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**- LAW ENFORCEMENT RESPONSE TO RAPE CASES IN INDIA: A
COMPARATIVE AND CRITICAL ANALYSIS**

- Aneesh Sikarwar
- Vijay Kumawat

ABSTRACT

This study examines the handling of rape cases by law enforcement in India, situating the inquiry within a comparative framework involving select foreign jurisdictions. It traces the evolution of Indian rape law, particularly in the aftermath of the *Mukesh & Anr. v. State (NCT of Delhi)*, and evaluates the statutory scheme under the Indian Penal Code, the Code of Criminal Procedure, and the Indian Evidence Act. The paper interrogates the functioning of core procedural stages—registration of FIRs, medical examination, investigation, and trial—while identifying persistent deficiencies such as evidentiary lapses, delays, and institutional insensitivity.

Adopting a doctrinal and comparative methodology, the research analyses how different jurisdiction's structure offences, calibrate punishment, and operationalize victim protection. It further engages with the constitutional dimension of punishment, particularly the balance between deterrence and the right to life and dignity under Constitution of India, Article 21. While some jurisdictions rely on severe penal sanctions, the study argues that the effectiveness of rape law enforcement depends more on investigative competence, prosecutorial integrity, and victim-centric processes than on punishment severity alone.

The paper concludes that despite progressive legal reform in India, outcomes remain uneven due to implementation deficits. It proposes a shift towards capacity-building, accountability mechanisms, and trauma-informed practices, coupled with calibrated sentencing policy, to ensure that justice in sexual offence cases is both effective and constitutionally grounded.

INTRODUCTION

Rape is a heinous crime that affects countless individuals across the world, and India is no exception. (recent rape cases NCRB) The handling of rape cases in India has been a topic of great concern and debate, with many questioning the effectiveness of the legal system in providing justice to survivors. Understanding how law enforcement handles rape cases in India is crucial in order to shed light on the situation and work towards creating a safer and more just society. This blog will explore the various aspects of the legal process in India, including the

punishments for rape, and delve into the challenges faced by law enforcement in handling these sensitive cases in India. Similarly, it is also a concern for other countries, there were many different countries where rape offenders face a very serious punishment for committing the crime which can end their life also. We can also read about why others country's punishment for rape related crime were different from India and how they execute their procedure for justice to victim, and also compare that these punishment for rape offenders either violate their human right or not? Or what about right to life of criminals, and why they overlook their life because of committing rape.

RESEARCH QUESTIONS / OBJECTIVES

1. How effectively do Indian law enforcement agencies investigate and prosecute rape cases under the current statutory framework?
2. What structural and procedural barriers impede justice for survivors?
3. How do selected foreign jurisdictions differ in legal design, enforcement mechanisms, and victim protection?
4. Does severity of punishment (including capital punishment) meaningfully improve deterrence or conviction outcomes?
5. How can Indian law reconcile deterrence with constitutional guarantees under Article 21?

RESEARCH METHODOLOGY

This study adopts a **doctrinal method**, analysing primary sources including statutes, amendments, and judicial decisions of the Supreme Court and High Courts of India. Secondary sources such as law commission reports and peer-reviewed scholarship are used to contextualise legal developments. A **comparative approach** is employed to examine selected jurisdictions on common parameters—offence definition, evidentiary standards, investigation protocols, sentencing policy, and victim protection frameworks—so as to identify convergences, divergences, and best practices. The analysis is qualitative, with selective use of official statistics (e.g., NCRB) to indicate trends in reporting and conviction.

HOW INDIA JUDICIARY HANDLES RAPE CASES

In India, every single minute there is a woman who faced rape, harassment in day and night and in which there is one case who become a sensation for a country and become a stepping

stone to change the law in society for women protection. (footnote) Some of the cases were Delhi rape case 2013, Mathura Rape case 1973, The Unnao& Kathua rape case. In history of India laws related to woman were changes from time to time. The law relating to women's protection and rape undergone significant changes throughout Indian legal history. from above there is key changes in law by cases were –

1. The constant change in law – because of change in society need and pressure of historic case make change in law such as after Mathura rape case 1973 which shake the Indian legal system and create a doubt of Indian police honour & safety of a woman in custody of police. After the rape incident of women by police officer in their custody, create so much spark all over nation and make amendment in Indian legal system, such as, Dowry death and rape laws: It was only after the Mathura case that sections 376-B, 376-C and 376-D of the IPC were included under the Criminal Law (Second Amendment) Act of 1983 to prevent custodial abuse. later make custodial rape punishable, prohibition of victim identity disclosure, and give tougher sentences after the case.
2. Recommendations of the Justice Verma Committee - The Justice Verma Committee, formed after the 2013 Delhi gang rape case (Nirbhaya case), changed the course of modern India's rape laws: New definition of consent: The definition of rape was broadened to include any form of physical penetration, not just "vaginal intercourse." But Age of consent: The age of consent was raised from 16 to 18 years. Ban on the two-finger test: The judiciary recommended banning this humiliating test, considering it detrimental to the dignity of the victim. Death penalty: Interestingly, the Verma Committee did not recommend capital punishment for rape, although it was included in subsequent laws.
3. Key Judicial Approaches and Challenges Patriarchal Mindset: Judicial decisions have often been influenced by a patriarchal mindset, where the victim's character or virginity were considered the basis for judgment. However, modern reforms have attempted to change this. Barbaric Crimes and Bodily Integrity: The judiciary now considers rape not just a violation of modesty but also a violation of a person's bodily integrity.

Workplace Harassment- The judiciary has taken seriously not only physical violence but also workplace harassment: CEDAW and International Standards: India has ensured the safety of women in the workplace based on international treaties (such as Article 11 of CEDAW). And the POSH Act, 2013: This Act, passed by the Parliament, is a big step towards preventing sexual harassment at the workplace and providing a safe environment to women.

JUDICIAL DEVELOPMENTS AND MILESTONE CASES

1. Mathura Rape Case (1979)

This case brought into focus the shortcomings in the understanding of consent, resulting in widespread protests and amendments in rape laws, especially concerning custodial rape.

2. Nirbhaya Case (2012)

The horrifying gang rape in Delhi resulted in the establishment of the Justice Verma Committee and legal changes, such as the expanded definition of sexual offences.

3. State of Punjab v. Gurmit Singh

The Supreme Court stressed the significance of in-camera proceedings and the anonymity of victims.

4. Tukaram v. State of Maharashtra

This controversial decision drew attention to the issue of judicial insensitivity and paved the way for reforms related to consent and proof.

OTHER JUDICIAL PRINCIPLES

Lalita Kumari v. Govt. of U.P.

Ratio: Registration of FIR is mandatory for cognizable offences; preliminary inquiry is limited.

Takeaway: Non-registration in rape cases is unlawful.

State of Punjab v. Gurmit Singh

Ratio: Testimony of the prosecutrix, if trustworthy, requires no corroboration.

Takeaway: Courts must avoid stereotyping and undue suspicion.

Mukesh & Anr. v. State (NCT of Delhi)

Ratio: Affirmed severe punishment in a “rarest of rare” case; emphasised brutality and societal impact.

Takeaway: Sentencing reflects gravity, but does not substitute systemic reform.

HUMAN RIGHTS PERSPECTIVE

The constitutional guarantee of life and personal liberty under Constitution of India extends to both victims and accused. While stringent penalties aim at deterrence, proportionality and due process remain central. The Supreme Court's "rarest of rare" doctrine in *Bachan Singh v. State of Punjab* underscores that capital punishment must be exceptional.

Balanced Position:

- **For deterrence:** Severe punishment signals societal condemnation.
- **For rights compliance:** Over-reliance on severity risks arbitrariness and may not improve conviction rates.
- **Operational insight:** Certainty and swiftness of punishment—through efficient investigation and trial—have greater deterrent value than severity alone.

Illustration: A jurisdiction with moderate penalties but high conviction rates may deter more effectively than one with extreme penalties but low enforcement efficiency.

LEGAL FRAMEWORK IN INDIA

(A) Substantive Offence

- The Indian Penal Code defines rape with an expanded consent standard post-2013 amendments.
- Indian Penal Code and allied provisions (376A–376E) prescribe graded punishments, including aggravated forms.

Illustration: A sexual act without free and voluntary consent—where consent is obtained by coercion or deception—falls within the broadened statutory definition.

(B) Procedural Safeguards

- Code of Criminal Procedure: Mandatory registration of FIR in cognizable offences; refusal is impermissible.
- Code of Criminal Procedure: Recording of the victim's statement before a Magistrate.
- Code of Criminal Procedure: Time-bound completion of investigation.

Illustration: Police must register an FIR immediately upon disclosure; delays at this stage can compromise evidence.

(C) Evidentiary Principles

- Indian Evidence Act: Presumption of absence of consent in specified prosecutions once sexual intercourse is proved and the victim states lack of consent.
- Rape shield protections limit questioning about past sexual history.

Illustration: The victim's testimony, if credible, can sustain conviction without corroboration.

RAPE STATISTICS IN INDIA

As per the records maintained by the National Crime Records Bureau (NCRB), numerous rapes are reported each year in India. But the conviction rate is quite low, which suggests inefficiencies in investigating and prosecuting rape cases.

There are mainly three areas that should be focused on:

- Under-reporting of cases owing to social pressure and fear of reprisals
- Low conviction rate because of the absence of evidence or uncooperative witnesses
- High backlog of cases resulting in delayed justice

LAW ENFORCEMENT PROCEDURE IN RAPE CASES

The handling of rape cases by law enforcement follows a structured process:

➤ Registration of FIR

Police are legally bound to register an FIR upon receiving information about a rape incident. Refusal to do so constitutes a punishable offence.

➤ Medical Examination

The victim must undergo medical examination within 24 hours to collect forensic evidence. The "two-finger test" has been banned as unconstitutional and violative of dignity.

➤ Recording of Statement

Statements are recorded under Section 164 CrPC to ensure authenticity and prevent coercion.

➤ **Investigation and Charge Sheet**

Police conduct investigation, collect evidence, and file a charge sheet before the court.

➤ **Trial Process**

Trials are generally conducted in-camera to protect the identity and dignity of the victim.

COMPARATIVE ANALYSIS: UNITED KINGDOM, CANADA, AND SWEDEN

Building upon the established understanding of the Indian legal landscape—specifically the shift from the patriarchal interpretations of the Mathura case to the post-Nirbhaya reforms—this section examines how international jurisdictions have restructured their sexual offence frameworks. By analysing the legal systems of the United Kingdom, Canada, and Sweden, we can identify diverse models of justice that prioritize bodily integrity, gender neutrality, and affirmative consent.

1. Legal Framework and Statutory Definitions

The foundational difference between the Indian framework and these international models lies in the statutory definition of the offence itself. In the United Kingdom, the **Sexual Offences Act 2003** serves as a modern benchmark by replacing archaic common law definitions with clear statutory language. It defines consent through the lens of "freedom and capacity," ensuring that agreement is a choice made without coercion or impairment. This Act significantly widened the definition of rape to include "surgically constructed" anatomy, explicitly protecting male-to-female transsexual persons.

Canada took a pioneer approach in 1983 by abolishing the traditional term "rape" entirely, replacing it with a three-tiered "Sexual Assault" framework. This change was intended to shift the legal focus from the sexual nature of the act to the violent violation of the victim's bodily integrity. Similarly, Sweden's 2018 reforms moved the country to a "Consent-Based Model". Under the Swedish Penal Code (Chapter 6, Section 1), a person is guilty of rape if they perform a sexual act with someone who is not participating voluntarily, regardless of whether physical force or threats were used.

2. Judicial Approaches to Consent and the "Frozen Fright" Phenomenon

The judicial handling of consent remains the most contentious aspect of sexual assault trials. While Indian courts have historically struggled with a "patriarchal mindset" that scrutinizes a victim's character, the Swedish judiciary explicitly recognizes the psychological state of "frozen fright". Swedish law acknowledges that a victim may be physically unable to resist or speak due to trauma, and such passivity is legally categorized as a lack of voluntary participation. Participation must be expressed through words, signs, or other clear actions.

In Canada, the judicial standard focuses on "active consent," meaning agreement must be voluntary and ongoing throughout the sexual activity. Consent is considered legally invalid or "vitiated" if it is obtained through the abuse of power, authority, or fraud. The UK judiciary further reinforces this by utilizing "conclusive presumptions". For instance, if a victim was asleep or unconscious, the court conclusively presumes a lack of consent, preventing defendants from arguing they "thought" the person agreed.

3. Implementation Mechanisms and Extraterritorial Jurisdiction

A significant procedural advantage observed in the UK's **Sexual Offences Act 2003** is the principle of extraterritorial jurisdiction. Under this provision, a UK citizen who commits a sexual offence outside the territory of the United Kingdom can be prosecuted within the UK as if the crime occurred on domestic soil. This stands in stark contrast to the Indian legal system, which currently lacks a robust mechanism for punishing its citizens for offences committed outside national borders.

Furthermore, the implementation of "Special Measures" in the UK under the **Youth Justice and Criminal Evidence Act 1999** provides survivors with significant procedural safeguards. These include testifying via live video links or behind screens to avoid the intimidation of facing the accused in open court. Sweden complements its legal framework with "integrated district-level protection units" that provide holistic rehabilitation, addressing the "patchy and disjointed" enforcement often found in other jurisdictions.

4. Rights, Limitations, and the Marital Exception

One of the most glaring inconsistencies highlighted by this comparative study is the "Marital Rape Exception". While Section 63 of India's Bharatiya Nyaya Sanhita (formerly Exception 2 to Section 375 IPC) still provides a legal shield for husbands who force sexual acts upon their wives, provided the wife is over 18, both the UK and Canada have fully criminalized such acts. These nations treat non-consensual acts within a marriage with the same legal severity as any

other assault, grounded in the belief that a relationship should never be an exception to bodily autonomy.

Additionally, the UK has expanded its legal protections to be more inclusive of gender diversity. The 2003 Act explicitly covers "surgically constructed" anatomy, ensuring that transsexual individuals are protected under the same statutory definitions of rape as cisgender women.

5. Challenges and Criticisms: The Persistence of "Rape Myths"

Despite advanced statutory wording, all three jurisdictions face the challenge of "Rape Myth Acceptance" (RMA). These are societal prejudices—shared by India, the UK, and the USA—that influence the behavior of law enforcement and the judiciary, often leading to victim-blaming. Even in the UK, where neutral statutes are well-established, conviction rates have remained lower than expected, which sometimes demotivates survivors from pursuing legal action.

Sweden has attempted to address the difficulty of proving intent through the unique category of "Negligent Rape" (*Oaktsam våldtäkt*). Under Section 1a of the Swedish Penal Code, a person can be held responsible if they were "grossly negligent" regarding the fact that the other person was not participating voluntarily. This effectively limits the "misunderstanding" defense that often hampers prosecutions in other countries.

Detailed Analytical Insights and Global Comparisons

Gender Neutrality and the Male Victimization Gap

The evolution toward gender neutrality is a primary area where international standards diverge from Indian law. While Indian statutes primarily identify "woman" as the victim and "man" as the perpetrator, the UK and Canada utilize gender-neutral wording. This acknowledges that sexual violence is a human rights violation that can affect anyone regardless of gender, caste, or ethnicity. Statistics from India indicate that sexual abuse among children is nearly evenly split (57.3% boys and 42.7% girls), yet adult male victims often lack equal legal standing or the social support systems available in the UK. The UK offers specific helplines and reporting mechanisms dedicated to male survivors, recognizing that shame and social stigma are major barriers to reporting for all genders.

The Rise of Digital Crimes and Cyber-Sexual Assault

As developed nations, the UK and Canada increasingly confront "Digital Crimes" or cyber-related sexual assaults. These include "stealthing"—the non-consensual removal of protection during intercourse—which the UK and Canadian courts have begun to treat as a form of sexual assault. These jurisdictions are constantly reforming their legal frameworks and digital evidence procedures to stay ahead of these evolving threats. In contrast, the Indian legal system's focus remains largely on traditional forms of physical penetration, highlighting a need for broader definitions that encompass modern modes of violation.

Accountability and Strict Liability for Minors

A critical area of difference is the protection of minors. Swedish law (Chapter 6, Section 13) applies a form of "strict liability" for sexual acts with children under fifteen. Any such act is classified as "rape of a child" regardless of whether force or non-voluntariness is proven. If the act involves "ruthless exploitation" or multiple perpetrators, it is classified as "gross rape of a child," carrying a minimum sentence of six years. While India has the POCSO Act to protect children, the Swedish model provides a useful example of how to categorize different levels of severity within the offence of child rape to ensure proportional sentencing.

Structural Barriers and the Prosecution Nexus

Finally, the effectiveness of any anti-rape law is determined by the "nexus" between the law and its actual implementation. In India, survivors frequently face obstacles during the prosecution stage due to technical loopholes and procedural delays. The UK and Canada have worked to streamline these processes by improving survivor experiences and focusing on the "voluntary agreement" rather than a victim's past sexual history. Sweden's use of "preparatory works" to guide judicial interpretation also helps bridge the gap between legislation and enforcement, ensuring that judges are well-informed on concepts like "frozen fright" during trials.

CONCLUSION

This study demonstrates that India's legal framework on rape has undergone substantial reform, particularly in the definition of consent and the gradation of offences under the Indian Penal Code, complemented by procedural safeguards in the Code of Criminal Procedure and evidentiary presumptions under the Evidence Act. Judicial interventions—from mandatory FIR registration to recognition of the evidentiary sufficiency of the prosecutrix's testimony—have

further strengthened the doctrinal position. Yet, the translation of these norms into consistent outcomes remains uneven.

The comparative analysis underscores a critical insight: **the efficacy of rape law enforcement is driven less by the severity of punishment and more by the certainty, quality, and timeliness of the investigative and prosecutorial process.** Jurisdictions that invest in specialised units, robust forensic infrastructure, and victim-support systems tend to achieve more reliable outcomes, irrespective of whether their sentencing regimes are harsher or moderate.

From a constitutional standpoint, the discourse must remain anchored in Article 21, balancing the imperative of deterrence with due process and proportionality. The “rarest of rare” doctrine cautions against an over-reliance on extreme penalties as a substitute for systemic efficiency. Accordingly, the path forward lies in **institutional reform**: professionalising investigations, ensuring accountability for procedural lapses, expanding victim-centric mechanisms, and enhancing data-driven oversight.

In sum, durable progress requires moving beyond episodic legislative responses towards a **holistic, implementation-focused model**—one that integrates legal standards with administrative capacity and societal support—so that justice in rape cases is not only pronounced in law but realised in practice.

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