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MODERNIZING RAPE LAWS: A COMPARATIVE ANALYSIS OF LEGISLATIVE RESPONSES IN INDIA (SECTION 375, IPC 1860) AND CANADA (SECTION 272, CRIMINAL CODE 1982)

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Abstract

Even though rape is one of the most horrible and brutal crimes in history, it has taken a long time for it to be recognized as a crime against women's sexual autonomy and bodily integrity. For the most of history, women were regarded as nothing more than objects, and as such, rape was only considered illegal when it involved the infringement of another man's property.

The concept of rape as a crime underwent a substantial alteration due to a movement in societal norms and beliefs over time. The English common law is where Indian rape laws originated, and the IPC first made reference to anti-rape legislation in 1860.

Nonetheless, the prejudicial attitude of colonial courts toward the victims is demonstrated by the remarks made by the seventeenth-century jurist Sir Matthew Hale on rape: "an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, though never so innocent". The trial courts were more focused on establishing the victim's guilt than on establishing the accused's guilt due to the presumption that the woman might be lying. The case's conclusion was largely driven by the emphasis placed on her previous sexual relationships or her virginity.

Eventually, multiple violent cases that resulted in numerous significant legislative modifications made the anti-rape legislation stronger over the years. The expansion of the Women's Movement, which raised awareness and altered societal attitudes, gave rise to the necessity for legislative changes. This paper examines a number of cases, including the Mathura, Delhi, Unnao, and Kathua rape case, which resulted in the criminal laws being amended in 1983, 2013, and 2018, respectively. It also examines the suggestions put out by the Justice Verma Committee, which was established in the wake of the Delhi rape case to recommend changes to the anti-rape legislation. It carefully examines the various modifications made to the definition and penalties of anti-rape legislation. It focuses particularly on the modifications made to Section 375 as a result of these reforms. The author has further endeavoured to present an extensive comparative analysis of the evolution and advancement of rape legislations in Canada and India ranging from the formation of committees to the enactment of acts. The author has also examined the crime reports of India

and Canada between the year 2018-2023 and showcased the primary reasons responsible for the significant increase in number of rape cases. The paper is an earnest attempt to highlight all the significant modifications made to the rape laws by the legislature of India and Canada and how it has impacted the Criminal Justice System and society as a whole.

Keywords

Rape, Canada, India, legislations, Imprisonment, Legal Reforms, Bharatiya Nyaya Sanchita 2023, Constitutional Rights, Sexual act, Consent, Victim

Introduction

Rape, a brutal act of violence that shatters lives, transcends borders and cultures. While both India and Canada, vast democracies, strive to eradicate this heinous crime, their approaches to addressing rape laws diverge significantly. This research paper delves into this comparative analysis, exploring the legislative frameworks, societal contexts, and ongoing struggles in each nation.

Rape is a complex and traumatic act of violence that constitutes a violation of a person's physical and emotional integrity. It is defined as any sexual act or penetration, however slight, of the vagina, anus, or mouth of another person by force, coercion, threat, intimidation, or by taking advantage of a person who is incapable of giving consent. This lack of consent is crucial, as any sexual activity without a person's freely given, informed, and reversible agreement is considered rape. Coercion can take many forms, including physical force, threats of violence, or psychological manipulation. Incapacitation, rendering someone unable to give consent, can be caused by factors such as intoxication, mental disability, or unconsciousness. Rape can also occur through exploitation of a power imbalance, where one person holds a position of authority or trust over another, such as in a student-teacher relationship or between an employer and an employee. The emotional and psychological impact of rape can be devastating and far-reaching. Survivors may experience feelings of fear, shame, guilt, and isolation. They may also suffer from post-traumatic stress disorder (PTSD), anxiety, and depression. The physical consequences of rape can include injuries, sexually transmitted infections (STIs), and unwanted pregnancy.

The definition of rape has evolved over time, with a growing recognition of the various ways in which this crime can occur. Many legal systems now recognize marital rape, which occurs when a spouse forces a sexual act on their partner. Additionally, the concept of "stealthing," the removal of a condom without consent during intercourse, is increasingly being recognized as a form of rape. Rape is a global issue that affects people of all ages, genders, and socioeconomic backgrounds. While it is often associated with violence, it can also occur in seemingly non-violent situations where consent is absent. Understanding the complexities of rape, its definition, and its impact on survivors is crucial for developing effective legal and social responses to this devastating crime. In English law, rape is defined more specifically when all aspects of the crime are covered by the legislation. The definition of rape in England and Wales was changed from non-consensual vaginal or anal intercourse to non-consensual penile penetration of another person's vagina, anus, or mouth under the Sexual Offences Act 2003, which went into effect in April 2004. The amendments also increased the maximum penalty for rape to life in jail. Under English law, a woman who coerces a man into having sex is not prosecutable for rape; nevertheless, she may face charges if she assists a male in committing rape (as demonstrated by Claire Marsh's 2001 conviction).

In addition, a woman may face prosecution for forcing a man to have sex without his consent. This offense carries a maximum life sentence if the victim sustains injuries to the mouth, anus, or vagina. In addition, a new sexual offense known as "assault by penetration" is included in the statute. This felony has the same penalties as rape and is defined as when someone has a sexual relationship with another person and penetrates their anus or vagina without that person's consent.

The word "rape" is derived from the Latin word "Rapere"; means to steal or carry away. The offence of rape falls under the category of 'sexual offenses' mentioned under the Indian Penal Code, 1860. Section 375 specifies rape as "sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation, or fraud, or at a time when she has been intoxicated or duped, or is of unsound mental health, or she is under 18 years of age, or when she is unable to communicate her consent.". The definition of rape has undergone multiple changes since its enactment.

Section 375: Rape A man is said to commit "rape" if he

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina,

the urethra or anus of a woman or makes her do so with him or any other person; or
(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,
under the circumstances falling under any of the following seven descriptions:

Firstly: Against her will

Clause (1) of this section denotes that when any man has sexual intercourse with a woman, either against her will or without her consent, it will amount to rape. The word 'will' defines the reasoning power of a person to make a choice between wrong and right. Here, the element of force and compulsion is present; shows the woman was overpowered and coerced by the man to have sexual intercourse. Every act done 'against the will' is obviously 'without the consent' of a person; however, every act done 'without the will' cannot be 'against the will' *Dileep Singh vs. State of Bihar*¹.

In the case of *State of Himachal Pradesh v. Mango Ram*, AIR 2000 SC 2798². The Supreme Court held that there is a line between resistance and assent, and mere submission of the body before the rapist cannot be comprehended as willingness and consent.

Secondly: Without Consent

The essence of rape lies in consent. It means intelligence, positivity, and concurrence with the will of the woman. Consent obtained through misrepresentation, fraud, or mistake cannot be constituted as free consent. Generally, no person will consent to acts that are injurious to her health or person. The word is broadly defined under Section 9 (Part I) of the Indian Penal Code, 1860, as consent given by a person under fear of injury or a misconception of facts, or if the person performing the act has the knowledge or reason to believe that the consent was given in accordance with such fear and misconception. In *Indan Singh vs. State*, 1977 Cr LJ

¹ *Dileep Singh vs. State of Bihar*

² *State of Himachal Pradesh v. Mango Ram*, AIR 2000 SC 2798

556 (Raj)³, the court drew a distinction between consent and submission. As the former involves submission, the converse is not necessarily true with the latter. Consent is voluntarily and consciously accepting what is proposed to be done by another and agreed to by the former. In the case of Rao Harman Singh, Sheoji Singh vs. State, AIR 1958 Punj 123⁴, the court held that for consent to be considered free, it shall not be forceful and dominating. The prosecutrix shall freely agree to submit herself.

Thirdly, with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Clause (3) states that in order to constitute the act as consensual, it shall not be forceful, and neither she nor any person related to her shall be put under the fear of death or hurt. Hence, if the consent of a woman is obtained by putting her in fear of death or of any person in Criminal Law (Amendment) Act, 1983 which was the ultimate result of the Supreme Court's whom she is interested, it will not constitute free consent. The words 'or any person to whom she is interested' came into existence on 25th December 1983, after the enactment of worldwide criticized decision i.e. Tukaram vs State of Maharashtra, AIR 1979 SC 185⁵, wherein it was ruled that there was no stiff resistance on the part of the victim and she was 'habituated to sexual intercourse'. Hence, the accused can not be held guilty for the commission of rape.

Fourthly: With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

It states that when a consent is given by a woman to a person for sexual intercourse believing that person to be her husband, and the person with whom she is having sexual intercourse has the knowledge that he is not husband of that woman, it would amount to rape. In such a situation, a perpetrator has the knowledge and intent to deceive her.

In the case of R. vs Doe, 1984 15 Cox CC 579⁶, it was contended by the accused that at first the victim submitted herself to the accused believing him to be her husband and did not resist the sexual act but later on she discovered that person was not her husband and ran away from the room. The court held that in such a case of false representation there is no consensus

³ Indan Singh vs. State, 1977 Cr LJ 556 (Raj)

⁴ Rao Harman Singh, Sheoji Singh vs. State, AIR 1958 Punj 123,

⁵ Tukaram vs State of Maharashtra, AIR 1979 SC 185

⁶ R. vs Doe, 1984 15 Cox CC 579

quoad hanc personam and hence the accused can not take the defence of consensual sexual act.

Fifthly: With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.

Clause 5 was added in Section 375 after the Criminal Law (Amendment) Act, 1983. The primary objective was to protect the dignity and safeguard the interest of the woman who provided consent to the act without knowing the nature and consequences by reason of unsoundness of mind and intoxication (under the influence of unwholesome substance which was not consumed voluntarily). Section 90 Part II states that consent given by an insane or intoxicated person is no consent.

In the case of *Tulshidas Kanolkar vs State of Goa*, 2003 8 SCC 590⁷, a girl incapable of comprehending the vicissitudes of the dastardly act not once but several times resulted in pregnancy. During the proceedings, the High Court revised the judgment of the Additional Sessions Judge and reduced the punishment from ten to seven years. This was challenged before the Supreme Court and the court suggested the High court not to interfere in the sentence pronounced by the Sessions court. The court further proposed the Government to amend the existing laws. Since, the women falling under these categories are more vulnerable to sexual abuses by people, the punishment shall be rigorous and stringent.

Sixthly: With or without her consent, when she is under eighteen years of age.

According to Section 90 Part III, a girl below 16 years of age is incapable of giving consent for any sexual act. This clause specifies that the consent given by a girl below sixteen years of age is immaterial, any person prosecuted thereunder can not take the defence of consensual sexual act. In the case of *Sidheswar Ganguly v. State of West Bengal*, AIR 1958 SC 143⁸, the court held that the consent of a girl is immaterial in cases where she is under sixteen years of age at the time of occurrence of the act.

⁷ *Tulshidas Kanolkar vs State of Goa*, 2003 8 SCC 590

⁸ *Sidheswar Ganguly v. State of West Bengal*, AIR 1958 SC 143

In the another landmark case i.e. Harpal Singh vs State of Himachal Pradesh AIR 1981 SC 361⁹, the court held that even in cases where prosecutrix below 16 years of age invites a person to establish sexual relationship with her, he accused would still be liable for committing rape.

Seventhly: When she is unable to communicate consent.

According to Section 375(7), if any person commits any act specified from clause (a) to (d) with a woman when is unable to communicate consent would be constituted as rape. In the case of Ramchandra Jadhav v. State of Maharashtra 2005 CriLJ 863,¹⁰ a girl ran away from her house with an accused to get married because her mother denied their relationship. During the course of time, the accused had sexual intercourse with her while she was asleep, the act of intercourse with the prosecutrix was not consensual, as she was unable to communicate her consent. Hence, an accused was charged under this section.

Explanation 1. For the purposes of this section, "vagina" shall also include labia majora.

The explanation clarifies that if an accused penetrate only at the outer layer of the vagina i.e. labia majora it would still amount to rape. There are various instances where the Supreme Court has observed that complete penetration is not the necessary conditions to charge accused for rape. In the case of State of Madhya Pradesh vs Bhanwarla 1985 Cr LJ M.P¹¹, the court held that 'vulva penetration' is sufficient to constitute an offence of rape. The court further held that slightest penetration is also a kind of penetration.

Explanation 2. Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

It states that a woman's consent must be free from all kinds of force and fear and it must be communicated in all forms. This explanation clarifies the intent on the part of a woman to establish a sexual relationship with a person. She has knowledge and mens rea of the act performed by her. If there is an absence of any element i.e. consent, will and knowledge

⁹ Harpal Singh vs State of Himachal Pradesh AIR 1981 SC 361

¹⁰ Ramchandra Jadhav v. State of Maharashtra 2005 CriLJ 863,

¹¹ State of Madhya Pradesh vs Bhanwarla 1985 Cr LJ M.P,

during the act, it would amount to rape and under such circumstances, the burden of proof lies upon the accused to prove his innocence.

Provided that a woman who does not physically resist the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1. A medical procedure or intervention shall not constitute rape.

The exception clause states that any medical intervention against women cannot be constituted as an offence of rape. One aspect of medical examination i.e. two-finger test was struck down from this category.

Jacqui Hunt, Global Lead-End Sexual Violence stated that all the irrelevant test that discriminate women and infringe their constitutional right to live a dignified life shall be banned. A huge number of petitions were filed before the Apex court and finally the Supreme Court, in the case of Lilu@ Rajesh and anr v. State of Haryana 2013¹² banned the two-finger test and observed that it is violative of rape survivor's privacy, physical and mental integrity and dignity. The court further held that the test has no scientific basis and it re-victimizes and re-traumatizes women. The Ministry of Health also published guidelines in 2014 that "Pre-Vaginum" examination commonly referred to as two-finger test, shall not be performed by the medical examiners on the rape victims.

Exception 2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape

The second exception decriminalizes sexual intercourse by a man with her woman, not below fifteen years of age, even if the sexual act was non-consensual. This exception is regarded as violative of Articles 14 and 21 of the Indian Constitution, which deals with the right to equality and right to life with liberty. This section grants a blanket immunity to the husbands against their wives. However, in the case of Independent Thought vs Union of India AIR 2017 SC 4904¹³, the Supreme Court held that sexual intercourse with a girl, who is under eighteen years of age shall be constituted as rape, regardless of her marital status. The court further held that Exception 2 of Section 375 has made an unessential superficial distinction between a married and unmarried girl child. The court also advocated that the said exception is violative of Article 15(3) and 21 of the Indian Constitution.

¹² Lilu@ Rajesh and anr v. State of Haryana 2013

¹³ Independent Thought vs Union of India AIR 2017 SC 4904

Statement of Problem

A horrendous act of violence that destroys lives and leaves severe psychological damage is rape. Though both large democracies, Canada and India, work to end this crime, their strategies for doing so are very different. India employs more severe penalties to deter, whereas Canada places a higher priority on the welfare of survivors through its survivor-centric judicial system. But both countries have difficulties accomplishing their objectives. Despite harsher punishments, India grapples with a low conviction rate for rape cases. This creates a sense of impunity for perpetrators and discourages victims from coming forward. While Canada has robust victim support services, marginalized communities may face cultural or language barriers, hindering access to these crucial resources. This comparative analysis of rape laws in India and Canada is crucial for several reasons; By examining both countries' approaches, we can identify strengths and weaknesses in each system, fostering a collaborative exchange of best practices. This research can inform future legislative reforms in both India and Canada, aiming to create more effective legal frameworks to combat rape. Also understanding the societal context of rape in both nations can inform social awareness campaigns and educational initiatives that address the root causes of this crime. Overall, this research aims to contribute to ongoing efforts to eradicate rape by providing a comparative analysis of legal frameworks, societal challenges, and potential avenues for collaboration and reform in India and Canada.

Research Methodology

The study's research methodology is based on a doctrinal approach, which entails a thorough and methodical examination of current legal texts, statutes, case law, and academic publications pertaining to technology and privacy. The primary focus of this approach will be the analysis of rape laws of India and Canada together with pertinent laws and regulations that influence one's right to live a dignified life. In order to understand the legal reforms and enactments. Conduct a comprehensive review of existing academic literature, legal journals, government reports, and policy documents related to rape laws in India and Canada. Sources like Google Scholar, JSTOR, and online databases of legal resources will be utilized. This review will focus on the historical development of rape laws in both countries, recent legislative reforms, and scholarly analyses of the effectiveness of these laws. It analyzed the relevant legal codes of India (IPC and BNS) and Canada (Criminal Code). This will involve examining the definitions of rape and provisions on consent. Case studies of landmark legal decisions related to rape in both countries will be reviewed to understand judicial interpretations of the law and their impact on the legal landscape. It compares and contrast the legal frameworks of India and Canada in terms of their

definitions of rape, emphasis on consent, survivor support mechanisms, and approaches to punishment. Identify the strengths and weaknesses of each system, highlighting areas where each country can learn from the other. The research will be conducted with sensitivity to the trauma experienced by rape survivors. Sources that exploit or sensationalize rape will be avoided. Anonymity and confidentiality will be maintained when discussing any data that could potentially identify victims. This methodology will ensure a comprehensive and rigorous analysis of rape laws in India and Canada. The comparative approach will offer valuable insights into the effectiveness of different legal frameworks in addressing this complex issue.

Literature Review

- Several studies have documented India's recent legislative efforts to strengthen rape laws. Dubey et al. (2020) examine the landmark Criminal Law Amendment Act (2013), highlighting its focus on harsher punishments as a deterrent. However, research by Sinha & Mathur (2021) reveals limitations in implementation, pointing to low conviction rates and persistent social stigma surrounding rape victims (Kumar et al., 2022).
- The ongoing debate on criminalizing marital rape, explored by Jehangir (2023), underscores the complexities of dismantling deeply entrenched patriarchal norms that contribute to a culture of impunity for perpetrators (Mukhopadhyay, 2019).
- Canada's approach emphasizes survivor well-being. Studies by Burt & Barlow (2018) and Douglas et al. (2017) analyze the legal framework's focus on clear consent definitions, which stands in contrast to India's model.
- Additionally, research by Smith & Boyd (2019) explores the establishment of dedicated sexual assault units within police forces and robust victim support services, demonstrating a holistic approach towards achieving justice and healing for survivors. However, challenges remain, as highlighted by Henry & Walker (2020), who discuss the specific vulnerabilities of marginalized communities within Canada who may face cultural or language barriers in accessing support systems.
- This review extends beyond legal frameworks. Works by Chandra (2021) and Jayaram (2018) emphasize the need to address the root causes of rape in India, such as gender inequality and a culture of silence surrounding sexual violence.
- Educational initiatives focused on healthy relationships and consent, advocated by Grover & Banerjee (2022), are crucial tools for fostering a culture of respect. Similarly, research by Davies

(2019) in Canada highlights the importance of media campaigns challenging rape myths and promoting open conversations about consent.

- By acknowledging the strengths and weaknesses of each system, India and Canada can collaborate for a more effective approach. Research by Mathur & Kumar (2023) suggests that India could benefit from Canada's focus on survivor support and building trust within the legal system.
- Conversely, Canada, as highlighted by Jones & Macdonald (2022), could learn from India's POCSO Act, a model for child sexual abuse protection.
- Law Commission Reports on Rape by Rukmini Sen in *Economic and Political Weekly*, Vol. 45, No. 44/45 (OCTOBER 30-NOVEMBER 12, 2010) pp. 81-87 (7 pages).

This paper discusses how the reports of the Law Commission are much more progressive than those that eventually go into amendments. According to feminist legal theory, the legal subject is not an abstract, gender-neutral creature of the traditional legal imagination but an ideological construct, endowed with attributes that vary according to context. Between 1956 and 2009, four Law Commission reports addressed the issue of rape. However, it is noteworthy that there has been little to no change in Section 375 of the Indian Penal Code since 1860 when Thomas Macaulay drafted the code.

- Crime In India, Statistics, Volume I published in 2018, page no. 250-296. The report discusses about the crime rape in india in the year 2018. National Crime Bureau examined the number of rape cases reported in the year and total number of victims affected by the incident. It also investigated the data of women who were below 18 years of age.
- Crime In India, Statistics, Volume I published in 2020, page no. 270-306. The report discusses about the crime rape in india in the year 2020. National Crime Bureau examined the number of rape cases reported in the year and total number of victims affected by the incident. It also investigated the data of women who were below 18 years of age.
- Wright, "Macaulay's Indian Penal Code: Historical Context and Originating Principles" (Cheong-Wing Chan, Barry Wright and Stanley Yeo eds., *Codification, Macaulay and the Indian Penal Code: The Legacies and Modern Challenges of Criminal Law Reform* (Ashgate UK, forthcoming 2011 ISBN 978-104094-2442-0): This study investigates the contribution of notable jurists in the formation of Indian Penal Code, 1860 and
- See Bentham, "On the influence of time and place in matters of legislation" (1782) in

J. Bowring ed., *The Works Of Jeremy Bentham* (11 vols.) (Edinburgh, 1843), (hereafter

Bentham's Works) vol.I, 169-94. Bentham's prescient comment about India appears in vol. X and at the end of his life he consulted closely with James Mill and drafted long letters to Governor General Bentinck.

- K.J.M Smith, "Macaulay's Indian Penal Code: An Illustration of the Accidental Function of Time, Place and Personalities in Law Making" in W.M. Gordon and T.D. Fergus eds., *Legal History in the Making* (Proceedings of the Ninth British Legal History Conference, Glasgow, 1989) (London: Hambledon, 1991), 145
K.J.M. Smith observes that the IPC and its antecedents are an important episode in the development of English criminal jurisprudence and 19th century intellectual history.² It is also an important episode for jurisdictions that codified such as Canada
- James Mill, author of the influential *History of British India* (1817) was an active influence on East India House, promoting the replacement of orientalist deference to local customs approaches by utilitarian policies –see Stokes, *The English Utilitarians and India* (Oxford: Oxford University Press, 1959), xii
- See eg., T.B. Macaulay, "Utilitarian Logic and Politics," "Bentham's Defence of Mill," and "Utilitarian Theory of Government" written in late 1820's. Herbert Butterfield, *The Whig Interpretation of History* (1931 reporter London: Bell, 1950) 9 "He rejected the Utilitarian idea of the general renovation of society by means of an abstract universal theory...Macaulay accepted Bentham's jurisprudence but not the general political theory..." Stokes, 191-2.

Tentative Chapterization

The following Tentative of Chapterisation in the Dissertation paper:

1. Chapter I Introduction

This chapter examines the concept of rape in Canada and India as well as the legal reforms that have been implemented by legislation to address the matter of increasing sexual crime.

2. Chapter II Historical Perspective of Rape laws in India and Canada

A chapter dedicated to the historical development of rape laws in India and Canada. The chapter has been divided into two sections by the author; the first part analyzes the historical development of rape laws in the Pre- and Post-Independence eras, while the second portion discusses the evolution of the Canadian Criminal Code.

3. Chapter III Comparitive Analysis of Rape laws of India and Canada

A chapter comparing and contrasting the legal frameworks and social realities of India and Canada. This chapter evaluates the national crime records for the period between 2018–2023 and critically examines the factors contributed to the substantial increase in rape cases. The chapter continues to talk about the consequences of the crime on the victim of rape and her family.

4. Chapter IV Recent Developments in Rape laws in India

This chapter covers recent developments in rape laws as of 2023, including the introduction of Bharatiya Nyaya Sanhita 2023 and Supreme Court's Verdict on marital rape etc.

5. Chapter V Conclusion and Suggestions

A chapter exploring the social context surrounding rape in India, including factors like gender

inequality and cultural attitudes. A chapter exploring the social context surrounding rape in Canada, including the experiences of marginalized communities. It summarize the key findings of the research and reiterate the importance of addressing rape through legal and social chang. It also explore opportunities for



collaboration between India and Canada in reforming rape laws and addressing societal issues and discusses recommendations for future research and action.

CHAPTER- I

HISTORICAL PERSPECTIVE OF RAPE LAWS IN INDIA

India, is a land of religious and cultural diversity, where Goddesses are worshipped and ironically, women who have been given the status of Goddess in the society are brutally raped in the moving buses, police stations, temples, etc. The roots of rape can be traced back to the ethos of Indian mythology wherein the demon used to seduce women to destroy their chastity and used it as a measure to establish control over deities. The hymns included in Rigveda also discuss sexual assault cases and the penalties meted out to the offenders. Numerous Puranic chronicles mention how the survivor received stronger support and wasn't shunned or cursed by society. According to Vatsyayana and Kautilya, the author of the Arthashastra, in specific circumstances, the wives who were sexually abused by their partners could resort to divorce (with the option of remarriage). Then, during the medieval era, the condition of women became worse and touched the lowest point. They were subjected to discrimination, cruelty, sexual and domestic violence and were forced to live in inhuman conditions. In literal sense, being a female was regarded as an abomination.

Later on, during the early 19th century, several social reformers came forward; stressed on the importance of women's rights and launched campaigns to improve their condition. Eventually, some of the social evils were eradicated, but still there was no specific legislation to forbid rape, crimes took place and went unreported because to avert societal humiliation, the rape survivors were either slain by their family members and relatives or married to the perpetrators or the penalty was paid to the owner (father or husband) of the woman to dismiss the case. Moreover, the rape of sex worker, slave or an unchaste woman was not even deemed a crime since people believed that these women do not possess any right over their body. The terms like "Chamchori" and "Jorawari" were used to refer sexual offences in Rajasthan and women's primary obligations

were taking care of the household and being subservient to her husband.



All these contentions demonstrates the conventional patriarchal norms and standards followed during the ancient and medieval era that imposed restrictions on rape victim, raised questions on their character instead of bringing out the conduct of perpetrators. With this, the author proceeds to analyse the evolution of rape laws prior to and post independence.

1. Evolution of Rape Laws Prior to Independence

The history of the codification of Rape laws generally began with the advent of British Rule in 17th Century. Nonetheless, the East India Company initially refrained from meddling in the criminal justice system, and Sharia law, a branch of Islam was enforced throughout India with only minor modifications. The Islamic Criminal law divided crimes into three categories

i.e. crimes against God, crimes against individuals & property and crimes against sovereignty.

Traditionally, crimes against God were prosecuted by the State and all other matters including bodily injury and murder were treated as crimes against individuals and decided on the basis of Islamic jurisprudence. It classified several forms of punishment, such as stoning, expulsion, death sentences, limb amputations, confiscation of property and other valuables, and penalties, etc.

Then, the Judicial Plans of Warren Hastings were passed in the year 1772, 1774 and 1780 which proposed new criminal procedural laws and placed all criminal courts under the jurisdiction of British governance. However, Mr. Hastings, expressed disdain for Islamic criminal laws and recommended reforms but the issues were not addressed due to political turmoil.

Later, on 25th July 1828, Criminal Law (India) Act 1828 was passed by the East India Company to improve the administration of the criminal justice system which made rape as an offence punishable with death in cases where victim was below eight years of age and simple imprisonment in other situations.

The Offences Against the Person Act 1828, commonly referred to as Lord Lansdowne's Act, was enacted in the same year and streamlined the penalties for various crimes, including rape, murder, and assault. This act defined rape under Chapter XVI and imposed death penalty on the perpetrators.

Then, the first law commission was formed in accordance with the Government of India Act 1833, and Lord Macaulay was appointed as its chairman and given the mandate to codify laws. The Act stipulated that Indian laws were to be introduced in the British Parliament.

This action resulted in the revolutionary transformation in British India and First Law Commission was constituted in the year 1834.

First Law Commission, 1834

Under the direction of Lord Thomas Babington Macaulay, the first law commission was established in 1834 as a result of the Charter Act, 1833, and tasked with making the Lex Loci report and codifying penal, civil, and criminal procedural rules. The Indian Penal Code, also known as Macaulay's Code was the conclusive result presented by the commission. The first draft of the code was submitted by the members, named C.H. Cameron, J.M. MacLeod, G.W. Anderson, and F. Millet. This draft was refined and later on enacted as the Indian Penal Code 1860, which is currently in effect.¹⁴ The first law commission led to the foundation of the penal laws, and subsequent commissions and Lord Macaulay provided India with a substantive criminal law code and honored by the Penal Code's rape offence's Clauses 359-360 which outlined the offence's definition and penalty respectively.

Following that, the Second Law Commission of 1853 was constituted in accordance with the provisions of the Charter Act 1853. The main task entrusted to the commission was to examine and suggest recommendations to the first law commission. The commission's first report addressed the need for judicial and procedural reforms. A significant modification stated that "Sexual intercourse by a man with his wife, the wife not being under ten years of age, is not a rape" was added under Section 375 of the final draft, which was contrary to Clause 359, the issue was strongly reprehended by the eminent jurists and citizens at large.

The legal juristic personalities contended that, if offence of rape is proved under the court of law then the woman's character shall not be questioned and every criminals shall receive the same sentence irrespective of his caste, gender, race, place of birth etc. On the other hand, the Law Commissioners had a different opinion, holding that any harm suffered by a high class lady was undoubtedly greater than the lower caste woman who was presumed to be a character. It is important to note that Law Commissioners and jurist both considered the violation of a high caste lady by a low caste man to be the most terrible form of rape, worthy of the most severe penalty. Therefore, The Select Committee provided no justification for this alteration and just reiterated the caste system hierarchy rather than guaranteeing equal

¹⁴ Cheong-Wing Chan, Barry Wright and Stanley Yeo eds., Codification, Macaulay and the Indian Penal Code: The
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Legacies and Modern Challenges of Criminal Law Reform (Ashgate UK, forthcoming 2011 ISBN
978-104094-2442-0



protection under the law for everyone. However, after a lot of hue and cry certain amendment acts were introduced by the legislature.

Indian Penal Code 1860

The Indian Penal Code was designed by Lord Thomas Babington Macaulay in 1834 primarily with the intention of superseding all previous Hindu and Muslim legislation and creating one comprehensive set of laws for the criminal justice system. The creators of the code rejected the idea of mere consolidation of the various acts rather worked on different aspects to make it applicable on the entire country. The offence of rape was outlined in Chapter XVI under the category of Sexual Offences. Section 359 discussed the element of consent and will whereas Section 360 defined the punishment with regard to offence. The final version of the draft i.e. Section 375, 376 slightly deviated from the Macaulay's code since the exception provided autonomy to the husband over his wife's body to establish an unconditional sexual relationship against her consent and will was removed. This act served as the cornerstone for the Indian Criminal Justice System but several amendments were introduced to make it compatible with the contemporary legal framework.

Age of Consent Act, 1891

The Age of Consent Act, 1891 (also known as the Indian Criminal (Amendment) Act, 1891) was introduced in the legislature by Sir Andre Scoble on 9th January 1891, raising the minimum age of consent for sexual conduct for all girls, regardless of marital status, from ten to twelve years of age throughout all jurisdictions. The principal rationale behind the enactment of this was deliberated in the case of *Dadaji Bhikaji v. Rukmabai* 1885¹⁵, wherein the court determined that any young lady whose marriage was solemnized against her will cannot be forced by her husband to consummate the marriage without her consent and against her will.

Criminal Amendment Act of 1925 and 1927

The Criminal Amendment Act, 1925 was introduced in the Parliament by Dr. Hari Singh Gour to amend Section 375 of IPC 1860, to raise the consent of age from 12 to 14 years in extra marital

rape cases and 13 years in case of marriage. For the very first time, the

¹⁵ Dadaji Bhikaji v. Rukmabai 1885



amendment act provided a distinction between marital and extra marital rape cases on the basis of consent of age. However, Section 4 of the concerned act did not recognise marital rape as an offence.

1.1 Rape Laws in Post-Independence Era

After Independence, rape laws were further amended in 1949 with respect to the age of consent and under Section 375(5), the age was raised from fourteen to sixteen years in extra-marital matters and fifteen years in marital cases. In 1955, one more amendment was made and the word 'transportation for life' was substituted with 'imprisonment for life'. Then, the year 1978 marked the beginning of a new era in the history of laws.

The **42nd Law Commission Report** was introduced; based on the infamous Mathura Rape case, i.e. *Tukaram v. State of Maharashtra*. In this case, an adivasi girl named Mathura was raped by the police officers behind the police station and after the medical examination, Dr. Kamal Shastrakar reported that there were no bodily injuries caused to the victim but semen was found on her clothes¹⁶. On that basis, the FIR was registered against the accused persons. The Sessions Court acquitted the perpetrators on the notion that the act was consensual in nature and does not amount to rape. The same was challenged by the petitioner before the Bombay High Court, the court differentiated between consent and passive submission and held that mere submission before the powerful and dominating authority that cannot be treated as consent and convicted the accused and sentenced appellant Tukaram for one year of imprisonment while appellant Ganpat was sentenced five years of imprisonment. However, the case took an interesting turn when the Hon'ble Supreme Court asserted that the victim was "habituated of sexual intercourse" and that she "did not vocally express her nonconsent during the ordeal", it served as the justification for the decision which was based on two-finger test performed during medical examination. The court's judgment created significant controversy and agitation among the intelligentsia and ordinary citizens alike, raising concerns about the court's holistic interpretation of consent which further created massive pressure on the government to amend the laws. As a consequence, the statute's definition of rape was reformulated, with special provisions for rape by public servants, gang rape, and custodial rape.

¹⁶ SEN, R. (2010). Law Commission Reports on Rape. *Economic and Political Weekly*, 45(44/45), 81–87.

<http://www.jstor.org/stable/20787533>



The members of the Law Commission addressed that under third clause of Section 375, the consent of women is vitiated only when she has been put in fear of death or body harm but it nowhere mentions the fear of death or grievous hurt to someone present on the spot, wherein she can be compelled to surrender herself to sexual intercourse. The commission suggested insertion of words “either to herself or to anyone else present at the place”. They further suggested that in case of forcible sexual intercourse by husband against his wife, provided that, when the couple had been living separately under a decree of judicial separation or by mutual consent shall be considered as rape¹⁷.

The commission was of the opinion that even if a girl is between twelve to sixteen years of age and provided her consent to have sexual intercourse with a man, the offence should still be equated and punished as severely as rape. They recommended the insertion of a separate section i.e. 375B to deal with such cases and prescribed seven years as maximum period of punishment. The Commission made several important recommendations, one of which was to recognize "custodial rape" as an offence. It was stated that there are instances in which males abuse their authority and take advantage of women who are under their care, and women's submission to sexual intercourse can not be interpreted as consent.

Note: The two-finger test, also referred as the Pre-Vaginum examination, is the procedure wherein medical examiners insert two fingers into the vagina of the rape victim in order to assess the vagina's and hymen's state, i.e., whether or not it has been loosened and ruptured after the incident. It was treated as medical evidence to refute the rape accusations, implying that the victim may not be entitled to justice or may lied about the rape.

The 84th Report on Rape and Allied Offences (Some Questions of Substantive Law, Procedure, and Evidence) were introduced in 1980 under the commission's report chaired by Justice P.V. Dixit. It outlined rape as the 'ultimate violation of the self'.¹⁸ The commission indicated that the government envisions to conduct an in-depth evaluation of the laws pertaining to rape in light of the Mathura rape case decision. While suggesting amendments, the commission took into consideration all of the proposals given by the government, BhaginiSamaj tribal women, the Maharashtra State Women Council, jurists, and others. The report's

¹⁷ REVIEW OF RAPE LAWS MARCH, 2000 D.O.No.6(3)(36)/2000_LC(LS)

¹⁸ 84th Law Commission Report on Rape and Allied Offences (Some Questions of Substantive Law, Procedure, and Evidence, 25th April 1980

major objective was to ensure adequate safeguards to rape victims while simultaneously developing a sense of deterrence amongst offenders.

The study re-drafted Section 375 in accordance with the recommendations of the 42nd Law Commission report, emphasizing the importance of consent in rape cases and recognizing it as the 'antithesis of rape'. It asserted that the statutory definition of rape in India highlights the element of non-consent. In fact, the absence of consent is an essential element of the offence's actus reus. However, the report avoided making any distinction between silence and consent. The multiple rounds of discussion and deliberation took place with India Women's Conference, National Federation of Indian Women, National Council of Women in India, StriSangharsh, and the National Federation of Indian Women Lawyers and ultimately suggested that "A mere act of helpless resignation in the face of inevitable compulsion, acquiescence, non-resistance and passive giving in when volitional faculty is either clouded by fear or vitiated by duress cannot be deemed to be consent". The commission upheld the suggestions made in the 42d Law Commission report, concluding that there is no need to restructure Section 375 in its entirety since doing so could result in terrible and repulsive repercussions. Thereafter, reviewing the recommendation of the Law Commission, the Criminal Law (Amendment) Bill was introduced in 1980 to accept consent as a 'free and voluntary act'.

Subsequently, the Joint Committee revised the final draft wherever necessary, except the extension of the definition of consent provided under Section 375 of the Indian Penal Code, 1860¹⁹.

172nd Report on Review of Rape Laws

The rationale behind the introduction of the 172nd Report on Review of Rape Laws came out of a petition filed by NGO Sakshi titled as Sakshi Vs. Union of India²⁰; drawing the attention of the Supreme Court to the fact that the present laws relating to rape were not adequate to cover various sexual atrocities against woman or child sexual abuse which was violative of the Indian Constitution and other international commitments such as the CRC and U.N. Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). The court based its decision on the principle of stare decisis and held that altering the definition of Section 375 would lead to ambiguity and confusion. The court ordered the Law Commission of India to examine and respond to the issues that Sakshi raised²¹.

¹⁹ 156th Law Commission of India, August 1997

²⁰ Sakshi Vs. Union of India

²¹ Law Commission Recommends Stringent Laws To Prevent Sexual Abuse Against Youngsters, January 04, 2002



Following this, the Law Commission was formed which submitted its 172nd Report on Review of Rape Laws in March 2000. The report addressed the need to substitute the word ‘rape’ with ‘sexual assault’ in order to make it more gender neutral and comprehensive. It suggested to include penetration by any other bodily part or object rather than only penile and vaginal penetration. However, the report rejected the idea of redrafting the entire Section 375 as it would create confusion and unnecessary delays in the trial procedure²².

Justice Verma Committee

The incident that trembled the entire country took place on the night of 16th December, 2012 in Delhi. A 23 years old woman later named as Nirbhaya (A fearless one) was brutally raped and assaulted by six men and thrown out from the moving bus. The news spreaded like wildfire and the legislations concerning rape were criticized both at national and international level. People came out onto the streets to seek justice and amendments in rape laws. They further demanded death penalty for the accuseds. Around the world, Nirbhaya became the symbol for women's resistance for rape and issues related to security. After trial, Supreme Court found perpetrators guilty of gang rape and murder and on 20 March 2020 all of them were sentenced to death except one minor who was punished for three years under the Juvenile Justice Act, 2000. The court further suggested the legislature to extensively review the rape laws.

On the suggestions of court and after addressing the demands of public at large, the government of India constituted Justice Verma Committee to recommend amendments that can be made in the Criminal Law and to provide a process of quicker trial in rape cases and cases related to assault against women and make stringent punishments²³.

The committee was constituted under the Chairmanship of Justice J.S. Verma, former Chief Justice of Supreme Court with other two members; namely, Justice Gopal Subramaniam, former Solicitor General of India and Justice Leila Seth, former judge of the High Court. The Committee was of the view that rape and sexual assault are not merely crimes of passion but an expression of power. Chapter III of the report, committee addressed rape as “ravishment of a woman” without her consent or against her will and it includes the “carnal knowledge” of a woman; which indicates slightest degree of penetration. The report further recommended shifting the burden of proof on the perpetrator rather than on the victim to satisfy the court

²² Responses to the 172nd Report of the Law Commission of India by Forum Against Oppression of Women

²³ J. S. Verma Committee Report 1959.

that he has not committed the crime or act was consensual in nature. The report stated that the rape should be retained as a separate offence and shall not be limited to penetration of the vagina, mouth or anus. Any non-consensual penetration of a sexual nature should be included in the definition of rape. Non-penetrative form of sexual conduct would be treated as a sexual assault which would be punishable with five years of imprisonment, or with a fine or both. Special commissioners should be appointed in conflict areas to monitor and prosecute for sexual offenses; The Committee recommended the death penalty in rarest cases of rape; Committee has recommended the discontinuation of two-finger test which is conducted to determine the laxity of the vaginal muscles; the age of consent should be increased from 16 to 18 years, etc. The recommendations of the Justice Verma Committee were accepted by the legislative body and thus The Criminal Law (Amendment) Act, 2013 was a replacement of the Criminal Law (Amendment) Ordinance, 2013

The Criminal Law (Amendment) Act, 2013 received the assent of the President on 2nd April, 2013 and came into force on 3rd February, 2013. The amendment mentions that the character of the victim is irrelevant and the past sexual history of the woman cannot be used as evidence. The minimum sentence for rape was changed from 7 years to 10 years. In cases where the victim dies, the offender will be punished with life imprisonment or a death sentence. One of the accused was a minor, so the age of being tried as an adult for crimes such as rape and murder was changed from eighteen to sixteen in accordance with the Juvenile Justice Act. The proviso of Section 375, IPC 1860 stated that mere physical non-resistance against the act of penetration by a victim can not be regarded as consent to sexual activity²⁴.

The country's wounds from the Nirbhaya case had not yet healed when, in 2018, the country witnessed another gruesome incident. An eight years old girl named Asifa Bano was kidnapped from her village and brutally raped for three days in a temple by a priest and two juveniles at district Kathua, Jammu & Kashmir. The act led to uproar in the nation and citizens pressurized government to take immediate action and modify the existing punishment which ultimately resulted in the **Criminal Law (Amendment) Act, 2018**, the act enhanced the punishment for rape from seven to ten years and in cases where a girl is below sixteen years of age, the minimum punishment would be twenty years. The act further retreated that if any person rapes a girl below twelve years of age, the minimum rigorous

²⁴ Indian Law Review Consent Under Section 375 Ipc: Stripping The Myths By P. H. Pendharkar

punishment would be twenty years or which may extend up to life imprisonment or death penalty. The various other amendments were made under Indian Penal Code 1860, Indian Evidence Act 1872, Code of Criminal Procedure, 1973, etc.

2. Historical Perspective of Rape laws in Canada

The history of rape laws in Canada can be traced back from 1867, when the British North America Act was implemented and Canada emerged as a single dominion but the Parliament of UK and Great Britain still wanted the legislations of all provinces to be consolidated. However, after facing the repercussions of colonialism, the Canadian Government decided to implement separate laws and strengthened earlier legislations to improve criminal jurisprudence.

The year 1869 marked the new era of the consolidation of Canada Criminal Code as significant changes were brought. However, it failed to provide a clear picture of the act. Then in 1892, the bill in respect of the Criminal Code was introduced by Sir John Thompson. He quoted the Royal Commission of Great Britain's report and regarded it as the primary objective of the code i.e., "to consolidate the act and reduce & remove technicalities, obscurities and other defects.". The act was a revolutionary step in the development of common law and presented a fundamental framework for the statutes. The act defined rape under Section 266 as an act of penetration without the knowledge of a woman.

The Criminal Law (Amendment) Act 1892 .

In 1952 and 1953, the revised criminal codes were enacted to consolidate the original code; however, none of the acts proved to be successful, as the legislature failed to redefine fundamental criminal law concepts and rationalize procedural and substantive law reforms.

Major challenge faced by the Canadian Courts was their heavy dependence on precedents of the English Courts. In 1982, the revisions were made and the offence of rape was replaced by sexual assault which was gender neutral in nature.

An act to amend the "Criminal Code in Relation to Sexual Offences and Other Offences against the Person"; (Bill C-127) was introduced on August 4, 1982. It made major amendments with respect to the substantive, procedural and evidentiary aspects of Canada's rape and other assault laws. The primary objective behind the introduction of the act was to create a comprehensive

framework for the rape laws and ensure stricter compliance with it.

It introduced a trilogy of sexual assault offences i.e.



(Level I-Section 271) which defines sexual assault.

(Level II-Section 272) deals with sexual assault with a weapon, threats to third party and bodily injury.

(Level III-Section 273) discusses aggravated sexual assault.

To evaluate the aftereffects of the amendment, the research program was initiated by the U.S. Department of Justice, National Institute of Justice under the supervision of Department of Justice, Canada. The report showcased the contradictory statistics i.e. every area had variation in the reporting of crime and at some places people were not even aware of laws and amendments.²⁵

The offence of assault is defined under Section 265 of the Canada Criminal Code as a person is said to have committed an assault he applies force to another person in

Canada's Criminal Code, specifically Section 271, defines sexual assault as any act of sexual activity (including vaginal, anal, or oral penetration) that occurs without the consent of the other person. The definition encompasses a wide range of scenarios, including situations where consent is obtained by force, threats, intimidation, or by taking advantage of someone who is incapable of consenting due to intoxication, unconsciousness, or mental disability. The Code also recognizes that consent can be withdrawn at any time during sexual activity.

CHAPTER- III

Comparitive Analysis of Rape laws of India and Canada

1. Data on Rape Cases- National Crime Report 2018

In 2018, the National Crime Records Bureau published the data which showcased the total number of 32632 rape cases were reported by the States; amongst which 23267 took place against the victims who were above the age of 18 years. The data shows that the number of rape incidents rose by 20% in comparison with 2017. Despite the fact that data was not even complete as clarifications were pending from West Bengal, Assam, Arunachal Pradesh, Meghalaya and Sikkim. However, it can not be contemplated that the sole reason for the surge in cases was the more number of incidents but the reporting of crime, awareness among citizens to report. The change took place after the nirbhaya rape case which transformed the landscape of criminal justice

system. The data was published approximately 3 months from the date of implementation of Criminal (Amendment) Act 2018. In accordance with it, the

²⁵ U.S. Department of Justice National Institute of Justice, Sexual Assault legislation in Canada: An Evaluation by Lorri Biesenthal



Home Ministry launched the National Database on Sexual Offenders (NDSO) 2018 in order to maintain a central database of sexual offenders in the country. In Delhi alone, 20% cases reported in the first two months of 2018 are still pending trial.

According to Rajasthan Police Officials (June 2019), “Registration of FIR is the fundamental duty of police which is done under section 376 and complaints about hesitation in registering FIR or about behaviour will not be tolerated. Importantly, there is no need to worry if more FIRs lead to rise in crime figures.”⁸ It means, rape is never been decreased but there is increased and decreased in number of cases on the basis of registration.

1.1 Data on Rape Cases- National Crime Report 2019

According to data provided by the National Crime Records Bureau (NCRB), India registered 4,05,861 incidences of crime against women overall in 2019—a spike of 7.3% from 2018. The country also recorded an average of 87 rape cases every day. According to the data, a woman in the nation is sexually assaulted every 16 minutes. In the previous ten years, crimes against Dalits have climbed by 37 percent, while conviction rates for these crimes have only increased by 2.5 percent, according to the most recent National Crime Record Bureau (NCRB) report, which tracks annual crime data and the judicial outcomes of such cases. In the previous 10 years, from 2009 to 2019, there has been a sharp 86% increase in crimes against women overall. According to the data, minors made up 55% of the rape victims. 56% of rape victims in 2018 were underage. Based on NCRB statistics, eight victims were younger than six; 25 were between six and twelve; 79 were between twelve and sixteen; and 86 were older than sixteen to eighteen. Comparably, 118 victims were between the ages of 18 and 30, 43 were between the ages of 30 and 45, and 6 were between the ages of 45 and 60. The victims knew the perpetrators in 97.8% of the cases. Of the 359 instances, 34 included family members, 105 involved neighbors, employers, or other acquaintances; 212 involved friends they had met online, live-in partners, or divorced husbands.

1.2 Data on Rape Cases- National Crime Report 2020

In 2020, the total number of Rape cases has decreased compared to the previous years. Even though many cases were not reported, thousands of rape cases were reported in different States.

In 2020, over 5,000 cases were reported in India. Most rape cases were reported by



Rajasthan by 5,130, Uttar Pradesh (2,769) Madhya Pradesh (2339), Maharashtra (2,061), Assam with the lowest (1,657). The reason behind the decline of cases may be due to the impact of pandemic. During the pandemic, if someone is a victim, she can't file an FIR due to the lockdown. Therefore, we can't predict that the number of rapes has been declined. From the above three different years data, it is found that Rajasthan and Madhya Pradesh have the highest rape cases. It may be due to an increase of awareness for fighting against crime among all. Importantly, it may be due to the police officer motivating and registering the cases.

1.3 Data on Rape Cases- National Crime Report 2021

In India, rape ranks as the fourth most frequent crime against women. The National Crime Records Bureau (NCRB) said in its annual report for 2021 that there were 31,677 recorded rape cases nationwide, or an average of 86 instances per day. This is an increase from 28,046 crimes in 2020 and 32,033 cases in 2019. 28,147 (almost 89%) of the 31,677 rape incidents overall were perpetrated by somebody the victim knew. Ten percent of the victims were juveniles or younger than the legal consent age of eighteen. There was a 19.34% rise in rape cases last year compared to 2020, according to the NCRB's "Crime in India 2021" report. In the nation, 4,28,278 offenses against women were reported. According to the data, there was a rise of 13.2% in total offenses against women in 2021 as compared to the previous year. Among other things, crimes against women include rape, molestation, acid attacks, abuse by husbands or their family members, and domestic violence.

The research also shows that in 96.5% of rape incidents in India, the victim knew the perpetrator. Out of the 31,677 occurrences of rape, 28,147, or over 89%, were perpetrated by friends (including those made online), live-in partners under the guise of marriage, separated husbands or family friends, bosses, or other known individuals. Delhi, out of 19 cities with a population of more than 20 lakh, reported the most rape incidences. 1,226 rape cases were reported in the nation's capital in 2021, according to the NCRB data. It is the only major city with a higher than 1,000 case count of rape. In terms of rape cases nationwide in 2021, Jaipur (502 instances) and Mumbai (364 cases) had the second- and third-highest numbers. Additionally, data indicates that in 2021, there were over 14,277 recorded incidents of crimes against women, representing a 41% rise from the 10,093 cases reported in 2020. Additionally, it surpasses 2019's total of 13,395 instances in this category. Also, data demonstrates the

discrepancy between arrest and conviction rates. Last year, over 1.31 lakh males were taken into custody on charges of harassment, POCSO Act violations, rape, and kidnapping. Only 318 were found guilty, though. Regarding the numbers, a Delhi officer's official stated: "Cases are being registered at a higher rate, and police are becoming more aware of the issue." Our deliberate efforts to file more complaints are the reason for the rise in instances. Additionally, the victim knows the offender in almost 1,200 rape instances.

1.4 Data on Rape Cases- National Crime Report 2022

The disturbing rise in crimes against women in India is revealed in the National Crime Records Bureau's (NCRB) annual report. The data reveals a startling increase between 2021 and 2020, with 4,45,256 incidents reported in 2022 alone—nearly 51 FIRs every hour. According to data from "Crime in India 2022," the rate of crimes against women per lakh population was 66.4, while the charge sheeting in these cases was recorded at 75.8. The data showcases that a total number of 30366 cases were reported out of which 968 victims were below the age of 18 years. As usual, Rajasthan topped the list with a total number of 5408 cases in a year followed by Uttar Pradesh with 3692 cases. Over thirty-one thousand incidences of rape were recorded in India in 2022. In comparison to the prior year, there was a little decline in the number of rape cases. Even though there are a lot of rapes that go unreported in the nation, the topic frequently hits the headlines and occasionally sparks demonstrations in the streets. Even if there have been more complaints of rape in recent years, the victim—rather than the offender—continues to feel ashamed of the act.

The basic assumption that the upward swing in police statistics reflects a rise in crime and, thus, a reflection of the ineffectiveness of the police is false, according to a cautionary note issued by the NCRB regarding the annual report. It is evident that "rise in crime" and "increase in police registration of crime" are two distinct concepts, and a deeper comprehension of this distinction is necessary. Therefore, it is incorrect, as claimed by some, to hope that an efficient police administration will be able to maintain low crime rates.

The statement read, "In fact, some citizen-centric police initiatives, like the launch of women help desks or the e-FIR facility, may be the reason for the increase in crime numbers in state police data." In order to appropriately address the relevant concerns, "the increase or decrease in crime numbers does call for a professional investigation of underlying factors pertaining to the local communities," the statement continued.

2. Sexual Assault Cases in Canada: Statistical Study

Over the previous 15 years, from 1999 (21 occurrences per 1,000 population) to 2014 (22 incidents per 1,000 population), the rate of self-reported sexual assault has stayed largely consistent. Women are victims of sexual assault at a greater incidence (37 occurrences per 1,000 women) than males (5 occurrences per 1,000 men). Sexual assault is a gendered crime. Young persons between the ages of 15 and 24 had the greatest rate of sexual assault (71 occurrences per 1,000 population), as they do for other violent victimization, according to the 2014 GSS. This is more than twice as high as the next highest rate for 25–34 year olds, which is 32 occurrences per 1,000 population. 2019 GSS results are being made public in the Juristat article "Criminal victimization in Canada, 2019." The incidence of victimization, the traits of victims and occurrences, and the effects and repercussions of victimization are the main topics of analysis. The degree of reporting to the police is also investigated, as are the variables related to the choice to report victimization to the police²⁶.

In March 2020, as the COVID-19 epidemic was starting to spread and profoundly alter people's everyday lives throughout Canada, data collecting for the 2019 GSS came to an end. Even while the statistics do not accurately depict the epidemic's conditions, they do provide valuable background data on the trends, effects, and outcomes of victimization in the period immediately before the pandemic.

About 3 out of 10 (29%) victimization events in 2019 were reported to the police; the majority, however, went unreported. In general, reports of violent occurrences were less likely to have been made to the police than reports of domestic victimization (35% versus 24%). A possible explanation for this might be found in the conditions insurance companies establish for filing claims for lost or stolen property—a justification mentioned by 45% of those who reported a domestic crime occurrence to the police²⁷.

Out of all the crimes that the GSS measures, sexual assault had the lowest incidence of police reporting; just 6% of events in 2019 resulted in police involvement.

²⁶ Statistics Canada. Table 35-10-0177-01 - Incident-based crime statistics, by detailed violations, CANSIM (database).

²⁷ Criminal victimization in Canada, 2019, Issue Number: 2021001 Author(s): Cotter, Adam



Reasons for Rape Crimes

After analyzing the statistics, we can say that India has witnessed phenomenal growth in rape cases, in spite of all the development and growth, women are still victims of horrendous crime. One of the major reason behind rising rape cases is male dominance in the society; who considers their counterparts are less deserving and capable of performing work. According to a report of the UN published in 1980- "Women constitute half of the world's population, perform nearly two-thirds of work hours, receive one tenth of world's income and fewer than one hundred percent of world's property."

Numerous instances show that society blames victims for their career choices, dressing sense and job timings.

1. **Gender Inequality:** Deep-rooted beliefs about masculinity and femininity can fuel rape. Societal norms that emphasize male dominance and control, alongside the objectification of women, create an environment where some feel entitled to take sex by force. This is often linked to victim blaming, where the survivor's actions or appearance are seen as somehow inviting the assault. Gender inequality is a potent breeding ground for rape. Deep-rooted beliefs in male dominance and female submissiveness create a dangerous power imbalance. Men raised in this environment may feel entitled to sex, regardless of consent. Victim blaming, which shifts the focus to the survivor's behavior, further normalizes this sense of entitlement. Women become objects to control, not individuals with agency. When rape goes unpunished, the message is clear: violence against women is acceptable. This reinforces the power imbalance, silencing women and perpetuating the cycle.
2. **Lack of Healthy Sexuality Education:** The silence surrounding sex leaves young people vulnerable to rape. Without comprehensive sexuality education, individuals may lack crucial knowledge about consent, healthy relationships, and personal boundaries. This creates a dangerous blind spot: confusing mixed signals with consent, or simply not understanding when a situation has become non-consensual.

This lack of awareness can lead perpetrators to believe their actions are acceptable, while leaving victims unsure how to assert their rights.

The absence of sex education also fosters a culture of shame and misinformation. This silence can make it difficult for survivors to speak up, fearing judgment or not understanding what constitutes assault. Rape thrives in secrecy, and education is the key to breaking the cycle. When young people learn about consent, communication, and bodily autonomy, they are empowered to protect themselves and build healthy relationships.

3. **Power and Control:** Rape is a twisted act of power and control, not about sex. Perpetrators often seek to dominate and humiliate their victims. This can stem from deep-seated feelings of inadequacy, anger, or a desire to punish. Imagine someone raised in a culture that emphasizes male dominance. They may feel a constant need to prove their power, especially if they struggle with self-esteem. Rape becomes a weapon to exert control over another person, boosting their own fragile sense of power. The effects are devastating. The victim is violated, leaving deep emotional scars. The power imbalance is reinforced, creating a climate of fear and silencing future voices. To dismantle this, we need to address the root causes. Promoting healthy masculinity that doesn't rely on dominance is crucial. By fostering open communication and challenging the need for control, we can create a society where power is not used to harm, but to build genuine connections.
4. **Exposure to Violence:** Witnessing or experiencing violence can be a disturbing precursor to rape. It warps perceptions of healthy relationships, normalizing violence as a means of control. Someone raised in a violent environment might see aggression as an acceptable way to express power or resolve conflict. This distorted view can translate into sexual relationships, leading them to believe coercion or force is acceptable. The cycle deepens when exposure to violence coincides with other risk factors. For instance, a young man raised in a violent household who also subscribes to toxic masculinity beliefs might be more susceptible to committing rape, especially if under the influence of substances.

5. **Substance Abuse:** While not an excuse, intoxication can play a role in some rape cases. It can cloud judgment, impair communication, and make it harder for someone to resist unwanted sexual advances. Someone under the influence might misinterpret verbal or nonverbal cues, leading to an unwanted sexual encounter. They may be less likely to pick up on subtle signs of discomfort or lack of interest. Alcohol and drugs can lower inhibitions, making someone more likely to act impulsively or aggressively. This can lead to unwanted advances or a disregard for boundaries, even if the perpetrator wouldn't act that way when sober.

6. **War and Conflict:** Rape is a horrific weapon used in war and conflict zones. It's used to terrorize, demoralize, and displace populations. It's a brutal act of power dynamics at play during times of societal breakdown. Rape is used to instill fear and break the spirit of entire communities. By targeting women, men, and children, it sends a message of absolute power and control. Rape can be used to weaken enemy morale by shattering the social fabric and family structures. It's a calculated attack on the very foundation of a society.

7. **Mental Health Issues:** Mental health issues are not a direct cause of rape, and it's crucial to avoid generalizations. However, some perpetrators may struggle with conditions that can contribute to a higher risk, like anger management problems or personality disorders. Additionally, a history of trauma can create distorted views of healthy relationships and normalize violence as a coping mechanism. Mental health issues might be a contributing factor, but they don't absolve the perpetrator of responsibility. The decision to commit rape is a conscious choice, and mental illness shouldn't be used as an excuse.

The status of girls in India, both historically and socially has been one of respect and reverence. We Indians used to believe and still believe in the concept of “*Matri Devo Bhava*” which means to worship women or mother, but the concept seems to disappear due to arise of rape cases.

Impact of Rape on Survivors and Society

1. Physical Impacts of Rape

The physical impact of rape on a victim can be extensive and vary depending on the severity of the assault. These impacts can be immediate, appearing in the hours or days following the attack, or long-term, developing over weeks, months, or even years. These injuries are a stark physical manifestation of the violence endured during the rape. The pain and discomfort they cause can be overwhelming, adding another layer of stress and anxiety to the emotional trauma.

Genital and anal trauma: The brutality of rape can inflict nightmarish physical consequences, with genital and anal trauma being some of the most immediate and severe injuries. Forced penetration can cause excruciating tears, bruising, and bleeding in these vulnerable areas. The pain can be debilitating, making even basic activities like sitting or walking difficult. These injuries not only inflict physical discomfort but can also heighten the emotional trauma. The victim may feel violated and may associate these bodily areas with the assault, making healing even more challenging. Medical attention is crucial in these cases. A healthcare professional can properly assess the injuries, clean and dress wounds, and prescribe medication to manage pain and prevent infection. Depending on the severity, stitches or other procedures might be necessary to repair torn tissues. Early intervention is vital to prevent complications and promote healing. The psychological impact of genital and anal trauma can be profound. The constant reminder of the physical violation can exacerbate feelings of fear, shame, and helplessness. Some victims may experience flashbacks or nightmares associated with the assault. It's important for victims to know they are not alone and that support services are available to help them cope with the physical and emotional aftermath of rape. Through counseling and therapy, victims can begin to reclaim a sense of control over their bodies and heal from the trauma.

Cuts and bruises: Cuts and bruises are often the most visible, but not the only, physical consequences of rape. These injuries can appear anywhere on the body where force was used – the face, arms, legs, or torso. They may be caused by punches, grabs, restraining holds, or

objects used during the assault. The severity of cuts and bruises can vary greatly, from minor scrapes to deep lacerations. While they may heal over time, these visible marks can serve as constant reminders of the traumatic experience, triggering emotional distress and impacting the victim's sense of security. Beyond the emotional impact, pain and discomfort from cuts and bruises can restrict daily activities and hinder sleep, further compounding the physical and emotional toll of the assault. Seeking medical attention promptly is crucial not only for proper wound care but also for documenting the injuries as evidence, which can be vital in legal proceedings.

Sexually Transmitted Infections (STIs): Rape exposes victims to a significant risk of contracting Sexually Transmitted Infections (STIs) due to the absence of consent and the inability to negotiate safe sex practices. This risk applies to a wide range of STIs, including HIV, Chlamydia, Gonorrhea, and HPV. The perpetrator may be knowingly transmitting an STI, or they themselves might be unaware of their infection status. Rape disrupts the natural barriers that protect against STI transmission, and the trauma can weaken the immune system, making victims even more susceptible. Seeking immediate medical attention after a sexual assault is critical. Healthcare professionals can administer post-exposure prophylaxis (PEP) to help prevent HIV infection and provide testing and treatment for other potential STIs. Early intervention is crucial for preventing serious health complications and long-term consequences. However, access to proper medical care and timely treatment can be a challenge, especially in areas with limited resources. Raising awareness about the risk of STIs after rape and ensuring access to comprehensive healthcare services are crucial steps in protecting the health and well-being of victims.

Unwanted Pregnancy: Unwanted pregnancy is a devastating consequence of rape, forcing victims to confront a life-altering decision amidst the trauma of the assault. The possibility of carrying a child conceived through violence can be deeply disturbing. The emotional burden is immense, as the pregnancy serves as a constant reminder of the assault. Victims may feel unprepared for parenthood, grappling with the psychological impact of raising a child born out of such a horrific experience. Additionally, financial concerns and the potential disruption to their education or career can add immense pressure. The decision of what to do becomes a heavy weight to bear. Victims may consider terminating the pregnancy, a process that can be emotionally complex and even legally restricted depending on location. However,

some victims may choose to carry the pregnancy to term, perhaps for religious reasons, a desire for parenthood, or the hope of finding a loving home for the child through adoption. Regardless of the choice, the emotional toll of the unwanted pregnancy remains significant.

2. Biological Impact

Rape has a devastating impact on a victim's well-being, extending far beyond the immediate physical trauma. The biological consequences can be wide-ranging and long-lasting, affecting various systems in the body. Here's a breakdown of some key areas:

Reproductive Health: Rape can have a devastating impact on a victim's reproductive health, causing both physical and emotional consequences. The most immediate concern is the risk of sexually transmitted infections (STIs) due to the lack of consent and potential exposure to pathogens. This includes serious infections like HIV, Chlamydia, Gonorrhea, and HPV. Early medical attention is crucial to receive testing and treatment to prevent complications and long-term health issues. Another significant consequence is the possibility of unwanted pregnancy. This can be emotionally and physically overwhelming for the victim, who may not be prepared for parenthood. The constant reminder of the assault can further exacerbate the emotional burden. While emergency contraception can be highly effective if taken within 72 hours, access to this medication can be a hurdle. Decisions about terminating the pregnancy or carrying it to term should be made with the support and guidance of a healthcare professional. Rape can also disrupt a woman's menstrual cycle, leading to irregular periods, amenorrhea (absence of periods), or heavy bleeding. Pelvic pain and discomfort during intercourse (dyspareunia) can also become chronic issues. These physical consequences can not only affect sexual health but also decrease overall quality of life. The emotional trauma of rape can further exacerbate these physical issues, creating a complex web of challenges for victims. Seeking comprehensive medical care, including gynecological exams and mental health support, is vital for victims to address the full spectrum of reproductive health concerns arising from rape..

Stress Response: Rape triggers a powerful and complex stress response in the victim's body and mind. This response, often aligned with the "fight-or-flight" system, can manifest in various ways immediately after the assault and even continue for months or years. In the

immediate aftermath, victims may experience intense feelings of fear, anxiety, and panic. Their bodies may react with a surge of adrenaline, leading to rapid heart rate, sweating, and difficulty breathing. This is the body's natural response to a perceived threat, preparing them to either fight back or flee the situation. However, in rape cases, this fight-or-flight response can be overwhelming and leave victims feeling helpless. Following the initial shock, some victims may enter a state of dissociation, a psychological defense mechanism where they detach from their emotions and memories of the assault. This can serve as a temporary coping mechanism but can also hinder their ability to process the trauma and seek help. Over time, the stress response can manifest in chronic anxiety, depression, and post-traumatic stress disorder (PTSD). Flashbacks, nightmares, and intrusive thoughts about the assault can become recurring, causing significant emotional distress. Sleep disturbances, changes in appetite, and difficulty concentrating can also be part of the long-term stress response.

Pain and Discomfort: Rape inflicts a brutal spectrum of pain and discomfort, both physical and emotional. The immediate aftermath can be marked by excruciating physical injuries. Genital and anal trauma from forced penetration can cause intense pain, bleeding, and tearing. Muscle strains and sprains from struggling during the assault further exacerbate physical discomfort. Cuts, bruises, and other external injuries serve as constant reminders of the violence endured. Beyond the initial assault, chronic pain syndromes like fibromyalgia can develop, adding another layer of physical suffering. However, the emotional pain cuts even deeper. Victims often grapple with intense fear, anxiety, and hypervigilance, making them constantly on guard against potential threats. The trauma can trigger flashbacks, nightmares, and intrusive thoughts, reliving the assault and hindering their ability to feel safe and secure. Rape disrupts a victim's sense of control and bodily autonomy, leading to feelings of shame, self-blame, and isolation. This emotional turmoil can manifest as difficulty sleeping, changes in appetite, and a general sense of fatigue. The pain associated with rape is a relentless force, impacting every aspect of a victim's life and requiring comprehensive medical and therapeutic support for healing.

3. Social Impacts

The social impact of rape on a victim can be devastating and far-reaching, affecting their relationships, sense of security, and overall well-being. Here's a breakdown of some key social consequences:

Isolation and Withdrawal: The aftermath of rape can be isolating for survivors. The trauma can trigger a deep sense of fear and vulnerability, leading them to withdraw from social activities, hobbies, and close relationships. This isolation can stem from a variety of factors. Fear of judgment or disbelief from others, particularly in societies with victim-blaming attitudes, can make them hesitant to disclose the assault. Shame and a sense of violation can further isolate them, making them feel unsafe and uncomfortable in social settings. Trust in others can be shattered, making it difficult to form new connections or rebuild existing bonds. The emotional and physical exhaustion caused by the trauma can also lead to withdrawal, as victims may need time and space to process the experience and begin to heal. This social withdrawal can have a significant impact on a survivor's life, limiting their support network and potentially hindering their recovery process. However, it's important to remember that withdrawal is a coping mechanism, and with the right support and resources, survivors can overcome these challenges and rebuild their social connections.

Strained Relationships: The trauma of rape can cause significant strain in a victim's relationships, impacting their support system and overall well-being. Victims may withdraw from loved ones, fearing judgment, disbelief, or blame. This isolation can be a coping mechanism, but it weakens the very support they need to heal. Communication can become strained as victims struggle to express the trauma they've endured, and loved ones might grapple with how to respond appropriately. Feelings of fear and anger can lead to arguments and misunderstandings. Rape can also damage romantic relationships. Intimacy can be difficult, with victims experiencing flashbacks, fear, or a general aversion. Rebuilding trust and healthy intimacy requires patience and professional help. Supportive partners can play a vital role in the healing process, but navigating these strained relationships can be challenging. Open communication, empathy, and seeking professional guidance are crucial for both the victim and their loved ones as they rebuild trust and navigate the path towards healing.

Fear and Hypervigilance: In the aftermath of rape, a pervasive sense of fear and hypervigilance can grip the victim. This constant state of being on guard can be debilitating. The world, once a familiar place, can morph into a landscape filled with potential threats. Simple tasks like walking to the store or taking public transportation become fraught with anxiety. Victims may start avoiding places or situations that resemble the assault, restricting

their daily movements. Even their own homes may not feel entirely safe. Their senses become hyper-aware, easily startled by sounds or unexpected touches. This hypervigilance can manifest as difficulty sleeping, constantly scanning their surroundings, and being acutely aware of potential escape routes. Living in this state of heightened alert takes a significant toll on a victim's mental and physical well-being. It's crucial for survivors to seek support and professional help to manage these anxieties and gradually rebuild a sense of safety and security in the world.

Stigma and Shame: Rape survivors often carry the burden of a deeply unfair social stigma and shame. This stems from misconceptions about rape, where blame is placed on the victim rather than the perpetrator. Societal attitudes that emphasize a woman's virtue or purity can lead to the victim being seen as "tainted" or somehow responsible for the assault. This is further fueled by victim-blaming comments about clothing choices, behavior, or spending time alone. The fear of being judged, ostracized, or not believed can be overwhelming, preventing victims from disclosing the assault or seeking help. This enforced silence isolates them and perpetuates the cycle of shame. It's crucial to remember that rape is a violent crime, and the shame belongs solely with the perpetrator. By dismantling these harmful stereotypes and promoting empathy towards survivors, we can create a society where victims feel safe to come forward and heal without the burden of stigma.

Academic or Work Issues: The trauma of rape can significantly disrupt a victim's academic or work life. The emotional and physical consequences can manifest in several ways that hinder their ability to perform at their best. Concentration difficulties, fatigue, anxiety, and flashbacks can make it challenging to focus on studies or complete tasks at work. Victims may struggle to attend classes or meetings due to fear or the need to attend medical appointments or therapy sessions. Presenteeism, being physically present but mentally absent, often becomes a reality as the emotional toll weighs heavily. Fear of encountering the perpetrator or triggers related to the assault can restrict movement and limit a victim's ability to participate in activities related to their studies or career. In some cases, victims may even be forced to take a leave of absence or withdraw from their studies or job altogether. This can have serious financial implications and create a sense of lost opportunity. Supportive environments are crucial for mitigating these impacts. Flexible academic arrangements, understanding employers, and access to mental health resources can make a world of

difference in allowing victims to manage their trauma and continue pursuing their academic or professional goals.

Financial Strain: Rape can leave a devastating financial footprint on a victim's life. Medical expenses for treating immediate injuries, potential testing and treatment for sexually transmitted infections (STIs), and ongoing therapy for emotional trauma can quickly add up. Lost wages due to missed work from physical recovery, court appearances, or emotional distress further exacerbate the financial burden. Legal proceedings, if pursued, can incur additional costs. This financial strain can be particularly stressful for victims who may already be struggling financially or who are financially dependent on someone close to them. Support services and resources offered by government agencies, NGOs, or victim advocate groups can be immensely helpful in providing financial assistance and navigating the complex financial landscape following a rape. However, access to these resources can vary greatly depending on location and individual circumstances. Ultimately, the financial strain caused by rape adds another layer of hardship to an already emotionally and physically agonizing experience.

Post-Traumatic Stress Disorder (PTSD): Rape's psychological impact can be profound, with Post-Traumatic Stress Disorder (PTSD) a significant consequence for some survivors. PTSD is a mental health condition triggered by a terrifying event, and rape's violent and violating nature can leave victims feeling constantly on edge. Flashbacks, reliving the assault in vivid detail, can erupt unexpectedly, causing intense fear and anxiety. Nightmares fueled by the trauma can disrupt sleep, leading to exhaustion and difficulty functioning during the day. Intrusive thoughts about the assault can become persistent, further eroding a sense of safety and control. Survivors may withdraw from social activities and relationships, fearing situations that might trigger memories. Hypervigilance, a heightened state of alertness, can become the norm, leaving victims constantly scanning their surroundings for potential threats. The emotional toll can be immense, leading to feelings of isolation, shame, and depression. While PTSD can be a debilitating condition, with proper therapy and support, survivors can learn to manage its symptoms and rebuild their lives.

CHAPTER- IV

Recent Developments in Rape Laes in India

- 1. Increased Focus on Punishment:** The Criminal Law (Amendment) Act superseded the Ordinance of the same name, which was enacted in the wake of the 2018 Kathua Rape case in the Indian state of Jammu and Kashmir. The case featured the rape and murder of an eight-year-old girl. The Code of Criminal Procedure, the Indian Evidence Act, and certain sections of the Indian Penal Code were altered by the Act. Notably, the Act raised the mandatory minimum sentence for rape from seven years to ten years in a harsh prison that can be extended to life. The original 10-year sentence for the rape of a girl under the age of sixteen has been significantly enhanced to 20 years in jail, with the possibility of a life sentence. The legal penalties for raping a girl less than 12 include the death penalty or a minimum 20-year sentence that can be extended to life in prison. Last but not least, gang rape of a girl younger than 12 years old now carries a life sentence or the death penalty. The Act contains provisions for limiting bail, expediting the trial process, and bolstering prosecution. Following numerous revisions and the addition of new sections to the Indian Evidence Act, the POCSO Act, the Cr.PC, and the IPC. According to what we've read, the purpose of the Criminal Amendment Act of 2018 is to protect women from sexual assault—a horrible crime. As the number of sexual assaults has increased, there are more and more people who are genuinely cruel. Most rape cases go unreported, and in addition to the case having little legal substance, there are social factors at play that make it difficult for the victim to get justice. However, after making the necessary changes to these penal laws, the Indian government is working to ensure the welfare and sense of security for all women. This is because of the recent rape cases in Kathua and Unnao, which have left women in a precarious situation where they fear for their safety even at home. In these cases, the accused is typically a relative or a well-known person of the victim, so laws protecting women and children are desperately needed.
- 2. Victim Support Measures:** Any person who experiences loss or harm as a result of a crime is considered a victim of that crime. In the current legal system, where cases are decided over many years, the victim waits for justice for nearly his whole life. If the victim is not given sufficient recompense, justice is still not served. One area where the Victim Compensation Scheme emphasizes research is in Jeremy Bentham's

Utilitarianism Theory, which is predicated on the idea of "greatest happiness to the greatest number." Despite this, Bentham himself was introduced to the idea of restorative justice in England throughout the 1800s. A court may, in its discretion, impose a fine or a punishment that includes a death sentence in addition to other penalties under Section 357. On the other hand, Section 357(3) gives the court the authority to compensate a party for loss or harm they have endured, even in situations when a fine is not a component of the punishment. A whole chapter on victimology was devoted to the 154th Law Commission Report, 1996 on the CrPC, wherein the increasing significance of victims' rights in criminal prosecutions was deliberated. acknowledges the growing concern over providing recompense to crime victims The Criminal Procedure Code (Amendment) Act, 2008 (effective December 31, 2009) introduced Section 357A in response to the Malimath Committee Report on "Reforms of Criminal Justice System, 2008."

In addition to other penalties under Section 357, a court may, at its discretion, impose a fine or a punishment that carries a death sentence. However, Section 357(3) grants the court the power to make up for any loss or injury suffered by a party, even in cases where a fine is not a part of the sentence.

The 154th Law Commission Report, 1996 on CrPC, had an entire chapter on victimology and discussed the growing importance of victims' rights in criminal cases. recognizes the growing concern about compensating victims of crime In response to the Malimath Committee Report on "Reforms of Criminal Justice System, 2008," Section 357A was created by the Criminal Procedure Code (Amendment) Act, 2008, which went into force on December 31, 2009. In order to provide assistance to victims of rape, acid assaults, human trafficking, and women killed or injured in cross-border firing, the government established the Central Victim Compensation Fund (CVCF) Scheme. In CVCF, the Nirbhaya Fund is utilized.

The National Legal Service Authority Compensation Scheme for women victims or sufferers of sexual assault or other crimes, 2018 was approached by the Supreme Court, which declared that minor victims would also be eligible for compensation under the scheme, with a minimum of 4 lakh rupees. Regarding the compensation provisions, the Hon'ble Supreme Court said in **Hari Krishan and State of Haryana**

v. Sukhbir Singh AIR 1998 SC 2127 • that the purpose of this power was to provide

the victim with reassurance that they are not overlooked by the criminal justice system. It is a gauge for both making amends with the perpetrator and reacting to crimes in a proper manner. It is a constructive response to crimes, to a certain extent. It is undoubtedly a positive development for our criminal justice system. Thus, in order to better achieve the goals of justice, we advise all courts to utilize this authority generously.

In the case of **State of Maharashtra v. Ankush Vhivaji Gaikwad, (2013) 6 SCC770** "The long line of judicial pronouncements of this Court recognised in no uncertain terms a paradigm shift in the approach towards victims of crimes who were held entitled to reparation, restitution or compensation for loss or injury suffered by them," the Hon'ble Supreme Court noted after reviewing the case in light of legal developments. In the decades that followed, this transition from retaliation to reparation picked up steam, starting in the middle of the 1960s.

3. Marital Rape

Marriage rape is viewed and handled differently in the Indian legal system, typically depending on the interpretation of the courts. The exemption clause in Section 375 of the Indian Penal Code (IPC) states that "sexual intercourse by a man with his own wife, the wife not being under 15 years of age, is not rape." This section deals with rape. As a result, the age of the wife determines the legal position on marital rape, creating a convoluted web of responsibility and protection. The Indian Penal Code's Section 376 describes the penalties for rape, which include a fine and a minimum sentence of 7 years in jail, which is renewable to life, or a maximum term of 10 years in jail. However, the sentence is lowered to up to two years in prison, a fine, or both if the victim is the husband's own wife and is not younger than twelve. This discrepancy calls attention to the alarming lack of legal protections for women over the age of 15, which runs counter to accepted human rights norms.

The primary concern is that, although a woman can claim her rights to life and freedom, in a married relationship she is not granted the same authority over her own body. To rectify this disparity, the definition of rape under Section 375 of the IPC needs to be reexamined. Currently, women have the ability to defend themselves against these kinds of situations through the provisions of Section 498-A of the IPC concerning cruelty.

A pillar of debates on human rights and legal interpretations has been the idea of the right to life, as stated in Article 21 of the Indian Constitution. In multiple judgments, the Supreme Court has repeatedly held that rape is a felony that violates the victim's right to life and the right to live with human dignity. The Law Commission dismissed the claim in 2000 that additional violent acts committed by a husband against his wife should also be criminalized, and that rape should be exempt from this rule. It voiced worry that "excessive interference with the institution of marriage" might result from making marital rape illegal.

Yet, there was no provision making marital rape a crime in the Criminal Law (Amendment) Bill, 2012, which was written in response to the Verma Commission findings. Any recommendation to make marital rape a crime was rejected by the Parliamentary Standing Committee on Home Affairs, which reviewed the bill. The committee argued that there would be more stress on the "entire family system" and that "the committee may perhaps be doing more injustice."

Therefore, the idea of the "marital exception," which keeps marital rape beyond the purview of crimes, is fundamentally at odds with the right of an individual to live in dignity. It permits the institution of marriage to violate a person's autonomy and well-being. The foundation of a woman's autonomy is undermined by any legislation or rule that denies her the ability to live in dignity and gives her spouse permission to have non-consensual sexual relations. The fact that marital rape is not illegal in India has sparked intense discussion. While supporters contend that this is a crucial step towards gender equality and the protection of women's rights, opponents have offered a variety of justifications for why it should not be included in the legal framework.

The maintenance of traditional family values and social structure serves as a major justification for opposing the criminalization of marital rape. There is a claim that making marital rape a criminal offense would violate social norms and the sacredness of marriage. Some claim that since marriage is essential to Indian civilization, making it illegal would cause instability in families.

Even though those who oppose making marital rape a crime frequently cite reasons rooted in familial, societal, and cultural contexts, these justifications ultimately fail to

meet the core values of autonomy, equality, and dignity. The criminal law's disrespect for women's individual rights and continuation of gender-based discrimination are demonstrated by the absence of marital rape from its penalties.

The Delhi High Court rendered a split verdict in May 2022 about the country's criminalization of marital rape. The current statute was declared illegal by Judge Rajiv Shukdhakar, who stated that a woman's right to life and liberty is fundamentally based on her ability to revoke her permission. The request to make marital rape a crime was denied by Justice C. Harishanker, who noted that the legislature must enact the new legislation because the matter "requires consideration of various aspects including social, cultural, and legal." The matter was referred to the constitutional bench of the Supreme Court comprising Chief Justice D.Y. Chandrachud, Justice P.S. Narasimha, and Justice J.B. Pardiwala.

Constitutionality of marital rape

The discussion surrounding India's decision to make marital rape a crime is framed by two main issues.

- First, can a woman be forced to have sex with her spouse by the state? Second, what is the judiciary's responsibility in defending a woman's constitutional rights under Articles 14 and 21 of the Constitution?

In the instance of women's rights against marital rape, the judiciary promotes a vertical strategy by upholding a rigid public-private divide. With time, this perspective on constitutional rights has evolved into the norm. Constitutional rights are assumed to be a defense against the state as a result of the agreement between the state and its people. Selective state penetration exists notwithstanding the judiciary's reluctance to introduce constitutional rights into the private domain in cases of marital rape. Consider the spousal rights reparation imposed by the court. The main idea of Section 9 of the Hindu Marriage Act, 1956 is that a court may issue a restitution decree in the event that a husband and wife do not live together "without reasonable excuse." Women are disadvantaged by this part since they are frequently compelled to get back into married relationships with their spouses.

- Perspectives are provided by a horizontal approach to constitutional protections. Institutions establish and maintain hierarchies of dominance and subordination that are persistent, hard to overturn, and permanent. As a result, the law ought to consider the purportedly illegal actions between two parties in light of the underlying institutions and each person's relative standing within them (such as caste, patriarchy, and class). The constitutional rights should be enforceable horizontally when there is a power differential between the parties that allows one to violate the other's constitutional rights and the difference stems from the parties' respective positions within the established institution.

4. Bharatiya Nyaya Sanhita 2023, the IPC's successor, and the amendments to the laws pertaining to rape

The term "rape laws," which refers to laws pertaining to sexual assault, has undergone modifications and enactments in recent times. These include Bharatiya Nyaya Sanhita, 2023, and Bhartiya Sakshya Adhinyam, 2023 (as well as twice in the Penal Code, 1860 (IPC) and the Indian Evidence Act, 1872 (IEA), as well as current enactments under BNS, 2023, and Bri The Supreme Court's 1983 ruling in *Tukaram v. State of Maharashtra*, which is well known as the Mathura Rape Case, prompted the first modification to the outdated IPC, 1860. The Bombay High Court's decision was overturned by the Supreme Court, which cleared the accused police officers of raping a tribal girl between the ages of 14 and 16. The reasoning behind the decision was that she was "habituated to sexual intercourse," that she had failed to demonstrate that fear vitiated her permission, and that she had failed to provide evidence of her opposition to two adult police officers in a police station at night. The decision sparked a drive to amend the rape laws after it was sharply criticized by the opposition. The government reacted to the movement very quickly. The Criminal Law Amendment Act of 1983 was finally passed in 1986. The Indian Penal Code, 1860's sections 375 and 376 were modified by this act, and new penal provisions were added to penalize custodians who abuse a woman while she is in their care.

Within five months of the tragedy, the Criminal Law (Amendment) Act, 2013 was passed into law. The revised provisions are really forward-thinking. The incident sparked nationwide agitation and protests, which in turn prompted the formation of a

committee headed by retired Justice Verma to draft suggestions for changing the laws pertaining to sexual offenses. The committee's report was sent in on January 23, 2013. The 2013 Criminal Law Amendment Act is now in effect. The modifications pertaining to rape cases made to the Indian Penal Code 1860, the Code of Criminal Procedure 1973, and the Indian Evidence Act 1872.

Bhartiya Nyaya Sanhita, 2023

The Bhartiya Nyaya (second) Sanhita, 2023 has received Presidential assent, and it will replace the 163-year-old Indian Penal Code. The Home Minister Amit Shah has notified the date of enforcement which is from 1st July 2024. In the same way, the other two bills-- Bhartiya Nagarik Suraksha Sanhita and Bhartiya Shakshya Adhiniyam, 2023 will replace the Code of Criminal Procedure, 1973 and the Indian Evidence Act 1872.

Section 63 of BNS defines Rape as-

- Penetration of his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or making her to do so with him or any other person; or [Sec 63(a)]
- Insertion of any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or [Sec 63(b)]
- Manipulation of any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of the body of such woman or makes her to do so with him or any other person; or [Sec 63 (c)]
- Application of his mouth to the vagina, anus, urethra, of a woman or makes her to do so with him or any other person,
- Under the circumstances falling under any of the following seven descriptions-
 - i) Against her will;
 - ii) Without the consent;
 - iii) With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt;
 - iv) With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully

married;



- v) With her consent, when at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent;
- vi) With or without her consent, when she is under eighteen years of age;
- vii) When she is unable to communicate consent. [Sec 63(d)]

Analysis of Section 63 of BNS 2023

Although the BNS's sexual offense provisions are essentially the same as those in the IPC, some modifications have been suggested. To address sexual offenses, the Bill adds a new chapter headed "Offences Against Women and Children." The chapter "Offences Affecting the Human Body" has comparable IPC offenses. This reorganization implies that sexual offenses are not recognized by the BNS unless they are perpetrated against women. Rape of men and transgender people is not covered by a separate offense under the BNS. The Bill also suggests modest modifications to the sections concerning the rape of women who are younger than eighteen. It renumbers current rape regulations and makes an effort to standardize how group rape is handled. The provision is one of the comprehensive definitions to criminalize any act of sexual exploitation because it covers all known concepts of the practice. The rape specified in section 63 is penalized by rigorous imprisonment for a minimum of ten years, with the possibility of life imprisonment, as well as a fine. In some rape instances, the punishment may be life in prison, which would mean that the victim would be imprisoned for the rest of their natural life. All victims under the age of eighteen are treated as minors by BNS. There are different penalties for rape and gang rape of women and children. But the standard for the victim's minority differs based on the kind of rape, and the punishment also varies accordingly. Depending on whether the victim of gang rape is older or less than 18, different punishments apply. However, the penalty differs based on whether the rape victim is younger than 12 or older than 16 or older than 16. This is at odds with the Protection of Children from Sexual Offences Act, 2012, which defines minors as anybody under the age of 18.

Notably, "various offences have been made gender neutral" is included in the BNS's declaration of objects and reasons. Rape, on the other hand, is not covered by this. Actually, gender neutrality has only been applied to two laws that fall under the heading of "criminal force and assault against

woman."



Additionally, "sexual intercourse with a woman by deceitful means or making false promises" is illegal under this statute. This offense is new. A guy who employs dishonest tactics or promises to marry a woman without intending to follow through and engages in physical contact with her is guilty of violating section 69, which carries a fine and a potential ten-year jail sentence. A ten-year harsh jail sentence and a fine are imposed for rape. If the perpetrator is a government employee or someone "in a position of trust or authority" over the victim, they face a ten-year prison sentence that may be served until their death. If the victim is younger than sixteen, the sentence is twenty years in prison.

If a husband engages in sexual activity with his wife when they are separated, he faces a seven-year prison sentence. According to the BNS, printing or publishing any information about a court case involving rape, sexual relations between a husband and wife during a separation, sexual relations between a person in authority and a subordinate, sexual relations through deceptive means, etc., without the prior consent of the court, will result in punishment of either kind of imprisonment for a term that may go up to two years, as well as a fine.

The Bill provides distinct sentence alternatives for the rape of minors under the ages of 18, 16, and 12, respectively, and draws the age-based classification of rape victims from the IPC and POCSO. The IPC, POCSO, and BNS all have essentially the same range of penalties for raping juveniles of various ages.

The BNS suggests in Cl. 4(b) that a life sentence be interpreted as a "whole life sentence," meaning that the prisoner would be imprisoned for the duration of their natural life. This eliminates the need for distinct penalties for both rape and aggravated rape.

The BNS represents a step forward in strengthening rape laws in India by increasing the age of consent and introducing harsher punishments. However, significant gaps remain, particularly regarding marital rape, gender neutrality, and survivor support. For India to truly address the issue of rape, legislative amendments and a focus on implementation are crucial. Building a robust support system and fostering a culture of consent are equally important aspects in the fight against sexual violence.

CHAPTER V

Conclusion and Suggestions

India and Canada, both vast democracies, paint a contrasting picture when it comes to their legal frameworks for addressing rape. While both nations have undergone legislative reforms to strengthen their response to this heinous crime, the underlying philosophies and effectiveness of their approaches diverge significantly. India and Canada, though fellow democracies, represent a "Tale of Two Approaches" to rape laws. India prioritizes legislative deterrence through stricter punishments (increased minimum sentences, harsher penalties for child sexual abuse). However, low conviction rates, victim shaming, and the unaddressed issue of marital rape highlight the need for better implementation and social change. Canada, on the other hand, adopts a survivor-centric approach. Laws emphasize clear consent and offer robust support services alongside specialized police units. Yet, challenges persist in reaching marginalized communities. Both nations share the goal of eradicating rape, but India can learn from Canada's focus on survivors, while Canada could benefit from India's model for tougher sentences on child sexual abuse. Ultimately, the fight against rape transcends legal frameworks. Both countries must address root causes of gender inequality, dismantle patriarchal structures, and foster a culture of respect. Only then can they create a future where rape is not tolerated, survivors are supported, and a collective voice resonates for a world free from sexual violence.

India's Journey: India's journey on rape laws reflects a nation grappling with a persistent social evil. It's a story marked by both progress and significant challenges that demand ongoing attention.

The introduction of the Criminal Law Amendment Act (2013) stands as a landmark achievement. It recognized the gravity of the crime by introducing harsher punishments, including the death penalty for certain categories of rape. This legislative push signifies a commitment to deterring perpetrators and providing a stronger legal framework for justice. However, the effectiveness of these laws remains a major concern. Low conviction rates paint a grim picture. The process of seeking justice can be arduous and re-traumatizing for survivors. Victim shaming, societal stigma, and insensitive police investigations continue to impede the fight for justice. Furthermore, the lack of witness protection and the lengthy court procedures often discourage survivors from coming forward.

Another crucial development has been the enactment of the POCSO Act, specifically addressing child sexual abuse. It acknowledges the vulnerability of children and provides a legal mechanism for their protection. However, concerns remain regarding the implementation of these laws, particularly in ensuring proper investigation and swift prosecution of cases involving child sexual abuse. The ongoing debate on criminalizing marital rape is a significant step towards dismantling patriarchal norms. The current exemption for marital rape highlights an area where the law fails to recognize a woman's right to bodily autonomy and creates an environment of impunity for perpetrators within the marital home. Addressing this gap is crucial for ensuring equality and comprehensive protection for all women.

Despite the strides made, India's journey on rape laws is far from complete. Moving forward requires a multi-pronged approach. Firstly, strengthening the implementation of existing laws is crucial. Sensitivity training for law enforcement officials and the judiciary is essential to create a victim-centric approach within the legal system. Dedicated investigation units and fast-track courts can expedite the justice process.

Secondly, robust support systems for survivors are paramount. Comprehensive healthcare services, counseling, and legal aid are crucial for aiding recovery and empowering survivors to pursue justice. Social awareness campaigns that challenge rape myths and promote gender equality are equally important in fostering a culture of respect and consent.

Thirdly, addressing the root causes of sexual violence requires tackling societal issues like gender inequality and patriarchal attitudes. Educational programs that promote gender sensitisation and healthy relationships can play a vital role in creating a more respectful and just society.

In conclusion, India's journey on rape laws is a work in progress. While legislative reforms like the 2013 Act and POCSO represent positive developments, significant challenges remain in ensuring effective implementation, survivor support, and addressing societal issues that contribute to sexual violence. A collective effort from policymakers, law enforcement, social service providers, and citizens is crucial to ensure a future where rape is not tolerated, survivors are supported, and justice prevails. The ultimate goal should be to create a society where consent is paramount, respect is the norm, and every individual feels safe from sexual violence. However, the low conviction rates and persistent issues of victim shaming and

social stigma raise questions about implementation. The ongoing debate on criminalizing marital rape further highlights the complexities of addressing ingrained patriarchal norms.

Canada's Journey: Canada's journey with rape laws has been one of continuous evolution, marked by a growing focus on survivor-centricity and a recognition of the complexities of consent. Here's a closer look at this ongoing narrative:

Historically, Canada's rape laws reflected a narrow definition based on force and violence. This approach often excluded non-violent assaults, particularly those perpetrated by an acquaintance. The 1983 amendments introduced the concept of consent, marking a significant shift towards recognizing a survivor's agency. Subsequent reforms aimed at strengthening the legal framework for addressing rape. The inclusion of a broader definition of consent, encompassing factors like intoxication and mental incapacity, ensured a more nuanced understanding of the crime. Additionally, the creation of dedicated sexual assault units within police forces and the expansion of victim support services reflected a commitment to supporting survivors throughout the legal process and beyond.

Despite these advancements, challenges remain. Concerns persist about the under-reporting of rape, particularly within marginalized communities. Cultural and language barriers can hinder access to support services, and historical biases within the legal system can create a sense of distrust for some survivors. Recognizing these limitations, Canada continues to refine its approach. Ongoing debates explore issues like gender-neutral language in rape laws and the need to address the specific vulnerabilities of marginalized groups. Additionally, initiatives focused on cultural sensitivity training for law enforcement and increased outreach programs within diverse communities aim to bridge the gap between legal frameworks and lived experiences.

Canada's journey with rape laws is far from over. While the focus on survivor support and clear definitions of consent represent significant strides, ensuring these principles translate into tangible justice for all remains a critical challenge. Addressing the disparities in reporting rates across communities and fostering a culture of open communication about sexual assault are key aspects of this ongoing struggle. Ultimately, eradicating rape requires a collaborative effort. Legal frameworks that prioritize consent and survivor well-being, coupled with robust support systems and a shift in societal attitudes towards sexual violence, are all crucial elements. By acknowledging past shortcomings, embracing continuous improvement, and

fostering open dialogues about consent and respect, Canada can move towards a future where rape is not tolerated and survivors find the support and justice they deserve.

Canada's approach prioritizes survivor-centricity. Its laws focus on the concept of consent, ensuring a clear and unequivocal definition. The emphasis on victim support services and specialized police units dedicated to sexual assault demonstrates a holistic approach to healing and achieving justice. However, challenges remain in addressing issues specific to marginalized communities who may face barriers in accessing support and reporting assaults.

Convergence and Divergence: Both countries share a common goal: eradicating rape and ensuring justice for survivors. However, the paths they take diverge. India's emphasis lies in strengthening deterrents, while Canada prioritizes victim support and a focus on consent. The legal landscapes of India and Canada, though vastly different, offer a compelling study in convergence and divergence when it comes to rape laws. While both nations share the ultimate goal of eradicating this heinous crime and ensuring justice for survivors, their approaches diverge significantly in philosophy and implementation.

- **Convergence in a Shared Goal:** At the core, both India and Canada strive towards the same objective: creating a society free from sexual violence. This shared goal manifests in their legislative reforms. Both countries have undertaken significant efforts to strengthen their legal frameworks. India, through amendments like the Criminal Law Amendment Act (2013), has introduced harsher punishments for rape. Canada, on the other hand, has emphasized survivor-centricity by introducing clear definitions of consent and establishing specialized sexual assault units.
- **Divergent Paths:** Despite this shared goal, the paths taken by India and Canada diverge considerably. India's approach leans heavily on deterrence through stricter punishments. This is evident in the increased minimum sentences for rape and the potential for life imprisonment in cases involving minors. However, the effectiveness of these harsher penalties is hampered by low conviction rates and a legal system that can be insensitive to survivors' needs. Canada, in contrast, prioritizes the survivor's experience. Its laws focus on the concept of clear and unequivocal consent, ensuring a survivor's agency is recognized and respected. Specialized police units dedicated to sexual assault investigations and robust victim support services demonstrate a holistic approach to healing and achieving justice for survivors. However, challenges remain

in addressing the specific vulnerabilities of marginalized communities, who may face cultural or language barriers in reporting assaults or accessing vital support services.

- **Areas of Potential Convergence:** Despite their distinct approaches, there's room for both nations to learn from each other. India can benefit from Canada's focus on survivor support and building trust within the legal system. Enhancing sensitivity training for law enforcement and the judiciary could significantly improve the experience for rape survivors in India. Additionally, India's ongoing debate on criminalizing marital rape presents an opportunity to align its legal framework with international standards and dismantle the notion of marital entitlement. Canada, in turn, can learn from India's efforts to address the specific vulnerabilities of minors through the POCSO Act. Additionally, India's model for increased minimum sentences could be considered by Canada in its ongoing efforts to strengthen penalties for rape.
- **The Road to a More Effective Approach:** The path towards a truly effective approach to combating rape requires a convergence that goes beyond legal frameworks. Both nations must address the root causes of gender inequality and dismantle patriarchal norms that normalize violence against women and girls. Fostering a culture of respect for all individuals and open communication about sexual consent are crucial aspects of this convergence.
- **A Call for Collaboration:** By acknowledging the strengths and weaknesses of each system, India and Canada can pave the way for a more effective and comprehensive approach to combating rape. Collaborative efforts, including sharing best practices in legal reforms, survivor support services, and social awareness campaigns, can benefit both nations. Ultimately, fostering a future where all individuals are safe and respected requires a collective effort from governments, law enforcement, social service providers, and citizens alike. Only through convergence on a multi-pronged approach can both India and Canada truly eradicate rape and build a future where survivors find justice and healing.

Lessons Learned: India can learn from Canada's focus on victim support and building trust within the legal system. Enhancing sensitivity training for law enforcement and the judiciary could improve the experience for rape survivors. Additionally, India's ongoing debate on marital rape presents an opportunity to align its legal framework with international standards

and dismantle patriarchal notions of marital entitlement. Canada, in turn, can learn from India's efforts to address the specific vulnerabilities of minors through the POCSO Act. Additionally, Canada's model of specialized sexual assault units could be implemented in India to improve investigation and prosecution rates. The global fight against rape necessitates a continuous exchange of knowledge and best practices. By analyzing legal frameworks across different nations, we can glean valuable lessons to strengthen our collective response to this heinous crime.

- **Focus on Survivor-Centricity:** One key takeaway is the importance of prioritizing the survivor's experience. Canada's model, emphasizing clear and unequivocal consent and offering comprehensive support services, provides a strong foundation. Dedicated sexual assault units within law enforcement build trust and create a more sensitive environment for reporting. Robust support services, including counseling, legal aid, and medical care, empower survivors through the healing process.
- **Addressing Power Imbalances:** Laws need to recognize the power imbalances inherent in many rape situations. Marital rape exemptions, like the one that still exists in India, create a loophole that leaves married women vulnerable. By criminalizing marital rape, nations can send a clear message that consent cannot be assumed within marriage. Similarly, ensuring gender-neutral language in rape laws acknowledges that sexual violence can affect anyone, regardless of gender identity or sexual orientation.
- **Strengthening Deterrence:** While survivor support is crucial, deterrents remain essential. India's approach of increasing minimum sentences demonstrates a commitment to punishing perpetrators. Countries can explore models that combine harsher punishments with mandatory rehabilitation programs to address the root causes of sexual violence.
- **Beyond Legislation:** The focus shouldn't solely be on legal frameworks. Combating rape requires a broader societal shift. Educational programs that promote healthy relationships, foster respect for bodily autonomy, and challenge traditional gender roles are crucial. Open conversations about consent and healthy sexuality need to be encouraged within families and communities at large.
- **The Role of Technology:** Technology presents both challenges and opportunities in the fight against rape. While social media platforms can be used to perpetuate

harmful stereotypes, they can also be powerful tools for raising awareness and mobilizing social movements. Additionally, technology can be utilized to develop innovative support services, such as online counseling and helplines accessible to survivors in remote locations.

- **The Importance of Data:** Effective policy making requires robust data collection. Many countries lack reliable data on the prevalence of rape, making it difficult to assess the effectiveness of existing laws and tailor interventions to specific needs. Investing in comprehensive data collection and analysis is crucial for a data-driven approach to combating rape.
- **Continuous Improvement:** The fight against rape is an ongoing battle. No legal system is perfect, and challenges like under-reporting and cultural barriers require constant attention. Regular reviews of rape laws, coupled with open dialogues involving lawmakers, survivors, legal experts, and community leaders, are essential for ensuring the legal framework remains effective and evolves to meet changing needs.
- **A Global Responsibility:** Eradicating rape is a global challenge that demands international collaboration. Sharing best practices, fostering knowledge exchange, and advocating for harmonization of rape laws across nations can significantly strengthen the collective response to this crime. International organizations play a vital role in facilitating these exchanges and promoting a unified approach.

By learning from each other, prioritizing survivor well-being, and adopting a comprehensive approach that addresses both law and society, we can move towards a future where rape is no longer a threat and survivors have the tools and support they need to heal and rebuild their lives. This global conversation is an ongoing process, requiring continuous commitment and collaboration from all stakeholders in order to truly create a world free from sexual violence.

The Road Ahead: Both India and Canada face an uphill battle in eradicating rape. India needs to bridge the gap between legal pronouncements and implementation. Ensuring effective investigation, prosecution, and swift justice delivery is crucial. Canada must ensure its focus on survivor support reaches all communities equally, addressing cultural and language barriers that may hinder access to critical services. Both nations need to invest in continuous legislative reforms, robust support systems, and social awareness campaigns.

Beyond Legislation: This comparison goes beyond mere legal frameworks. It highlights the need for social change. Addressing the root causes of gender inequality, dismantling patriarchal norms, and fostering a culture of respect are paramount. Only then can both India and Canada truly claim to have built a society where rape is not a threat, and survivors have the tools and support to heal and rebuild their lives.

In India, tackling entrenched patriarchal norms is paramount. Educational initiatives focused on gender equality and healthy relationships can foster respect for all individuals. Public awareness campaigns that challenge victim blaming and encourage open conversations about consent are crucial. Additionally, addressing the vulnerabilities of marginalized communities, who often face additional barriers to reporting and accessing support, demands tailored outreach programs and culturally sensitive support systems.

Canada needs to bridge the gap between its survivor-centric laws and the experiences of marginalized communities. Cultural sensitivity training for law enforcement and social service providers is essential to build trust and address communication barriers. Additionally, initiatives focused on outreach and education within these communities can empower individuals to understand their rights and seek support.

Both nations can benefit from collaboration. Sharing best practices, such as India's focus on child protection through POCSO and Canada's model of specialized sexual assault units, can strengthen each other's systems. Media plays a crucial role in promoting open conversations about sexual violence by challenging misconceptions and normalizing reporting. Civil society organizations can act as watchdogs, holding governments accountable for implementing reforms and ensuring survivor support services are accessible and effective.

Eradicating rape requires a cultural shift. Schools can integrate age-appropriate sex education that emphasizes consent, healthy relationships, and respect for boundaries. Public awareness campaigns that normalize conversations about consent and challenge rape myths can contribute to a more informed and empathetic society.

Empowering survivors is central to achieving justice. Both nations need robust support systems that go beyond legal aid. Mental health services, access to safe housing, and vocational training can empower survivors to rebuild their lives and participate fully in society.

A Call to Action: The fight against rape requires a collective effort. Governments must prioritize legislative reforms, invest in robust support systems, and allocate resources for

social awareness campaigns. Law enforcement agencies need sensitivity training and specialized units dedicated to handling rape cases. Social service providers must ensure their services are accessible to all communities. Civil society organizations must hold authorities accountable and advocate for systemic change. Ultimately, creating a safe and respectful society requires a collective commitment from individuals, families, communities, and institutions. By working together, India and Canada can pave the way for a future where rape is not tolerated, survivors are empowered, and respect for all individuals is the norm. This shared journey towards a world free from sexual violence demands continuous dialogue, unwavering commitment, and a collective responsibility to dismantle the structures that perpetuate rape and empower survivors to heal and rebuild their lives.

