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# Re-Examining Laws Related to Rape: A Comparative Study in USA and India

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HATIK SINGHAL<sup>1</sup> AND PRIYADARSHINI TIWARI<sup>2</sup>

## ABSTRACT

*A girl kid can be a victim of a crime or the object of attention of one from the moment of her birth or earlier. The nature of the offences varies, just as the levels do. According to data from the National Crime Records Bureau, India's crime rate was 46 per 100,000 in 2012; the rate of rape was 2 per 100,000; the rate of dowry murder was 0.7 per 100,000; and the incidence of domestic abuse by spouses or their families was 5.9 per 100,000. "While the 85% prevalence of sexual violence in the country [India] is among the lowest in the world, it is estimated to affect 27.5 million women in India," said a 2014 report published in the Lancet.*

*Additionally, according to a 2006 survey, only 1% of women who had suffered sexual violence—whether it occurred inside or outside of marriage—reported it to the police, and 85% of them never sought assistance. The author will discuss the causes of violence and gender discrimination as well as how women are treated in both countries. In addition, this discussion covers the rights of victims of rape as well as the gaps in the legislation against rape using a variety of case laws. Finally, it goes into detail on the changes that should be made to the laws of that specific nation.*

**Keywords:** NCRB, Case, Murder, Violence, Rape.

## I. INTRODUCTION

In the process of attempting to achieve social equality, women encounter significant challenges as a collective group. There are just 22 percent of the total parliamentary posts that are held by women in all around the world, according to the IPU (Inter-Parliamentary Union), 2015. Women get, on average, a lower salary than their male colleagues for performing the same amount of work. In addition, according to the London School of Hygiene and Tropical Medicine (2013), one in every three women has been the victim of physical assault at a point in their lives. Given the significant and detrimental effects on a person's physical health, emotional well-being, social life, and financial situation, this violence is especially repulsive. Pain, bruises, bleeding, and broken limbs are some of the physical symptoms that victims typically feel as a

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<sup>1</sup> Author is a student at Law College Dehradun, Uttarakhand University, Dehradun, Uttarakhand, India.

<sup>2</sup> Author is an Assistant Professor at Law College Dehradun, Uttarakhand University, Dehradun, Uttarakhand, India

result of the incident.

Depression, post-traumatic stress disorder (PTSD), reliance on alcohol or drugs, and anxiety are all common and problematic mental health symptoms that can arise following an assault. As an additional point of interest, several estimations suggest that victims of sexual assault are likely to contemplate ending their own lives<sup>3</sup>.

According to McGlynn and Munro (2010)<sup>4</sup>, victims of rape are frequently shunned by their communities and families as a result of the shame and stigma that are associated with having sexual relations outside of marriage. As a result of the perception that victims are sometimes contaminated and dishonoured, many people in India are unable to marry as a result of violence. In addition, victims of assault endure enormous financial expenditures as a result of the medical treatments they require and the hours they are unable to work. According to research that was carried out by the Centres for Disease Control and Prevention in the year 2003, the average cost of therapy for victims was around \$2,084 (The White House Council on Women and Girls & the Office of the Vice President, 2014). When seen from a macroeconomic perspective, the U.S. economy is estimated to incur around \$87,000 in expenditures for each and every rape.

Because of the severe repercussions that sexual assaults may have, as well as the enormous amount of violent sexual encounters that occur in communities globally, women are living in a state of near-constant terror of being assaulted sexually. Catharine MacKinnon characterised rape as "an act of dominance over women that works systematically to maintain a gender-stratified society in which women occupy a disadvantaged status as the appropriate victims and targets of sexual aggression". The primary reasons for committing rape are not sexual impulses but rather power relations between the perpetrator and the victim. However, these seemingly little alterations are actually a huge source of insecurity, as they make it impossible for women to ever completely feel secure from harm.

The specific reasons for rape might differ from society to society. To begin, the prevalence of rape and sexual assault is significantly influenced by gender norms and roles. Civilizations in which gender roles and behaviours are well specified and constrained are more likely to have a higher incidence of rape and physical assault of its members. Additionally, the prevalence of sexual violence taking place against women is higher in communities that place a top priority

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<sup>3</sup> National Inst. of Mental Health (DHHS), Rockville, Md. and National Center for the Control and Prevention of Rape., "Hidden Rape: Incidence and Prevalence of Sexual Aggression and Victimization in a National Sample of Students in Higher Education."

<sup>4</sup> Clare McGlynn, Vanessa E. Munro and Vanessa E. Munro (eds.), *Rethinking Rape Law International and Comparative Perspectives* (Routledge-Cavendish, 1st edn., 2011).

on masculinity than femininity, which is the case in the majority of societies<sup>5</sup>. When this kind of leveraging of masculinity takes place, youngsters are frequently instructed to repress their feelings and to confuse their sexual potency with their authority. According to Shaw and Lee (2008), young females are socialised to be weak and dependent on the men in their life. This is in contrast to the other way around.

## II. CAUSES OF GENDER DISCRIMINATION IN INDIA

- **Orthodox Mentality:** In Indian culture, discrimination may also be seen in the unique gender roles that are assigned to individuals. In India, women are still confined to the home, in which they are cared for by the men in their lives and are in charge of cooking, cleaning, and raising the children (Gaynair, 2011). Current studies have demonstrated that the aforementioned remains the case. According to a study by the International Centre for Research on Women, just about sixteen percent of Indian men surveyed claimed to be participating in household chores. Because of low ratio, Indian males are taught that females are subordinate, not independent, and should stay at home. Furthermore, they are taught that females should not leave the house. Furthermore, a significant number of Indian women have come to accept being the subordinate, seeing it to be a stance that is consistent with and acceptable within society. Recent research published by UNICEF (2014) indicated that more than fifty percent of the young Indian females who were polled felt that it was acceptable to beat their wives in specific situations, such as when they refused to have sexual relations, left the house without permission from their husbands, or burned meals.
- **Female Foeticide and Dowry:** In India, prejudice against women begins even before birth, beginning with the practice of female foeticide. This is because male offspring are prized for their prospective monetary and social worth, which is the reason behind this phenomenon. According to Sharma, Pardasani, and Nandram (2014)<sup>6</sup>, the deeply ingrained custom of dowry contributes to the perception that women are destined to be a source of financial hardship in the future. It is possible to gain an understanding of the weighty and often insurmountable load of dowry by referring to the recent occurrence that took place in December of 2014, in which a mother and her two young daughters were discovered drowned. According to a statement that was made by the authorities,

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<sup>5</sup> Shaw, Susan M. (Susan Maxine), *et.al.*, *Women's Voices, Feminist Visions: Classic and Contemporary Readings* (Mc Graw Hill, New York, 5th edn., 2012).

<sup>6</sup> Radha R. Sharma, Rupali Pardasani, *et.al.*, "The Problem of Rape in India: A Multi-Dimensional Analysis" *International Journal of Managing Projects in Business* (2014).

the lady first drowned her two girls and then herself too as a result of her husband's relentless and aggressive requests for further dowry payments<sup>7</sup>.

- **Limited Public Amenities:** Furthermore, the restricted availability of secure and easily appropriate public amenities for women in India's public facilities and transportation networks is another manifestation of masculine prejudice in the country. The best example of unsafe public transportation system for women is “Nirbhaya Case” in Delhi, where a 23-year-old young woman, brutally assaulted and raped in a DTC bus at night on 16 December 2012<sup>8</sup>. An investigation that was conducted not so long ago in New Delhi revealed that there are around 1,534 public restrooms for males, whereas there are just 132 restrooms available for females. As a result of the fact that many of these facilities close at night, typically around nine o'clock, there is a lot of conjecture that this might be a means of subtly hinting that women shouldn't be outside the house after this hour. The curfew that has been established is extremely difficult to adhere to for a significant number of young women who are engaged in the field of telecommunications. Because of outsourcing in the United States, many jobs in the field of telecommunications observe the time schedule of the United States, which results in late hours in India. The public transport system in Mumbai is a good example of a minor project that has been successful in increasing women's sense of security and confidence. This is a positive development. Upon seeing the growing number of women travelling inside Mumbai, the transportation business came up with the idea of designing train carts that were exclusively dedicated for female passengers.

As a consequence of this, women have a sense of validation regarding their power to move freely and autonomously across the city.

- **Caste based discrimination:** Caste is a significant element that contributes to the high incidence of sexual assault against women. It is one of the important contributing factors. The long-standing caste system is a hierarchical framework that, on the basis of an individual's ancestry, determines the social tasks that they are expected to perform. There is a correlation between the upper castes and religion, in addition to honour and cleanliness. Upper-caste women have traditionally been compelled to maintain their purity in order to forestall the development of inter-caste relationships that may

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<sup>7</sup> Editorial, “Fed up with Additional Dowry Demands, Woman Drowns Daughters”, *Times of India*, Dec. 05, 2014, available at: <https://timesofindia.indiatimes.com/city/hyderabad/fed-up-with-additional-dowry-demands-woman-drowns-daughters-self/articleshow/45378871.cms>.

<sup>8</sup> Editorial, “What is Nirbhaya Case?”, *Times of India*, Dec. 18, 2019, available at: <https://timesofindia.indiatimes.com/india/what-is-nirbhaya-case/articleshow/72868430.cms>

potentially dismantle the existing power system. On the other hand, women from lower castes, particularly Dalit girls, are considered to have no social requirement for purity by society.

### **III. VIOLENCE RELATED TO WOMEN IN THE US**

Domestic abuse, homicide, sex trafficking, rape, and assault against women are all considered forms of violence against women in the United States. It is acknowledged as a matter of public health concern. The culture of the United States has resulted in the denigration of violence against women, and the media there may have played a role in the public's perception of women-directed violence as unimportant. Violence against women can result in long-term mental and physical health issues as well as immediate physical harm. Violence against women can have a detrimental impact on one's physical and mental well-being as well as disrupt family, job, and educational life. Violence can sometimes have fatal consequences. Youngsters who see violence run the risk of suffering psychological and physical health problems. Depending on their age, children may react differently to exposure.

#### **(A) Categories of violence**

- **Domestic violence:** The National Institute of Justice and the Centres for Disease Control and Prevention estimate that one in four women will at some point in their adult life face physical abuse at the hands of their partner. According to a 2007 study, over 64% of women have been murdered by a spouse or family member. Other behaviours that are deemed abusive might also be included in the category of intimate partner abuse. These are situations when one person tries to dominate the relationship, control the money, and compel the other to spend time apart from friends and family. Older women, women with impairments, women living in rural areas, and immigrants have all been identified as having a higher risk of domestic and sexual violence. It might be challenging to address and prevent this kind of assault since some women lack access to victim services. In addition, a woman may be dependent on the perpetrator psychologically and economically, as well as face language hurdles. In certain violent situations, a victim and her kids might not be able to afford accommodation other than that of the offender.
- **Rape:** There is disagreement among researchers over the exact number of women who experience sexual assault in the United States, however estimates range from 15% to 20%. (A study conducted in 2007 by the Justice Department on rape discovered an 18% rate; the 1995 National Violence Against Women Survey reported a prevalence of 17.6%. In 2008, there were about 500 rapes of women in the US every day. Gang rapes

account for about 21.8% of all rapes of victims who are women in the United States. According to a March 2013 report from the US Department of Justice's Bureau of Justice Statistics, there were 5.0 assaults per 1,000 women aged 12 or older, a 58% decrease in the anticipated yearly rate of female rape or sexual assault from 1995 to 2010. Law enforcement in the United States also manipulates rape statistics to "create the illusion of success in fighting violent crime," according to a 2014 study. It was discovered on investigation that it's very rare for the defendant to get convicted.

- **Sexual assault:** Rape and other sexual assault incidents per 100,000 persons each year the crime of sexual assault is distinct from other forms of assault. When it comes to sexual assault, the victim's ethical behaviour, conduct, resistance, and verbal declarations of unintentional participation are taken into consideration when determining the severity of the offence. Another form of assault, battery, is classified according to the attackers' intent and course of action. Whether or whether a crime has been perpetrated is not determined by the victim's reaction to this kind of assault. It is not necessary for the victim to provide proof of resistance, permission, or past punching behaviour. Moreover, even if sexual relations should be consensual, the debate about consenting assault muddies our concept of violence and harm. Changes in laws regarding certain sexual acts "may lead to the glorification of sexual violence".

#### **IV. VIOLENCE AGAINST WOMEN IN THE INDIA**

A harsh attitude towards women and their perceived weakness have been brought about by the rapid changes in lifestyle, social ethos, and economic standards. As a result, there is an increase in crimes against women. A lady must have suffered from female feticide prior to or even during her birth as a victim of this crime. The majority of women in India are ignorant of their legal rights and the remedies available to them in the event that those rights are violated. The IPC, 1860 acknowledges a number of offences against women, for which they have faced harsh penalties recently.

##### **(A) Categories of Violence**

- **Sexual harassment of women at workplace:** The purpose of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was to give women protection in the workplace. Vulgar behaviour is defined as any additional unwelcome physical contact, such as grasping, brushing, contacting, pressing, Eve trolling, legally undesirable passion or pestering, or recommendations for appropriate sexual behaviour from another person. Additionally, it covers the distribution and

appearance of single, specifically explicit visual materials, such as pictures, kiddie programmes, dream boats, schedules, screensavers, computer presentations, hostile text, vulgar messages, or any other kind of unwanted sexual lead, like late-night jokes that annoy or shame people, cause confusion, or make zealous remarks. The Visakha guidelines<sup>9</sup> for predicting obscene behaviour, which were issued by the Supreme Court of India, were superseded by this bill. Each office or branch of a business with ten or more employees must have a workplace complaints committee. Sections 294, 354, 354A, and 509 of the Indian Penal Code 1860 allow the victim to report something to the police.

- **Acid attack:** The act of hurling an abrasive or damaging material into another person's body with the intention of weakening, deforming, torturing, or performing is known as acid throwing, also known as acid attack. The perpetrators of these crimes often expose themselves and occasionally dissolve bones as a result of consuming corrosive sprays on their bodies, primarily on the faces. The IPC, 1860 has two sections that deal with throwing or attempting to throw corrosive separately and knowingly causing grave damage.
- **Rape:** The most heinous and brutal crime against women is rape. In India, it ranks as the fourth most frequent crime. The definition of assault in Section 375 of the IPC, which addresses rape, is "having sex with a woman, despite her consent, by coercion, distorting or misrepresentation or when she is drunk or deceived" or "when she is of poor psychological well-being," despite the fact that the girl is under the age of 18. The predicament of a woman without her agreement, without pressure, deception, or fear is, to put it simply, the crime of rape. In general, it is the inadvertent forced coitus—the admission to any of the tiniest stages of the male reproductive organ—of any female.
- **Domestic violence:** According to Domestic Violence Act of 2005, section 12, a petition to a magistrate may be recorded. The Magistrate must grant the request. The husband or members of his family may object under section 498A for dowry together with cruelty. The Supreme Court examined the definition of "shared family unit" in *SR Batra Vs. Tarun Batra*<sup>10</sup>. This definition includes a home with a spouse, a leased space, or a home with a joint group along with the husband. It can't be regarded as joint family property if it is a relative's selective property. A woman is neither guaranteed nor qualified to live

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<sup>9</sup> *Vishaka v. State of Rajasthan*, AIR 1997 SUPREME COURT 3011

<sup>10</sup> *SR Batra v. Tarun Batra*, AIR 2007 SC 1088

in her in-law's home under the Domestic Violence Act. this was upheld by a Delhi court in *Sudha Mishra v Surya Chandra Mishra*<sup>11</sup>.

- **Dowry demand:** Another clause, clause 498A, was integrated in the Indian Penal Code to lessen the growing occurrences of dowry harassment and killing. Section 198A was subsequently introduced to the CrPc in 1983. Women are now further protected from inheritance stimulation thanks to the 2005 passage of the Protection of Women from Domestic Violence Act. The IPC, 1860 was amended to include Section 304B, which rendered endowments guilty of a specific offence and subjected them to life imprisonment, the longest possible sentence. Furthermore, Section 4 of the Dowry Prohibition Act, 1961 restricts to pay the interest on dowries, whether they are asked before or after marriage and even in the absence of mercy.
- **Pornography:** Erotic and vulgar entertainment is defined as written or visual content that, in the eyes of a conscientious reader, animates sexual excitement or appears sexy by means of explicit portrayals or demonstrations of sex organs or action. The proliferation of illicit websites with graphic and profane content is a result of the increased usage of data innovation, such as the Internet and specialised devices. Although there are no specific Acts in India that regulate obscenity or erotic entertainment, the dissemination or transmission of hostile and vulgar material is illegal under a number of different prohibitions. The Indecent Representation of Women (Prohibition) Act, 1986, Section 6[1].

## V. RIGHTS OF A RAPE VICTIM

- **Right to Zero FIR:** This refers to the ability to file a police report in any police station, regardless of the jurisdiction's location of the occurrence.
- **Free Medical care:** The CrPC, section 357C, prohibits private or public hospitals from charging for the care of rape victims.
- **No two-finger test:** During a medical examination, no doctor is allowed to do a two-finger test.
- **Right to Compensation:** Section 357A of the CrPC, which outlines the victim recompense programme, is a new provision.

## VI. COMPARISON OF RAPE LAWS IN BOTH NATIONS

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<sup>11</sup> *Sudha Mishra v. Surya Chandra*, RFA 299/2014

There are several significant parallels and discrepancies between the rape laws of the USA and India. Since Lord Macaulay authored both the original constitutions for the United States and India, the laws regarding rape were the same when the two nations gained their independence in 1947. As a result, the legislation has not changed throughout the decades.

The USA Penal Code's sections 375 and 376 have been repealed, among other modifications to the legislation throughout time. Due to the fact that rape victims are sometimes imprisoned for crimes they have never done before, such adultery or other felonies, rape-related injustice has been more common in America than in India. Section 375 applies to the same circumstances in both nations; however, India has two more situations. According to the Indian Penal Code, "With his consent, when, at the time of giving such consent, he is unable to understand the nature of is unable and the consequences thereof to which she consents, due to unsoundness of mind or intoxication, or due to the administration by him personally of any other foolish or injurious substance."

The woman fails to express her permission; thus, this is an addition. In India, the age of consent to enter is 18, however for females under the age of sixteen, it is 16. Here, permission and the labia majora's inclusion in penetration are further explained under the Indian Penal Code. Under the eighteen years of age (the first fifteen years of life), marital rape is not legal in India and under the age of sixteen in the United States. These are the specific distinctions in the two nations' rape laws. Since they follow clear regulations that don't encompass a wide range of scenarios, this provides US court judges more discretion in their rulings.

It is therefore crucial to pay close attention to how he interprets the law. Because rape laws in India are severe and prescient, they have codified a variety of conceivable conditions, giving judges there relatively little discretion in making decisions. The United Nations Special Reporter on Violence Against Women, Rashida Manju, noted advancements in 2011 about violence against women in the US, but she omitted information about immigrants, Native Americans, African Americans, and people serving in the armed forces as well as those incarcerated. I also offered suggestions.

These are the main distinctions in the two nations' rape laws, while there are also many parallels and variances between them. 1,181 women were killed by intimate partners in 2005.

That is, three ladies on average every day. Almost one-third of all American women who died in homicide did so at the hands of an intimate partner. 2006. In the US, 232,960 women were victims of sexual assault or rape, according to the National Crime Victims Survey, which also involves offences that went unreported to the police. More than 600 ladies a day, that is. Some

estimates, like the FBI's, are far lower as they rely on information from law enforcement organisations. Because of the intimate nature of the act and the victim's belief that nothing can be done, a sizable portion of crimes go unreported.

The National Coalition of Anti-abuse Programmes states that there is still a dearth of reports of domestic abuse against LGBT people. Its significance is denied and there is little knowledge." The prevalence of sexual assault and rape is alarmingly high, endangering the health and welfare of women. According to a 2011 research that examined NISVS data, 43.9 percent of American women had experienced sexual violence other than rape, and 19.3% of females got raped at some time in their life.

The offender is frequently someone the victim knows: According to a survey conducted by Briding et al. (2014), nearly half of the female rape victims reported having at least one acquaintance-level offender, and a comparable percentage, 45.4%, stated their intimate partner was the offender.

## **VII. CONCLUSION**

After comparing the two nations' legal systems, it appears that the Indian Penal Code's provisions on rape are more thoroughly drafted. This is due to the fact that it leaves little space for ambiguity and appears to have grown and changed since independence by taking in accidents, morals, and public opinion. Consequently, it appears to have been more widely discussed, making it unlikely that facts would be widely misconstrued or distorted. With each unfortunate rape episode, it appears to have changed, adding more and more clauses and justifications to safeguard the public's interests and those of the vulnerable in particular. In light of this, the authors claim that it is more thorough and balanced than the rape provision of the USA Penal Code.

The USA Penal Code contains very few measures that fail to reflect the government's determination to lower the horrifying rape rates. Since independence, several of the clauses have remained unchanged and are therefore somewhat antiquated. The fact that there have been no rape-related legal revisions indicates both the standstill of social progress and the predicament of American women who are not given adequate care and protection. In India, there are around 186,212 cases of crime which got registered against women that are still under investigation as of the end of 2018, out of the 378,277 cases of crime registered against women that have been actually testified in. The National Crime Records Bureau releases these statistics. New Delhi, the nation's capital, is still regarded as India's least safe city.

Comparing the rules of India to those in other foreign countries, the former have less of a

deterrent effect. In addition to the fact that the penalties in those nations are significantly harsher than those in our own, the ineffectiveness of our legal system also works against the administration of justice. Even if every offence listed in the penal code, including murder, dacoity, cheating, etc., can happen to a woman, the sole offences against women are those that are specifically committed against women or those that are directly related to them. As. These offences may be covered by special or municipal legislation, both of which have the goal of outlawing any misconduct against women, or they may be covered by the Indian Penal Code.

The IPC addresses an array of crimes against women, yet it is missing something. For these offences, separate courts ought to be established in order to guarantee prompt judgement and experience handling delicate situations. It's time to stand up for our nation's women and take measures since prosperity never flourishes in places where women are mistreated. The morals and concepts that our history has imparted to us through the great Indian literature need to be relearned. Women were revered as goddesses in history of India; we must revive this lost tradition. By schooling people and altering the parenting style that is prevalent in our culture, this goal can come true. It's time to let go of your ingrained attitudes towards women and see things in the context of knowledge and understanding. Now women should be given freedom to do their part.

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