence, and change institutional procedures to protect the autonomy and dignity of survivors.

IV. SWEDEN: AFFIRMATIVE CONSENT AND BROAD COERCION DOCTRINE

A. Legal Framework Overview

Sweden is well known for leading the way in a victim-centered, progressive judicial system that addresses sexual offenses, especially when it comes to adopting an affirmative consent policy. The Sexual Offences Act (Brottsbalken, Chapter 6), which was completely revised in 2013 and reexamined in 2018, serves as the cornerstone of this transformation. The former introduced a new "consent-based" definition of rape.⁴³

Rape was defined by Swedish law as "force" or "threat of force" sexual contact until 2013. The majority of legal systems used this conventional kind of coercion.⁴⁴ The definition was broadened by the 2013 modifications to encompass offenses that take advantage of a victim's especially disadvantageous circumstances, such as unconsciousness or extreme intoxication. However, legal experts and feminists persisted in claiming that failing to obtain voluntary, affirmative permission was not expressly illegal⁴⁵ In 2018, a new legal definition was developed in response to these criticisms: rape is defined as non-explicit or non-implied consented sex, whether or not physical force or threats were used. Long-term civil society mobilization, public discourse, and a general shift in perspective toward considering sexual violence as a breach of human autonomy rather than a crime of violence per se led to this

⁴⁰ Daily Star. (2021). HC declared 'two-finger test' illegal in 2018; why is it still being used? The Daily Star. <https://www.thedailystar.net>

⁴¹ *Ibid* 32

⁴² *Ibid* 5

⁴³ *Ibid* 11

⁴⁴ Lappi-Seppälä, T. (2012). Nordic Criminal Policy: A Retrospective Review. *Crime and Justice*, 40(1), 217–313.

⁴⁵ Munro, V. E., & Ellison, L. (2017). Rethinking Rape Law Reform: The Swedish Experience in International Perspective. *Legal Studies*, 37(1), 1–20. <https://doi.org/10.1111/lest.12131>

change.⁴⁶ Crucially, the 2018 law also criminalized negligent rape, which is the act of having intercourse without carefully obtaining the agreement of the other person. This innovation shows that Sweden is willing to extend victim protection and hold the person responsible for the advancements accountable.⁴⁷

B. Consent Doctrine

One of the most liberal consent principles in Europe was introduced by the 2018 Swedish legislative change. Consent is now defined as "voluntary participation" in the sexual act rather than the lack of resistance under the revised Chapter 6 of the Swedish Penal Code. According to the law, inactivity, quiet, or the absence of physical resistance are not equivalent to agreement.⁴⁸ This is a part of a larger philosophical and normative shift away from viewing sexual offenses as violations of sexual and personal autonomy and toward viewing them first and foremost as acts of violence and coercion.⁴⁹ By requiring all parties to demonstrate affirmative consent, or active consent, either orally or by action, the affirmative consent model removes any room for doubt and places the onus of proof on the initiator to confirm that consent has been given. Feminist legal theory, which supports this strategy, argues that conventional consent models promote male sexual entitlement and place an undue burden on victims to demonstrate non-consent.⁵⁰ By requiring agreement to be provided voluntarily, placed, and rescindable at any time, Swedish law has attempted to reflect these conclusions. This closely adheres to international human rights norms, such as CEDAW General Recommendation No. 35.⁵¹

The number of reported rape cases increased significantly from 5,236 in 2017 to 6,960 in 2021 as a result of the affirmative consent model's implementation.⁵² At first, critics were concerned that the change might lead to disproportionate prosecution or wrongful convictions. Early case law, however, indicates that courts are carefully implementing the new norm, striking a balance between the rights of the offender and a thorough comprehension of victim

⁴⁶ Bergman, H. (2019). Sweden's Feminist Legal Reform: The Consent Law of 2018. *Scandinavian Journal of Gender Studies*, 27(2), 123–137. <https://doi.org/10.1080/08038740.2019.1589389>

⁴⁷ Kerstens, J. (2020). Rethinking Consent and Coercion in Swedish Rape Law: Legal Developments and Their Social Impact. *Nordic Journal of Human Rights*, 38(1), 44–63. <https://doi.org/10.1080/18918131.2020.1723287>

⁴⁸ *Ibid* 44

⁴⁹ Westberg, M. (2020). Shaping the Law on Rape: Consent, Coercion, and Culture in the Nordic Countries. *Feminist Criminology*, 15(1), 50–69. <https://doi.org/10.1177/1557085119877081>

⁵⁰ MacKinnon, C. A. (2020). Rape Redefined. *Harvard Law & Policy Review*, 10(2), 431–449.

⁵¹ *Ibid* 37

⁵² Brå (Swedish National Council for Crime Prevention). (2022). Reported offences 2021 – preliminary statistics. <https://www.bra.se>

autonomy.⁵³ B 8143-19, Stockholm District Court, 2019 is a typical instance where the court determined that the complainant's immobility and lack of obvious signs overrode any inferred permission, despite the fact that she did not physically resist. The court used the notion of negligent rape under the modified legislation, focusing on the defendant's incapacity to ascertain the complainant's consent.

This Swedish theory of consent also places a strong emphasis on awareness and education. Alongside the legal change, public education initiatives were launched to raise knowledge of affirmative consent among legal professionals as well as the general public.⁵⁴ Sweden's dedication to changing how society views sexual liberty is shown in this all-encompassing approach.

C. Coercion Doctrine

While Sweden's 2018 reform kept and extended measures for dealing with coercion, it also made affirmative consent the focal point of the country's sexual offense legislation. According to Section 6, Chapter 6, Sections 1-2 of the Swedish Penal Code, coercion encompasses not only physical assault or threats but also any situation in which the victim is unduly influenced or in a particularly susceptible state.⁵⁵ Coercion is defined by the law as a wide concept that includes situational, emotional, and psychological pressure. For instance, Section 1 acknowledges that rape occurs when a person engages in sexual activity with someone, they are physically unable to resist due to sleep, unconsciousness, intoxication, or any other circumstance. Additionally, Section 2 makes it illegal to engage in sexual exploitation, which is not the same as rape but involves abusing a relationship of trust or reliance, including relationships with people in positions of power like teachers or guardians. This broad definition of coercion goes beyond simplistic conceptions of physical force to recognize the intricate power relations frequently involved in sexual assault. It is consistent with the jurisprudence of international law, such as the ICTR's Akayesu decision, which established that coercion can result from psychological oppression, fear, or pressure.⁵⁶ In addition, the Swedish model criminalizes situations in which people take advantage of someone else's mental illness, cognitive impairment, or dependency by including laws against sexual abuse in exploitation.⁵⁷

The multifaceted approach guarantees that diverse types of vulnerability and coercion are

⁵³ *Ibid* 11

⁵⁴ *Ibid* 47

⁵⁵ *Ibid* 45

⁵⁶ International Criminal Tribunal for Rwanda, 2018

⁵⁷ *Ibid* 50

captured by the law. Overall, Sweden's coercion theory adds depth to its consent paradigm, emphasizing the importance of any sexual activity being consensual and free of severe physical or psychological pressure.

D. Victim-Centered Approach

A victim-focused legal framework that places a high priority on victims' well-being, privacy, and dignity underpins Sweden's sexual offense legislation. Legal aid programs, specialized courts, and trauma-informed investigative procedures are some examples of how it manifests.⁵⁸

According to Ekholm, victims of sexual offenses are entitled to a state-appointed attorney (målsägandebiträde) who will represent them on an individual basis without taking the prosecutor's interests into account.⁵⁹ In order to protect the victims' right to anonymity, Swedish courts also use closed sessions when addressing cases involving sexual offenses. Based on psychological trauma and victim sensitivity concepts, police and prosecutors receive specific training in interviewing survivors of sexual violence. In contrast to the affirmative consent approach, investigations concentrate on recreating the incident's larger context rather than looking for tangible signs of struggle.⁶⁰ Furthermore, from a very young age, Sweden has invested heavily in public campaigns and school sex education that emphasize affirmative consent, physical integrity, and respectful partnerships.⁶¹ Together, these efforts have had the effect of lowering secondary victimization, enhancing the legitimacy of judicial institutions, and fostering a legal culture that views sexual abuse as a basic human rights violation rather than a personal or ethical matter.

V. INDIA: HYBRID APPROACH AND ONGOING DEBATES

A. Legal Framework

The 2012 Delhi gang rape in particular caused a significant change in India's legislative reaction to sexual assaults. The Indian Penal Code (IPC) saw significant amendments brought about by the Criminal Law (Amendment) Act, 2013, chiefly the expansion of punishments under Section 376 and the definition of rape under Section 375. With the adoption of the Bharatiya Nyaya Sanhita (BNS) in 2023 and further changes in 2018, the legal framework has been further established, covering topics like age of consent, coercion, and consent.⁶²

⁵⁸ *Ibid* 42

⁵⁹ *Ibid* 11

⁶⁰ *Ibid* 47

⁶¹ *Ibid* 44

⁶² In the Bharatiya Nyaya Sanhita (BNS), 2023, for the first time, the provisions relating to crime against woman

According to Section 375 of the Indian Penal Code, rape occurs when a man has sex with a woman against her will, without her consent, or with illegal consent- for example, by threatening to kill her or injure someone else, by deceiving her into believing she is legally married to him, or when she is too drunk or mentally ill to give consent at that moment.

The term "rape" was used in the 2013 amendment, but it was expanded to include activities other than penile-vaginal penetration, such as oral and anal intercourse. Rape, voyeurism, stalking, and insulting a woman's modesty are all prohibited under the BNS, which goes into force in July 2023. In addition, the victim of gang rape must be at least 18 years old to be deemed an adult. Furthermore, Section 69 of the BNS creates a new crime that makes it illegal to have sex under false and misleading impressions, such as a false promise of marriage, and carries a maximum sentence of 10 years in jail.

B. Consent Doctrine

In India, the basis for judging whether sexual activity is lawful is consent. In accordance with Section 375 of the IPC,⁶³ consensus ought to be free, informed, and transparent. The 2013 amendment made it clear that consent would not be interpreted as the absence of physical resistance, highlighting the requirement that agreement be expressed verbally or nonverbally by words, gestures, or any other means. By making sexual activity via deception, including a false promise of marriage, a crime, the BNS goes one step further in defining consent. This is consistent with court decisions that have ruled that consent gained in this way by deception is void. For example, the Delhi High Court ruled in *State v. Sandeep* (2019) that consent based on a fraudulent marriage promise would be considered rape. The rule of consent is still controversial, though, especially when it comes to marital rape. A man and his wife may engage in sexual activity together under Section 375 of the IPC, as long as she is at least eighteen years old. The exemption has drawn criticism for being out of date and inconsistent with contemporary ideas of personal liberty and gender equality. Marital rape is still legal in India despite calls for reform, which is a sign of ingrained cultural beliefs and resistance to change.

C. Coercion Doctrine

The doctrine of coercion of sexual offense is addressed under Section 375 of the IPC, which states that consent gained under the fear of death or bodily harm is invalid. This section

and child have been given precedence and placed under one Chapter. Strict punishments up to death sentence have been provided for the offences against women. Punishment for gang rape of a woman below the age of 18 years is life imprisonment till remainder of the convict's natural life or death. Retrieved from <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2115169>

⁶³ IPC stands for Indian Penal Code

expresses the legal principle that free consent cannot be obtained by force or threat. In the 1992 decision of *State of Maharashtra v. Prakash*, the Supreme Court recognized that agreement obtained by threats of death or bodily harm is invalid, stating that passive acceptance by coercion is not equivalent to lawful assent. The BNS upholds this clause, reinforcing the law's stance that coercion renders consent invalid. The BNS also adds additional sexual exploitation offenses, such as trafficking and sexual intercourse by deceit, broadening the law to cover various forms of coercion. Despite such legal systems, it is difficult to adequately combat coercion in sexual offenses. Coercion victims are typically discouraged from reporting coercion due to social shame, retribution fear, and a lack of knowledge about their legal rights. In such circumstances, the victim is also typically obliged to bear the burden of proof, which complicates the judicial procedure and may result in low conviction rates.

D. Social and Legal Challenges

Implementing and making India's sexual offenses statute effective is another major challenge. Despite legislative advancements, the societal perception of women and sexual assault is still very much in place. The victim-blaming, social boycott, and lack of adequate support networks that victims of sexual offenses frequently experience might deter them from pursuing justice. Investigation agencies are also occasionally insensitive or lack enough training on sexual offense cases, which deters the legal system. Time-consuming trials, a low conviction rate, and inconsistent application of the law are other shortcomings of the legal system. For example, rape conviction rates are still low, with many cases lingering in the court system for months or even years, despite the establishment of fast-track courts and harsher sentencing guidelines. Furthermore, underlying cultural views of marriage as providing permanent consent for sexual conduct are reflected in the law's reluctance to punish marital rape. This viewpoint maintains gender inequality in marriage and undercuts women's autonomy.

VI. COMPARATIVE ANALYSIS AND CRITICAL DISCUSSION

This section critically analyzes the legal systems for sexual offenses in Bangladesh, Sweden, and India based on their theories of coercion and consent, sociocultural factors, how well they provide victims access to justice, and how well they adhere to international norms.

A. Similarities

- **Consent as a Key Component:** All three nations place equal emphasis on consent as a crucial component in deciding whether or not sexual actions are legal. The legal

definition of rape in Bangladesh is limited to penetration of the penis to the vagina, does not include other types of sexual assault, and does not fully address the issue of consent. In a similar vein, Indian law has come under fire for its restrictive definition of rape and its expansive use of victim sexual history information to disprove the idea of consent. In contrast, Sweden has expanded the legal definition of consent by amending the legislation to make non-consensual sex illegal, even when there are no threats or coercion involved.

- All three nations acknowledge coercion as a factor that vitiates consent.
- According to Bangladeshi law, evidence on the victim's personality may be included and used to refute the existence of consent. Section 375 of the Indian Penal Code deals with coercion and states that consent acquired under fear of death or harm is not valid. Sweden's legal reform has included coercion a part of their definition of rape, making coerced sex illegal.

B. Differences

- Bangladeshi law has been under fire for its narrow definition of rape and exclusion of other sexual assault offenses, which deprives victims of coverage and acknowledges different types of coercion. India's legal rules have drawn criticism for their narrow application and the potential to invalidate the concept of consent by allowing proof of the victim's prior sexual history. Sweden's legislative revisions have expanded the protections for victims by defining rape to encompass intercourse without permission, even in cases when there is no danger or coercion.
- Systemic problems including corruption, a lack of infrastructure, and a social culture that discourages reporting sexual assaults make it difficult to enforce the laws in Bangladesh. Low conviction rates, excessive trial delays, and societal shame that deters victims from seeking justice are some of the issues India confronts. The conviction rate has increased in Sweden as a result of legislative change, which reflects better law enforcement.
- The way the law treats sexual offenses is significantly influenced by the sociocultural background of both countries. It is more difficult for them to get justice because of gender and environmental shifts, such as Bangladesh's restriction on the movement of women and resources. Both the preference for evidence based on the victim's character and the use of the "two-finger test" by the legal system are patriarchal presumptions that erode the concept of consent and promote victim-blaming.

- Traditional gender stereotypes and social norms contribute to the underreporting of sexual assaults. The legal focus on physical resistance as evidence of lack of permission is a common example of reducing the concept of consent, as it is likely to reject situations in which the victims did not physically resist. The disdain for marital rape also demonstrates the persistence of traditional notions of women's freedom.
- Individual autonomy and liberal views on gender equality have influenced Sweden's legal reforms. A step toward accepting the significance of affirmative permission and the sovereignty of people in sexuality is the prosecution of non-consensual sex, even in the absence of threats or violence.

C. Impact on Victims' Access to Justice

Laws in different countries have different effects on victims' access to justice.

Bangladesh: The lack of victim support services, excessive police investigative delays, and societal pressure to drop a complaint are just a few of the significant challenges victims face. Access to justice is further hampered by the absence of a precise definition of sexual assault and the acceptance of evidence on the victim's character.

India: Although legal reforms have been started, issues including long trial times, poor conviction rates, and societal shame continue to harm victims. The leniency of evidence on the victim's sexual history and the inability to recognize marital rape might discourage victims from pursuing justice.

Sweden: Increased convictions as a result of the criminal law revisions show that victims now have better access to justice. Criminalizing unconsented sex and broadening the definition of rape have given victims more power and made it easier to prosecute offenders.

D. Compliance with International Standards

Comprehensive legal structures that safeguard individuals from sexual assault and preserve their autonomy are promoted by international human rights norms.

Bangladesh: International norms that stress the value of consent and the defense of victims' rights are at odds with the limited definition of rape and the release of information about the victim's personality.

India: Legal reforms have been put in place, however problems like the disregard for marital rape and the acceptance of evidence about the victim's past sexual activity show only a partial conformity to international norms.

Sweden: The law change in Sweden most closely resembles international norms as it

criminalizes forceful sexual relations and expands the definition of rape to include non-consensual sex, further protecting people's rights.

VII. RECOMMENDATIONS FOR LEGAL REFORM

Affirmative consent requirements, broader definitions of coercion, police and judicial training, enhanced victim support, raising public awareness, and cultural change are some of the proposed reforms to strengthen the legal systems in Bangladesh, Sweden, and India in handling sexual offenses.

A. Affirmative Consent Standards

Bangladesh: The absence of a precise concept of consent in Bangladeshi law causes misunderstandings and uneven treatment of sexual offenses. The creation of an affirmative consent norm is necessary to address this. Any individual engaging in a sexual act must provide explicit, informed, and voluntary permission in order for affirmative consent to be granted. These standards shift the focus from the victim's resistance to the offender's need to get permission. Adopting this criterion will provide more precise guidelines for evaluating cases involving sexual offenses and align Bangladesh's judicial system with international human rights norms.

Sweden: One example is Sweden, which made non-consensual sex illegal in 2018. The principle that inactivity or silence should never be interpreted as permission is highly valued by the law, safeguarding people against sexual exploitation in situations when the motivations are unclear. Increased convictions and societal shifts in favor of acknowledging the value of affirmative consent have resulted from this.

India: Indian law is still caught between outdated ideas of consent that need evidence of physical resistance. By adopting an affirmative consent paradigm, the legislation would be updated to make all types of non-consensual sex unlawful and punishable by law. International human rights standards, which support individual agency and place a high priority on gender equality, would also be in line with this modification.

B. Expanding Definitions of Coercion

Bangladesh: Many forms of coercion, including threats of social exclusion, economic reliance, and psychological manipulation, are not included in Bangladesh's present legal definitions. By include these elements in the definition of coercion, it would be easier to see how permission may be revoked and guarantee that all instances of sexual exploitation are covered.

Sweden: The 'negligent rape' scenario, which occurs when the offender neglects to get consent, even in the absence of violence or threats, was brought about by Sweden's changes. According to this extension, coercion is an infringement on someone's independence even if it may be indirect.

India: Coercion has historically been defined too narrowly in India, frequently being taken to mean physical force or threats. Adding psychological coercion, manipulation, and the exploitation of power disparities to this would better represent the experiences of victims and guarantee that they are adequately protected by the legal system.

C. Training Judiciary and Law Enforcement

Bangladesh: In Bangladesh, judges and law enforcement officials frequently lack the necessary training to handle cases involving sexual offenses, which leads them to blame victims and improperly handle evidence. Effective training programs on trauma-informed practices, gender sensitivity, and the legal nuances of sexual offenses would improve management of these cases and motivate victims to come forward.

Sweden: To ensure the proper implementation of the changes, Sweden places a strong emphasis on ongoing professional training for legal professionals on the nuances of consent and coercion. Continuous professional development upholds the highest standards in the adjudication of sexual offense cases and emphasizes the need of treating victims with dignity.

India: It is imperative that judges, prosecutors, and police personnel in India have the necessary training to handle cases involving sexual offenses with the tact and comprehension that are expected of them. Law-defined coercion and consent, victim psychology, and the influence of societal norms on the legal system must all be included in training.

D. Increasing Victim Support

Bangladesh: The establishment of specialist rape crisis centers throughout Bangladesh would provide survivors with comprehensive assistance, including medical care, legal assistance, and psychiatric therapy. The centers would be secure locations where victims could come to report crimes and receive assistance without fear of retaliation or harassment.

Sweden: Independent Sexual Violence Advisors (ISVAs), who provide survivors with individualized support throughout the legal system, are a key component of the Swedish method. Providing equivalent support services in other nations might increase the victims' chances of receiving justice by preventing them from being left alone to deal with the convoluted judicial system.

India: The consolidation of victim support in India includes both short-term aid and long-term rehabilitation and reintegration into society. This includes speaking out against the stigma associated with being a survivor of a sexual offense and gaining access to social resources, legal counsel, and medical care.

E. Necessity of cultural change and public awareness.

Bangladesh: Social mobilization through public awareness campaigns that highlight the importance of consent, gender equality, and the rights of survivors of sexual offenses is essential to changing social perceptions. Sexual violence would decrease if these were included into community life and school curricula, fostering a respectful and understanding society.

Sweden: The inclusion of sex education in the Swedish school curriculum has been crucial in raising knowledge of healthy relationships and consent. Such an educational system may be expanded globally, which will eventually lead to a shift in culture and a decrease in sexual assaults.

India: Ongoing public education and media initiatives are required to combat India's profoundly ingrained patriarchal attitudes. Gender equality, the rejection of negative stereotypes, and affirmative role models can change public perceptions and provide a more affirmative environment for victims.

VIII. CONCLUSION

This comparative analysis of the criminal justice systems' reactions to sexual assaults in Bangladesh, Sweden, and India highlights several key issues regarding the dynamic interaction between the coercion and consent doctrines in various legal and sociocultural situations. Bangladesh's legal system is still bound by antiquated, colonial definitions that exclude the complex realities of coercion and restrict the concept of consent to a very limited interpretation, creating structural obstacles to justice for survivors.⁶⁴ The Swedish Gender Equality Agency notes that Sweden's groundbreaking reform of adopting an affirmative consent approach, which emphasizes the importance of unambiguous and consensual consent, sets an example for change with quantifiable improvements in conviction and attitudinal societal changes toward sexual assault.⁶⁵ The need for more precise definitions of consent and

⁶⁴Dhaka Tribune. (2018). 'No reform of rape definition in 160 years.' Retrieved from <https://www.dhakatribune.com/bangladesh/laws-rights/162898/%E2%80%98no-reform-of-rape-definition-in-160-years%E2%80%99>

⁶⁵ Swedish Gender Equality Agency. (n.d.). Sweden's consent law: A new standard for sexual offences. Retrieved from <https://swedishgenderequalityagency.se/gender-equality-in-sweden/sweden-s-consent-law/>

broader interpretations of coercion to better protect victims is highlighted by India's changing legal landscape, which is characterized by significant legislative changes such as the Criminal Law (Amendment) Act, 2013, but is still plagued by deeply ingrained patriarchal thinking and uneven enforcement.⁶⁶ This analysis clearly highlights the need for sexual offense laws to be standardized across jurisdictions. Particularly in South Asia, where cultural and legal differences make the problem worse, legal incoherence, encapsulated in the divergent interpretations of consent and coercion, prevents victims from accessing justice and upholds impunity.⁶⁷

A uniform legal structure based on affirmative consent principles and a broad, comprehensive definition of coercion not only respects international human rights obligations, such as those expressed in the Istanbul Convention and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), but also promotes legal certainty and better protection for victims worldwide.⁶⁸ This cooperation is important not just for increasing prosecutorial effectiveness, but also for encouraging societal reform by confronting outdated conventions based on legal systems.

This study makes a substantial empirical addition to the worldwide discussion by illustrating the transformational potential of coercive theories and consent-based legal changes that may be implemented holistically. The legal systems of Bangladesh, Sweden, and India are compared to show how advanced legal standards may get past the societal and institutional obstacles that prevent victims of sexual offenses from receiving justice. Furthermore, the study highlights the critical role that the law plays as a mirror and a tool for social change, emphasizing that for legal reform to be successful, it needs to be backed by victim support networks, education, and training.

To determine the long-term effects of broadened definitions of coercion and affirmative consent legislation on the prevalence of sexual assault and court rulings, follow-up research should utilize this platform by performing longitudinal analysis. Knowledge of optimal practices will be enhanced by cross-country research including a wider range of countries with diverse socio-legal settings. In order to better understand how legal changes might be

⁶⁶ JURIST. (2022). Adopting the affirmative consent standard: India needs to move toward victim-friendly rape adjudication. Retrieved from <https://www.jurist.org/commentary/2022/06/avanti-deshpande-affirmative-consent-india/>

⁶⁷ Equality Now. (2021, April 21). Rape laws across South Asia insufficient, inconsistent, and poorly enforced, leaving women at heightened risk of sexual violence. Retrieved from https://equalitynow.org/press_release/rape_laws_south_asia_april_2021/

⁶⁸ Silkway News. (2021). Harmonisation of criminal laws needed to stop rape – UN expert. Retrieved from <https://www.silkway.news/harmonization-of-criminal-laws-needed-30163/>

specifically designed to protect all victims inclusively, it is necessary to investigate intersectional factors including caste, ethnicity, and economic position.

This paper argues in support of a strong, well-coordinated legal framework for sexual offenses that emphasizes respect for international human rights norms, victim control, and the intricacies of coercion. In addition to being required by law, pursuing these reforms is morally and socially vital in order to eradicate systems of gendered violence and provide justice for survivors throughout the world.
