

"Rape Laws in India: A Critical Analysis of Reforms, Enforcement and the Path Forward"

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I. Introduction

Women are central to society, serving crucial roles as daughters, sisters, wives, mothers and friends. They are the foundation of our communities, providing support and nurturing life. However, despite their importance, women often face severe violence, with rape being one of the most extreme violations of their rights. This crime not only disrespects women but also undermines their dignity, showing a failure in how society protects those who are essential to its well-being.

Rape is more than just a violent act, it is an attack on a woman's sense of self and autonomy. The harm caused by rape goes beyond physical injury, leaving deep emotional scars that can last a lifetime. It often reveals deep-seated gender inequalities and harmful views of masculinity. Victims frequently experience severe mental health issues such as depression, anxiety and Post-traumatic stress disorder (PTSD)¹. Additionally, the stigma around rape can lead to social isolation and stress for both the victim and her family, especially in cultures where a woman's honour is tied to her sexuality.

India's rape laws have changed over the years, starting from their initial introduction in the Indian Penal Code of 1860. Despite significant Criminal Law Amendments in 1983, 2013, and

¹ <https://www.who.int/news-room/fact-sheets/detail/post-traumatic-stress-disorder>

2018, the number of rape cases remains disturbingly high. The 2018 NCRB report revealed that 33,356 rape cases were reported in India², meaning that a rape is reported every 15 minutes. Disturbingly, 93.9% of these rapes were committed by someone known to the victim³. According to the World Population Review 2020, South Africa and Botswana top the list of rape incidents, while India ranks 117th out of 193 countries⁴. This paper will examine how rape laws in India have evolved in response to societal changes and legal rulings. It will evaluate the current legal framework, highlight ongoing issues, and suggest improvements. The aim is to understand what progress has been made and what more needs to be done to better protect victims and prevent rape.

II. What is Rape?

The term 'Rape' is derived from the Latin term "rapere," meaning to seize or carry away. It is defined as a severe and violent crime involving non-consensual sexual intercourse, characterized by the use of force or coercion. Legally, it is defined as a criminal act where sexual activity occurs without the victim's consent. For centuries, women were often viewed as property rather than individuals with their own rights. Consequently, rape was seen more as a crime against the man who "owned" the woman, rather than an assault on the woman herself⁵. This historical perspective contributed to a narrow and often inadequate understanding of sexual violence. In contemporary legal contexts, the definition of rape has expanded to cover a broader range of non-consensual sexual activities beyond just penile-vaginal intercourse⁶. Initially, the Indian Penal Code (IPC) of 1860 defined rape narrowly, focusing exclusively on the form of sexual activity and requiring minimal penetration to constitute the crime. This limited definition did not address other forms of sexual violence such as oral or anal penetration, which were covered under lesser offenses like outraging modesty of women or hurt. The inadequacy of these provisions, particularly in cases involving child sexual abuse,

² National Crime Record Bureau, "Crime in India 2018", 2, (Ministry of Home Affairs, December 2019) available at <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf> (last visited on 8th December, 2020)

³ <https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf>

⁴ "Rape Statistics by Country 2020", World Population Review, available at <https://worldpopulationreview.com/country-rankings/rape-statistics-by-country> (last visited on 8 th December, 2020)

⁵ Elizabeth Kolsky, *"The Body Evidencing the Crime": Rape on Trial in Colonial India, 1860-1947*, 22 GENDER & HISTORY, 111 (2010) https://www.researchgate.net/publication/229448954_The_Body_Evidencing_the_Crime'_Rape_on_Trial_in_Colonial_India_1860-1947.

⁶ Brian Palmer, What's the Difference Between "Rape" and "Sexual Assault?", SLATE (Feb. 17, 2011, 3:59 PM), http://www.slate.com/articles/news_and_politics/explainer/2011/02/whats_the_difference_between_rape_and_sexual_assault.html

has led to demands for a more inclusive and comprehensive legal definition of rape. These changes reflect a growing recognition of the various forms of sexual violence and the need for laws that better protect victims and address the full scope of sexual offenses.

Today, "Digital rape" is a legal term used in some jurisdictions, including India, to describe a form of sexual assault that involves the non-consensual penetration of a person's vagina, anus, or mouth using fingers or any other object. The term "digital" in this context refers to the use of fingers ("digits") rather than digital technology⁷. Digital Rape is considered a serious crime and is treated with the same severity as other forms of rape involving penile penetration. It was formally recognized as rape under Indian law with the Criminal Law (Amendment) Act of 2013, which expanded the definition of rape to include acts beyond penile-vaginal intercourse. Additionally, the digital age has introduced new forms of abuse like 'Cyber Rape' that involves non-consensual sharing or distribution of sexually explicit material, such as intimate photos or videos, often through digital platforms. This can include acts like revenge pornography and online sexual harassment. Furthermore, the term 'Virtual Rape' refers to non-consensual sexual acts that occur in virtual environments, such as online games or virtual reality platforms. These acts might simulate sexual assaults or unwanted sexual behaviour, affecting the victim's psychological and emotional well-being, even though no physical contact occurs. Both cyber and virtual rape require updated legal frameworks and societal understanding to adequately address these emerging forms of sexual violence in our interconnected world. The evolving definition of rape now includes these modern forms of abuse, reflecting a broader recognition of the various ways in which sexual violence can manifest.

III. Evolution of Law against Rape in India

The evolution of rape laws in India reflects an ongoing struggle to address sexual violence effectively and protect women's rights. The Code of Manu, one of the oldest legal texts in Hindu law, was an early attempt to recognize rape as a serious crime⁸. It prescribed severe corporal punishments for offenders, acknowledging the violation of a woman's autonomy and dignity. This marked an early attempt to codify sexual violence within a legal framework, setting a precedent for future legal developments. The Charter Act of 1833 established a Law

⁷ Economic Times. (2023, August 22). Noida 'digital rape' case: Man handed life imprisonment. The Economic Times.<https://economictimes.indiatimes.com/news/india/noida-digital-rape-case-man-handed-life-imprisonment/articleshow/93935682.cms?from=mdr>

⁸ Ram Prasad Das Gupta, *Crime and Punishment in Ancient India*, 1973, p 73.

Commission, led by Lord T.B. Macaulay, to unify Indian Penal law, which ultimately resulted in the creation of the Indian Penal Code (IPC). The legal framework for addressing rape in India began to take form with the IPC's introduction in 1860, defining rape. The repealed Section 375 of the Indian Penal Code defined rape as penile-vaginal intercourse under certain conditions, such as without the woman's consent or if she was underage. It included circumstances where intercourse was against her will, without her consent if she was insensible, or if consent was obtained through fear or deceit. The section also specified that intercourse with a wife was not considered rape if she was at least ten years old⁹. Subsequently, various amendments were made to broaden the definition of rape under section 375 and the same are incorporated in section 63 of the new Bharatiya Nyaya Sanhitha 2023 (BNS). It includes any form of penetration into the vagina, mouth, urethra, or anus, or any manipulation of body parts to cause such penetration. The new law covers a range of situations including acts against the woman's will, without her consent, or when consent is obtained through coercion or deceit. It also includes situations where the woman is incapacitated due to mental unsoundness or intoxication, is under eighteen years old, or unable to communicate consent. Exceptions under the new law include medical procedures and sexual acts with a wife over eighteen years of age¹⁰.

1. Significant Law Commission Reports on Rape

- a) **42nd Law Commission Report (1971):** Recommended expanding the definition of rape to include non-penile forms of penetration and suggested stricter penalties for sexual offenses. Proposed the inclusion of provisions for the protection of minors and called for the recognition of marital rape.
- b) **84th Law Commission Report (1980):** Suggested raising the age of consent from 16 to 18 years. Emphasized the need to treat all forms of non-consensual sexual penetration as rape, not just penile-vaginal penetration.
- c) **156th Law Commission Report (1997):** Recommended redefining rape to include all forms of non-consensual sexual penetration and suggested making marital rape a punishable offense. Called for harsher penalties for gang rape and custodial rape.

⁹ Section 375 of THE INDIAN PENAL CODE

Available at https://www.indiacode.nic.in/bitstream/123456789/15289/1/ipc_act.pdf

¹⁰ Section 63 THE BHARATIYA NYAYA SANHITA, 2023

Available at <https://www.indiacode.nic.in/bitstream/123456789/20062/1/a2023-45.pdf>

d) **172nd Law Commission Report (2000):** It recommended comprehensive revisions to rape laws, including broadening the definition of sexual offenses to be gender-neutral and introducing new sections such as 376E. It suggests deleting Section 377, enhancing penalties in Section 509, and replacing "rape" with "sexual assault" to better address various sexual crimes. The Report emphasizes stricter measures to prevent child sexual abuse, reflecting concerns raised in *Sakshi Vs. Union of India* and aligning with international standards and constitutional provisions for child protection.

2. Significant Criminal Law Amendment Acts on Rape

a) The Criminal Law Amendment of 1983:

- i. Section 228A (IPC) was inserted aimed at protecting the identity of rape victims by restricting the publication of their names. However, enforcement has been inconsistent, and media violations have occasionally compromised the privacy of victims. The same is now incorporated in section 73 of BNS. The amendments of Section 375 and 376, 376A, 376B, 376C, 376D (IPC) expanded the definition of rape to include various forms, such as custodial and gang rape, with stricter penalties. Despite these changes, the effectiveness has been limited by delays in the judicial process, low conviction rates, and persistent societal stigma. The same is incorporated in section 63 to 70(1) of BNS. Further, section 498A was added penalising cruelty by husband and his relatives towards a woman (now in 86 BNS).
- ii. Code of Criminal Procedure 1973 (CrPC) Amendments: Sections 327(2) & 327(3) introduced in-camera proceedings for rape trials to protect victims from public scrutiny. While these provisions were intended to safeguard victims, they sometimes result in reduced transparency in the judicial process (Section 366 Bharatiya Nagrik Suraksha Sanhitha, 2023(BNSS)).
- iii. Indian Evidence Act (IEA) 1872, Amendments (Sec. 114A): Shifted the burden of proof in custodial rape cases, making it easier for victims to prove lack of consent. This change, while progressive, has raised concerns about fairness and the presumption of innocence (section 120 of Bharatiya Sakshya Adhiniyam 2023(BSA)).

b) The Criminal Law Amendment Act, 2013

- i. Introduction of sections 354A, 354B, 354C, 354D of IPC (now sections 75,76,77,78 of BNS): It addressed sexual harassment, voyeurism, and stalking, and stricter penalties for rape under sections 375 and 376.

- ii. Enhanced Penalties: Severe punishments for aggravated offenses (Sections 375 and 376, 376A, 376B, 376C, 376D, 376E (IPC) / now section 63, 64, 66, 67, 68, 70, 71 BNS), including death and persistent vegetative states caused by rape, as well as repeat offenders.
- iii. Victim Protection: Requirements for statements to be recorded by women officers (Sections 154(1) & 161CrPC/ 173 and 180 BNSS), expedited trials (Section 309(1) Crpc /346 BNSS), and free medical treatment for victims (Section 357C CrPC/ 397 BNSS). However, implementation inconsistencies and issues like victim-blaming persist.
- iv. Evidence and Privacy: Exclusion of past sexual history in trials (Sections 53A & 114A/ 48 and 120 BSA) and presumptions of absence of consent in aggravated cases aimed at reducing victim-blaming. Challenges remain in ensuring uniform application and respect for victim's privacy.

c) **The Criminal Law Amendment Act, 2018:**

- i. Amendments in the Indian Penal Code, 1860: It enhanced penalties for sexual offenses. Section 376 now mandates a minimum of ten years' imprisonment for rape, with life imprisonment for offenses involving victims under sixteen. Sections 376AB, 376DA, and 376DB (65, 70(2) of BNS) impose severe punishments, including life imprisonment or death, for the rape of minors under twelve and for gang rapes of victims under sixteen and twelve.
- ii. Amendments in the Code of Criminal Procedure, 1973: It brought procedural reforms to expedite justice for rape cases. Sections 374 and 377 (415 and 418 of BNSS) mandate that appeals against sentences for specific rape-related offenses be disposed of within six months, aiming to speed up the judicial process. Section 438 restricts bail for serious rape offenses, while Section 439 requires notice to the Public Prosecutor and the presence of the informant during bail hearings (Sections 482 and 483 BNSS).
- iii. Amendments in the Indian Evidence Act, 1872: Section 53A (48 BSA) excludes evidence related to a victim's previous sexual history, while Section 114A (120 BSA) presumes a lack of consent in aggravated rape cases, shifting the burden of proof. It focused on protecting victims' dignity and reducing victim-blaming. Section 146 (149 BNS) limits the scope of cross-examination regarding a victim's sexual history, aiming to minimize re-victimization during trials.

Additionally, there are other legal frameworks and initiatives that are also significantly addressing the issue of 'Rape' in India. For instance, The Protection of Children from Sexual

Offences (POCSO) Act, 2012 offers a robust legal structure for safeguarding minors from sexual abuse by defining various forms of sexual offenses against children and stipulating specific penalties. Similarly, the Juvenile Justice (Care and Protection of Children) Act, 2015, includes provisions for handling cases involving juveniles accused of sexual offenses, emphasizing rehabilitation and reform while ensuring victim protection. The National Crime Records Bureau (NCRB) plays a crucial role by collecting and analyzing crime data, including rape statistics, which is vital for understanding trends and shaping effective policy responses. National-level initiatives further strengthen the legal framework, with measures designed to address sexual violence across the country. For instance, the National Legal Services Authority (NALSA) has launched programs to provide legal aid and support to survivors of sexual violence, ensuring access to justice for marginalized communities. The National Commission for Women (NCW) works on policy advocacy and monitoring the implementation of laws related to sexual offenses, including the POCSO Act and the Criminal Law Amendment Acts. Additionally, the central government has supported the establishment of Sakhi One-Stop Centres (OSCs)¹¹ across various states, which offer comprehensive services such as medical care, counselling, and legal aid to survivors of sexual violence. In Telangana, as a specific example of national-level initiatives, the state has implemented specialized fast-track courts to expedite the adjudication of sexual offenses, ensuring quicker justice for victims. The state has also established State Women and Child Protection Units, focusing on immediate assistance and support for survivors. Additionally, Telangana has introduced awareness programs and training workshops for law enforcement and judicial personnel to handle cases of sexual violence more effectively. These measures reflect the commitment to enhance the legal and practical response to sexual violence on a national scale, providing both systemic support and localized resources to address various forms of sexual offenses comprehensively. These legal framework and initiatives, reflect a concerted effort to adapt and enhance the legal framework to better protect victims and address various forms of sexual violence including the offence of rape.

IV. Judicial Precedents on Rape Laws in India

Judicial precedents in India have played a pivotal role in shaping the evolution of rape laws, reflecting the legal system's response to the brutality of such crimes and the need for reform.

¹¹ The Government of India has started the One Stop Centre (OSC) Scheme with effect from 1st April, 2015. OSCs provide a range of integrated services under one roof including police facilitation, medical aid, legal aid and counselling, psycho-social counselling and temporary shelter to women affected by violence or in distress.

Below are detailed accounts of significant cases that demonstrate the judiciary's approach to addressing rape and the brutality involved.

1. In the case of **Soko v. Emperor**, the petitioner was initially convicted under Section 354 of the Indian Penal Code (IPC) for outraging the modesty of a five-and-a-half-year-old girl by inserting his finger into her private parts, causing injury. The defense argued that the girl, due to her young age, had not yet developed a sense of modesty, and therefore, the conviction under Section 354 was inappropriate. The court ultimately questioned whether the assault met the legal criteria for outraging modesty, as the girl showed no signs of distress and promptly informed her mother of the incident. The court concluded that the act, while severe, did not necessarily amount to outraging modesty under Section 354 and modified the conviction to Section 323 IPC, maintaining the sentence but recognizing the assault as causing hurt rather than outraging modesty¹².
2. **Mathura Rape Case:** The 1979 Supreme Court ruling in *Tuka Ram v. State of Maharashtra*, also known as the Mathura rape case¹³, sparked widespread outrage and led to a significant movement for the amendment of rape laws in India. The verdict, which acquitted the accused policemen, was heavily criticized for its flawed distinction between consent and submission, particularly in a case where the victim, Mathura, had clearly not consented. This judgment drew the attention of four law professors, who wrote an "Open Letter to the Chief Justice of India" in protest, highlighting the court's failure to protect women's rights and questioning whether societal taboos on pre-marital sex could ever justify such acts of violence by authorities. The public backlash from this letter played a crucial role in the eventual amendment of rape laws in 1983. In 1972, Mathura, a 16-year-old tribal girl, was allegedly raped by two policemen, Tukaram and Ganpat, inside the Desai Ganj police station in Maharashtra. The accused took advantage of their authority and the isolation of the police station to commit the crime. Despite Mathura's young age and vulnerable status, the Supreme Court acquitted the accused, controversially citing lack of evidence of resistance from the victim. The brutal misuse of power in this case and the failure of the judicial system to deliver justice led to nationwide protests, highlighting the inadequacies in the legal system and resulting in the Criminal Law (Amendment) Act, 1983.
3. The case of **State of Punjab vs Gurmit Singh & Ors**¹⁴, highlights the systemic challenges faced by victims of sexual violence in the Indian judiciary. The case revolved around the

¹² Soko vs. Emperor, AIR 1933 Cal 142

¹³ Tukaram and Anr vs. State of Maharashtra, 1979 SCR (1) 810

¹⁴ 1996 AIR 1393

abduction and gang rape of a minor girl by three accused who forcibly took her to a secluded location and repeatedly assaulted her. Despite the gravity of the crime, the trial court displayed a troubling bias, questioning the victim's credibility due to a delay in filing the FIR and unjustly questioning on her character without any substantive evidence. The court also misinterpreted medical findings, suggesting that the victim was habituated to sexual intercourse, further undermining her testimony. The Supreme Court, however, rectified these errors, stressing that delays in reporting such crimes should not be used to discredit the victim and condemning the baseless character assassination by the lower court. The judgment also highlighted the importance of in-camera proceedings in rape trials, leading to an amendment in Section 327 of the CrPC to protect the victim's dignity. This case serves as a crucial reminder of the need for judicial sensitivity and fairness in handling cases of sexual violence.

4. In the **State of Karnataka vs. Krishnappa**¹⁵, the Supreme Court reviewed the case of Krishnappa, who was convicted of raping an eight-year-old girl. The trial court sentenced him to 10 years of rigorous imprisonment and a fine. On appeal, the High Court reduced his sentence to 4 years, citing his age, family responsibilities, and intoxication at the time of the crime. The Supreme Court, however, reinstated the 10-year sentence, criticizing the High Court's leniency. The Court underscored that sentencing in rape cases must reflect the severity of the offense and the victim's age, rejecting socio-economic or personal circumstances of the accused as justifications for reduced punishment.
5. In **Sakshi vs Union of India**¹⁶, the Supreme Court addressed a writ petition filed by Sakshi, an organization dedicated to supporting victims of sexual abuse and violence. The petition sought to expand the definition of "sexual intercourse" under Section 375 of the Indian Penal Code to include various forms of penetration beyond penile/vaginal intercourse. The petition also requested that such cases be registered under relevant IPC sections and sought other related reliefs. The Court ruled in favor of the petition, directing that:
 - a. Section 327(2) of the Criminal Procedure Code (Cr.P.C.) should apply to trials under Sections 354 and 377 IPC, in addition to those already covered.
 - b. In trials for child sex abuse or rape, measures should be taken to protect the victim, including using screens to prevent direct confrontation with the accused, submitting cross-examination questions in writing, and allowing breaks for the victim during testimony.

¹⁵ AIR 2000 SC 1470

¹⁶ (2004) 5 SCC 518

6. In **State of U.P. v. Pappu @ Yunus & Anr**¹⁷, the Supreme Court addressed a case where the prosecutrix was raped by two men, Pappu @ Yunus and Mannoo, who forcibly entered her home and assaulted her. Despite the trial court's conviction based on the victim's testimony and corroborative evidence, the High Court acquitted the accused, unjustly considering the victim's alleged "loose morals." The Supreme Court rejected this reasoning, asserting that a victim's character is irrelevant when determining if rape occurred. The Court emphasized that prior sexual activity does not give anyone the right to commit rape and that a rape victim's testimony does not require corroboration unless circumstances demand it. The Court set aside the High Court's acquittal and remitted the case for fresh consideration, emphasizing that the focus should be on the accused's actions, not the victim's character.
7. In the case of **Lillu @ Rajesh & Anr v. State of Haryana**¹⁸, the appellant, Lillu @ Rajesh, was convicted under Section 376 of the Indian Penal Code (IPC) and sentenced to seven years of rigorous imprisonment for the crime of rape. The case revolved around a brutal incident where the appellant and other co-accused committed sexual assault. During the investigation, the controversial "two-finger test" was conducted as part of the medical examination of the rape survivor. This test, which involves examining the vaginal laxity to infer sexual history or consent, was heavily criticized. The Supreme Court ruled that the two-finger test violates the survivor's right to privacy, physical and mental integrity, and dignity. The Court emphasized that even if the test report is affirmative, it cannot lead to a presumption of consent. The Court condemned the test as an affront to the dignity of rape survivors, reaffirming that such procedures should not be used to re-traumatize or degrade the victim. Ultimately, the appeal was dismissed, upholding the conviction and stressing the need for more humane and respectful treatment of rape survivors.
8. **Nirbhaya Case:** On the night of December 16, 2012, a 23-year-old physiotherapy intern, later known as "Nirbhaya," was brutally gang-raped and tortured by six men on a moving bus in Delhi. The assailants inserted an iron rod into her body, causing severe internal injuries. The sheer brutality of the attack, which included beating her male friend unconscious and leaving both of them naked and severely injured on the roadside, shocked the nation. Nirbhaya succumbed to her injuries 13 days later. The Supreme Court upheld the death penalty for four of the convicts, citing the crime as "rarest of the rare" and underscoring the inhumanity of the offense. This case led to the Criminal Law (Amendment) Act, 2013, and brought significant

¹⁷ 2005 (3) SCC 594,

¹⁸ (2013) 14 SCC 643

reforms to India's rape laws. The definition of rape was expanded to include penetration by any object or body part, as well as oral sex. The law provided a clearer articulation of consent, emphasizing that the absence of physical resistance does not imply consent. New offenses such as stalking, voyeurism, and sexual harassment were introduced, and punishments for sexual crimes were made more severe, including life imprisonment and the death penalty in certain cases. The age of consent was raised from 16 to 18 years, and it became mandatory for all hospitals to provide immediate medical treatment to rape victims. The Nirbhaya case not only served justice to the victim but also catalyzed critical legal reforms to enhance the safety and rights of women in India¹⁹.

9. **Unnao Rape case:** In June 2017, a 17-year-old girl from Uttar Pradesh was kidnapped and brutally raped by BJP MLA Kuldeep Singh Sengar, his brother Jaideep, and others²⁰. The victim was discovered 17 days later, and despite an initial lack of action from the police, the case gained national attention after the victim's father was beaten to death and the victim attempted self-immolation. The Supreme Court intervened, transferring the case to Delhi and mandating compensation for the victim's family. On December 16, 2019, Sengar was convicted for rape and sentenced to life imprisonment with fine of ₹25 lakh, out of which ₹15 lakh was allocated for trial and prosecution expenses. In March 2020, Sengar was also found guilty of culpable homicide and criminal conspiracy related to the death of the victim's father. The mishandling of the case and the subsequent public outcry highlighted systemic failures, leading to increased calls for legal reforms to better protect victims and ensure justice.
10. In the **Kathua rape case**²¹, an 8-year-old girl named Asifa Bano was abducted, gang-raped, and murdered by a group of eight men, including former revenue official Sanji Ram and police officers, in Jammu and Kashmir in January 2018. The gruesome crime led to significant legal proceedings: Sanji Ram and three others received life imprisonment, while Deepak Khajuria and Parvesh Kumar were sentenced to death. Other accused were convicted for evidence destruction. The public outrage and demand for justice in this case highlighted severe deficiencies in existing laws, prompting the Indian government to amend criminal laws. This led to the Criminal Law (Amendment) Act, 2018, which strengthened penalties for sexual

¹⁹ Mukesh & Anr. v. State for NCT of Delhi & Ors., (2017) 6 SCC 1

²⁰ Allahabad High Court. (2018, May 21). Re: An Unfortunate Incident in Unnao of Rape and Murder Published in Various Newspaper v. State of U.P., W.P (Cri.) 1 of 2018. Retrieved from <https://www.example-url.com>. For details, see C.B.I v. Kuldip Singh Sengar, Cri. Case No. 1228/2018.

²¹ State of Jammu & Kashmir (Now U.T. of Jammu & Kashmir) & Ors. v. Shubam Sangra, Criminal Appeal No. 1928 of 2022, arising out of S.L.P. (Criminal) No. 11220 of 2019.

offenses, introduced stricter measures for the protection of minors, and aimed to expedite legal processes related to rape cases.

11. **Kolkata Rape case:** On August 9, 2024, the Supreme Court of India, led by Chief Justice D.Y. Chandrachud, Justices J.B. Pardiwala, and Manoj Misra, took suo motu cognizance of the horrific rape and murder of a doctor at Kolkata's RG Kar Hospital. This rare judicial intervention aims to address not only the specific case but also broader systemic issues regarding the safety of healthcare professionals. The court expressed strong disapproval of the West Bengal government's inadequate response, including the failure to prevent a mob from vandalizing the hospital and the delay in filing an FIR. It also ordered the removal of the victim's name and graphic images from media platforms and directed the deployment of the Central Industrial Security Force (CISF) to protect the hospital. The court's action underscores its commitment to addressing rape and ensuring better safety and support for healthcare workers across India

V. Challenges

There are multifaceted challenges in the Indian legal system related to the reporting, prosecution, and adjudication of rape cases, where societal biases, judicial insensitivity, and systemic failures often impede the pursuit of justice, necessitating legal reforms and public intervention. Significant among them are as follows:

1. **Societal Stigma and Victim Blaming:** Victims of rape often face societal stigma and are blamed for the crime, which discourages them from reporting the incident and seeking justice.
2. **Challenges in Reporting the Crime:** Many victims encounter significant barriers in reporting rape, including fear of not being believed, retaliation, and lack of support from authorities.
3. **Police Apathy and Institutional Bias:** Victims may face indifference or bias from police officers, leading to delayed investigations, mishandling of evidence, or even refusal to file complaints.
4. **Issues with Medical Examination Practices:** The use of outdated and intrusive medical examination practices, such as the "two-finger test," can further traumatize victims and compromise their dignity.
5. **Judicial Delays and Prolonged Trials:** Rape cases often face extensive delays in the judicial process, with victims enduring prolonged trauma due to the slow pace of trials.

6. **Character Assassination in Court:** Defense strategies frequently focus on discrediting the victim's character, questioning their morality, and using their past behaviour to undermine their credibility.
7. **Barriers to Adequate Legal Representation:** Victims may struggle to secure competent legal representation, which is critical in navigating the complexities of the legal system and ensuring their voices are heard.
8. **Leniency in Sentencing:** Courts may sometimes show undue leniency towards perpetrators, citing factors such as age, social status, or lack of prior criminal history, which can undermine justice.
9. **Threats and Intimidation of Victims and Witnesses:** Victims and witnesses may face threats, intimidation, or violence from the accused or their associates, deterring them from pursuing the case or testifying in court.
10. **Impact of Media and Public Perception:** Media coverage and public opinion can influence the legal process, sometimes leading to sensationalism or the victim's privacy being compromised, affecting the pursuit of justice.

VI. Unaddressed Issues in Indian Rape Laws

The shortcomings of current rape laws in India are evident despite numerous amendments aimed at strengthening them. Although the evolution of rape laws since their introduction in the Indian Penal Code by Lord Macaulay has been significant, recent statistics from the NCRB reveal that these laws are still inadequate in curbing the persistent culture of rape. The 2013 Criminal Law Amendment Act, based on the recommendations of the Justice Verma Committee, fell short in addressing key issues such as marital rape, which remains an exception under Section 375 IPC (63 BNS), contrary to global human rights standards. Furthermore, the 2018 Criminal Law Amendment Act blurred the distinction between rape simpliciter and aggravated rape by imposing the same minimum punishment of 10 years for both, undermining the principle of proportionality in sentencing. Another critical shortcoming is the gender-specific language in the definition of rape under Section 375IPC (63 BNS), which excludes a gender-neutral approach recommended by the Justice Verma Committee. The lack of gender neutrality in rape laws conflicts with the POCSO Act 2012²², which was designed to protect minors irrespective of gender. This inconsistency results in unequal punishment for the same

²² Protection of Children from Sexual Offences Act, Act No.32 of 2012

crime based on the victim's gender, defeating the purpose of the POCSO Act and highlighting the urgent need for a more inclusive and responsive legal framework.

VII. Future Directions

Bringing change in society and the mindset of men to prevent rape and sexual assault requires a multifaceted approach that addresses cultural, educational, legal, and societal factors. Here are some key strategies to foster this change:

1. Education and Awareness

- a. Implement comprehensive sex education in schools that goes beyond biology to include discussions on consent, respect, and healthy relationships.
- b. Introduce gender sensitization programs at all levels of education and in workplaces to challenge stereotypes and promote equality.
- c. Conduct widespread awareness campaigns to educate communities about the importance of consent, the impact of sexual violence, and the need to respect women's autonomy.

2. Challenging Cultural Norms

- a. Challenge and redefine traditional notions of masculinity that equate manhood with dominance, control, and aggression. Promote models of masculinity that value empathy, respect, and equality.
- b. Encourage media to portray women and men in ways that challenge harmful stereotypes and promote gender equality. This includes responsible reporting on sexual violence that avoids victim-blaming.
- c. Promote positive role models in media, education, and communities who demonstrate respect for women and advocate for gender equality.

3. Legal Reforms and Enforcement

- a. Ensure that laws related to sexual violence are comprehensive, clearly defined, and strictly enforced. Punishments should be swift and just, serving as a deterrent to potential offenders.
- b. Train judges, lawyers, and law enforcement officials to handle cases of sexual violence with sensitivity and without bias, ensuring justice for survivors.
- c. Establish and strengthen support systems for survivors of sexual violence, including legal aid, counselling, and safe spaces, to encourage reporting and ensure their dignity is upheld throughout the legal process.

4. Community and Family Engagement

- a. Educate parents on the importance of teaching their children, especially boys, about respect, consent and gender equality from a young age.
- b. Engage community leaders and influencers to speak out against sexual violence and promote a culture of respect and accountability.
- c. Encourage individuals to speak up and intervene in situations where they witness or suspect sexual harassment or assault. Training programs on bystander intervention can empower people to act.

5. Empowerment of Women

- a. Promote the education and economic empowerment of women, which can lead to greater independence and a stronger voice in society.
- b. Encourage and support women in leadership roles across all sectors to challenge the status quo and influence policy and societal attitudes.
- c. Offer self-defense training programs to women and girls to equip them with the skills to protect themselves if necessary.

6. Public Dialogue and Policy Advocacy

- a. Create spaces for open dialogue about sexual violence, consent, and gender norms in schools, workplaces, and communities.
- b. Advocate for policies that promote gender equality and protect against sexual violence, including workplace policies on harassment and support for survivors.

7. Long-Term Commitment

- a. Recognize that changing mindsets and societal norms is a long-term process that requires continuous effort, commitment, and collaboration from all sectors of society.
- b. Regularly assess the impact of interventions and make necessary adjustments to ensure that progress is being made towards reducing sexual violence and changing societal attitudes.
- c. By addressing the root causes of sexual violence and promoting a culture of respect and equality, society can move towards a future where rape and sexual assault are no longer tolerated or prevalent

VIII. Conclusion

In conclusion, while India's rape laws have improved over time, changing the law alone isn't enough to stop sexual violence. The real solution lies in changing how men think about and treat women. This means teaching boys and men from a young age to understand the difference

between right and wrong behaviour, especially in how they interact with women and children. Respecting women and children, understanding consent, and valuing their rights over their own bodies should become a natural part of our culture. Alongside legal changes, we need to focus on education and awareness campaigns that promote respect, empathy, and understanding. Only by changing these attitudes can we hope to create a safer society where everyone, especially women and children, are treated with the dignity they deserve. This way, we can move closer to ending the culture of rape and ensuring that all people can live without fear.
