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# **A COMPARATIVE ANALYSIS OF BLACK RAPE VICTIMS IN THE UNITED STATES AND THE MARGINALIZED SECTION OF INDIA**

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## **Abstract**

Rape is universally regarded as the most abhorrent crime committed against women, regardless of the level of societal development. Nevertheless, the issue of rape is not a recent one; its origins may be traced back to ancient civilizations. The severity of the crime of rape has evolved from ancient to current times. In ancient times, women were seen as the possessions of men. If any harm was done to a woman, her owner had the right to seek compensation from the culprit. Nevertheless, the perpetrator was not held responsible for the sexual assault against the victim under any circumstances. However, over time, the definition and consequences of rape have undergone modifications. Despite the failure of the states and its officials to adequately protect women from sexual assault. Furthermore, with closer examination, it becomes evident that the most affected individuals are those belonging to the disadvantaged segment, regardless of their nationality. This research examines the facts on sexual harassment against women in the United States and India. When comparing the data on sexual harassment between marginalized sections (namely Dalits) in India and black women in the USA, we observe that both groups experience similar levels of harassment. The study discovered that these phenomena occur consistently across various contexts, such as police interrogations, medical treatments, and trials. Consequently, the majority of them are reluctant to submit their case to the authorities. The majority of countries have implemented policies to provide compensation for victims of rape. However, the question at hand is whether this sum is sufficient for the rehabilitation of rape victims.

In this paper I will discuss all the issues relating to Rape, Compensation and Rehabilitation throughout the world.

**Keywords;** Offence, Feminism, Judgement, Victim, Compensation, Rehabilitation

## Introduction:

Crime against women encompasses a range of offenses, including domestic violence, sexual assault, child marriages, and female genital mutilation. These actions are infringement of the most fundamental rights. Since the beginning of existence, women, regardless of their race, religion, or geographic location, have been relegated to a subordinate position. The term "rape" is derived from the Latin word "rapio," which meaning "to seize." It entails engaging in non-consensual sexual intercourse with a lady through the use of coercion. Rape is the act of a private individual committing an act of violence against a woman without her consent or willingness. It is the most extreme breach of honor. In the case of Bodhisattwa Gautam, the Supreme Court of India stated that women in our country are unfortunately part of a social group that faces various barriers and obstacles, resulting in their disadvantaged position. Consequently, they have been subjected to oppression by men. However, the Constitution ensures that women have an equal status to men. Sexual violence is not only a degrading act but also an illegal violation of a woman's dignity. Not only does it damage her utmost dignity, but it also insults her self-worth. Rape is not solely a physical act; it also entails the complete devastation of the victim's entire personality for the remainder of their life. It undermines the entire social structure, affecting relationships within families, friendships, and work. Due to the occurrence of rape, individuals tend to make an effort to steer clear of rape victims. Numerous initiatives were launched by women and other organizations to improve the status and conditions of women. However, they did not succeed in achieving their objective. Even the most developed nations lacked provisions for gender equality.

And due to that women's movement started in many Western states in the 1960s and 1970s which promoted the general personal development and growth for women.<sup>1</sup> This was the time when feminist raises their voice for equality in every sector. And after few years their concerns were shifted to political participation of women and economic representation at work place, as well as the participation of women in the development process in several country.<sup>2</sup>

As Cathy Roberts points out, "The feminist understanding of rape in the beginning bore little resemblance to the viewpoint of psychologists and society in general. Feminism rejected the

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<sup>1</sup>Kelly, Liz & Radford, Jill, Sexual Violence Against Women and Girls, An Approach to an International Overview, in Rethinking Violence against Women, Dobash and Dobash eds., Sage Publications, London, (1998), p. 53.

<sup>2</sup>Preliminary Report Submitted by the Special Rapporteur on Violence against Women, its Causes and Consequences, Ms. Rhadika Coomaraswamy, in Accordance with Commission on Human Rights Resolution 1994/95, UN Doc. E/CN.4/1995/42, 22 November 1994, para. 20.

model of the lone deviant, acting out perverted fantasies or frustrations, and substituted instead a figure who had an uncomfortable similarity to the average man”.<sup>3</sup>

The ancient patriarchs who convened to draft their early agreements utilized the act of sexual assault on a woman as a means to establish and consolidate their own dominance. Consequently, it is perplexing how they could perceive rape as a transgression committed by men against women. Women were considered as completely subordinate entities and lacked autonomy. The concept of rape cannot be understood in terms of a woman's agreement or refusal, nor can a definition that is acceptable to men be founded on a male-female understanding of a woman's right to control her own body. Rape was once recognized as a form of property crime committed by one man against another, metaphorically speaking, before it was formally incorporated into the legal system. Women were commonly regarded as possessions. Starting in 1970, every nation was obligated to revise their legislation on women and enforce it with efficiency.

### **Legislation on Rape Law in India:**

In the early period after Independence, the socio-economic condition of India was poor and lacked the efficient laws. But with the progress of time certain changes made by parliament and judiciary. However there was a hurdle for judiciary to dispose the cases of rape because the definition of rape and punishment was not efficient. From 1950 to 1978 the Courts gave a suspicious look on victim of rape. For Example, previous character of victim, age of the victim, conduct of victim, resistance by victim etc. There are hundreds of cases which shows the lack of effective laws regarding rape and compensation of victims of rape. The main considering point to decide cases of rape was, whether the victim crossed the 16 years of age, previous character of victim, reaction of victim during intercourse etc. Till *Mathura case*<sup>4</sup> (1979) the people were silent in the nation but after that a big agitation started by Feminist, NGO's, Student Union, Opposition Parties etc. And due to that Indian parliament brought the changes in Indian Penal Code, Indian Evidence Act, Criminal Procedure Code etc. However, this was the starting point of changes in the criminal justice system, because after mathura case, the judiciary and legislature were under the compulsion to make the effective law and implement it properly. And due to that the Hon'ble Apex Court in *Delhi Domestic* case directed the National Commission for Woman to make a policy, which can help the women to live dignified life. The NCW gave the proposal to authority

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<sup>3</sup>Schulhofer, Stephen, *Unwanted Sex: The Culture of Intimidation and the Failure of Law*, p. 24.

<sup>4</sup>*Tukaram v. State of Maharashtra* AIR 1979.

but it took much time for implementation. Again the government had appointed the Malimath Committee<sup>5</sup> to review the existing criminal justice system. And it gives hundreds of suggestions regarding the introduction of new provision in criminal law, evidence, trial etc.

Again in 2012, the *Nirbhaya* Case incident forced the mass to come on road for agitation against the government. The incident became a global matter within of days; in the United States, media coverage of this case surpassed that of a domestic rape case that occurred at Steubenville High School in Ohio earlier that year.<sup>6</sup> In fact, “Over 1515 articles appeared in the United States alone within the two-month period following the incident” (Row chowdhury 2013). Celebrities were compelled to take to their Facebook and Twitter accounts to voice their condemnation of the attack, and started campaigns to end crimes against women on their own. The demand of the movements was to change the definition of rape and imposed the hard punishment for accused. The committee was head by retired judge named J.S.Verma. Hundreds of proposal were suggested by the committee on rape, acid attacks, sexual harassment etc. The home ministry has also introduced the *Nirbhaya fund* for victims of rape with the 200 crore.

### **Position of Marginalised Section in India:**

Woman played a very important role in every civilization irrespective of caste or section. Even today they are treated as a goddess and we can find the evidence of it through the Indian festival and temples. Even hundreds of festivals are celebrated in India on the name of women. However it is not the real picture of India because at the same time, the *dalits* are not allowed to enter in the temple. Mary C. Grey in her work *A Cry for Dignity: Religion, Violence and the Struggle of Dalit Women in India* elucidates that the word ‘*Dalit*’ means ‘broken’ or ‘crushed’, like Dal- a universally popular dish made from lentils-where lentils are crushed to produce the sauce, likewise the *Dalits* see themselves as broken people, deliberately crushed by the caste system. And this is not the story of pre-independence period, even today this practice is going in Northern India. Now the question is what has changed after the independence?. According to me, lot of changed for the upper class but nothing has been changed for marginalised class. They don’t have the separate identity except their class and are treated like a chattels.<sup>7</sup> There was a practice in

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<sup>5</sup>Dr. Justice V.S. Malimath, S. Varadachary, IAS, (Retd.), Amitabh Gupta, IPS, (Retd.), Prof. (Dr.) N.R. Madhava Menon, D.V. Subba Rao “*Committee on Reforms of Criminal Justice System*” Government of India, Ministry of Home Affairs, 2003.

<sup>6</sup>Tina P. Lapsia, “Impact of the “Nirbhaya” Rape Case: Isolated Phenomenon or Social Change” UCONN Library, Spring 5-1-2015.

<sup>7</sup>Deliege, R “*The World of Untouchables*”, New Delhi, Oxford University Press, 1997.

India, known as Bonded Labour, which has been abolished in 1976. However it was abolished only in document of the Government. There are hundreds of family in northern India, which are the part of this system today also. Whether they are working in the fields, houses, brick factory etc. Their children know only thing, and that is they have to work for their owner. The owner just took the advantages of their literateness and show the documents that their forefather took the debit from them. Moreover, this is not only limited to general work, they were also sexually exploited. There are hundreds of cases of sexual assault of *dalits* and they were disposed by panchayat (Village Council).<sup>8</sup> Even after the introduction of Schedule caste and schedule tribes act, they are not allowed to approach to police station regarding the incident of rape. And if they report it, the upper caste refused them to work in their fields. They don't have enough resources for surviving and due to that they don't want to go against the upper caste.

### Here are some cases of *dalits* (Backward Class)

Uma Kumari the victim was raped by a man of upper caste in 2003 in Jammu district, Bihar. The same day her mother approach to police station and the authority assured her for further action against the accused. But when it comes to the knowledge of accused, he and other 10 persons from the upper caste dragged Uma and her mother nearby ravine that night and then took turns to gang-rape both women for 18 hours.<sup>9</sup>

Again a girl known as Pallavi when she was coming back to home after the visit to her grandmother. She was kidnapped and gang raped by 12 men from upper caste. They have made a video of her gang rape and threatened her if she would disclose to someone. The perpetrators lived locally and eight were from the dominant Jat caste. Pallavi, who is from the *Dalit* community, was so fearful that she remained silent for nine days.

Rekha, a 16-year-old *Dalit* girl, visited a grocery shop in her neighbourhood. At the store, the 46-year-old shop owner offered to give her free snacks and called her to come inside. When she refused, the man forced Rekha into his store, raped her, and threatened to kill her if she told anybody. After the attack, the man followed her home and began stalking her. Multiple times, he

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<sup>8</sup>Massey, J "History and *Dalit* Identity", New Delhi, Indian Society for Promoting Christian Knowledge (ISPCK), 1995.

<sup>9</sup>Aloysius Irudayam s.j. Aloysius Irudayam s.j. Jayshree P. Mangubhai Jayshree P. Mangubhai Joel G. Lee "*Dalit* Women Speak Out *Dalit* Women Speak Out Violence against *Dalit* Women in India ", Overview Report Overview Report of Study in Andhra Pradesh, Bihar, Study in Andhra Pradesh, Bihar, Study in Andhra Pradesh, Bihar, Tamil Nadu/Pondicherry and Uttar Pradesh, 2006.

came to her house when she was alone and her parents were out working. He began appearing at other places where she went, including a playground where she practised sport. For six months, the accused repeatedly raped Rekha and threatened to kill her and her parents unless she kept silent. In fear of her life, she spoke to nobody about the abuse.<sup>10</sup>

In a more recent case of a village in the Hathras district of Uttar Pradesh, a 19-year-old *Dalit* woman was gang-raped by upper castes men in September 2020, and a month later succumbed to her injuries in a hospital in Delhi.

### **Position of Black Women in USA:**

Black women became the centre point of study from 17<sup>th</sup> century throughout the world. From the slavery era the negro people were treated as the property of owner or we can say the white man.<sup>11</sup> They didn't have their life, they were just the chattels and have to spend their whole life in the fields. Whether it is the day or night, they have to follow the order of owner. Majority of the black women were sexually assaulted by white man. Furthermore, there were mainly to reasons behind it, first to satisfy their lust (white man) and the other is to increase their labour through the child birth. Even there was a perception that if any child would be born from the black women, his/her capacity to do work would be much better than white man. Colonial rape laws compounded black women's subjugation by excluding their sexual assault. As Steve Wilf makes plain, "the rape of black women was not acknowledged by early American law."

The Jim Crow Laws played a very important role in American history. In this system the black were tortured and raped just because their body is not their own. The government officials also misused their power over the black women and man through sexual assault and rape to dominate them. The courts continued to enforce Jim Crow laws until the mid-1900s, and African Americans were also subjected to extra-legal treatment in the form of physical assaults and practices such as lynching, where police were often present. About 3,000 African Americans were lynched between the mid-1800s and the early 1900s (B. Smith 2000: 75), and those performing the lynching's were seldom prosecuted.

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<sup>10</sup>Justice Denied: Sexual Violence & Intersectional Discrimination-Barriers to Accessing Justice for *Dalit* Women and Girls in Haryana, India, 2020.

<sup>11</sup>Palmer, Colin A, "Passageways- interpretative History of Black America" Publisher, Wadsworth, 1998.

There is a report of New York State Judicial Commission on Minorities (1991)<sup>12</sup>, which includes the highly officials and eminent like; judges, attorneys, and law professors. They disclose that “there are two justice systems at work in the courts of New York State; one for whites, and a very different one for minorities and the poor”. The panel found inequality, disparate treatment, and injustice based on race. The panel also concluded that minority cases often take only 4 or 5 minutes in court, suggesting a form of assembly line justice, and that black defendants outside of New York City frequently have their cases heard by an all-white jury.

Black women’s frustrations with their circumstances are perhaps best expressed by one nurse’s lamentation in 1912; “*On one hand, we are assailed by white men, and, on the other hand, we are assailed by black men, who should be our natural protectors; and, whether in the cook kitchen, at the washtub - we are but little more than pack horses, beasts of burden, slaves!*”<sup>13</sup> Even the introduction of Bill of Rights in America has not changed the position of blacks. Greene’s essay “reveals a pattern of racially discriminatory police, judicial, and sentencing practices that was typical of the kind of ‘justice’ low-income African Americans were likely to find in North Carolina and across the country, despite the victories of the 1960s civil rights movement.”<sup>14</sup> The behaviour of the authority was so rude towards the black victims of rape. Moreover, the victims were convicted rather than the accused in negro cases. This approach clearly proves that the racial discrimination was on high in America. Even in the modern time the life of black women are so pathetic and they have to live inferior to whites. And if we compare the data whether it relating to opportunity in education, jobs, business etc, the whites are on much higher. Due to that they place the black as a slave in modern time also. And this is the main reason the black women (victims of rape) don’t want to report their case, because they know, that what would happen in the police station, hospitals and trials. They don’t want to face the same torture which she have already faced during the incidence of rape.

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<sup>12</sup>Report of the New York State Judicial Commission on Minorities, Vol.4, 1991.

<sup>13</sup> Richie, “*More Slavery at the South,*” New York Independent, pp. 196–200. 1912.

<sup>14</sup> Elizabeth Hinton “An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System”

Vera Institute of Justice, 2018.

The data published by the U.S. Department of Justice, during 1930 to 1972 clearly states the mentality of officials. In this period the total 455 people were executed for rape, and 405 of those were African American.<sup>15</sup>

### **Common thing in USA and India;**

1. There are many things which were common in USA and India towards the offences against women. Whether it is related to gravity of offence or rude behaviour of authority. Some of these are discuss below. Both the countries are on same note in non-reporting the rape case to authority. Moreover, the reason is also the same, the victims believe that they can't get justice due to poverty or racial discrimination.
2. The nature of the rape and majority of the victims are both common in both countries. In USA the black women are the subject of whites and in India the marginalise section is the subject of middle or upper class. Khap Panchayat is a non-judicial body in northern state (Haryana, Uttar Pardesh, Rajasthan) in India which influence the victims to approach to authority.
3. The rude behaviour of the authority is also the common and this is the main obstacle in achieving the justice. For Example; the police asks silly question during interrogation and sometimes force them to withdraw their report due to personal benefits or political pressure.
4. The long process of trial confirms the victims that they would not justice in this life. Moreover they come from the poor family so they don't have enough resources to pay for expenses.

### **Perception of authority and common man towards victims of rape:**

The authorities play a significant role in victim's life from starting point to end. And if the authorities are not ready to understand the tears of victims then in that situation, they don't have any option except to forget their incident. Whenever any case of rape reported to the police, they are duty bound to investigate thoroughly and submit the report in court. And it is written in the criminal procedure code. But in reality it is very surprised that they asks the same story in front of family member. Moreover they pressurised the victims to change their statement in the court just for personal benefits. The second authority which confirms whether rape has been occurred or not is the medical test. Till 2015 the two finger test was in practice which was totally inhuman.

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<sup>15</sup> Danielle L. McGuire, "It Was like All of Us Had Been Raped": Sexual Violence, Community Mobilization, and the African American Freedom Struggle, *The Journal of American History*, Vol. 91, No. 3 (Dec., 2004), pp. 906-931.

In this process the doctor's used the two finger to test whether the hymen was on its place, if there were no injury on the hymen then no rape has occurred. But the question is if any women is married and the rape was done by any other person, how could be hymen injured. The last is the judiciary which has to finally decide and convicted or acquit the accused. But judiciary is bound to believe on the documents produced before it. However sometimes the court used its discretionary powers, but not enough in the cases of rape.

### **Appraisal and Suggestion:**

A society can't develop without the participation of all irrespective of gender. But if we try to differentiate them the result would be worse like in India and America. Moreover, this is the reason the marginalised section of India is the attraction point in election times. Because they didn't achieve anything during the lifetime but the politician wants to assure them to provide all facilities. However, these all are the political propaganda, nothing more than else.

I think that such trauma cannot be compensated only by providing financial assistance to such victims of rape. But for the purpose of rehabilitation of such victims the State/ UT Governments have made an attempt by providing financial assistance to such victims in terms of compensation which varies from Rs. 20,000/- to Rs. 10,00,000. But there must be a fix amount of compensation for victims. In the current scheme there is a big gap between minimum and maximum amount and due to that the DLSA/SLSA award only minimum amount. Moreover the victim of Rape cannot withdraw the full amount of compensation from their account because the scheme mentioned that only limited amount you can withdraw and rest of the amount would be in saving account as a Fixed Deposit. The victim must be free from this condition. The investigating agency must be free from political pressure. Also the lengthy process of trial must be easy, so every victim can approach the judicial system.

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