



Rape Laws In India: Strengthening Justice Or Fuelling Criminal Innovation?

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Abstract: The effectiveness of the rape laws has been called into question by recent incidents like the one that occurred in Kolkata. Do the laws work to change, or do they offer a dangerous haven for gradually sophisticated misconduct? The research explores whether the existing legal framework has two sides, offering protection and revealing fresh weaknesses simultaneously. The study investigates whether India's rape laws constitute an advancement in the administration of justice or whether they unintentionally backfire and have unexpected repercussions through a thorough examination of legislative reforms. When considering the recent occurrence that occurred in Kolkata, the following questions come to mind: Would changing India's rape laws result in more justice or more crime? Are India's laws a shelter for victims or a haven for criminal activity? Does the Rape Legislation Advance Criminal Strategy or Backfire? Are India's laws against rape a Double-Edged Sword, Protecting Against Danger?

Index Terms: Rape Laws, Victims, Criminal Tactics And Administration Of Justice

I. INTRODUCTION:

The Indian legal system's position on rape has been discussed in both the public and legal spheres, especially in the aftermath of high-profile instances that led to protests and important legislative changes. Despite these developments, there is still disagreement on the efficacy of rape laws. Although the declared goals of these laws are to protect victims and deter criminal activity, their actual effects are sometimes seriously questioned when they are put into practice. This study examines the efficacy of India's rape laws as well as any unintended effects they might have on criminal behaviour, with an emphasis on how they might encourage the use of more sophisticated criminal strategies. More stringent legislation, like the ones enacted in reaction to the 2012 Nirbhaya case, was designed to stop the upward trend in sexual assault cases (TIMESOFINDIA.COM / Updated: Dec 19, 2019). Unquestionably, these rules have provided victims more legal alternatives, but they have also come under fire for possibly creating an atmosphere where offenders can develop and adapt their strategies to avoid being caught and prosecuted. The main outcome of this study is this paradoxical conclusion: regulations intended to safeguard individuals may unintentionally make crime more difficult. This study focuses on recent events such as the incident in Kolkata that have brought attention to the differences between the desired legal conclusion and the actual outcomes. It looks at whether the current legal system serves as a powerful shield for victims or conversely if it encourages the creation of criminal strategies. By investigating the connection between legislative reforms and criminal adaptability, this study seeks to ascertain whether India's rape laws are a double-edged sword offering protection on the one hand while exposing new vulnerabilities on the other. The intention is to provide a thorough analysis of the consequences of these laws and look into workable solutions that might enhance victim care and the legal system's administration.

II. Infamous Incidents of Rapes in India:

The complex and dynamic process that has resulted in India's rape laws is a reflection of the changing public opinion about sexual assault and the legal system's reaction to it.

2.1. Beginning with the **Indian Penal Code (IPC) of 1860** and continuing through notable cases like the Mathura rape case, the Nirbhaya case and the most recent doctor rape case in Kolkata the legal outline has undergone noteworthy changes to better handle the issue of rape. The fundamentals of India's rape laws were laid down by the Indian Penal Code which was passed in 1860 while the country was still a British colony (Indian penal code 1860 - Comparative analysis 2024). Section 375 of the Indian Penal Code defined rape and listed the various circumstances in which a man could be charged with it. However, the idea was rare and since women were often seen as their husbands or fathers' property the law primarily dealt with infringements on property rights. Section 376 of the Indian Penal Code states that the length of a prison sentence for rape varies from seven years to life depending on how serious the offence was.

2.2. **The Rape Case of Mathura (1972):** A significant turning point in India's history of rape laws was the Mathura rape case. Mathura (Shanti, 2021), a young tribal girl at the Desai Ganj Police Station in Maharashtra, claims that two police officials sexually raped her. The Bombay High Court found the defendants guilty despite the trial court's exoneration. But in a contentious decision, the Supreme Court cleared the cops, concluding that since Mathura had not raised any red flags, he must have approved of the conduct. Due to the extensive demonstrations that this decision provoked, the Indian women's rights movement was launched. The 1983 IPC revisions were a result of public outcry and brought about a number of improvements. With the introduction of the concept of "custodial rape", "rape committed by members of the armed forces", public employees and other people in "positions of authority" was subject to harsher penalties with a minimum term of ten years. The Indian Evidence Act Section 114A was also modified to assume that consent was not given in cases of custodial rape.

2.3. **The Case of Nirbhaya:** The 2012 brutal gang rape that took place in Delhi was the subject of the Nirbhaya case (Arya, 2022). which marked another pivotal moment in the evolution of India's rape laws. The incident, which resulted in the young woman's death triggered large-scale protests demanding stricter laws and increased safety for women. Consequently, the government formed the "Justice Verma Committee" to make recommendations as to modifications to the criminal code pertaining to sexual assault. The 2013 Criminal Law (Amendment) Act was based on recommendations made by the committee. The changes expanded the definition of rape under Section 375 of the IPC to include acts like forcing oral sex penetrating any body part and inserting an object. fixed severity of the punishment for rape was increased and now and then the victim might be sentenced to death or a lifelong vegetative state. Along with expanding the definition of aggravated rape, the Act also created new offenses like stalking voyeurism and acid attacks.

2.4. A case of **doctor's rape in Kolkata (2024):** With the recent rape case involving a doctor in Kolkata (Shamim, 2024) the efficacy of India's rape laws has come under scrutiny once again. The case involving the rape of a physician at a public hospital raised awareness of the vulnerabilities that women continue to face in situations that are meant to be safe. Although there has been significant progress in the legal system since 1860 circumstances like these underscore the continual challenges in enforcing the law and the need for continual updates. This has led to the Indian Medical association deciding to show solidarity by conducting strike on 17th August, 2024 for twenty-four hours (TOI City Desk / TIMESOFINDIA.COM / Updated: Aug 16, 2024). The issue is to protest against the allegation of destruction of the crime scene, and also repeated attacks on doctors in Kolkata who sat for protests. The reaction to such a brutal act has infuriated the nation. It seems to be a déjà vu moment for the citizens. The question remaining the same, aren't the laws enough to stop such barbaric activities. Why aren't women safe even after seventy-eight years of independence?

III. Recent Developments in Laws:

Fig. 1. On recent developments in rape Laws in India:

1860:

Indian Penal Code (IPC) Enactment

- The original IPC criminalized rape under Section 375, defining it as non-consensual sexual intercourse.

1983:

Criminal Law (Amendment) Act, 1983

- Introduced new definitions and penalties for rape, including the provision for custodial rape and a wider scope for legal protection.

1997:

Vishakha Guidelines

- Issued by the Supreme Court to address sexual harassment at the workplace, laying down guidelines for prevention and redressal.

2013

Criminal Law (Amendment) Act, 2013

- Known as the Nirbhaya Act, it significantly expanded the definition of rape, introduced new offenses, enhanced penalties, and established fast-track courts.

2018:

Criminal Law (Amendment) Act, 2018

- Amended to include death penalty for repeat offenders, introduced provisions for aggravated sexual assault, and enhanced punishment for offenses against minors.

2020:

The Protection of Children from Sexual Offences (POCSO) Act Amendments

- Strengthened legal frameworks for protecting children from sexual offenses, including amendments for harsher punishments and clearer procedural guidelines.

Source: Prepared by the researcher.

IV . Theoretical Perspective

4.1. Feminist criminology:

Understanding how patriarchy and gender inequality affect crime is crucial for comprehending how India's rape laws have evolved over time. Feminist criminology takes this approach to crime analysis. The impact of gender power dynamics on criminal behaviour and the administration of justice is often ignored by conventional criminological theories, which this method challenges (Vella, 2023). The protection of women's honour was prioritized over a thorough approach to treating sexual abuse during the early phases of Indian rape laws, ignoring survivor experiences and promoting victim-blaming. Feminist advocacy and public pressure made the Criminal Law (Amendment) Act 2013 possible, which improved victim protection and expanded the definition of rape. This incident was a major step toward adopting a feminist theory-informed position. However, feminist criminology also criticizes these modifications for leaving patriarchal systems in place. Gender biases persist in the way that rigorous evidentiary standards and convoluted legal processes disadvantage survivors. Moreover, shifting criminal tactics in response to legislative changes highlight the need for ongoing gender-responsive legal framework changes. Feminist criminology provides a critical viewpoint for evaluating the benefits and drawbacks of India's rape laws advocating for a legal system that not only punishes offenders but also addresses the underlying causes of gender-based violence.

4.2. Critical Legal Studies (CLS):

Critical Legal Studies (CLS) provides a framework for analysing the limits and inherent biases of legal systems like the rape laws in India. As laws are shaped by social political and cultural factors' laws in CLS opinion are not neutral tools but rather serve as reflections of power relations (Advanced jurisprudence). This event makes it evident that even with changes like the Criminal Law (Amendment) Act 2013 rape laws may not sufficiently address the complexities of sexual violence and may even worsen existing inequities. Critics of the CLS claim that there are situations in which strict procedural requirements and high evidentiary standards might discriminate against survivors, particularly those from marginalized populations, as evidence that legal formalism occasionally triumphs over substantive justice. Rather than just updating legal provisions, this school of view argues for reforms that address underlying social dynamics and a critical analysis of the ways in which rape laws intersect with issues of power and inequality. CLS highlights that in order to truly offer victims of sexual assault with justice, structural change is necessary.

4.3. Post-modernism provides a sophisticated lens through which to view India's rape laws because of its emphasis on questioning absolute facts and demolishing established narratives (Sinha). This perspective advocates for a more adaptable situation-specific approach and criticizes the rigidity of traditional legal definitions and universal standards. Previous Indian laws on rape were unyielding and did not account for the complexities of personal experiences and social contexts. However, laws such as the Criminal Law (Amendment) Act 2013, which broadens the definition of rape and considers various perspectives on sexual violence embody post-modernist principles. It questions traditional notions of consent (Koh, 1967) and justice by emphasizing procedural flexibility and victim-centered methods. By addressing power imbalances and questioning exclusive notions of justice, postmodernism promotes a change toward a more adaptable and inclusive legal system. This evolution attempts to take into account a more comprehensive understanding of justice as well as the complexities of sexual violence.

V. In Pursuit of Answers:

When considering the recent occurrence which occurred in Kolkata, the following questions come to mind:

5.1. Would changing India's rape laws result in more justice or more crime?

India faces a philosophical conundrum when it comes to strengthening its rape laws. On the one hand in order to safeguard victims (Declaration of basic principles of justice for victims of crime and abuse of Power | OHCHR 1985) uphold the rule of law, deter future offenders, comprehensive and stricter regulations are required. These laws are a reflection of society's moral commitment to upholding equality and human dignity. However, due to the complexity of human behavior and the dynamics of society every change in the law may unintentionally result in more sophisticated criminal techniques because offenders adapt to existing legal provisions and environment (Douglas & Munn, NCJRS Virtual Library 1992). Justice requires a significant cultural shift in addition to legal reform (Gahlot & Agarwal, 2024), which begs the question: can the socio-economic problems at the root of these crimes be resolved by law alone? Laws must find a way to reconcile reflecting society's moral standards with acting as a tool for change (Garg, 2022). Hence, in order to prevent crime legal changes must be coupled with larger social initiatives that foster equality empathy and respect.

5.2. Are India's laws a shelter for victims or a haven for criminal activity?

In India, victims are entitled to safety justice and a means of holding perpetrators accountable through the legal system. They provide essential avenues for crime reporting prosecution and sentencing especially in cases of sexual assault. Regrettably, structural issues such as judicial backlogs' public stigma and corruption (Shah & Parmar, 2021) can undermine the effectiveness of these laws by allowing criminals to exploit loopholes. Even though the laws are meant to protect victims there are times when they seem more like safe havens for criminal activity because of gaps in the legal system and enforcement. Consequently, even though protecting victims is the aim of Indian law achieving this goal necessitates ongoing enforcement strong legal frameworks and social support.

5.3. Does the Rape Legislation Advance Criminal Strategy or Backfire?

Laws against rape can be beneficial in different ways. Enough laws are designed to protect victims and discourage criminal action. But if these rules are badly written or implemented, they can unintentionally inspire criminals to come up with ever-more-complex ways to avoid being discovered or prosecuted. Criminals may attempt to evade punishment by utilizing legal precedents, particular kinds of evidence, or procedural constraints. Strict rules could also create a game of cat and mouse where offenders change their tactics to get around the law. On the other hand, strong and well-executed legislation that offers a solid basis for holding perpetrators accountable (Nascimento et al., 2022) and giving support to victims may result in a drop in the incidence of rapes and improved victim justice. To avoid laws that unintentionally encourage criminal activity or have unfavourable effects, it is crucial to balance their design with practical enforcement and support mechanisms.

5.4. Are India's laws against rape a Double-Edged Sword, Protecting Against Danger?

The primary objectives of India's laws on sexual assault and rape are to protect victims and deter offenders. But even with all of its advantages, this architecture is not without flaws. A careful analysis is necessary due to the contradiction that exists between the legislation's protective intentions and the outcomes they produce. The Criminal Law (Amendment) Act 2013, also referred to as the Nirbhaya Act, is a well-known anti-rape statute in India. It represents a significant advancement in the defence of women's rights. This Act created special courts to process cases more rapidly, tightened the definition of rape, and enforced harsh penalties. The Act enhances victim protection in a number of ways including by including provisions for mental health care and compensation. These steps aim to increase survivors access to legal options and enhance the court systems' efficacy in preventing sexual assault.

The inclusion of specific measures that further reflect the legislative purpose of fostering a helpful environment for survivors include standards for victim treatment during judicial processes and faster trial proceedings. These legal adjustments not only act as a deterrent but also as a systematic effort to address sexual assault head-on and create a victim-supportive environment. Despite these developments, there are still problems with the legislative approach in laws on rape in India (Gowda, 2023). The possibility of his, her, their, etc. having unduly strict evidentiary requirements is one major worry. The prosecution process can occasionally become more difficult due to the focus on particular types of evidence, such as forensic analysis and intricate procedural procedures. Because legal nuances are complex, offenders may be able to unknowingly take use of them to evade punishment.

There may be instances where the defendant is found not guilty due to legal technicalities, despite the fact that convictions must adhere to stringent standards for proof. Furthermore, the emphasis on specific legislative measures may cause criminals to alter their modes of illegal behavior. For example, tighter guidelines and increased scrutiny for proof could cause criminals to devise ever-more-advanced strategies to try and avoid detection. These modifications could counteract the deterrent effect of the laws, which could lead to a vicious cycle where new regulations are undermined by criminal techniques that vary over time. An additional important consideration is the potential for law to be misused. Rules intended to protect victims may at times be misused leading to false accusations despite their intended purpose. This abuse could be detrimental to the accused as well as cast doubt on the veracity of heartfelt accusations clouding the legal system impartiality and reducing its efficacy.

VI. Conclusion

Through a critical analysis of the complex dynamics of these laws, this research article has investigated whether India's rape laws which are intended to protect victims could inadvertently encourage the development of criminal tactics. Current events such as the one that transpired in Kolkata accentuate the pressing question: Do these laws genuinely advance justice or do they merely provide criminals with a platform to carry out ever-more-technical schemes? Although the goal of these regulations is to promote justice, they may unintentionally allow criminals to take advantage of legal loopholes for ever-more-complex schemes. By analysing the frameworks of the rape laws a dual character—which can be both protective and reveal new weaknesses, this research could conclude by saying that India's rape laws genuinely advance justice and in some occasions has unintentionally backfired. Examining legislative innovations and their impact on society in detail the study sheds light on the fundamental conflicts that exist within the legal system. It has sought to find out whether these regulations while meant to enhance victim protection may also reveal new vulnerabilities that criminals are misusing. This study highlights how crucial it is to enact laws that balance justice while anticipating and resolving any unforeseen repercussions. In the end, the research poses crucial questions that need to be answered in order to better understand and improve the effectiveness of legal reforms in the fight against sexual violence. Do rape laws in India encourage criminal tactics or offer genuine protection? Are they a double-edged sword that hides criminal activity from view while also providing safety to victims?

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