

Socio-Legal Tolerance of Rape Trials in India

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ABSTRACT

In many regions of India, rape is seen as a question of family honour rather than a criminal conduct against an individual. This frequently results in underreporting of crimes and social pressure on victims to keep silent. Many rape cases are dismissed or weakened as a result of cultural beliefs that blame the victim, particularly when the victim's behaviour, dress, or lifestyle are examined. Deeply rooted patriarchal standards influence how rape cases are seen. Women, especially those from marginalized groups, frequently endure institutional discrimination. Long trials, procedural delays, and an overworked judicial system might discourage victims from seeking justice. Frequently, the courts and law enforcement are unprepared to address sensitive problems surrounding rape prosecutions. Insensitive probing, character assassination against the victim, and inappropriate management of evidence. Despite legislative measures such as the Criminal Law (Amendment) Act of 2013, which strengthened rape legislation, defence attorneys can still use loopholes to postpone or reject cases. In some circumstances, media attention contributes to quick justice, while in others, it causes more agony for the sufferer. It is crucial to investigate discrepancies in how rape trials are handled in urban and rural India, as well as geographical variances in police effectiveness and legal literacy.

Keywords: Victim blaming, Institutional discrimination, Long trials, police effectiveness.

INTRODUCTION

Rape remains one of the most horrific crimes, not only because of the physical and psychological devastation inflicted on the victim, but also because of the structural barriers victims confront in obtaining justice. Rape cases in India are complicated, reflecting the judicial system's socio-cultural prejudices. Despite progressive legislation such as the Criminal Law (Amendment) Act of 2013, which expanded the definition of sexual assault and imposed harsher penalties, rape cases continue to be plagued by large procedural delays, societal shame, and variable court results. Victims, particularly women, face two trials: one in the courts and

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one in the court of public opinion, where patriarchal standards frequently shift responsibility onto them. The interaction of social hierarchy, gender prejudices, and legal shortcomings adds to a culture of impunity in which many criminals avoid prosecution. This study aims to critically investigate the varied character of rape cases in India, with an emphasis on the structural impediments, cultural stigmas, and legal shortcomings that continue to obstruct justice for survivors. This study attempts to provide insight into the structural reforms necessary to build a more responsive and victim-centric legal framework by investigating landmark cases, judge attitudes, and reform impact.

STATEMENT OF THE PROBLEM

According to the NCRB, a crime of rape is one of the most underreported yet the most common ones in India. Although legislations have been reformed, and awareness brought about among the general public, cases of rapes are on the rise steadily, with more than 32,000 cases being registered annually recently. However, this forms only the tip of the iceberg because many incidents go unreported owing to social stigma, family pressures, and also for fear of acts against them.

From 2012, the Delhi gang rape case brought unprecedented national and international attention to the notice of every citizen in the country, followed by widespread protests as well as reform in the legal structure. Yet, cases where such systemic tolerance continues exist. Very often, rape victims experience secondary victimisation in the courts when they are made to endure a test of their character, conduct, and private lives. Re-traumatization compels most of them to step out of the judicial process or surrender to settlements. Rather than preserving the sanctity of justice, the legal machinery nurtures a culture of tolerance by allowing victim-blaming narratives and a lack of support mechanisms.

It further marginalizes and exposes the survivors to threats, intimidation, and prolonged psychic trauma in the entire process of trial, mainly due to the lack of legal aid, counseling services, and victim protection programs. Legal tolerance is usually more pronounced during cases involving powerful or influential individuals. Rape cases involving politicians, celebrities, or rich people are highly indicative of an almost disturbing pattern where the power play and corruption dictate the course of legal processes. Such cases are often interfered with

by political or social forces, in which either justice is stalled, or the case is dismissed due to pressure or bribery.

Such an atmosphere leads to impunity among perpetrators and feeling helpless among victims, thereby brewing the culture of tolerance toward rape in the Indian legal system.

Crimes like rape have become disturbingly common, with the incidents being frequently reported in daily newspapers. The patriarchal structure and controlled setup of the Indian society, with the “dominating nature” of men in the society have worsened the plight of rape survivors. One of the biggest hurdles in securing justice in the Indian judicial system itself. The principle of the accused being innocent until proven guilty often results in a lower conviction rate, adding to the survivor’s trauma. Furthermore, the rape survivors not only endure the ordeal of legal proceedings but also face a public trial but also face a public trial of people, with society attaching stigma and shame to them. They are often accused of filing false cases, even though the mere failure of the prosecution to conclusively prove the crime does not itself prove that rape has been committed. In many cases, the victims are children under the age of 16, with girls as young as 13 or 14 years sometimes found pregnant, and the FIR being filed only when a medical examination reveals the pregnancy. Cases of family abuse are just as prevalent as stranger abuse, and these cases are often reported after months or even years of ongoing abuse. The procedural safeguards meant to protect the accused often end up feeling like procedural persecution for survivors., thereby, making the justice process even more harrowing. Rape remains one of the most controversial issues and underreported crimes, posing a challenge to the contemporary legal and social systems.

LAWS GOVERNING RAPE IN INDIA

Following the Nirbhaya case-after the brutal gang-rape and murder of a young woman in Delhi-following the tragic aftermath of that occurrence; rape laws in India were amended in 2013 for more stringent punishment of offenders and greater protection and security for women.

Definition of Rape: The Indian Penal Code (“IPC”) defines rape as non-consensual sexual intercourse. A woman's consent is deemed to be involuntary if it has been obtained by force, threat, intimidation, deception, or at a time when she was incapable of giving consent.

Penalty: The punishment imposed for rape is imprisonment seven years to life imprisonment. In such cases when the victim is a minor or in case the offense leads to the death of the victim

or causes her to be in a vegetative state, then the punishment can be a minimum of 20 years of imprisonment or life imprisonment.

Marital Rape: In India, marital rape is not explicitly recognized as a criminal offence. Most importantly, the Supreme Court articulated that a wife has the right to refuse sexual intercourse by her husband without her consent. The issue of marital rape is still being considered by the government and the judiciary.

Protection of Victim: Criminal Law (Amendment) Act, 2013 provides special provision for the protection of victim rape. An unreserved right is prohibited through print media, electronic media, and social media not to disclose any identity of a victim. Fast Track Courts: There are fast track courts devised by the government to ensure speedy delivery of justice in rape cases. They are expected to decide such cases within six months of filing the charge sheet.

Consent: Consent is a very relevant issue in the case of rape. The law requires that sexual intercourse must be by consent and the non-consent would make the act rape. The non-consent by the victim can be inferred through the age, the mental condition, among others, that will impair her ability to give such consent.

Child Sexual Abuse: The Protection of Children from Sexual Offences Act, 2012 (“POCSO”) deals with crimes committed against children in the aspect of sexual offenses. It defines a child as a person below the age of 18 years and provides for stringent punishment for sexual offences against children, which includes rape.

Provisions regarding rape laws in India have, over the years been strengthened to make the country a safer place for women. There are different strategies that the government has adopted to provide fast justice to rape victims as well as severe punishment to offenders. However, there is a long way to go to eradicate this very heinous crime and to make it a safe country for women in India.⁵¹

⁵¹ Geetanjali Gangoli, *Controlling Women's Sexuality: Rape Law in India*, in International Approaches to Rape, 101, 101-120 (2011), https://www.researchgate.net/publication/370522880_Controlling_women's_sexuality_rape_law_in_India.

PUNISHMENTS FOR RAPE (SECTION 64 OF BNS)

Imprisonment for a term not less than 10 years, which can extend to life imprisonment, imprisonment for the remainder of the offender's natural life. A fine may also be imposed, which can be directed towards compensating the victim.

Punishment for Aggravated Rape: Aggravated rape involves circumstances that increase the severity of the crime, similar to those mentioned under Section 376(2) of the IPC. Rape committed by a public servant or someone in a position of authority, such as a police officer, doctor, or teacher. Rape of a woman under the age of 16 years. Gang rape, when the crime is committed by more than one person acting together. Rape committed on a pregnant woman or causing grievous injury to the victim. Rape during communal or sectarian violence. Punishment: Rigorous imprisonment for not less than 20 years, which may extend to life imprisonment or death penalty in extreme cases (for example, in cases involving the rape of minors or gang rape).

OBJECTIVES OF THE STUDY

The specific objectives of the evaluation study include the assessments / examination of the meaning, affects, role of government and associations for rape victims in India.

Research questions

1. What are the major factors that delay justice in rape cases, thereby delaying the delivery of justice to survivors of rape in India?
2. How does victim-blaming by law enforcement and judiciary affect legal outcomes in rape cases in India?
3. Does the power and influence of the perpetrators impact legal processes and, therefore, justice delivery in India?

METHODOLOGY

Claims in this article are supported by aspects that are both described and analytically treated. From a large number of secondary sources, mainly articles from newspapers and magazines, reports based on investigations, and other studies somehow similar to those, will be used endlessly in this work.

RESULT

Rape: Socio- Legal Challenge on India

Over the past decades, India has witnessed significant changes in the social structure of the society, driven by the clash between traditional values and the progressive mindset of the newer generation. This shift has influenced the nature and pattern of crimes committed in the country. In response, there is an urgent need for judicial reform along with a broader change in the societal mentality. Educating people to view women as individuals with equal dignity rather than as commodities is essential to promoting and enforcing women's rights.

The responsibility for protecting women should rest solely with the police authorities but also with the general public. Legal reforms alone are insufficient, transformation in mindset is equally crucial to prevent the victimization of rape survivors. Although laws have been strengthened aftermath of horrific incidents, their enforcement at the ground level remains inadequate, as evidenced by the increasing number of cases every year.

One of the major issues with the current framework is that it is not watertight. Lawmakers have consistently failed to eliminate loopholes in the laws they enact. For instance, the lack of gender neutrality in definition of offences such as disrobing, voyeurism and rape, the absence of martial rape laws, inadequate compensation for victims of rape, and inconsistencies regarding the age of consent are glaring shortcomings. Recognizing these flaws, political leaders like Sushma Swaraj asked for stricter and more effective laws. Similarly, Shailendra Kumar and Sharad Yadav warned against the potential misuse of such laws against men. In contrast, SP chief Mulayam Singh Yadav vehemently opposed the anti-rape bill too, citing concerns over its misuse.

Unfortunately, it often takes gruesome incidents for the legislature to realize the need for reforms. The Mathura Rape Case and the tragic death of Damini (Nirbhaya) are stark reminders of this pattern. Such instances show the failure of the legislature to proactively strengthen the legal system, which has, over the years, eroded the common man's faith in it. To address this, the legislature must undertake a comprehensive review of the law-making process, ensuring that the legal framework is both effective and free of loopholes. Much has been already said on the present laws, it's high time that the legislature realizes its responsibility.

Social perspective on rape: Attitudes of society towards rape can be broadly divided into three subgroups. The first approach attributes the blame to the perpetrator and identifies three primary causes of rape: male sexuality, male pathology, and male hostility. The male sexuality theory suggests that men are unable to control their sexual urges, while male pathology view perceives rapists as individuals suffering from mental disorders. The male hostility perspective, on the other hand, links rape to a deep-seated hatred or resentment towards women. Interestingly, although the first two causes hold men accountable for the crime, they also shift the responsibility of prevention onto the victims. The belief that men cannot suppress their sex desires indirectly blames women for creating situations that could arouse men –implying they should take measures to avoid such scenarios. Similarly, the male pathology argument suggests that rapists can be identified, hence, making it the women's responsibility to remain vigilant. However, mere identification may be of little help, as the victim may not be in a position to defend herself. Male hostility is often viewed as the driving factor in cases of stranger-perpetrated rape. The second approach places the blame on the victim herself, “female precipitation”. This perspective is deeply rooted in male chauvinism, which holds women responsible for creating an environment that is conducive to rape. Actions such as dressing provocatively, socializing with male friends and consuming alcohol are seen as inviting sexual violence. The theories of male sexuality, male pathology and female precipitating that put the responsibility for prevention on the victim and exonerate the perpetrator are quite aptly called ‘rape myths’. All three rape myths are present in our society and contribute to the high incidence of rape in India. The third approach holds society itself accountable for rape, attributing the crime to gender inequality and male supremacy. This viewpoint showcases how rape is still used as tool to punish and subjugate women, often sanctioned by the community. A stark example this is the recent gang rape of a 20-year-old woman in West Bengal, which was ordered by a village panchayat, it remind us of the fact that rape is acceptable as punishment by and even the verdict of society.

Social and economic factors: Several social and economic factors contribute to the high incidence of rape in India. One of the primary causes is the low literacy rate, which is often associated with higher crime rates. Additionally, the lack of basic sanitation facilities, such as toilets within homes is one of the contributing factors. Women are frequently forced to use open fields for defecation, often during early morning or late evening hours, making them vulnerable to sexual assaults. Perpetrators, often from the same village, exploit this vulnerability by targeting them when they are alone and defenseless. Moreover, social

hierarchy exacerbates the issue, particularly for Dalit and tribal women. Due to their lower social status, they are treated as personal property, denied basic human rights, and subjected to sexual violence with impunity.⁵² Another contributing factor is underreporting of date rapes or rape by intimate partners. In India, such instances are often not recognized as rape, skewing the statistics and further contributing to the underreporting of cases. In the Indian context, social and economic factors play a far more crucial role in the prevalence of rape than commonly believed rape myths. Additionally, these factors indirectly fuel victim-blaming narratives, where victims are either directly or indirectly held for crime, further discouraging them from seeking justice.⁵³

Difficult path to justice: There are far too many laws and far too few people enforcing them in India. Rather than passing more time framing new laws - the 2012 Verma committee, which submitted recommendations following the mass rape case in Delhi, asked the Indian government to enact new legislation - time should be spent on execution and sensitivity.⁵⁴ They “ran away with her boyfriend,” the Hyderabad police concluded, so they never took out a report or tracked her phone. When police refuse to file reports or imply that victims' families “settle,” many victims and their families surrender too soon. But neither the police nor medical professionals in India have been professionally trained on how best to support sexual assault survivors. The Unnao rape case unfolds flaws in our system and how easily powerful people can create discrepancies in it. Government and police have a responsibility to provide protection (along with witnesses) and counseling to women who come forward about violence. Other areas that have to be put on a war footing include: delayed trials, insufficient investigation, a low conviction rate, and impunity.

Effects of rape: Survivors of sexual assault or rape may experience a full gamut of emotions and impacts that are uniquely difficult and distressing. Any catastrophic experience does so in his or her own unique way. The traumatic effects of the experience can be transitory, or they can persist for a significant length of time following the sexual assault or rape. This paper does outline several of the effects survivors often suffer, though it's certainly not a comprehensive

⁵² Vrushali Patil & Bandana Purkayastha, *The Transnational Assemblage of Indian Rape Culture*, 41 ETHNIC & RACIAL STUD. 1, 1-19 (2017).

⁵³ Alissa Terese Nolan, *A Literature Review of Intimate Partner Violence Against Women in India*, BOSTON UNIV. THESES & DISSERTATIONS 1, 1-50 (2021).

⁵⁴ DR. J.N. PANDEY, THE CONSTITUTIONAL LAW OF INDIA (2012).

list. It doesn't imply sexual abuse, or assault didn't happen because a survivor's reactions aren't typical responses, like there isn't any evident physical damage. No one heals in isolation. Over the journey of restoration and healing, help is usually available at most turns. The most common physical. Other effects are

1. Deprivation of right to life and personal liberty.
2. Being compelled to undergo discomfoting procedures and questions both inside the court as well as from the people outside.
3. Not treated in accordance with the society norms and sometimes, the right to education is also being disallowed to her.
4. Exploitation by the media and the people concerned who had made her a public figure.
5. Influences and interference by several political parties in the matter or making it a political issue.
6. Victim deprivation of some rehab and after-care treatment.
7. Delayed proceeding of the trail that delays the delivery of justice.
8. Delayed by the investigating agency in detecting the real offenders.

Why is the Death Penalty not the Solution?

Whether or not death penalty is a proper retribution for rapists in India remains a very contentious and debatable question. At first blush, the sentence may seem so right and harsh so that it goes well with what the law of the land has stipulated against rape. However, there are many more reasons why the death penalty cannot be considered a solution for rapists in India. For one, the death penalty is inefficient in crime deterrence, including rape. Studies have shown that this extent of punishment does not have a deterrent effect on the propensity for crimes; rather, it is a probability of getting caught and the surety of punishment. The rape conviction rate in India is also very low and the duration that it takes to come to a trial can also be very long. Thus, capital punishment may not bring much in terms of reducing the rate of rape in society. For this reason, there is always a possibility of wrongful conviction in rape cases with resultant wrongful execution of innocent people. The Indian judiciary has been much criticized for being slow-moving. There have been instances where wrong persons were falsely accused and convicted of rape. The death penalty would also increase the chances of false confessions, which is a grave cause for alarm and keeps to the due process requirement

as well as affords the accused a fair trial.⁵⁵ Thirdly, the anxiety area is the abuse of the death sentence order in rape convictions. There has been a long history of misuse of capital punishment in India, for example against the Dalit and Muslim communities. Such sections of society are more vulnerable to wrongful accusation and conviction. Moreover, there is the risk of misuse by law enforcing agencies to elicit confessions and intimidate people.

Thus, the contention may lose its attention to the need for full social and systemic changes that could modify the whole situation concerning rape in India. Rape is a problem entrenched within the social and cultural scene and gender inequality, as well as insufficient law enforcement. Being able to address these elements would be critical to preventing rape and, therefore, offering justice to the victims. Rather than emphasis on punishment efforts, they need to be made to create awareness, to change attitudes concerning women, and to improve the effectiveness and efficiency of the criminal justice system. While death is considered a fit for a rapist in India, this is surely not a solution for the problem of rape. Instead of this, more serious actions that concern the root cause of the problems should be taken to improve the administration of justice while ensuring the safety and dignity of women in that country.

At the same time, it is also important for Indian society as a whole to reflect on its attitudes towards women and gender equality. This means challenging patriarchal norms and promoting respect for women's rights, as well as encouraging men and boys to take an active role in preventing violence against women. Education is also key to changing attitudes and promoting gender equality. This means providing comprehensive sexuality education in schools, which includes information on healthy relationships, consent, and the prevention of sexual violence. It also means engaging with communities and religious leaders to promote positive messages about gender equality and the importance of respecting women's rights. Finally, it is important to acknowledge that the problem of rape is not unique to India. It is a global issue that affects women and girls in every country and culture. Therefore, it is important for the international community to work together to address this issue, share best practices, and support efforts to promote gender equality and prevent violence against women. In conclusion, the worrying growth of a culture of rape in India is a complex and multi-faceted problem that requires urgent and sustained action from all levels of society. While progress has been made in recent years, much more needs to be done to ensure that women and girls in India can live free from the fear

⁵⁵ Sinisa Malesevic, *The Dark Side of Democracy: Explaining Ethnic Cleansing*, 11 NATIONS & NAT'LISM 1, 1-10 (2005).

of sexual violence. By working together to promote gender equality, challenge patriarchal attitudes, and provide support and services for victims, we can create a safer and more just world for all.

CONCLUSION

conclusion, the worrying growth of a culture of rape in India is a complex and multi-faceted problem that requires urgent and sustained action from all levels of society. The problem is rooted in deep-seated patriarchal attitudes towards women, which perpetuate gender inequality and normalize violence against women. This is compounded by a lack of effective law enforcement, a dysfunctional criminal justice system, and a culture of victim-blaming and shaming. There is no doubt that rape is a serious crime that has devastating physical, psychological, and emotional consequences for its victims. It is therefore imperative that the Indian government takes immediate action to address this issue. This includes strengthening laws to ensure that perpetrators are brought to justice, providing better support and services for victims. This can only be achieved by introducing broad prevention strategies that focus on the root cause of the problem. At the same time, it is important for the entire Indian society to reanalyze their attitude towards the position of women and gender equality. This, in turn, postulates the need to question the patriarchal norms and promote respect for women's rights, and encourage the men and boys to take an active role in preventing violence against women. Education also plays an important role in shifting attitudes and promoting the equality of genders. It is a comprehensive sexuality education among students in school, considering healthy relationship education, consent, and prevention of sexual violence. It also refers to how it works with the community and religious leaders in which messages for gender equality and respect for women's rights are to be provided. It is further noteworthy that the problem of rape is not peculiar to India. It has proven to be a global issue, transcending borders and cultures, and affecting women and girls worldwide. In this regard, the international community must come together to tackle the problem, share best practice experiences, and support efforts to promote gender equality and prevent violence against women. In conclusion, it is a very complex and multilayered concern toward the worrying growth of a culture of rape in India, which needs urgent and sustained action from all levels of society. Therefore, much has been achieved through recent years, but more needs to be done to ensure that women and girls in India are able to live free from fear of sexual violence. It will further promote gender equality,

challenge patriarchal attitudes, and offer support and services for victims in a safer and more just world.

