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A Multi-Dimensional Analysis of Laws Related to Rape

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INTRODUCTION

The crimes of rape and sexual misconduct have increased frequently during the previous few decades. There may be several causes for the increase in crime. The subjective and objective approaches are the two primary categories into which the variables relating to rape and sexual harassment may be classified. Anthropological, medical, biological, psychological, psychiatric, and analytical approaches are some examples of subjective approaches. Geographical, ecological, economic, social, sociological, and cultural aspects are all included in the objective methods. The social and economic factors are the most crucial of the casual elements. However, the most discouraging aspect is that, in many parts of the nation's male-dominated society, women continue to lack access to fundamental rights and are viewed as instruments for gratifying male needs.

RESEARCH OBJECTIVES

The researcher carried out the investigation, as mentioned earlier, with the following goals in mind:

1. To understand the status of women generally and the sexual offenses perpetrated against them.
2. To study the victims and dimensions of rape
3. To study the legislative framework concerning sexual violence against women, especially rape
4. To study the judicial approach concerning sexual violence against women, particularly rape

HYPOTHESIS

According to theories drawn from the liberation hypothesis, the consensus hypothesis, and the feminist conflict theory, several factors predicting arrest in rape cases have been examined. Regardless of legal considerations, extra-legal factors, according to feminist conflict theorists, affect the police's judgments. The consensus approach contends, in contrast, that legally significant

factors will have the most influence on policy choices. According to the emancipation hypothesis, the weight of the evidence and the gravity of the offense determine how much of impact extra-legal factors have on policy choices. The emancipation hypothesis is not supported by the findings of a legitimate regression study on arrest utilizing police archival data. As the level of intimacy between the suspect and victim rises, the feminist conflict theory accurately predicts a decline in the chance of an arrest.

RESEARCH QUESTIONS

- a) What is the historical context of the current laws governing India's rape justice system?
- b) What statutes and clauses of the Indian Constitution apply to the rape justice system?
- c) What is the Indian legal viewpoint on rape and its justice system?
- d) Describe a comparative analysis of the rape justice systems in other nations.

RESEARCH METHODOLOGY

Content analysis and descriptive methodology were used to carry out this study. The current research is doctrinal, non-empirical, descriptive, and analytical, and it entails reading a lot of published material, including academic publications that have been published and the archives of public libraries.

The proposed research will use the following research materials:

- 1) The critical research information sources will include textbooks, research papers, and reports issued by any institution, public library, government agency, or ministry.
- 2) The primary source of the study material would include decisions made by various courts of law in India and elsewhere, as well as statutes and codes from other nations, including India.
- 3) The secondary research materials will be research articles and papers published online by people, online blogs and debates, and research work presented at national and international seminars and discussions but have yet to publish political-administrative and private documents.
- 4) For the aim of this research, various manuals, periodicals, commentaries and digests, observations of court rulings, and legislative debates will also be studied as secondary sources.

LITERATURE REVIEW

Only research conducted after analyzing the body of knowledge on the topic may add something to the body of knowledge already in existence. To narrow the scope of the current research and keep this basic concept in mind, the researcher will examine the contents of the existing literature on insanity and take note of the numerous works that have been produced on the issue. Rape is multifaceted and multidimensional, according to a survey of theoretical viewpoints, research studies, reports, and reviews of federal, national, and international organizations.

The dissertation "An Analytical Study of the Rape Law and its Impact" compares the sentencing practices of the courts in various common law nations. The thesis first examines the gravity of the offense by reviewing the medical literature on the psychological and physical impacts of rape. The victim's participation in sentencing is also considered, along with the legal and philosophical literature on the wrongness of rape. It also lists the features of rape, its components, kinds, statistical information on rape, the victim's mental health, and its effects on crime or delinquency. Laws dealing to rape, its punishment in the court system, and the international rape instruments

COMPARATIVE ANALYSIS OF LAWS RELATED TO RAPE BETWEEN DIFFERENT COUNTRIES

A comparison of the rape laws in the UK, Canada, and India reveals some positive developments that deserve commendation and some issues that need to be fixed. To give rape victims' rights and opinions greater weight within the criminal justice system and allied organizations, India's rape laws and regulations have altered. The definition of rape has broadened to encompass more consent to a greater extent. Among other new offenses, there are no consequences for serial perpetrators or gang rape. Every jurisdiction that offers benefits to rape victims has systems for victim compensation. Considering the fine is fair and just enough to pay the victim's medical costs, any further penalties inflicted on the offender must be remitted directly to the victim. First, assistance and medical care are provided without charge. Police and medical workers are held more accountable for treating rape victims.

The statutory rape laws in India have improved over time, yet they still lack several essential components. The surgically produced vagina was added to the definition of rape in the Sexual Offences Act of 2003, which now includes transgender persons. However, the Indian Penal Code's definition of rape under section 375 uses

just the term "woman," implying that this provision only pertains to one gender. Second, due to the Sexual Offences Act of 2003's expansion of its scope, any British citizen who commits rape beyond British territory would face the same penalties as if he did it on home soil. Indian law prohibits the investigation of an Indian for rape committed outside of Indian territory. Thus, India should adopt concepts from modern nations to improve its laws and broaden the scope of how they are implemented in all facets of society.

INDIAN LEGAL VIEWPOINT ON RAPE AND ITS JUSTICE SYSTEM

Rape is a severe crime in India, where the collision of statutory law and judicial interpretation shapes the legal framework. The most significant legal framework for managing sexual assault is the Indian Penal Code (IPC), which has undergone several amendments to enhance the legal system for rape victims.

Rape, as defined by India, is any sexual activity that is not consensual or is done without the victim's authorization. In 2013, the legislation included additional definitions of sexual harassment, including marital rape, and tougher punishments, such as the death penalty, were applied in some severe circumstances.

The Indian court system has worked to give rape victims' rights and dignity top priority. Fast Track and Special Courts were created as specialized courts to accelerate rape cases and offer a more victim-friendly setting. Provisions for preserving survivors' identities have also been added due to legal amendments.

However, difficulties persist. The justice system has problems with underreporting, insensitive case treatment, societal stigma, and delayed trials. The necessity for additional legislative changes, such as more vigorous enforcement and better support networks for survivors, is a topic of continuous discussion.

In conclusion, India's legal perspective on rape has developed to offer severe penalties and protections for victims, seeing it as a horrific crime. Despite advancements, the court system continues to face many difficulties, demanding continuing efforts to enhance the overall handling of rape cases.

COMPARATIVE ANALYSIS OF ORIGINAL AND AMENDED SECTION 375

The original Section 375, which was inserted in IPC, 1860, defined

Rape as:-

“A male is deemed to have committed "rape" if, except the situations specifically mentioned below, he engages in sexual activity with a woman in any of the six situations listed below 1) Against her will, 2) without her consent, 3) with her consent, when it was obtained by putting her or anyone she cares about in fear of death or harm, or 4) with her consent, when the man knew he wasn't her husband but she gave her consent because she thought he was another man to whom she was or thought herself to be lawfully married, 5) With or without her consent, if she is under the age of sixteen. 6) With her consent, if, at the time of giving such consent, she is incapable of understanding the nature and consequences of that to which she gives consent due to unsoundness of mind, intoxication, or the administration by him personally or through another of any stupefying or unwholesome substance. Explanation: Penetration is sufficient to count as the required sexual contact for the crime of rape.”

Since any other type of sexual assault wasn't regarded as terrible as simply vaginal penetration, the original definition of rape was imprecise and crude in character, resulting in a meager conviction rate. The following is a quick overview of significant criminal law revisions to laws about rape. However, several criminal law amendments have significantly altered the concept of rape.

A. Criminal Law (Second Amendment) Act, 1983

This amendment was made in response to public outrage over the infamous ruling by the Supreme Court in the Tuka Ram and Anr v. State of Maharashtra case, also known as the Mathura rape case, in which a young girl was raped while being held by the police. The Bombay High Court had found the accused guilty, but the Supreme Court overturned the decision after an SLP was filed because Mathura offered no resistance and was already used to having sex. This incorrect ruling by the supreme court sparked widespread protests by NGOs and social activists, which resulted in the following changes to the rape provision:

- In the newly introduced Section 114 A of the Indian Evidence Act, it is stated that the court shall infer that the victim did not provide her permission where the victim's sexual intercourse with the accused is proven. The victim testified that she did not give her consent directly or indirectly.

- Custodial rape is now punished by at least seven years in prison under Section 376, which deals with the punishment for the rape offense.
- Section 228A of the IPC was added, making it illegal to publish the names of rape victims and punishable by up to two years in jail.
- The addition of 327(2) also mandated that trials for rape cases be held behind closed doors.

B. Criminal Law Amendment Act, 2013

Advocates for human rights and a number of women's organisations asked for harsher and more expedient rules against rape. The consequence was that the parliament approved the Criminal Law Amendment Act, 2013, popularly known as the Anti-Rape Bill, and it became effective on March 3, 2013. This was in reaction to the numerous demonstrations against India's deficient rape laws, which were made public following the horrifying rape and death of Nirbhaya in December 2012. The following Amendments were made:

- Several additional sections were added that dealt explicitly with different types of sexual offenses, such as stalking (354D), sexual harassment (354A), and assault or use of force against a woman to cause her to undress (354B).
- To broaden the definition of rape under section 375, oral sex and penetration by any object and manipulation of the woman's body to cause penetration were added. The report was expanded to include manipulating the woman's body to drive penetration.
- Permission was redefined as "unequivocal voluntary agreement" in a new explanation, meaning that the lack of opposition does not imply the presence of permission. The age of consent was also raised from 16 to 18 years.
- Procedural law was also modified. For example, section 154(1) of the Criminal Procedure Code, which deals with FIRs, was amended so that, in certain circumstances (such as rape), a woman police officer must include it. In addition, if the victim is physically or mentally disabled, the FIR must be recorded at the victim's home or a location of her choosing in the presence of a special needs interpreter, if necessary.
- Additionally, several provisions of the Indian Evidence Act were altered. For example, section 53A was inserted, which states that any evidence about the victim's prior sexual history or character should not be relevant on the

issue of such consent where the issue of consent is one of consent.

C. Criminal Law Amendment Act, 2018

One would believe that the evolution of rape laws would guarantee a safer environment for women in our nation because of several revisions to make rape provisions more stringent. Still, alas, this is not the case. The Kathua and Unnao rape cases reignited public sentiment to end the pervasive rape culture, which led to the Criminal Law Amendment Act 2018, being drafted and entering into force on August 11, 2018. India has seen several upsetting rape incidents, but two, in particular, stand out and prompted another criminal law amendment to rape-related provisions. The following rape statutes were modified by the unlawful modification Act of 2018:

- To raise the punishment when rape is perpetrated against a minor, additional provisions, including section 376 of the IPC, 1860, were added to the punishment section. A new section, Section 376AB¹², was inserted that details the penalties for raping a victim under the age of 12. The minimum sentence under Section 376AB is 20 years, life in prison (for the rest of the person's natural life), or the death penalty.
- The investigative term for all rape cases was shortened from three months to two months, especially in situations involving minors, to guarantee that justice was delivered in a fair amount of time. Additionally, anticipatory bail under section 438 is not permitted in cases of rape of a minor (under 16 years old).
- Sections 53A and 146 of the Indian Evidence Act of 1872 have been revised to allow them to be used in individual and group rape cases of juveniles under 16.

SHORTCOMINGS OF PRESENT RAPE LAWS

India's rape laws have been significantly modified to fit community values and opinions. Despite the advancements, serious questions exist about how well these laws are now working to combat the widespread problem of rape in the nation.

The exception for marital rape in India's rape legislation is its most blatant omission. As long as the wife is over fifteen, a man's sexual activity with his wife is not regarded as rape. This exception, which condones sexual abuse in marriage, creates a culture of

impunity and is thus highly problematic. By international human rights norms that recognize rape inside marriage as a violation of a person's rights and dignity, the Verma Committee proposed eliminating this loophole in its thorough report. Sadly, this suggestion is still unmet, leaving several married women open to sexual assault.

The absence of proportionality in rape offense sentencing raises another problem. The 2018 Criminal Law Amendment Act mandated a minimum of 10 years in solitary confinement to heighten the severity of punishment. However, this amendment may unintentionally undercut the proportionality principle. A one-size-fits-all approach to sentencing may not appropriately consider the different levels of severity in rape situations. To guarantee that sentences are more appropriately proportionate to the seriousness of the offense, a more sophisticated approach may be necessary to distinguish between rape simpliciter and aggravated types of rape.

Another topic that has generated controversy is the use of gender-specific wording in the definition of rape in Section 375 of the Indian Penal Code. While maintaining the term "man" for criminals, the Justice Verma Committee had suggested adopting gender-neutral language like "person" for victims. However, opposition to this idea was encountered due to worries that gender-neutral language would be discriminatory towards women. However, it is crucial to understand that anybody can be the victim of sexual assault. Adopting gender-neutral terminology might result in a legal framework that is more inclusive and better addresses the varied experiences of survivors.

Additionally, a worrying difference is highlighted by the meeting point of rape statutes and the Protection of Children from Sexual Offences (POCSO) Act. Although the POCSO Act was passed to offer equal protection to all kids, regardless of gender, there is still a disparity in penalty depending on the victim's gender. The POCSO Act, which aims to protect children from sexual offenses without distinction, is undermined by this contradiction.

Although India's rape laws have made significant progress, they are nevertheless riddled with issues that limit their ability to stop the culture of rape. The legal system must change to eliminate exclusions, guarantee appropriate punishment, adopt gender-neutral terminology, and be in line with other legislation like the POCSO Act to handle this urgent problem effectively. India can only effectively tackle sexual assault with fundamental change and a dedication to adapt to shifting societal standards. Bhagwati articulately remarked that the law must advance with society

rather than lag in achieving fairness and safety for all.

STEPS TO OVERCOME THE SHORTCOMINGS

A comprehensive and multifaceted approach is necessary to combat the rising issue of rape in India. This strategy should incorporate governmental reforms, social reforms, and cultural change.

Reforms to the law are essential in the fight against rape. The first step is gender-neutralizing the legal language by designating a victim as a "person" rather than a "woman." The contradiction between Section 376 of the Indian Penal Code and the Protection of Children from Sexual Offences (POCSO) Act would be resolved by this modification, which would align with the recommendations of the Justice Verma Committee of 2013. Furthermore, it is past time to make marital rape a crime. The Section 375 exemption, which exempts from punishment any sexual activity with a wife who is not under the age of 15, breaches fundamental rights and has to be repealed.

However, addressing the pervasive problem of violence against women through legal measures alone is insufficient. Two urgent issues are the low conviction rate and the backlog of rape cases. To speed up justice, fast-track courts for sexual offense cases must be established. Additionally, a substantial increase in the number of judges is required to manage the voluminous workload and avoid public cynicism towards the judiciary.

Beyond legal and legislative changes, there has to be a fundamental shift in how society views gender, masculinity, and feminism. A complete revamp of the Indian educational system is necessary to accomplish this. It is essential to incorporate topics like sex education, frequently seen as cultural taboos, into the curriculum. Gender-sensitive education should be provided for both instructors and students. To promote a culture that respects gender equality and recognizes the value of consent and limits, it is critical to implement policies such as the International guidelines on sex education offered by UNESCO.

Combating the culture of rape in India necessitates a multidimensional strategy incorporating judicial reforms, legislative amendments, and a significant change in community attitudes and educational standards. India can only expect to give its residents a safer and more egalitarian environment by addressing the issue from all these perspectives.

CONCLUSION

According to the study, rape is better understood as a crime of power rather than passion. Rape is the most overt type of violence against women since it is not only a sexual act. In India, virginity and chastity are seen as major female strengths, and losing one's virginity—by choice or force—is a serious disadvantage. The woman receives harsh criticism and condemnation for losing her virginity after being raped. The raped woman is burdened with guilt for no fault of her own and her sense of personal disgrace. In a culture like ours, where chastity is prized more than intelligence, a victim of rape feels embarrassed and reluctant to name the offender. Rape is a severe issue, but regrettably, it is not generating substantial debates. The legislature should step in and investigate the issues at hand. In these circumstances, the courts' function becomes more significant, and it is believed that they will approach these cases more realistically. Judicial decisions can persuade the government to establish the necessary measures to address a gap in the current law and in certain cases even to force it to do so.

The quote by Dr. B.R. Ambedkar about gauging a community's progress by the advancements made by women serves as a sharp reminder of the present status of sexual violence against women in India. Despite several changes to the penal statutes, the legislature has frequently disregarded important suggestions from findings like the Justice Verma Committee. This neglect has brought tragic situations like Nirbhaya, Kathua, and Unnao.

The three branches of the government must work together to solve the problem. The legislature must implement the Justice Verma Committee's recommendations to close the gaps in sections 375 and 376 of the Indian Penal Code. The judiciary should deploy retired judges as ad hoc judges to ensure prompt justice delivery to manage the massive backlog of cases. Law enforcement organizations require sensitivity training from the executive, especially when dealing with sexual offense charges. It is also critical to update the school curriculum to incorporate lessons on gender awareness and sensitivity training.

India can only expect to give its residents a better and healthier environment through this multidimensional strategy, with all government departments working harmoniously, finally displaying actual improvement in the National Crime Records Bureau figures.

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