

COMPARATIVE ANALYSIS OF LEGISLATION PERTAINING TO SEXUAL OFFENSES AGAINST WOMEN IN RELATION TO THE USA, UK, AND EU.

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ABSTRACT

Sexual offenses can be found in all societies, regardless of where they are located. Among the more severe types of sexual offenses is sexual assault, which can cause long-lasting physical and emotional damage to individuals. Victims of physical harm are at higher risk of experiencing various sexual and reproductive health issues. In addition to physical injuries, the mental health impact can also be significant. Sexual assault incidents often lead to severe consequences such as murder, suicide, and other serious outcomes for victims. The social repercussions of stigma can greatly impact the well-being of victims due to the loss of status within their relationships and communities. This chapter aims to explore sexual crimes by analyzing the factors contributing to their occurrence, their extent, and measures for prevention and treatment, as well as conducting a comparative assessment of such offenses and their interventions in different nations.¹

Violence and increasing crimes against women are being witnessed globally in various forms in the present era, reflecting the extent and severity of the atrocities against women in recent times. The global movement to combat violence against women highlights the alarming situation. Factors such as changes in livelihoods, lifestyles, disparities in economic progress, societal values, and lack of ethical standards contribute to a grim environment for women, leading to a rise in crimes against them. These incidents are a serious cause for concern, emphasizing the crucial need to create a safe and respectful environment for women in India, free from atrocities and brutality, ensuring dignity, freedom, and peace.²

Crimes of a sexual nature committed by women are a widespread issue worldwide. A wide variety of sexual offenses take place in various settings and social environments. These include sexual violence, rape, sexual abuse of individuals with disabilities, sexual violence against children such as statutory rape, adultery, forced marriages, and acts that challenge sexual morality or norms.

Sex-related offenses vary in location and circumstances, encompassing a wide range of acts. Alongside well-known crimes such as rape and assault, offenses like sexually abusing those who are mentally or physically challenged, child sexual abuse (legally termed sexual assault), adultery, homosexuality, coerced sex, and forcing someone into marriage or cohabitation are prevalent. Additionally, violent attacks targeting women's sexual integrity, like female genital mutilation and forced virginity examinations, contribute to the extensive abuse women endure.

Print or visual literature that specifically explains or depicts sexual organs or sexual activities is known as pornography. Its purpose is to arouse sexual arousal or to appear more boisterous to the responsible reader.³ An image of a sexual subject meant to arouse sexual desire is called pornography. Pornography may be found in a variety of mediums, such as books, magazines, postcards, artwork, sculptures, paintings, animations, sound recordings, movies, video games, and websites. Increased use of IT, such as the internet and specialized devices, has led to the growth of illegal locations that distribute pornographic and obscene content. Obscenity and pornography were not explicitly identified by any Indian law but were addressed by The IPC, 1860, The IT Act, 2000, and The Indecent Representation of Women (Prohibition Act), 1986. These laws deemed obscenity and explicit materials as punishable offenses. Various legislation in India provide punishments for crimes against women. Additionally, the Indian Penal Code covers a wide range of crimes against women, while specific offenses are known as 'Offenses against women'. New economic offenses have been established to effectively combat these crimes as per the changing times and amendments in existing laws.⁴

¹ Available at: <https://blog.ipleaders.in/offencesagainst-women/> (last visited on September 8, 2023).

² Harold J. Vetter and Ira J. Silverman, *The Nature of Crime* 89 (W. B. Saunders Company, Philadelphia, 1978).

³ Jatin Anand, "Only 19% Conviction in Rape Cases in 3 Years : Police Data", *Hindustan Times*, March 6, 2014.

⁴ Available at: <http://www.womenlawsindia.com/legalawareness/crimes-against-women/> (last accessed on September 06, 2023).

LEGAL PROVISIONS RELATED TO SEXUAL OFFENCES AGAINST WOMEN

Any non-consensual act of penetration whether it be vaginal, anal, or oral involving any part of another person's body with a bodily part or object is considered rape. Any aspect of life, including relationships and conflict, can have perpetrators from complete strangers to close friends and family members.⁵ To put it simply, an assault offense is when a woman is raped without her consent and done so with force, trickery, or terror. Stated differently, it is the fornication (minimum penetration of the masculine conceptual structure) of any woman who is coerced against her will. It is the most repulsive act imaginable and ignores a woman's greater right than wrong to be protected and treated as sacrosanct. Besides being disrespectful and corrupt, it also involves illegal interference in a woman's personal life, significantly affecting her pride, reputation, and self-esteem. This heinous act not only causes physical harm but also humiliates, degrades, and leaves a lasting impact on a woman's sense of self-worth and dignity.⁶

Section 375⁷ of the Indian Penal Code (IPC) criminalizes various acts involving sexual penetration, including inserting a man's penis into a woman's mouth, vagina, urethra, or anus. It also prohibits inserting anything other than a penis into a woman's vagina, urethra, or anus, as well as manipulating a woman's body to achieve penetration. Additionally, the section covers acts like using one's mouth on a woman's genitals and compelling her to engage in such actions.

Without voluntary agreement; lacking her approval; with her permission, which may be obtained by instilling fear of harm or death in her or someone she knows; With her endorsement, if she believes the individual she is engaging in sexual activity with is her partner; With her permission, if the woman is unable to fully comprehend the nature and consequences of the act she is consenting to due to mental instability or intoxication; With or without the consent of a female under 18 years old, when she is unable to give consent verbally.

Section 376 of the Indian Penal Code outlines the punishment for assault. Apart from situations mentioned in subsection 2 of the same section, the penalty involves rigorous imprisonment for at least 7 years, which can be extended to life imprisonment, along with a fine.⁸ Since April 2018, it has been legal to impose the death penalty on individuals convicted of molesting a child under 12 years old.

GANG RAPE (SECTION 376 D)

The offense of gang rape is addressed in section 376 D of the law. If a woman is sexually assaulted by multiple individuals in a ruthless manner, all involved are held responsible for the crime of rape and may face imprisonment for a minimum of 20 years, potentially resulting in life imprisonment and fines.⁹

In the case of *Tukaram v. State of Maharashtra*¹⁰, a young woman named Mathura, who belonged to the Harijan community, became involved with a man named Ashoka. Her sibling reported to the police that Ashoka had abducted Mathura. Mathura was taken to the police station a few hours later, where a statement was recorded. Due to the late hour, two constables asked Mathura to wait outside. One of the constables took her to the toilet, shone a light on her genitals, and then sexually assaulted her despite her resistance. Another defendant attempted to assault her but was unsuccessful. When Mathura's companions arrived and she reported the assault, the crowd became violent, leading to an FIR being filed against the constables. A medical examination revealed no physical harm to Mathura's body, but indicated old injuries to her hymen. The defendants argued that while there was no direct evidence of the young woman's consent to the alleged sexual activity, it could be implied from the circumstances that she had not consented.

OUTRAGE ITS MODESTY

When it comes to Section 354 IPC, the law prohibits the use of force or threats against women to violate their modesty, allowing for arrests without a warrant. The term 'outrageous modesty' is not clearly defined in the law, and courts determine its meaning by considering the specific situation. The Supreme Court defines "modesty" as a woman's feminine decency and virtue based on her gender.¹¹

In the case of *Rupan Deol Bajaj v. K.P.S. Gill*¹², an IAS official and DGP of Punjab was accused of misconduct. During a social event, the accused asked the applicant to sit next to him and then proceeded to move her chair forcefully and inappropriately, causing embarrassment and fear. Despite her pleas to leave her alone, he continued to exhibit intimidating behavior towards her. The applicant was further humiliated when the accused smacked her butt in front of all the guests, leading her to file a First Information Report (FIR) against him.

⁵ available at: <https://www.safecity.in/sexualviolence-laws-under-the-indian-penal-code/> (last accessed on September 05, 2023).

⁶ Kumar S, Jeyaseelan L, "Domestic violence and its mental health correlates in Indian women" *Br J Psychiatry*. (2005)

⁷ Indian Penal Code, 1860, S. 375.

⁸ Indian Penal Code, S. 376.

⁹ Indian Penal Code, 1860, S. 376D.

¹⁰ AIR 1979 SC 185.

¹¹ Indian Penal Code, 1860, s. 354.

¹² 2005(6) SCC 161.

After overturning the First Information Report, the High Court believed that the offense was covered by Section 95 of the Indian Penal Code. However, the Supreme Court ruled that quashing the FIR was illegal and Section 95 had no relevance to the IPC. The court emphasized that any offense related to a woman's modesty could never be considered minor. As a result, the perpetrator was held accountable under Section 354 of the IPC.

SEXUAL HARRASMENT

Another kind of blatant sexual double-dealing of women that takes place in a professional atmosphere or educational setting is inappropriate conduct. Unwanted sexual tension is transferred from one person to another. Such behavior is illegal if it creates a hostile or demeaning atmosphere, interferes with someone's ability to do their job or attend school, or, conversely, if the victim of the harasser's actions becomes a model employee or student. Different people have different ideas on what behaviors are improper. Unwanted physical gestures, jokes, or articulations; persistent and unwanted sexual approaches; touching or other obscene bodily contact; and outright frightening are common examples of improper conduct. When someone exerts control over another and takes use of that power to persuade the other person to accept unwelcome sexual attention, it is considered lewd behavior. Peer pressure can also manifest itself in other ways, such as when peers make inappropriate sexual jokes, send explicit images to one another, or make inappropriate sexual suggestions.¹³

Non-consensual touching like grabbing, squeezing, hitting, or touching someone in a sexual manner constitutes sexual harassment. Other forms of sexual harassment include making sexual comments about someone's appearance, asking for sexual favors, staring in a suggestive manner, following someone, and exposing genitalia.¹⁴

Section 354 A pertains to unwelcome physical contact, solicitation for sex or other sexual activities, making sexual remarks, and showcasing sexual content such as movies, books, and other forms of media.¹⁵

In the case of *Raju Pandurang Mahale v. State of Maharashtra*¹⁶, the accused invited the victim to their home under false pretenses involving a co-accused. They confined her in the house and provided alcohol which she consumed. The victim was then assaulted and her nude photos taken. The Supreme Court, based on section 354 of the IPC, found the accused guilty, stating that their conduct went against the accepted standards of women's decency.

In the case of *Visakha v. State of Rajasthan*¹⁷, the Supreme Court ruled that the fear of sexual harassment violated a woman's right to work in any field protected by Article 19(1)(g) of the Constitution. India ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1981, making it part of Indian law. The highest court acknowledged women's right to the integrity of their bodies as a fundamental human right. The situation of women is unjust and discriminatory in almost all modern societies.

DISROBING A WOMAN

Section 354 B addresses sanctions for committing an offense involving an attack on a woman or using criminal force to undress or force her to be naked. The punishment for this offense ranges from three to seven years in prison, along with a fine. It specifically targets male offenders in cases of sexual misconduct.¹⁸

VOYEURISM

In Section 354 C, it is considered a serious offense to observe or record a woman engaging in private activities without her knowledge, such as using a restroom, being undressed, in underwear, or involved in a sexual act, under circumstances where she expects privacy.¹⁹ This includes capturing images or videos of a woman in such private moments without her consent, which is a violation of privacy laws.

STALKING

Section 354 D covers two offenses; the first involves a man persistently following, contacting, or trying to contact a woman despite clear signs of her lack of interest. The second offense is when a man monitors a woman's use of the internet, emails, or any other electronic communication. A first conviction can lead to up to three years in prison, while a second conviction can result in up to five years in prison along with a fine.²⁰

¹³ V. Rao, "Wife-beating in rural south India: A qualitative and econometric analysis" *Soc Sci Med.* (1997).

¹⁴ available at: <https://www.unwomen.org/en/what-wedo/ending-violence-against-women/faqs/typesof-violence> (last accessed on September, 05, 2023).

¹⁵ Indian Penal Code, 1860, s. 354 A.

¹⁶ 2004(2) SCR 287.

¹⁷ (1997) 6 SCC 241.

¹⁸ Indian Penal Code, 1860, S. 354 B.

¹⁹ Indian Penal Code, 1860, S. 354 C.

²⁰ Indian Penal Code, 1860, s. 354D.

Following a woman persistently despite her showing disinterest or monitoring electronic communication is considered a violation. There are exceptions, such as law enforcement officers working within legal boundaries or situations where it is deemed reasonable or necessary.

OUTRAGING THE MODESTY OF WOMEN

This section under Section 509 addresses actions that seek to humiliate a woman without her consent, even if physical force is not involved. It is designed to discourage any form of harassment against a woman's dignity through words, gestures, or invasion of her privacy. It is commonly known as the 'Eve Teasing Section'.²¹

ACID ATTACK

The act of causing harm or deformity by using acid was made punishable by a minimum of 10 years under a new sub-section 326(A), while throwing or attempting to throw acid was made punishable by a minimum of 7 years under the new sub-section 326(B). Section 100 of the Indian Penal Code was amended to grant the right of private defense against such attempts.

Women are increasingly experiencing various forms of cruelty and violence on a daily basis, with violence being categorized into different types. One of the most atrocious crimes committed against women is acid attacks, or Vitriol Age. This crime is particularly disturbing and harmful, reflecting a depraved mindset. In India, there has been a concerning surge in gender-based violence through acid attacks over the past decade. Such attacks target women with malicious intent, raising questions about accountability and the role of society in addressing these crimes. The intentional act of harming someone with acid, once used for household purposes, has now evolved into a tool for inflicting harm on individuals. Acid attacks, as defined by UNICEF, pose a global issue where even children are victims. These attacks involve throwing acid on the victim to cause severe burns and disfigurement, disproportionately affecting young girls who have rebuffed sexual advances or marriage proposals.

MARITAL OFFENCES-

Marital Rape:

Marital rape is when sexual intercourse occurs with one's spouse without consent. This act is not punishable under Section 375 of the Indian Penal Code if the wife is above 15 years old. The Verma Committee in 2013 recommended removing this exception to include marital rape under Section 375. However, the 2013 amendment only added Section 376(B), which addresses sexual intercourse with a wife living separately and carries a punishment of up to 2 years, extendable under the Prevention of Domestic Violence Act (PDVA) of 2005. Despite offering civil remedies only, the PDVA does not address criminal consequences. The government announced in February 2022 that comprehensive amendments to criminal laws are underway regarding the issue of marital rape.²²

Cohabitation: Section 493, IPC

Section 493 of the Indian Penal Code deals with the offense of cohabitation: Any man who deceives an unmarried woman into believing they are lawfully married and engages in cohabitation or sexual intercourse with her under that false belief can be sentenced to up to 10 years in prison and fined.

Bigamy: Section 494, IPC

Section 494 of the Indian Penal Code deals with the offense of bigamy: If someone decides to get married without disclosing their previous marriage to their partner, they could face up to a 10-year prison sentence and/or be fined. This law applies to all religions. For example, a fifth marriage for a Muslim male or a second marriage for a Muslim female could lead to legal consequences under this regulation.

Adultery: Section 497, IPC

Section 497 of the Indian Penal Code deals with the offense of adultery: Having a sexual relationship with a married woman by a man was considered to be an offense under section 497 of the IPC, but the Supreme Court deemed this section unconstitutional in 2018. In the case of *Joseph Shine v. Union of India*, the Court stated that adultery should be a civil wrong rather than a criminal offense since it primarily affects the marital relationship.²³ However, criminal actions may still be justified in cases where there is a public element involved, like offenses against the State security.

²¹ Indian Penal Code, 1860, s. 509.

²² Process on to amend criminal laws: Government news report. <https://www.thehindu.com/news/national/not-advisable-to-condemn-every-man-as-rapist-women-and-child-development-minister/article38364656.ece>. (last accessed November 5, 2022).

²³ *Joseph Shine vs. Union of India*. <https://indiankanoon.org/doc/42184625/>. (last accessed November 5, 2022).

Enticing or Taking Away or Detaining with Criminal Intent a Married Woman: Section 498, IPC

Section 498 of the Indian Penal Code pertains to the act of enticing, taking away, or detaining a married woman with criminal intent: Taking or persuading any woman known to be married to another man, or under the care of another man, with the intention of engaging in illicit relations, is a crime. However, according to the Joseph Shine case, it will not be considered a crime if the woman gives her consent to the act.

Live-In Relationships

Co-habitation arrangements: Live-in relationships are described as a situation where partners live together for a considerable duration without being legally married, sharing a common household.²⁴ The Supreme Court of India has provided guidelines to address this growing trend in the absence of specific laws or social norms. While society may view live-in relationships as improper, they are not against the law.²⁵ Co-habitation is considered a fundamental right and can't be deemed illegal.²⁶ Under certain circumstances, couples in such relationships may be considered legally married, and children born from these unions are considered legitimate. Legal provisions for domestic relationships apply, and maintenance claims under Section 125 of the CrPC may be permitted if certain conditions are met.

Atrocities Related to Unlawful Demand of Dowry by Husbands or Relatives of the Husband: Section 498A, IPC

Section 498A of the Indian Penal Code deals with the criminalization of the act of demanding a dowry by husbands or their relatives, and the subsequent atrocities that may result from such unlawful demands: Introduced in 1983, this law was designed to safeguard married women from facing mistreatment by their husbands or in-laws due to illegal dowry requests. Offenders can face a maximum penalty of 3 years in prison and a fine. This is considered a serious crime and can lead to immediate arrest without the option of bail.²⁷

Dowry Death: Section 304B, IPC

Section 304B of the Indian Penal Code pertains to the offense of dowry death: Instituted in 1986, the law defines a "Dowry Death" as the demise of a woman due to burns or injuries within seven years of marriage under suspicious circumstances, where cruelty or harassment related to dowry demands is proven to have occurred prior to her death. In this case, the husband or his relatives are held responsible for causing her death.²⁸

Human trafficking:

Trafficking of humans: Human trafficking involves the exploitation and abduction of individuals through methods like violence, deception, coercion, or trickery. Many women and girls worldwide are victims of this terrible crime, often leading to sexual exploitation. India serves as a source, destination, and transit country for individuals trafficked for forced labor and sexual exploitation by various individuals. The most economically disadvantaged groups in India are particularly vulnerable to forced labor and sexual trafficking, with women and girls being transported within the country for commercial sexual exploitation and forced marriages.

The 2013 Criminal Law Amendment Act

In 2012, Delhi, the capital of India, witnessed a horrific gang rape known as the Nirbhaya rape case, which led to nationwide outrage and prompted the enactment of stronger laws through the Criminal Law (amendment) Act, 2013. This amendment increased the minimum sentence for rape from 7 to 10 years and raised it to 20 years for cases resulting in death or severe injury. One of the accused, who was a minor at the time, was tried as a juvenile and thus avoided the full legal consequences of the crime despite being close to adulthood at 17 years old.²⁹

To prevent repeat incidents, the legal age for prosecuting individuals for violent crimes such as rape and murder was lowered from 18 to 16. The law now states that minors aged 16 to 18 who commit severe crimes like brutal murders and rapes should face adult prosecution and consequences.

²⁴ Narayan CL, Narayan M, Deepanshu M, et al. Live-in relationship in India – Legal and psychological implications. *J Psychosexual Health*, 2021;3(1):18–23.

²⁵ *Khushboo v. Kanaimmal and another* in 2010 (5 SCC 600 2010). Indian Kanoon website. 2010. <https://indiankanoon.org/doc/1327342/>. (last accessed November 5, 2023).

²⁶ *D. Velusamy v. D. Patchaiammal* (10 SCC 469) 2010. <https://indiankanoon.org/doc/1521881/>. (last accessed November 5, 2022).

²⁷ The Criminal Law (Second Amendment) Act, 1983.

<https://www.498a.org/contents/amendments/Act%20of%201983.pdf>. (last accessed on November 5, 2022).

²⁸ The Transgender Persons (Protection of Rights) Act, 2019.

<https://www.indiacode.nic.in/bitstream/123456789/13091/1/a2019-40.pdf>. (last accessed on November, 2022).

²⁹ available at: <https://www.helpinelaw.com/employment-criminal-and-labour/LARO/laws-against-rape-and-other-sexual-offences-in-india.html> (last accessed on September 01, 2024).

Under special local statutes, the legal aspects pertaining to sexual offenses against women are addressed

Legal regulations concerning sexual assault against women are regularly reviewed and updated to remain relevant, although not all laws are specific to gender. The gender-related laws vary across the nation as outlined below:

1. The Immoral Traffic (Prevention) Act of 1956:

The Immoral Trafficking (Prevention) Act of 1956 (ITPA) in India regulates sexual activity by penalizing specific commercial sex acts and focusing on rescuing and rehabilitating individuals involved in sex work, rather than outright banning sex work.

2. The 1986 Indecent Representation of Women (Prohibition) Act:

This Act prohibits indecent depictions of women in advertisements, writings, images, or any other form. Section 2 defines terms like advertising, distribution, and representations of women. Section 3 criminalizes any publication that portrays women obscenely. Materials with inappropriate representations of women cannot be created, sold, or rented, except for specific cases like those created for public welfare or artistic purposes.

3. The 2005 Act for Safeguarding Women from Domestic Violence:

This law protects women from any behavior, lack of action, or misconduct that could lead to harm or injury. It safeguards females from various forms of violence including physical, sexual, emotional, verbal, psychological, and economic abuse.

4. Child Marriage Act of 2006:

The Indian government adopted a law in 2006 that prohibits the celebration of underage marriages, effectively banning child marriage. This law, introduced on 1 November 2007, makes it a serious offense to engage in child marriage and cannot be overlooked.

5. The POCSO Act of 2012 safeguards children from sexual offenses.

The government has enacted a particular law to address child sexual abuse incidents, known as The POCSO Act, 2012. This law was enforced on 14 November 2012, along with the accompanying regulations. The Act aims to provide comprehensive protection for children against rape, indecent behavior, and sexual exploitation, while ensuring the child's welfare at every step of the legal process through child-friendly documentation, evidence filing, investigation, and swift prosecution procedures in designated special courts.

This legislation applies to individuals under 18 years old. Sexual offenses, including assault and penetrative assault against a child of any gender, are clearly defined and punishable by a minimum of 3 years or 7 years in prison, respectively. Offenses committed by individuals in positions of authority, such as jail or school staff, relatives, guardians, and others, are considered aggravated. Acts like using weapons, causing severe harm, transmitting life-threatening diseases, impregnating a minor, or targeting children with disabilities are seen as aggravated assault. Sexual harassment carries a minimum 3-year sentence, and using a child for pornography is also a punishable offense. Anyone aware of such crimes is required to report them to the authorities, without disclosing the child's identity or compromising their privacy.

6. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

In India, the Prevention of Workplace Sexual Harassment Act applies to both the organized and unorganized sectors, including government bodies, private and public sector organizations, NGOs, businesses, educational institutes, sports institutions, and other establishments mentioned in the Act.

7. The Protection of Women from Domestic Violence Act, 2005³⁰

This law was passed in India to safeguard women who are victims of domestic abuse. It includes relationships between people who live together in the same home and are connected by consanguinity, marriage, a connection in the context of a marriage, adoption, or they are family members cohabiting as a unit. It includes all types of abuse physical, verbal, emotional, economic, and sexual as well as insults, name-calling, humiliation, and mockery for not having a male kid, among other things. It also involves threats, physical violence, and other forms of coercion used to force a woman to comply with an illegitimate dowry demand. The State Government is responsible for appointing Protection Officers, and the Protection Officer, Police, and Magistrate have been assigned roles. Protection orders, residence orders, custody orders, and compensation orders are examples of common remedies under the Act. The amount of financial assistance granted under this act must be sufficient, equitable, and reasonable in light of the affected person's level of life. The

³⁰ The Protection of Women from Domestic Violence Act, 2005. https://www.indiacode.nic.in/bitstream/123456789/15436/1/protection_of_women_from_domestic_violence_act%2C_2005.pdf. (last accessed on November 4, 2023).

order may be made in accordance with any already enacted legislation or Section 125 of the Criminal Procedure Code of 1973.

8. The Transgender Persons (Protection of Rights) Act, 2019³¹

The purpose of this legislation is to safeguard the rights and well-being of transgender individuals and empower them in social, economic, and educational aspects. Before this law, the Supreme Court had acknowledged the rights of transgender individuals and recommended welfare measures for them. The law includes penalties of up to 2 years for sexual abuse and other forms of discrimination against transgender individuals.

SEXUAL/ RAPE CASES

A. Delhi Gang Rape Case:

This particular case set the foundation for revisions in the laws against infringement to impose harsh penalties on offenders. The incident in question took place in 2012, when a young woman was assaulted by five individuals in a private vehicle while on her way home in the evening. The attack resulted in multiple organ failures, severe injuries to her genitals and other parts of her body, as well as the insertion of a rod into her private parts, leading to her tragic demise. This horrific act deeply impacted the public, as the perpetrators' actions were perceived as a threat to society. The Nirbhaya Gang Rape case, also referred to as the Delhi Gang Rape case, is a prominent example of a capital punishment case. The public's outcry following the rape and murder fueled calls for reform in India. The Supreme Court's decision reflected the brutal nature of the crime and the absence of remorse, leading to the decision to sentence the accused to death by hanging. Subsequently, the Indian government introduced a law permitting the death penalty in cases of rape resulting in death or leaving the victim in a persistent vegetative state. The debate over whether perpetrators of rape should face capital punishment continues.³²

B. In Mukesh and Anrs v. State (NCT of Delhi) and Ors,³³

The accused, who was sentenced to death by a lower court and confirmed by the High Court, has appealed to the Supreme Court. The Supreme Court carefully reviewed the present circumstances and considered the condemned person's statements regarding the death penalty before execution.

C. Unnao Rape Case:

In 2017, a 17-year-old girl was sexually assaulted and killed by a politician. When the victim sought help from the Chief Minister of Uttar Pradesh, her father was killed while in police custody, sparking public outrage. Investigations revealed that the girl was assaulted by a BJP politician named Kuldeep Singh Sengar from Unnao Constituency. Subsequently, a deliberate car crash aimed to eliminate the victim and her lawyer, causing serious harm and claiming the lives of two of their family members.³⁴

D. Kathua Rape Case:

In Kathua, Jammu & Kashmir, there was a tragic incident in 2018 involving the assault and murder of an 8-year-old girl. She was found raped and killed, sparking widespread outrage. The Protection of Children from Sexual Offences (POCSO) Act was reviewed and strongly enforced in response. Three accused individuals were convicted and sentenced to life in prison with a fine, while three others were sentenced to five years for tampering with evidence. The two main instances that led to modifications in the violation law and the POCSO Act were the driving factors for the 2018 amendment, which included additional protections and support for children in the "sexual offenses" category.

COMPARISON BETWEEN LAW EXISTING AND LAW EXISTED

"If the law fails to respond the need of changing society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth law must therefore constantly be on the move adopting itself to the fast changing society and not lag behind"

~Justice Bhagawati³⁵

The term "rape" originates from the Latin term "rapio," meaning "to seize." It refers to forcibly ravishing a woman without her consent, using fear, force, or fraud. Rape is considered the most severe form of sexual violence within society and occurs frequently. Sexual violence can be seen as the purposeful use of sex to assert power, causing pain and humiliation to the victim. It involves physical or psychological harm aimed at targeting the victim's sexuality, often

³¹ The Transgender Persons (Protection of Rights) Act, 2019.

<https://www.indiacode.nic.in/bitstream/123456789/13091/1/a2019-40.pdf>. (last accessed on November, 2023).

³² available at: <https://www.legalserviceindia.com/legal/article-677-capital-punishment-for-rape.html> (last accessed on September 03, 2024).

³³ (2017) 6 SCC 1.

³⁴ Supra note 27.

³⁵ Chapter IV, What changes brought under criminal law in light of human rights concept at https://shodhganga.inflibnet.ac.in/bitstream/10603/34296/13/13_chapter%20vi.pdf last accessed on 20.07.2023

directed towards women, which goes against societal values like “matru devo bhava. “The impact of sexual violence is severe as it creates lasting emotional harm in the victim’s life, especially in a male-dominated society like ours. This type of violence not only violates human rights but also hinders societal progress by making women vulnerable, as they comprise half of the population. Laws in all countries give special consideration to such crimes due to their extremely heinous nature. While women are victims of various crimes, incidents like sexual harassment, rape, and molestation predominantly target women and are particularly damaging as they violate women’s dignity.

Crime against women has been present in the realm of criminal activity for centuries. However, the methods, attitudes, and patterns have evolved over time. Women, especially in male-dominated societies, are frequently targeted as victims of violence and exploitation. While sexual activity is a natural aspect necessary for the continuation of human life, the degradation of this through sexual exploitation is concerning. In our society, the concept of virginity is contentious and the violation of it often leads to humiliation and shame for women.

It appears that the issue of violating women’s bodies has reached a critical point over a long period, indicating a significant decline in moral values, especially prevalent in India compared to other regions. The discussion on improving laws against sexual offenses to ensure women’s safety has already taken place. The aim was to address the changing needs over time to uphold law and order and maintain public trust in the justice system. As society evolves, so do criminal activities, necessitating amendments to existing laws. Consequently, specific needs were addressed when required, ultimately shaping the current legal framework.

There have been numerous cases in the past that have resulted in miscarriages of justice. These incidents prompted revisions and adjustments to the legal system. The primary goal of the criminal justice system is to uphold a lawful society that safeguards the principles of natural justice as a societal norm. Therefore, there is a critical necessity for structured legislation and a strong judiciary. This also emphasizes the importance of reviewing and improving policies, procedures, and laws to provide the necessary assurance to the victims.

The most talked-about and essential recent development in criminal law has been the addition of new crimes to protect victims or potential victims. These changes have significantly altered the previous version of the law, addressing actions that were previously not considered crimes but were harmful to society. This chapter examines the impact of these changes both before and after the amendment act.

Following the horrendous crime that occurred on December 16, 2012, calls for necessary changes were inevitable and pushed the government in the right direction. The enactment of the Anti-Rape Bill, also known as the Criminal Law Amendment Bill 2013 on February 3, 2013 was a response to this incident that happened two months prior. This legislation broadened the definition of sexual offenses against women and established strict punishments, including the possibility of capital punishment for the gravest cases. It specifically targeted crimes committed by individuals in positions of trust and addressed the issue of underreporting by penalizing the failure to register such crimes. The law also included provisions to prosecute acts like stalking and voyeurism that were previously challenging to punish. Notably, it safeguarded the privacy of victims by prohibiting the use of their sexual history as evidence in court, recognizing the importance of protecting privacy rights in the face of increasing violations.

To comprehend the modifications following the enactment of the act, a table is created to compare the situation before and after the Amendment act. It also includes the viewpoint of Justice Verma Committee on the specific offense.³⁶

	Offences	Definition	Before the Amendment Act, 2013	JVC Report Recommendation	Criminal Law Amendment Act, 2013	Bharatiya Nyaya Sanhita, 2023
1	Disobedience of Law by a Public Servant	Failure to record Information in sexual offences cases; knowingly disobeying laws on investigation	No specific provision, IPC,1860	Failure of a public servant to record information in relation to sexual offences should be specifically penalized under the Bill.	Punishable with rigorous imprisonment for six months to 2 years and fine.	Punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.
2	Rape resulting in death or Vegetative state	Causing death or persistent vegetative state when committing	Rape and murder dealt with as two separate offences.	Punishment 20 years up to life imprisonment. In case of gang rape resulting in	Specific offence. Punishment 20 years to life imprisonment	Punished with rigorous imprisonment for a term not less than 20

³⁶ Dr. Rituparna Bhattacharyya, “Criminal Law Amendmant Act, 2013: will it ensure women’s safety in public spaces?” at <https://core.ac.uk/reader/295492772> (last accessed on 14.05.2024)

		rape.	Rape: 7 years to life imprisonment, Murder: imprisonment for life or death, IPC, 1860.	death or persistent vegetative state punishment	(rigorous imprisonment) or death.	years but which may extend to imprisonment for life, which should mean imprisonment for the remainder of that person's natural life, or with death.
3	Punishment for gang rape	Where a person is raped by one or more in a group of persons acting in furtherance of a common intention, each of these persons shall be deemed to have committed the offence of gang rape, regardless of their gender	10 years to life imprisonment and fine, IPC, 1860	Imprisonment for life shall mean imprisonment for the rest of that person's natural life	20 years to life imprisonment (rigorous imprisonment) and fine payable to the victim, that is reasonable to meet medical expenses.	BNS provides death penalty for gang rape of woman under 18 years of age.
4	Rape by armed personnel	"Armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government	No specific provision. Public servant includes armed personnel. Punishment: 10 years to life imprisonment and fine, IPC, 1860	Specifically penalises rape by armed personnel within the area they are deployed in. Armed personnel should be penalised with imprisonment for 7 to 10 years if they knew that sexual offences were being committed by their subordinates. The requirement for sanction to prosecute armed personnel should be removed in relation to sexual offences.	Specific offence. Shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life	Punished with rigorous imprisonment for a term not less than 10 years but which may extend to imprisonment for life
5	Acid Attacks	Throwing of acid on women for a multitude of reasons,	No specific provision. Covered under grievous hurt.	Whoever attempts to throw acid or corrosive or any burning substances on any person, or	Specific offence. Punishable with 10 years or life imprisonment	Punished with imprisonment of either description for a term which

		including Alleged adultery, Turning down advances from men, and also as a form of domestic violence. Causing permanent or partial deformity or burns on any person by throwing or administering acid.	Punishment: up to 7years imprisonment, IPC, 1860	attempts to administer acid to any person, or attempts to use any other means to achieve the purpose of causing permanent or partial damage to any part or parts of the body of a person, shall be punished with rigorous imprisonment for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to pay compensation to the victim adequate to meet at least the medical expenses incurred by the victim.	and reasonable fine amount to meet medical expenses.	shall not be less than ten years but which may extend to imprisonment for life, and with fine: Provided that such fine shall be just and reasonable to meet the medical expenses of The treatment of the victim.
6	Punishment for repeat offenders	Punishment for persons previously convicted of an offence of rape, custodial rape, and gang rape.	No specific provision, IPC, 1860	Shall be punished with imprisonment for life, which means imprisonment for the rest of that person's natural life.	Specific offence. Life imprisonment (rigorous imprisonment) or death.	Punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.
7	Age of Consent	Legal age at which a person is considered to give sexual consent (sexual intercourse)	Specific provision, since the 1983 amendment in the rape law in the IPC, 1860	16 years	18 years	18 years

8	Touching	Physical contact involving unwelcome and explicit sexual overtures	Outraging a woman's modesty. Punishment: Imprisonment for maximum 2 years and fine, IPC, 1860	Existing provisions of the IPC should be deleted. Intentional touching of a sexual nature, without the person's consent should be penalised with 5 years rigorous imprisonment.	Outraging a woman's modesty: 1 to 5 years imprisonment and fine. Physical contact involving unwelcome and explicit sexual overtures: up to 3 years imprisonment and/or fine.	punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.
9	Stalking	Following a woman, attempting to foster personal interaction despite indication of victim's disinterest, spying, monitoring electronic communications	No specific provision.	Whoever commits the offence shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to three years, and shall also be liable to fine.	Specific offence. 1 st offence punishable with 1 to 3 years imprisonment (Bailable). 2 nd offence punishable with up to 5 years imprisonment (Non-bailable).	punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.
10	Sexually coloured remarks/Use of words or gestures to insult a woman's modesty	Making of sexually coloured remarks by a man.	No specific provision for this offence. Verbally assaulting a woman's modesty is punishable with one year imprisonment and/or fine, IPC, 1860.	Use of words or gestures towards a person, or in his presence, which create an unwelcome threat of a sexual nature, should be punishable with imprisonment for one year and/or fine.	Specific offence. Punishable with imprisonment for up to one year and/or fine. Non-bailable	Punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

11	Demand for Sexual Favour	Demand or request by a man for sexual favours.	No specific provision for this offence. Verbally assaulting a woman's modesty is punishable with one year imprisonment and/or fine, IPC, 1860	Those who demand or request for sexual favour should be punishable with imprisonment for one year and/or fine.	Specific offence. Punishable with up to 3 years' rigorous imprisonment and/or fine.	punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.
12	Assault to disrobe a woman	Forcing a woman to undress and lie in naked condition.	No specific offence. Outraging a woman's modesty is punishable with imprisonment for maximum 2 years and fine, IPC, 1860	Whoever assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked in any public place, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years and shall be liable to fine.	Specific offence. Punishable with 3 to 7 years imprisonment and fine.	Punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.
13	Voyeurism	Watching a woman when she is engaging in a private act including sexual acts, use of lavatory, or when private parts are exposed.	No specific offence, IPC, 1860. Information Technology Act, 2000 protects both men and women. Punishment: up to 3 years and/or fine upto 2 lakh.	Penalise the act of capturing images of, or watching, a woman engaging in sexual acts or when her genitals are exposed with imprisonment for 1 to 3 years and fine.	Specific offence. Only protects women. 1st offence punishable with 1 to 3 years imprisonment and fine. 2nd offence punishable with 3 to 7 years.	Punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either

						description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.
14	Forcibly showing pornography	Forcibly showing pornography by a man to a woman.	No specific provision, IPC, 1860		Punishable with rigorous imprisonment for up to 3 years imprisonment and/or fine.	Punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

Despite being necessary at the time, the action was heavily criticized on the following grounds³⁷:

- I. The absence of gender neutrality in legislation has inadvertently favored cases of “rape of female” over others.
 - II. Failure to address procedural matters has been identified as a critical issue. It has been suggested that simply increasing punishments is not the sole solution; other essential factors must also be considered. These factors include the efficiency of law enforcement and the judicial system in handling trafficked cases. Instances such as police delays in filing reports and investigating cases, as well as insensitivity displayed by law enforcement, contribute to significant delays in the investigative process. Additionally, delayed forensic reports further prolong the initiation of legal proceedings. When it comes to the legal aspect, there are deficiencies in the system itself, such as the absence of specialized courts and a scarcity of judges at all levels, resulting in a low rate of successful prosecutions. When cases do proceed, victims often face hostile cross-examination or do not receive adequate compensation. These issues discourage victims from seeking justice. The National Crime Record Bureau acknowledges that offenders often have prior records and the current laws focus solely on deterrence without addressing other aspects of the issue.
 - III. Critics have pointed out various issues with the Act. One criticism is that the Armed Forces (Special Powers) Act provides an easy way out for personnel accused of sexual violations against women. Another criticism is the failure to address marital rape as a crime, despite recommendations from the Verma Committee. In a patriarchal society, there is reluctance to recognize rape within marriage, with some viewing it as a normal part of marriage and believing it is acceptable for men to have intercourse against a woman’s will. Some argue that criminalizing marital rape could harm the institution of marriage.
- The next issue of debate concerned lowering the age of consent to 16 years old, with the condition that the spouse is older. Critics argue that reaching mental maturity at 16 is questionable, making consent ambiguous. According to researchers, the legal marriage age being 18 should align with the age of consent to avoid contradictions and complexities, particularly in marital situations.

CONTEMPORARY LAWS EXISTING IN OTHER COUNTRIES

The law has developed over the years to reduce crime rates. This evolution highlights the need for new strategies when past laws have failed. The 20th century saw significant advancements in addressing sexual violence against women through legal reforms. Different countries have unique approaches to justice administration and amending their legal systems. Various institutions such as family courts, administrative courts, and constitutional courts within a specific jurisdiction work towards resolving issues. Each national legal system has its own methods for addressing violence against women, aiming to deter wrongdoing from being repeated.

Structural gender disparities and bias play a central role in how conflict affects individuals based on their gender. To prevent sexual violence, it is essential to promote significant gender equality before, during, and after conflicts. This involves guaranteeing women’s active participation in various aspects of life and establishing accessible and effective justice and security systems.

³⁷ Yamini, “ Criminal Law (Amendment) Act, 2013: Sexual Offences,” at <https://www.lawctopus.com/academike/criminal-law-amendment/> (last accessed on 30.07.2023)

The term “conflict-related sexual violence” includes rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and other serious forms of sexual violence committed against women, men, girls, or boys that are connected, directly or indirectly, to a conflict.

Enhancing the effectiveness of local organizations is essential for holding individuals accountable for previous offenses and for discouraging future criminal activities. However, determining the true extent of conflict-related sexual violence is complex due to obstacles like underreporting caused by survivor intimidation and stigma. Despite these challenges, each state strives to address these issues using its own approaches and strategies.

The chapter discusses the current trends adopted by other nations, with a particular focus on recent trends. Exploring the practices of other countries or regions aims to gain insight into their approaches to addressing sexual offenses. Studying their methods can provide valuable insights on potential improvements to our own laws.

ENGLAND AND WALES³⁸

Up until 1956 in England & Wales, there was no specific law that punished or considered sexual offenses as criminal acts. The governing body was the common law, which addressed issues of sexual assault and violence. However, the Sexual Offences Act of 1956 was introduced by Parliament to codify and clearly criminalize sexual offenses, replacing the common law. This new law caused confusion and was criticized for being haphazard and discriminatory, violating international human rights standards. Recognizing the need for change, a review committee was established in 1999, leading to the revised Sexual Offences Act of 2003, which came into effect in May 2004 to address contemporary issues related to sexual offenses. The revised act aimed to achieve various objectives:

- Update the legislation on sexual crimes to better align with current societal perspectives and attitudes.
- To establish offenses that are gender-neutral (excluding rape) in order to guarantee equal protection and criminalization.
- To offer more transparency regarding this legal topic.
- To clarify the legislation concerning consent.
- To ensure the vulnerable, especially children and people with mental health issues, receive the necessary protection.
- To ensure that the penalties imposed align with the gravity of the committed offenses.
- To lower the rate of people leaving their jobs and assist in the conviction of those responsible for sexual assault.

The performance is being criticized by different organizations based on factors such as-

- Challenging to demonstrate the consent
- Utilization of the victim’s past sexual experiences as proof against her
- Challenging questioning resulting in the victim being labeled negatively
- The influential judgment in the Morgan Case³⁹ asserts that an individual should be acquitted if they honestly believed there was consent, even if this belief is not rational.

These circumstances contributed to a tense environment where many documented instances did not result in justice because they faltered from the beginning, as it was impossible to determine the mindset or intentions of the perpetrator. Consequently, government organizations recognized the presence of myths that impact the evidence and lead to unjust situations from the outset.

Consent, as stated under Section 74 of the Act, is when a person agrees of their own free will and has the ability to make that choice. The law uses a gender-neutral approach, where ‘he’ encompasses both male and female individuals. Understanding consent in cases of sexual violence is crucial. Government data from 2013 revealed that in most instances, the perpetrator is acquainted with the victim, often leading to sexual offenses occurring in private settings. This makes evidence vulnerable to exploitation by the perpetrator, complicating the determination of consent. The legislation addresses various scenarios in Sections 75 and 76 by establishing a set of assumptions.

Section 76 addresses cases where the victim has been deceived by the perpetrator. In such situations, it is assumed that the victim did not consent and that the defendant made an honest mistake in believing the victim consented. It is important to note that under this section, the presumption is final, and the offense must be proven based on the actual elements of the crime rather than relying solely on the presumption.

When someone is found guilty of committing a sexual offense, the sentencing typically involves life imprisonment, especially in cases involving penetration. If there is no penetration involved, the sentencing can be up to 10 years. The severity of the crime is carefully assessed in each case for a better understanding. Various factors are considered and categorized differently to ensure a fair and appropriate sentence. These categories are:

³⁸ Study of law provided for Sexual offences in other countries at https://shodhganga.inflibnet.ac.in/bitstream/10603/269395/10/10_chapter%204.pdf last accessed on 08.07.2023

³⁹ Morgan v. DPP [1976] AC 182.

1. The level of damage inflicted that may occur-

- Physical or mental,
- Penetration can occur naturally or digitally depending on the object and its size,
- How pregnancy or sexually transmitted infections are caused.
- To the reputation tarnished by embarrassment

2. Culpability-

- Planning level
- Involvement of additional accessories
- Administering intoxicating substances to the victim in order to achieve the desired outcome
- Abuse of a position of trust
- Committing the crime based on racial or religious motivations

3. Aggravating factors

- Focusing on an easily exploitable target
- Using leverage or intimidation to manipulate someone
- Utilizing a weapon to uphold a threat
- Compelling the victim to vacate the residence
- Discouraging the victim from reporting the incident and seeking justice.
- Manipulating or hiding the evidence.

4. Mitigating factors

- Historical criminal records and prior legal convictions
- Maturity is determined by age
- Good behavior exhibited in the past
- Committing a crime due to a mental disorder.

The use of a person's sexual history for cross-examination in a trial is not allowed according to the Criminal Evidence Act of 1999. However, in certain special circumstances, the court may allow such questioning with prior written permission. This practice was challenged in the case of *R. v. A.*⁴⁰, where it was argued that exceptions may need to be made to ensure a fair trial for the victim. Following this case, there were discussions on the limitations and scope of questioning in such cases, with a focus on protecting witnesses and victims from irrelevant and inappropriate inquiries that could harm their character. In some instances, the court may step in to prevent such questioning during cross-examination.

CHINA⁴¹

The country has long protected women's rights against feudal practices such as concubinage and forced marriages through the revolutionary marriage law. Emphasis has been placed on safeguarding the legitimate rights and interests of women and children, particularly girls. The constitution explicitly states that men and women are equal, their rights are state-protected, and any abuse of women's interests is prohibited. Special legislation, known as the Protection of Women's Rights and Interests, offers women specific protection. The criminal code includes severe penalties, even death, for offenses like rape, abduction, trafficking, or any act that violates a woman's life, well-being, liberty, or dignity. Additionally, the code criminalizes forced marriages, bigamy, abandonment, and abuse to counter discrimination and violence against women, especially in domestic settings.

LEGISLATION CONCERNING SEXUAL ASSAULT/ RAPE

Rape is defined as non-consensual sexual intercourse, which violates personal and democratic rights in Chinese Criminal Law. The law initially categorized rape against women and underage girls in 1979, with different considerations for mens rea. Subsequent amendments in 1997 brought vagueness in defining mens rea and actus rea for minor girls, leading to a case in 2003 where a man had intercourse with a minor girl and was charged with rape regardless of consent. The law regarding rape against minors remained uncertain, leaving them vulnerable. In 2010, a male victim of sexual assault was not legally recognized, but an amendment in 2015 extended sexual assault laws to include male victims, carrying a 5-year prison sentence in China.

PUNISHMENT

The country's criminal law allows for the death penalty in cases of severe rape, which must be authorized by the nation's highest court. Individuals under 18 years old are exempt from receiving the death penalty. The 2015

⁴⁰ [2001]UK HL 25.

⁴¹ Fitzgerald, Salmond on Jurisprudence, 12th Edition, N. M. Tripathi Private Ltd., Bombay.

amendment has contributed to enhancing protection for women and minors. Furthermore, the amendment also penalizes the falsification of evidence, with a 7-year sentence for anyone found submitting fabricated evidence.

UNITED STATES OF AMERICA⁴²

In the 1970s, a movement against sexual assault began in the United States. Supporters of the movement advocated for new laws and received wholehearted support. The first rape crisis center was established by a female victim of the justice system. During this period, advancements were made in evidence collection for sexual assault cases, medical procedures were standardized, and psychological research was conducted on post-rape trauma. Laws were reformed to address low reporting and conviction rates, criminalize marital rape, increase penalties for sexual assaults, and protect victims from having their sexual history used against them.

Efforts to establish the definition of rape began slightly before the 1970 revolution. Advocates covered every aspect to ensure justice for the victim. In 1962, the American Law Institute created the United States Model Penal Code, which declared that a man could be charged with rape if he had sexual intercourse with a woman who was not his wife:

- He forces her to comply through the use of force, threat of violence, or threat of serious harm or abduction to be inflicted on someone;
- He significantly reduced her ability to assess or manage her behavior by secretly giving her drugs, alcohol, or other substances to prevent resistance; or
- The woman is in an unconscious state;
- The girl is younger than 10 years old.

The Model Penal Code faced issues such as not acknowledging marital rape, defining rape solely as vaginal intercourse, not addressing concepts of force and consent comprehensively, and being gender biased. The purpose of creating the code was to establish a framework for standardizing penal codes. However, the initial version of the code was deemed incomplete as it fell short in addressing various aspects of the issue at hand.

The reformers contended that the burden of proof should rest on the plaintiff to demonstrate that the defendant committed sexual assault. They questioned the traditional concept of resistance, which implied that the victim must physically resist. This approach often discredited other forms of evidence and oversimplified the issue. Resisting sexual assault could not always be the main factor for conviction, as it may not be feasible in every situation. The focus should shift towards the perpetrator's actions rather than the victim's behavior, with a more nuanced definition emphasizing the importance of accountability and including psychological force, manipulation, and emotional coercion in the concept of "force." The state's agenda aimed to reduce victimization in the justice system by implementing laws to restrict the use of a victim's past sexual history in defenses. This included preventing the discrediting of victims by labeling their behavior as promiscuous. These laws, known as shield laws, were first passed in Michigan, which prohibited the submission of evidence regarding the victim's sexual conduct⁴³. In 1978, Congress passed a national shield law that was integrated into Federal Rules. Various officials, including those from the medical profession, police, and prosecutors, received training focused on victim-centered approaches for investigating and prosecuting sexual assaults.

The push to define rape as a strict liability offense gained momentum with many advocates supporting the concept strongly. Currently, the essence of the rape definition lies in the man's perception of a woman's consent, which determines whether she has been violated. Embracing strict liability would treat rape like any other crime, removing the need to consider the defendant's beliefs about consent. The term "use of force" is recommended to be eliminated from traditional laws to shift the focus onto the defendant's actions and require them to prove consent or resistance. The Doctrine of affirmative consent was introduced in 1992 by the Supreme Court of New Jersey.⁴⁴

The American Law Institute suggested a change in the wording that described sexual assault, leading to a draft being proposed in 2014 which- If an actor is found to have committed rape, which is considered a serious crime, they will be held responsible if they act with awareness or disregard.

- a. Uses physical force, physical restraint, or the threat of bodily harm to compel another person to participate in sexual activity with someone.
 - b. induces another individual to participate in sexual activity by using the threat of causing harm to someone other than that individual, or by threatening to commit any other violent crime;
 - c. Performs sexual intercourse with someone who is currently engaging in such an act of sexual intercourse:
- is younger than 12 years old;

⁴² The advocates of Human Rights, "Evolution of Sexual Assault Criminal Justice Reform" at https://www.stopvaw.org/national_sexual_assault_laws_united_states (last accessed on 03.05.2024)

⁴³available at: <https://www.lawinfo.com/resources/criminal-defense/what-is-the-model-penal-code.html>(last accessed on last accessed on 03.05.2024).

⁴⁴Students for Fair Admissions, Inc. (SFFA) v. President & Fellows of Harvard College (Harvard) and SFFA v. University of North Carolina (UNC), Nos. 20-1199 & 21-707. available at https://www.law.ox.ac.uk/sites/default/files/inline-files/OPBP_Affirmative%20Consent%20in%20Commonwealth%20Jurisdictions%20281%29.pdf, (last accessed on last accessed on 03.05.2024).

- is asleep, unaware, or physically incapable of refusing to participate in such sexual activity; or
- Does not have the ability to communicate a refusal to participate in sexual activity due to a mental illness or disability, whether it is temporary or lasting.
- The individual does not have the significant ability to evaluate or manage their behavior due to drugs, alcohol, or other substances that alter their consciousness, which were given by the actor without the person's knowledge to impair their ability to refuse sexual intercourse.

The Model Penal Code of 2014⁴⁵ abolishes the exclusion of exemption for marital rape and promotes the use of gender-neutral terms to facilitate a clearer understanding of force and consent by both individuals involved.

Classification of Violence Directed at Women in the United States

Acts of violence aimed at women in the United States, such as sexual assault and intimate-partner violence, have historically been underreported and not legally pursued enough, leading to insufficient attention to the impact on victims. Over the past decade, there has been a rising awareness of violence against women and more legal avenues available to tackle the issue. While some groups experienced a slight decrease in violence incidents during the 1990s, recent government data reveals that over a quarter of women in the country still report being victims of violence from a current or former intimate partner.

Violence directed at women within the household

Over the past decade, a set of new laws has been enacted to enhance the protection of women in the United States facing family violence. These laws have addressed various issues, including recognizing stalking as a distinctive form of violence. The Violence Against Women Act (VAWA) has been instrumental in enhancing remedies for domestic violence and providing increased financial support to survivors of abuse. Additionally, the Family Violence Option in the 1996 welfare reform bill allows states to offer flexibility in eligibility criteria for public assistance to victims of domestic violence. The Lautenberg Amendment has extended the prohibition of firearms possession to include individuals convicted of misdemeanors related to domestic violence. Efforts to introduce a civil remedy for abused women under VAWA were thwarted by a constitutional challenge, indicating the Supreme Court's hesitation to expand federal legislation on domestic violence. The enforcement of protective orders predominantly falls under state jurisdiction, with its efficacy relying on the knowledge and responsiveness of law enforcement and judicial officials.

When the Violence Against Women Act (VAWA) was first introduced in 1990, most states did not consider marital rape a punishable offense, or only allowed charges in certain situations where additional factors were present.⁴⁶ Over time, each state has criminalized marital rape to some extent, and some state courts have removed exemptions or lower penalties for marital rape, citing violations of the Equal Protection Clause. Additionally, inter-spousal civil tort immunity laws were seen as another obstacle for victims of gender-based discrimination, with many state courts also deeming them unconstitutional. Despite some progress in reforming laws, remnants of marital rape exemptions can still be seen in current legislation.⁴⁷

California is the sole state to have implemented a state Violence Against Women Act, offering a civil recourse for violent crimes driven by gender bias.⁴⁸ The Illinois General Assembly is contemplating the Gender Violence Act, which would allow victims of gender-related violence to seek compensation through lawsuits in state courts. New York City has introduced its own version of VAWA at the local level, permitting civil rights lawsuits for gender-biased violence.⁴⁹

A. DOMESTIC VIOLENCE

Domestic abuse is a term used to describe abusive behaviors within a relationship or household. Intimate-partner violence is a significant issue that affects many individuals in the United States, with estimates ranging from 960,000 to three million incidents per year.⁵⁰ Women are disproportionately affected, making up 85 percent of victims in 1999,

⁴⁵ Id. 43

⁴⁶ See amicus curiae brief by Senator Joseph Biden (in support of petitioners) to the U.S. Supreme Court in *United States v. Morrison* (No. 99-5, 99-29) at <http://www.senate.gov/biden/issues/amicus-final.pdf>.

⁴⁷ See Victoria Nourse, Symposium on Unfinished Feminist Business: The Normal Successes and Failures of Feminism and Criminal Law, 75 CHI. KENT L. REV. 591 (2000).

⁴⁸ H.B. 3279, 92nd Session.

⁴⁹ The Victims of Gender-Motivated Violence Protection Act, Number 752-A (last accessed on December 19, 2023). See Mayor's Office, Mayor Giuliani Signs Bill Granting Victims of Violent Crimes Motivated by Gender an Enhanced Civil Cause of Action against Their Attackers, Release #479-00, at <http://www.nyc.gov/html/om/html/2000b/pr479-00.html>.

⁵⁰ Family Violence Prevention Fund, Domestic Violence is a Serious, Widespread Social Problem in America: The Facts, at <http://endabuse.org/newsdesk/facts> citing U.S. Department Of Justice, Violence By Intimates: Analysis Of Data On Crimes By Current Or Former Spouses, Boyfriends, And Girlfriends (March 1998) And Citing The Commonwealth Fund, Health Concerns Across A Woman's Lifespan: 1998 Survey Of Women's Health (May 1999).

while men accounted for 15 percent.⁵¹ It is crucial to gather more insights into the various factors causing intimate-partner violence and finding effective solutions for different demographic groups.⁵²

B. STALKING

More than one million individuals in the United States have experienced stalking, with the majority of victims being women.⁵³ They are often targeted and threatened by individuals with whom they previously had a relationship. Women face the highest risk of severe harm and escalating violence when separating from an abusive partner.⁵⁴ Shockingly, a significant number of women who are killed by their partners were already living apart from them. Additionally, a large percentage of women who are stalked by ex-husbands endure physical and sexual assaults from these individuals.

C. SEXUAL ASSAULT

At both state and federal levels, the procedures for reporting and registering convicted sexual offenders have been enhanced. In response to concerns raised by advocates, the Department of Justice updated its crime victims survey tools to better capture sexual assault incidents and the fact that most rapists are acquainted with their victims. Federal laws have dedicated significant resources to educating officials on sexual assault crimes, including marital rape, and assisting victims in filing complaints about sexual abuse. Legislative efforts have focused on addressing drug-facilitated rape, collegiate sexual assault, and expanding responsibilities for professionals such as doctors and teachers to report statutory rape cases, although the impact of mandatory reporting is debated.

Stalking is now recognized as a form of sexual assault warranting specific legislative and law enforcement attention, yet the prosecution of sexual assault cases remains challenging. Initiatives are being implemented to tackle under-reporting and improve the handling of complaints. Non-governmental organizations are playing a growing role, with each state typically having at least one organization dedicated to addressing domestic violence and sexual assault issues.

1. Based on a 1998 survey conducted by the Centers for Disease Control and Prevention, approximately 18% of women in the United States stated that they have experienced either a completed or attempted rape in their lifetime.⁵⁵
2. Many changes have been made to the laws surrounding sexual assault in the United States, yet it continues to be a crime that is not reported enough and lacks prosecution.⁵⁶ Some research suggests that simply making an arrest may not be enough to prevent future violence; it needs to be combined with a united community effort as well.⁵⁷
3. Advocates have pushed for improved sexual assault legislation at both state and national levels and have successfully secured increased funding for services and training aimed at preventing and dealing with sexual violence towards women. There are now over 1,300 programs for sexual assault and over 1,900 programs for domestic violence I

⁵¹ Bureau Of Justice Statistics Special Report , Intimate Partner Violence And Age Of Victim, 1993-99. This figure may be significantly affected if one takes into account the incidents of domestic violence within gay and lesbian relationships which are not reported due to the fear of prejudice and general marginalization of such couples.

⁵² Joan Zorza, Violence Against Women: Law, Prevention, Protection, Enforcement, Treatment, Health 1-3-4 (Civic Research Institute, 2002) (noting that rates of domestic violence during the 1990s have declined for black women while holding steady for white women).

⁵³ Center for policy research, Stalking in America (1997).

⁵⁴ Martha R. Mahoney, Legal Images of Battered Women: Redefining the Issue of Separation, 90 MICH. L. REV. 1, 5-6 (1991).

⁵⁵ National Institute of Justice and Centers for Disease Control and Prevention, Prevalence, Incidence, and Consequences of Violence against Women: Findings from the National Violence Against Women Survey (Nov. 1998).

⁵⁶ Staff of Senate Comm. On The Judiciary, 103rd Cong., The Response to Rape: Detours On The Road To Equal Justice (Comm. Print 1993) at Chapter III, available at

<http://www.mith2.umd.edu/WomensStudies/GenderIssues/Violence+Women/ResponsetoRape/full-text>.

See also, Patricia A. Furci, The Sexual Assault Nurse Examiner: Should the Scope of the Physician-Patient Privilege Extend that Far?, 5 Quinnipiac Health L.J. 229, 232 (2002) (“[I]t is difficult to get accurate estimates of the incidence of sexual assault. It is believed that sexual assault is a seriously under-reported crime. Victims of rape and sexual assault may decide not to report the crime because they fear police attitudes and beliefs concerning rape, as well as the rape perpetrator.”); Dan M. Kahan, Gentle Nudges vs. Hard Shoves: Solving the Sticky Norms Problem, 67 U. CHI. L. REV. 607, 623-24 (2000) (“The conspicuous failure of prosecutors to charge and juries to convict reinforces the public perception that men who follow the “no sometimes means yes” norm aren’t engaged in rape after all – at which point jurors become even less likely to convict and prosecutors to charge.”)

⁵⁷ Elizabeth Cramer & Janett Forte, Factors Influencing Case Outcomes in Domestic Violence Trials, reprinted in Joan Zorza, Violence Against Women: Law, Prevention, Protection, Enforcement, Treatment, Health 30-1, 30-1 (Civil Research Institute 2002).

n various communities throughout the country, with coalitions dedicated to sexual assault and domestic violence present in every state.⁵⁸

EUROPE⁵⁹

In Europe, the main laws dealing with rape issues include The Istanbul Convention⁶⁰ by the Council of Europe, the European Convention on Human Rights (ECHR), and the rulings of the European Court of Human Rights (ECHR). The Istanbul Convention outlines the responsibilities of participating states in preventing and addressing gender-based violence. It sets a baseline that states must adhere to, including defining rape as any non-consensual sexual act. The majority of Council of Europe members, along with the European Union, have signed the Convention, with 33 states having ratified it.⁶¹ The Convention mandates legislative actions to prevent and address acts of violence by non-state actors⁶², including criminalizing specific non-consensual sexual acts.⁶³

The Council of Europe has issued a recommendation on “The protection of women from violence”, advising Member States to criminalize any sexual activity that occurs without consent, even if the victims do not resist. This recommendation complements the Istanbul Convention.⁶⁴

Additionally, the European Convention on Human Rights addresses rape in Article 3 and Article 8 as a type of ill-treatment⁶⁵ and a breach of an individual’s right to sexual autonomy. The European Court of Human Rights discussed the standard for rape laws in Europe in the case of *MC vs. Bulgaria*⁶⁶. The court emphasized the importance of criminalizing all non-violent sexual offenses⁶⁷ and highlighted the growing emphasis on consent requirements across Europe. The court argued against the need for physical resistance as proof in rape cases, stating that many victims, especially young girls, may not resist due to psychological reasons or fear of violence. The court stressed the obligation of states to penalize and prosecute non-consensual sexual acts, even without physical resistance from the victim, to uphold individual’s sexual autonomy and integrity. Bulgaria was found to have failed in effectively punishing rape, thus breaching its obligations under the ECHR to safeguard individuals’ physical integrity and private life.

The Court addressed the issue of establishing consent in the case, emphasizing the need for a thorough examination of all evidence by national authorities, even in the absence of direct evidence like signs of violence or witnesses. They must carefully consider all facts, including the element of non-consent, before making a decision.

GERMANY⁶⁸

The country was selected because it is a member of the European Union, despite the earlier discussion covering the EU. This choice was made due to the significant legal changes in 2016 aligning with international conventions. The significant amendment implemented in the German Criminal Code, known as *Strafgesetzbuch* or *StGB*, was seen in section 177, moving from a conventional coercion approach to one based on consent. Section 184 of the code has also been revised to include sexual harassment as a crime.

⁵⁸ National Advisory Council On Violence Against Women, Toolkit To End Violence Against Women, Chapter 1, Strengthening Community-Based Services And Advocacy For Victims, 1 (date) at <http://toolkit.ncjrs.org/files/chapter1.pdf>.

⁵⁹ Camilla Koljonen, “How is consent-based legislation on rape providing more protection for individuals incomparisontocoercion-basedlegislation?,” at

https://www.researchgate.net/profile/Camilla_Koljonen/publication/335397291_How_is_consent-based_legislation_on_rape_providing_more_protection_for_individuals_in_comparison_to_coercion-based_legislation_-_Comparison_between_Finland_and_Sweden/links/5d63c98792851c619d773ada/How-is-consent-based-legislation-on-rape-providing-more-protection-for-individuals-in-comparison-to-coercion-based-legislation-Comparison-between-Finland-and-Sweden?origin=publication_detail (last visited on 07.06.2023)

⁶⁰ Istanbul Convention (Council of Europe Convention on preventing and combating violence against women and domestic violence).

⁶¹ Council of Europe, Chart of signatures and ratifications of Treaty 210.

⁶² Article 5(2) of the Istanbul Convention.

⁶³ Article 36(1) of the Istanbul Convention.

⁶⁴ Council of Europe. “The protection of women against violence, Recommendation No. R (2002) 5 of the Committee of Ministers and Explanatory Memorandum” Appendix p. 14.

⁶⁵ Patricia Londono, ‘Defining rape under the Convention on Human Rights’ in Clare Mc Glynn and Vanessa Munro (eds), *Rethinking Rape Law: International and Comparative Perspectives* (Routledge 2010) p. 110.

⁶⁶ Appl. No. 39272/98, Council of Europe: European Court of Human Rights.

⁶⁷ *MC v Bulgaria* ECHR 2003-XII, paras. 101, 162.

⁶⁸ Tatjana Hornle, “The New German Law on Sexual Assault and Sexual Harassment,” on German Law Journal, Volume II, Issue 6 on 1st November 2017 Jurisprudence at <https://www.cambridge.org/core/journals/german-law-journal/article/new-german-law-on-sexual-assault-and-sexual-harassment/C8FAD908DD7B6ECC28C6CF36BD9603BE> (last accessed on 16.04.2024)

In the earlier version, section 177 of StGB addressed only individuals who had compelled the victim through force or a vulnerable situation. The traditional principles of the previous law were centered on coercion, requiring physical resistance from the victim. However, over time, it was recognized that the threat of violence itself warranted intervention. The revisions made in 1997 acknowledged that exploiting a situation where the victim is under the control of the perpetrator constitutes a form of violence and threat. These changes were not fully implemented until 2016 when a reform emphasizing a “no-means-no” approach was put in place to move away from the coercion model. The pivotal factor driving this change was the influence of International Law, specifically the Istanbul Convention, which necessitates the criminalization of non-consensual sexual acts. The subsequent legislation expanded the scope of coercive threats to include scenarios where the victim may be incapacitated, introducing a new offense that centers on the absence of consent.

CONCLUSION

Despite there being numerous laws in place to safeguard and advocate for women’s rights and interests, the frequency of misconduct and exploitation against women continues to rise daily. This situation highlights the notion that addressing the escalating violations against women in our society requires more than just relying on existing regulations. It is essential to prioritize the upliftment of women’s status, societal values, ethical standards, and the fundamental respect and dignity towards women in all individuals. Enhancing these aspects can contribute to a decline in crimes targeted at women. Furthermore, there is a necessity for more stringent laws to deter potential perpetrators from carrying out such acts. A detailed analysis reveals that crimes against women transcend various barriers such as religion, caste, and socioeconomic status. Factors like gender discrimination, a male-dominated culture, inadequate infrastructure, lack of awareness, time constraints, and societal influences contribute to the prevalence of crimes against women. Many victims of sexual crimes face further trauma when seeking assistance from law enforcement and the judiciary, facing biases and insensitivity that can be as distressing as the original offenses.

This highlights society’s failure to protect vulnerable individuals for various reasons and acknowledges the presence of individuals worse than animals. It criticizes society’s glorification of certain standards and institutions. Sexual crimes are depicted as violations against sacred aspects of society, such as marriage, sisterhood, and parenthood, as well as against humanity. The victim is portrayed as enduring ongoing suffering and facing challenges in seeking justice due to a lengthy, complex, and costly legal process. Rape cases are complicated and involve various factors that affect the pursuit of justice. Collaboration among law enforcement, the judicial system, NGOs, and the community is deemed necessary to prevent and address this issue.