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**A CRITICAL ANALYSIS OF COMPENSATION TO RAPE VICTIM IN
INDIA**- Abhay Baliyan¹**PREFACE**

Rape is a type of sexual assault usually involving sexual intercourse or other forms of sexual penetration carried out against a person without that person's consent. The act may be carried out by physical force, coercion, abuse of authority, or against a person who is incapable of giving valid consent. The term rape is sometimes used interchangeably with the term sexual assault.

Rape is defined in most jurisdictions as sexual intercourse, or other forms of sexual penetration, committed by a perpetrator against a victim without their consent. Originally, rape had no sexual connotation and is still used in other contexts in English.

In 2012, America changed their definition of Rape from "The carnal knowledge of a female forcibly and against her will" to "The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim." The previous definition was considered outdated and narrow. The updated definition includes recognizing any gender of victim and perpetrator and that rape with an object can be as traumatic as penile/vaginal rape. The bureau further describes instances when the victim is unable to give consent because of mental or physical incapacity. It recognizes that a victim can be incapacitated by drugs and alcohol and unable to give valid consent.

Victims of rape or sexual assault come from a wide range of genders, ages, sexual orientations, cultures, and degrees of impairment or disability. Incidences of rape are

¹ Student at Amity Law School, Noida

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classified into a number of categories, and they may describe the relationship of the perpetrator to the victim and the context of the sexual assault. Forced sexual activity can be committed over a long period of time with little to no physical injury.

CHAPTER I

INTRODUCTION

In India, the tradition of "MAATRI DEVO BHAVA" emphasizes the worship of mothers, advocating for women to be revered akin to goddesses. The country's culture and moral values stand distinct from those of the West.

1.1BACKGROUND

The history of Sociology has established that women embody fortitude, self-sacrifice, tenacity, and successful pursuit.

Throughout history, men have subjected women to their will, using them for self-gratification and sensual pleasure, as instruments for comfort, but never to elevate them to their rightful rank. Instead, men have sought to debase and enslave women's minds, triumphing in the ruin they have wrought. All women ask is for men to remove their feet from their necks and allow them to stand upright in the place God intended.

Ancient literature suggests a better position for women, yet ancient writers like Confucius, Aristotle, and Manu believed in the natural dominance of males, relegating females to an inherently inferior position. Considered property, women could be transferred or sold, and even in Greek civilization, they were confined within homes.

Despite their high position in the family, they were subjected to male dominance and denied rights. This led to sexual perversities, contributing to the destruction of civilizations and family units. The decline in moral values, seen globally and in India, reflects a shift towards immoral ways of life disguised as open culture.

Violence is often seen as physical force and destructive behavior, designed to injure or harm others. Violence against women stems from historical power imbalances between genders, perpetuating women's subordination. Despite being over half of the world's population, women endure unequal treatment, as highlighted in a 1980 UN report.

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This inequality is evident in women performing two-thirds of the world's work but receiving only a tenth of its income and owning less than one-hundredth of its property. Defined as any gender-based act causing physical, sexual, or psychological harm, violence against women includes threats, coercion, and deprivation of liberty. Sexual violence specifically uses sex to assert power and cause suffering, leaving lasting emotional scars. This brutality not only harms individuals but also hampers societal development by limiting the potential of almost half the population, women. Sexual violence, whether homosexual or heterosexual, disproportionately affects women due to their marginalized status. Shockingly, statistics show that at least one in five women worldwide has experienced physical or sexual abuse. This crime against women has unfortunately been a persistent issue across different times and places, reflecting a harsh reality of women's lives.

RESEARCH OBJECTIVE

Compensation for victims is a foundational concept in criminal justice, varying in approach across countries. India, for instance, has specific statutory provisions for compensating victims, such as the Code of Criminal Procedure 1973, Probation of Offenders Act 1958, and Fatal Accident Act.

STATEMENT OF PROBLEM

Designed/Methodology/Approach: This study employs a structured investigation, utilizing root cause analysis, to examine the gang rape case of December 16, 2012. The aim is to identify the true cause of rape and propose actions to prevent such incidents in the future.

Findings: The analysis of rape, including the specific gang rape case, reveals multiple causes. Given the complexity of the issue, this dissertation offers a multi-dimensional approach to address this problem effectively.

Research Limitations/Implications: Due to the sensitive nature of the subject, this research relies on secondary data for root cause analysis, which may limit the depth of the study.

Social Implications: Despite the widely recognized heinous nature of rape, the frequency and brutality of such crimes continue to rise. This study contributes theoretically and practically to

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the under-researched topic of crimes against women, specifically rape, offering insights that could lead to preventive measures.

Originality/Value: While various perspectives on rape exist, they are often fragmented. This research integrates diverse viewpoints to comprehensively explore the multi-dimensional causes and effects of rape, providing a valuable contribution to the field.

Three hypotheses regarding rape were examined through empirical research. The first hypothesis focused on the impact of exposure to sexual violence on responses to rape. Participants, both male and female, were first exposed to either a sadomasochistic or a nonviolent sexual passage, followed by a depiction of rape. Results indicated that gender and previous exposure interacted, with males exposed to the sadomasochistic story showing increased sexual arousal to the rape depiction and greater punitiveness toward the rapist compared to males who read the nonviolent version. Conversely, females exhibited differences in the opposite direction. However, further analysis showed significant differences in punitiveness only for males and only for the sadomasochistic exposure group.

The second hypothesis explored gender differences in the perception of rape. Thirdly, the study examined the idea that rape might be an extension of normal sexual patterns. It was found that while both genders believed that a high percentage of men would rape if not punished, and that a substantial percentage of women would enjoy being victimized, few women believed they personally would derive pleasure from victimization. Surprisingly, more than half of the males indicated some likelihood that they themselves would rape if assured of no punishment. This self-reporting was associated with attitudes toward rape that resembled the callous attitudes often held by convicted rapists.

• **HYPOTHESES**

Types of rape were also discussed:

- **Date Rape:** This refers to rape in which there has been some sort of romantic or sexual relationship between the two parties.
- **Gang Rape:** Involves a group of people participating in the rape of a single victim.

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- Marital Rape: The act of sexual intercourse with one's spouse without the spouse's consent, considered a form of domestic violence and sexual abuse.
- Child Sexual Abuse: Involves an adult or older adolescent using a child for sexual stimulation.
- Prison Rape: Rape occurring in prison.
- Acquaintance Rape: Perpetrated by a person who knows the victim, such as a classmate, co-worker, or family member.
- War Rape: Committed by combatants during armed conflict, often as spoils of war.
- Statutory Rape: Non forcible sexual activity in which one participant is below the age of consent.

RESEARCH METHODOLOGY

This study delved into three key hypotheses regarding rape. Firstly, it examined how exposure to sexual violence affects responses to rape. Results showed gender-specific reactions: males exposed to a sadomasochistic story were more sexually aroused by the rape depiction and more punitive toward the rapist, while females showed opposite trends. Secondly, gender differences in the perception of rape were identified. Lastly, the study explored the notion that rape might be an extension of normal sexual patterns. It found that while both genders believed a high percentage of men might rape if unpunished, very few women thought they would enjoy being victimized personally. Surprisingly, over half of the males indicated some likelihood that they themselves would rape if assured of no punishment, mirroring attitudes seen in convicted rapists.

Rape can take various forms, including date rape, gang rape, marital rape, child sexual abuse, prison rape, acquaintance rape, wartime sexual violence, and statutory rape. Each type involves non-consensual sexual activity, but the context and relationships between the victim and perpetrator vary.

• **LITERATURE REVIEW**

The study investigated three hypotheses regarding reactions to rape. First, it explored how exposure to sexual violence affects responses to rape. Gender differences were evident, with

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males exposed to sadomasochistic content showing increased arousal and punitiveness towards rape, while females showed opposite trends.

Second, gender differences in the perception of rape were found. Third, the study examined the belief that rape may be an extension of normal sexual patterns, revealing that while both genders believed a high percentage of men would rape if unpunished, few women believed they would enjoy being victimised. However, over half of the males indicated some likelihood of raping if assured of no punishment, indicating attitudes similar to convicted rapists.

Regarding types of rape, the study outlined several categories, including date rape, gang rape, marital rape, child sex abuse, prison rape, acquaintance rape, war rape, and statutory rape. Date rape refers to a rape involving parties with a pre-existing relationship, while gang rape involves multiple perpetrators. Marital rape is non-consensual sex within a marriage, child sex abuse involves using a child for sexual stimulation, and prison rape occurs in correctional facilities. Acquaintance rape is perpetrated by someone known to the victim, and war rape occurs during armed conflict. Statutory rape involves sexual activity with a minor below the age of consent.

• **DETERMINANTS OF SEXUAL VIOLENCE**

Recent global studies analyzing family violence and sexual assault across 90 diverse societies indicate that four key factors significantly correlate with violence against women:

- Economic disparity between genders
- Use of physical force to resolve conflicts
- Male dominance in decision-making
- Restrictions on women's autonomy within the family sphere.

In addition to these primary indicators, various societal factors contribute to the prevalence of sexual violence against women, including:

- **Socioeconomic Power Imbalance:**

Historical gender inequality forms the bedrock of sexual violence, reflecting broader societal power imbalances. Economic disparities limit women's access to authority and knowledge, perpetuating their vulnerability.

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- **Cultural Norms and Beliefs:**

Many cultures justify or overlook violence against women through tradition, religion, or customs. Practices like the Devdasi system and female genital mutilation exemplify how cultural norms fuel and legitimise violence against women.

- **Regulation of Female Sexuality:**

Legal systems often prioritise controlling female sexual behavior, equating chastity with social value and legitimacy of offspring. Violence becomes a tool for enforcing these norms, reducing women to mere objects of sexual control.

- **Objectification of Women:**

Throughout history, women have been objectified for male pleasure, perpetuating a culture where women are seen as commodities. Modern trends, such as using women in advertising, reinforce this objectification, further normalising violence against them.

- **IMPACT OF SEXUAL VIOLENCE**

The impact of sexual violence on women's human security is profound, affecting their personal, community, economic, and political spheres. In every society, women face personal insecurity from birth to death, shaping their daily decisions and often leading to seeking male protection, which perpetuates vulnerability and dependency, hindering empowerment and development.

The health consequences of sexual violence can be severe, including fatal physical injuries, sexually transmitted diseases, and unwanted pregnancies. The psychological, emotional, and spiritual impacts, such as anxiety, somatic disorders, and personality disorders, are equally devastating but harder to quantify. Moreover, sexual violence disrupts the healthy development of children and families, jeopardizing the functions and viability of the family unit.

Sexual violence not only obstructs women's potential and contributions to growth and development but also undermines human-centered development goals. It acts as a barrier to poverty alleviation by limiting women's employment choices, especially when violence occurs

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in the workplace. This pervasive issue takes various forms, including rape, eve-teasing, sexual harassment at work, and molestation, affecting all aspects of life.

Rape, specifically, is a crime that affects not just the individual woman but the entire society, violating basic human rights and destroying the psychological well-being of the victim. It instills deep emotional crises and a sense of powerlessness. The fear of rape pervades all aspects of a woman's life, influencing her actions and limiting her freedom from childhood onward.

There is no typical 'rape victim'; anyone can be a victim, regardless of age, ability, sexual orientation, race, or class. The term "rape" originates from Latin, meaning to snatch forcibly, highlighting the violent nature of the act. Susan Brown-miller describes rape as a "sexual invasion of the body by force," violating emotional, physical, and rational integrity. It is an act of dominance and control rather than sexual pleasure.

Rape must be viewed as the most extreme form of sexual violence, stemming from sexist values and power imbalances between men and women. It is not just an individual issue but a social and political one, denying the victim her agency and dignity. Rape is an act of domination that seeks to break the victim's personality, driven by emotions of hatred and contempt.

- **REACTION TO RAPE**

Rape evokes varied responses from both the victim and society, highlighting a stark contrast in perceptions. While the victim views rape as a profound violation of her autonomy, societal reactions often underscore double standards of morality. The Response of Society

Rape, as a crime, encompasses a broad spectrum of incidents, ranging from misunderstandings between acquaintances to violent assaults by strangers. Among rape survivors, there exists a diversity of age, maturity, life experiences, ethnicity, and social status. Consequently, the reactions and treatment from friends, family, and law enforcement can significantly impact the victim's recovery process.

- **The Incident**

The circumstances of the rape play a crucial role in how much a woman blames herself or is held accountable by others. Women raped by acquaintances often internalise guilt or self-

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blame, making it challenging to report the crime. Criticism from their social circle can exacerbate these feelings, potentially prolonging their recovery.

- The Victim

The sexual nature of rape can deeply affect young, sexually inexperienced girls, who may feel defiled and worry about their future relationships. Social class can also influence reactions, with middle and upper-class women potentially experiencing more profound emotional shocks due to their limited exposure to violence. In contrast, lower-class women may view rape as another hardship in their challenging lives.

- The Three Stages of Reaction

The recovery process following rape typically progresses through three stages:

- The Immediate or Acute Reaction

This initial stage, lasting several days, is characterised by shock, disbelief, anger, and anxiety. Physical symptoms like headaches, nausea, and insomnia are common. Support during this phase is crucial for the victim's emotional well-being.

- Outward Adjustment

In the second phase, the victim appears to resume normal activities but may avoid discussing her experience. Physical symptoms diminish, and she may become hyperactive in an effort to reorganise her life. However, this outward adjustment can lead to a withdrawal of support from family and friends.

- Integration

During this final phase, the victim may withdraw from others as she processes her feelings about the rape and those who have treated her insensitively. While some take positive steps to reduce their vulnerability or seek justice, others may experience a return of depression. This phase is considered normal unless it leads to compulsive behavior or irrational fears unrelated to the assault.

Reactions of the Society

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- The society's dual attitudes towards rape and its victims are evident. While condemned as a serious crime in law and public statements, in practice, it's sometimes viewed as a minor issue in the "battle of sexes."
- Traditional views on rape often show a contradiction. Some forms, like forcible intercourse with a chaste woman by a stranger, are seen as the worst crimes, while other forms, like coercive sex, are often ignored or downplayed.
- Society's attitudes towards rape and its victims are starkly different. Despite condemning rape, victims are often blamed for the assault, with rapists sometimes excused due to societal beliefs about men's inability to control their sexual urges.
- Rape victims face social stigma, often being ostracised by family and friends, leading to a fate considered worse than death.
- **Misconceptions About Rape**
 - Rape is a complex crime with no single definition, leading to numerous misconceptions. These myths mask the true issues, placing blame on women and diverting attention from the real problems.
 - Rape myths serve as a means of social control, perpetuating negative attitudes towards victims and minimizing the extent of male violence. They often lead women to blame themselves for their victimisation.
 - These myths also contribute to the normalisation of rape in society, forming the basis for its acceptance as a norm.
- **Motivation for Rape**
 1. Contrary to common belief, many rapists are in relationships and not deprived of sex. Rape is more about power, anger, status, and control than sexual desire or satisfaction.

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CHAPTER - II HISTORICAL PERSPECTIVE OF RAPE

The crime of rape is as old as mankind and is a crime against women. Rape between individuals of the same sex is termed as a homosexual act. When this act occurs between two females, it is known as lesbianism. Rape is defined as the penetration of a male organ into female genitals. According to some beliefs, the first woman to be raped was Eve, the mother of mankind, in the Garden of Eden.

Under Hinduism, the Mitakshara defines sangrahana as the unlawful union of a man and a woman for sexual enjoyment. Sinful sangrahana is categorized into three types: force, deceit, or sexual passion. The first type, which is rape, happens when intercourse occurs against the woman's will in a secluded place, or with an intoxicated, mentally disordered, or mistaken woman, or when she raises an alarm.

The second type occurs through trickery, administering intoxicants, or controlling her mind, leading to intercourse. The third type involves seduction through glances, employing a go-between, or being drawn to each other by beauty or wealth.

Brihad states that a man raping a woman of the same caste was to forfeit all his property, have his male genitals cut off, and be paraded on the back of an ass. If the raped woman was of a lower caste, half of this punishment was to be awarded, and if she was of a higher caste, the man was to be sentenced to death along with the confiscation of all his property.

Katya prescribes capital punishment for forcible sexual intercourse as it violates proper conduct. In cases of rape or sexual intercourse by deceit, the woman was not punished but had to undergo penance. Narada holds that sexual intercourse with certain relatives is incestuous and should be punished by excision of the offender's genitals.

Manu, another Hindu law giver, considers sexual relations with certain relatives, including a teacher's wife, as incestuous and prescribes heavy punishment followed by banishment. However, he also states that if a man has sexual intercourse with a maiden of the same caste who encourages his advances, it is not punishable, but he must honor her, bestow ornaments on her, and marry her.

Brihaspati Smriti and Other Ancient Texts

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- Brihaspati Smriti states the woman of east practiced promiscuity and that was the custom of the land, which was not to be condemned as it was an accepted custom.
- Baudhyan, Manu, Yajnavalkya, all great law givers of their period, state that the wives of actors, singers, etc., could have sexual intercourse with others, beyond marital relationship, with the knowledge and approval of their masters or husbands.
- It is amusing to find from ancient texts that it was usual with such masters or husbands to remain hidden at the time of such intercourse and appear in the mid of act or after it to claim the rent of such love-making.
- Apparently from this class of actors and singers arose the institution of dancers and of prostitutes.
- In sanskrit husband is called 'bhartar', which means nourishes, protector and it was considered a great sin to live on the income of wife by her love affairs as sinful as killing the sacred cow.
- Through epics and world history, universe has witnessed the masculine superiority and priority over the feminine and it has since from the time immemorial been witnessed practically by all Nevertheless, the absence of such crime cannot be ruled out or there is possibility of presence of such heinous crime.
- It was a usual practice in the ancient India as it was in old muslim kingdom as also with muslim rulers in the recent past, to keep some woman, according to the means of the person concerned, for the temporary use of a guest as a definitive gift to the guest.
- Crime is eternal as eternal as society and as old as creation itself. Even God and Goddesses are not free from such impulses.
- The study of Vedas and Puranas depicts that sex played prominent role among the people.
- In the Vedic smritis, it has been pointed out that human being are not only virtuous but also of adorned vices.

2.2 CONCEPT UNDER ISLAM

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Islam regards human life as a sacred gift from God, emphasizing its sanctity irrespective of gender, age, nationality, or religion. The Quran uses the term 'nafs' (soul, life) to signify the sanctity of life, without differentiation based on age, gender, or faith. Quranic teachings extend to all facets of life, encompassing the physical, mental, emotional, and spiritual realms, with approximately 150 verses elaborating on the concept of 'nafs'. Islam has historically confronted issues openly, condemning actions that harm or degrade human dignity ('zulm'), emphasizing respect for life without discrimination based on age or gender. Islam universally prohibits all forms of 'zulm', including physical, mental, emotional, and spiritual harm.

CHAPTER-III

RAPE: LEGISLATIVE DEVELOPMENTS IN INDIA

Criminal law not only sets norms for human behavior but also prohibits conduct against social conditions. It prescribes punitive measures for outlawed conduct based on the community's social and moral values.

- **PERCEPTION OF MACAULAY'S COMMISSION**

Understanding Penal Law

- Penal law should be understood in the context of prevailing social, moral, and cultural values.

Macaulay's Commission

- In 1828, an Act declared rape as punishable by death or imprisonment, depending on the victim's age.
- Thomas Macaulay's arrival in India in 1834 led to the drafting of the Indian Penal Code, which defined and punished rape.
- There were debates regarding the definition and punishment of rape, reflecting Victorian morality and social biases.

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Changes in Rape Laws

- The Indian Penal Code underwent changes regarding rape, including the exemption of sexual intercourse with a wife over ten years old from being considered rape.
- Changes in rape laws were influenced by cases of child wives dying due to consummation of marriage.

LAW SINCE INDEPENDENCE

- The Indian Criminal Law (Amendment) Act, 1891 raised the age of consent to 12 years to protect female children from early marriage and its consequences.
- Efforts to further amend the law continued into the 20th century, driven by concerns for the nation's health and reducing early marriage's adverse effects.

1924: Dr. Hari Singh Gour proposed amending IPC section-375 to raise age to 14 in both marital and extra-marital cases. Bill referred to Select Committee, which reduced age to 13 for marital rape. Sir Alexander Muddiman's 1925 Bill set age at 14 for extra-marital and 13 for marital cases, leading to Amendment Act, 1925, distinguishing between marital and extra-marital rape with different ages of consent. Section-376 was amended to include a clause for a maximum two-year punishment if the victim was the perpetrator's wife and under twelve years old, somewhat mitigating the raised age of consent to 13.

1927: Dr. Hari Singh Gaur proposed a Bill to raise the age to 14 and 16 in marital and extra-marital cases respectively. A committee was appointed to review the law's effectiveness, suggesting amendments. There were differing opinions in society regarding the law's effectiveness, with some suggesting prohibiting marriage under a certain age instead of raising the age of consent for sexual intercourse.

1949-55: Rape laws were further amended, raising the age of consent to 16 in extra-marital cases and 15 in marital cases. The punishment for rape was changed from "transportation for life" to "imprisonment for life" in 1955.

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- **IMPACT OF MATHURA CASE; CAMPAIGN FOR AMENDMENTS AND THE 84th LAW COMMISSION REPORT**

Post-independence, the Indian Law Commission expressed its intention to revise the IPC in 1959, but the report was only submitted to the Union Law Minister in 1971.

Impact of the Mathura case: The Supreme Court's decision in Tuka Ram v. State of Maharashtra led to widespread outrage and a mass movement for amending rape laws. The case involved the rape of Mathura, a young girl, by two policemen. Despite evidence, the Supreme Court acquitted the accused, stating that Mathura had consented to the act. This decision sparked protests and calls for legal reforms in rape laws, questioning the understanding of consent in Indian law.

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Academic Protest to National Wave

An academic protest by a group of four escalated into a national phenomenon, marking a unique event in the history of criminal law.

Criticism and Government Response

The judgment faced extensive criticism both within and outside Parliament for its perceived infringement upon the human rights of women under the law and the Constitution.

Formation of Law Commission

Acknowledging public sensitivity and parliamentary critique, the Government appointed the Law Commission in 1980 to examine laws concerning rape and related offenses.

Swift Action and Recommendations

The Law Commission expedited its 84th Report submission within less than a month, outlining significant recommendations for legal amendments.

Substantive Law Amendments

- Concept of Consent

Emphasized active consent over implied consent, proposing the substitution of 'consent' with 'free and voluntary consent' in section-375.

- Expanding Clause Thirdly

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Suggested broadening the scope of clause thirdly in section-375 to include fear of injury and intimidation.

- Non-violent Rape Recognition

Highlighted the possibility of rape without overt violence, advocating for broader considerations beyond physical injuries.

- Addressing Misconception

Proposed the addition of sub-clause (b) to address situations falling under misconception.

- Intoxication Clause

Recommended a new clause to address instances of consent obtained through intoxication.

- Age of Consent

Advocated for raising the age of consent to 18 years in line with the Child Marriage Restraint Act.

- Treatment of Child Wife Rape

Suggested integrating the rape of child wives into existing provisions, retaining Explanation II for judicially separated wives.

- Special Offenses

Retained recommendations regarding sexual offenses by specific individuals and institutions.

- Punishment Discretion

Advocated for unfettered judicial discretion in awarding punishments, with a maximum limit of life imprisonment or up to 10 years.

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- Enhanced Penalties

Proposed increased penalties for gang rape, rape of minors, pregnant women, and offenses by law enforcement officers.

Arrest and Investigation Reforms

- Dignified Arrest Procedures

Suggested amendments to section-46 Cr. P.C. to minimize the indignity faced by women during arrests.

- Detention Conditions

Recommended the inclusion of section-417-A in Cr.P.C. for appropriate detention of women in specific facilities.

- Female Interrogation

Advocated for female police officers to interrogate female victims of sexual offenses and recorded statements for underage victims.

- Location-Specific Interrogation

Emphasized conducting interrogations at the victim's dwelling place under section-160 (1) of Cr. P.C.

Section 166-A: Punishment for Violation

Under the new Section 166-A, IPC, violators face one year punishment, fine, or both.

Interrogation Protocol

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Law Commission proposed no interrogation of women after sunset or before sunrise, allowing a social worker's presence.

Section 167-A: Non-Recording Offence

Recommended inclusion of section-167-A to IPC penalises failure to record information on cognizable offences.

Medical Examination Procedures

Suggested amendments to Cr. P.C. for thorough medical examination of accused and victim, including new sections.

Trial Procedure Modifications

Endorsed trial in camera with proviso (2) to section-327 Cr. P.C. and proposed section 228-A IPC to safeguard rape victims' privacy.

Evidence Reform

Proposed shifting burden of proof to accused with section 111-A in Indian Evidence Act and restrictions on questioning prosecutrix's character.

Legislative Timeline

Bill introduced in 1980 aimed to strengthen rape laws, departing from some Law Commission recommendations. Joint Committee made further amendments in 1982.

Joint Committee's Amendments

Despite some positive changes, the Joint Committee didn't fully embrace progressive recommendations, notably regarding the definition of consent.

Joint Committee's Proposal:

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The Joint Committee proposed reducing the age of marital rape from 15 to 12 years, akin to the law of 1891.

Dilution of Punishment:

Section-376-A acknowledged rape cases of judicially separated wives but reduced punishment to 2 years, aiming at reconciliation between spouses.

Legislative Process:

The Criminal Law (Amendment) Bill introduced in 1983 took nearly 3 years to pass, reflecting the government's seriousness.

Existing Law:

The Criminal Law (Amendment) Act, 1983, after thorough debates, became the current law, defining rape under section-375 of the IPC.

Section- 376(D) penalises sexual intercourse by any hospital management or staff member with a woman in that hospital, aiming to curb abuse of women in custody or care, not amounting to rape but considered reprehensible.

• PUNISHMENT OF RAPE

Section 376 outlines imprisonment for rape, with a minimum of seven years, extendable to life or up to ten years, plus a fine, unless the victim is the convict's wife over twelve years old, in which case the penalty is up to two years or a fine or both.

For specific cases under section 376(2) (a) to (g):

- Police officers committing rape within their jurisdiction, at station premises, or on women in their custody or subordinate officers' custody;
- Public servants exploiting their position to rape women in their custody or subordinate public servant's custody;

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- Jail, remand home, or custody facility management or staff members exploiting their position to rape inmates;
- Hospital management or staff members exploiting their position to rape women in the hospital;
- Raping a pregnant woman, a woman under twelve years old, or gang rape, the punishment is rigorous imprisonment for at least ten years, extendable to life, plus a fine. The court, with valid reasons in the judgment, may impose a sentence of less than ten years.

Explanation 1 - In instances where a woman is raped by one or more individuals within a group acting in concert, each person involved is considered to have committed gang rape as per this sub-section 36.

Explanation 2 - The term "Women's or children's institution" refers to establishments like orphanages, homes for neglected women or children, or widows' homes, designed for the care and shelter of women or children 36.

Explanation 3 - The term "Hospital" encompasses the premises of the hospital itself and extends to include facilities for the treatment and rehabilitation of convalescents or those in need of medical attention³⁶.

The key provisions of the Criminal Law (Amendment) Act, 1983, include:

- Recognizing aggravated forms of rape for the first time, such as rape of minors, gang rape, and rape of pregnant women, among others.
- Distinguishing the rape of a judicially separated wife and prescribing punishments accordingly.
- Introducing mandatory minimum sentences, notably seven years for general rape cases and ten years for aggravated rape cases.
- Adding a clause to disregard consent given by a woman of unsound mind or under the influence of substances.

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- Amending Cr. P.C. to conduct trials under specified sections in camera and regulating publication of related matters.
- Inserting a new section in the Indian Penal Code to penalize the disclosure of a rape victim's identity without permission.
- Partially accepting recommendations regarding evidence provisions, notably shifting the burden of proof onto the accused in aggravated rape cases.
- Making changes in the First Schedule to Cr. P.C. to classify rape as cognizable and non-bailable, except for marital rape, and specifying conditions for arrest.
- Setting age of consent at 16 for general rape cases, 15 for marital rape cases, and invoking section 114-A of the Indian Evidence Act for victims below 12 years.
- Maintaining the status of a wife as it was in 1891 with a three-year increase in the age of consent for marital rape cases, not recognized by the Indian Penal Code.

- **THE SUGGESTIONS PROPOSED BY THE LAW**

COMMISSION OF INDIA

Despite progressive changes in the 1983 Act, many gaps remained. To address this, the National Commission for Women (NCW) proposed certain suggestions, later considered by the Law Commission in its 156th Report on the Indian Penal Code.

The main recommendations of the 156th Law Commission Report are as follows—

- The Commission suggested retaining the offence of rape in the IPC with a few modifications.
- It recommended modifying clause 'thirdly' to section-375, IPC, to include words- 'or of any other injury', expanding the scope to cover situations of rape by persons in positions of trust, authority, guardianship, or economic or social dominance.
- The Commission proposed raising the age limit in the clause 'sixthly' to section-375 IPC, to 18 years from the existing 16 years.

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- The Commission disagreed with the NCW's view that the age limit for the wife in the exception to section-375 IPC should be raised. In an effort to rectify these gaps, the NGO called "Sakshi" approached the Supreme Court of India for directions concerning the definition of the expression "sexual intercourse" as contained in S-375 IPC.

The Supreme Court directed the Law Commission to examine the issues involved. In response, the Law Commission presented its 172nd Report on the Review of Rape Laws in 2000.

The main recommendations of the 172nd Law Commission Report are as follows— THE SUBSTANTIVE LAW

- The Commission strongly recommended making the provision of rape gender-neutral because not only women and girls but also young boys are subjected to forced sexual assaults, causing no less psychological trauma to a boy than a girl.
- The Commission extended the definition of rape to include penetration by any body part or object, clarifying that any penetration constitutes rape.
- The Commission maintained the marital exception to rape, increasing the age of the wife from fifteen to sixteen years despite objections for its deletion by "Sakshi".
- The Commission proposed a new proviso to section-376 IPC, recommending severe punishment for sexual assault by a person in a position of trust or authority.
- For aggravated minor rapes, the Commission raised the victim's age from 12 to 16 years.
- The Commission kept both the 'adequate and special reasons clause' in section-376 IPC.
- Retaining section-376 IPC for rape by a husband during judicial separation, the Commission increased the minimum punishment to not less than 2 years but extendable to 7 years.
- Retaining sections-376-B, 376-C, 376-D, the Commission suggested adding an explanation covering all types of sexual intercourse as described above for section-375.
- The Commission recommended inserting a new section 376 E defining 'unlawful sexual contact' to include various acts of sexual abuse.

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- The Commission recommended deleting section-377 IPC as it would no longer be necessary after the proposed modifications.
- The Commission reiterated the suggestion from the 84th Law Commission Report to insert a new section 166-A in the Code, punishing public servants who knowingly disobey the law, resulting in prejudice to another person.

THE CODE OF CRIMINAL PROCEDURE, 1973.

- The Commission recommended adding sub-sections (3) and (4) to section 160, Cr PC. These state that a female police officer or a female Government servant should record the victim's statement. If neither is available, a female authorized by a women's welfare organization should do so, with reasons documented if none of these options are feasible.
- It was proposed to replace the proviso to sub-section (1) of s-160, Cr PC to raise the age limit from 15 to 16 years.
- The proviso to section-160, Cr PC should allow the victim's statement to be recorded in the presence of a chosen relative who won't interfere with the process.
- A new section 164-A, Cr PC was suggested for the victim's medical examination with consent during the investigation, to preserve crucial medical evidence.
- Another recommendation was the insertion of a new section 53-A, Cr PC, ensuring prompt medical examination of the accused.
- Modification of the proviso to section-273, Cr PC was urged to protect minor victims from direct confrontation by the accused while ensuring the accused's right to cross-examine.

INDIAN EVIDENCE ACT, 1872.

- The Law Commission proposed adding section-53-A, stating that the victim's past sexual experiences would not be relevant when consent is in question.

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- It was suggested to insert section-146 (4) to prohibit questions about the victim's general immoral character.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) ACT, 2005.

Due to liberal interpretation of section 53 Cr.PC, a rape victim's examination became mandatory by a female doctor, causing delays and inadequate evidence collection. The 2005 Amendment introduced specific sections for medical examination of victims and accused of rape, and inquiry by judicial magistrates into custodial rape and deaths. Section 164(A) CrPC outlines legal requirements, mandating examination with victim consent by any registered medical practitioner, easing constraints caused by the requirement for government doctors. Amendments to section 176 CrPC mandate judicial magistrates to investigate custodial rape and deaths.

- **THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) ACT, 2008**

- Victims' Hesitation and Legal Hurdles:

Many rape victims refrain from filing complaints due to procedural complexities and unsupportive police environments. They often face discomfort narrating their experiences to male officers. Even when they muster the courage to seek justice, trial delays and psychological distress persist. Moreover, many accused individuals are acquitted due to insufficient evidence.

- Amendments to Address Challenges:

In response, the Code of Criminal Procedure (CrPC) was amended in 2008, effective from 2009, to address these issues comprehensively.

- Enhanced Investigation Procedures: Section 157 CrPC now ensures that a victim's statement is recorded at her chosen location, preferably by a female officer, in the presence of her family or a social worker.

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- **Timely Investigation for Child Victims:** Section 173 CrPC mandates completing investigations of child rape cases within three months. Reports to magistrates must include medical examination results for specified offenses.
- **Expedited Trials:** Section 309 CrPC now aims to conclude trials related to rape offenses within two months of witness examination commencement.

- **Ensuring Privacy and Support:**

The 2008 amendment to section 327CrPC permits in-camera trials, preferably overseen by a female judge or magistrate. It also allows limited publication of trial proceedings while safeguarding the parties' identities.

- **Victim Compensation Scheme:**

The amendment introduces section 357(A) CrPC, establishing a victim compensation scheme. States, in consultation with the central government, are tasked with devising these schemes. District or state legal service authorities determine compensation upon court recommendation.

Salient Features of Criminal Law Amendment Bill 2012:

- **Widening the Scope of Offenses:**

The bill proposes replacing 'rape' with 'sexual assault' to encompass a broader range of crimes, potentially making it gender-neutral.

- **Protection for Minors:**

It suggests excluding sexual intercourse between a man and his wife under 16 from being considered sexual assault.

CHAPTER- IV

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ISSUES CONCERNING RAPE: CRITICAL COMPARATIVE ANALYSIS

Rape is unique among all crimes due to the treatment meted out to the victims of rape. They pay a double price –like other victims of violent crimes, suffering physical and psychological injury, but also defending the legitimacy of their suffering. According to Burgess and Holmstrom, “going to the Court, for the victim, is as much of a crisis as the actual rape itself.” Whereas rape wounds her dignity, curbs her individuality, destroys her sense of security, and causes severe physical injuries, the trial of rape forces her to relive the traumatic experience in a totally alien atmosphere, with the whole apparatus of the criminal justice system focused upon her.

The criminal justice system adopts attitudes of disbelief and hostility, treating the victim with suspicion instead of sympathy. Raped women face institutionalized sexism from the police, a male-dominated system influenced by notions of victim precipitation, and systematic acquittal of many guilty rapists.

At every step in a rape trial, there are systemic obstacles and discriminatory attitudes, resulting in a complete negation of her human rights. When a victim reports the case to the police, she sets in motion a complex and lengthy legal process that does little to help her recover from the ordeal of rape and much to compound the initial trauma she experienced at the hands of the offender. The victim has to prove that she was raped, with her prior lifestyle and sexual conduct laid before the court, and her consent or lack of it judged by her reputation, determining the innocence or guilt of the accused.

As expressed by a rape victim — I felt abused ... I felt accused — guilty till proven innocent ... the defense lawyer made it a big joke. Victim links the experience of the rape trial to being crucified. It is for these reasons that the progress of a rape case through the criminal justice system reflects a highly selective process of elimination. Only a fraction of all cases are

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reported, investigated, and lead to trial in the courts, with a very minute fraction of accused convicted.

Rape is unique in that distinctly human factors have established the legal elements of the crime, which must be proved beyond reasonable doubt. These factors discourage victims from reporting the crime to police and make conviction especially difficult. They include a sexist society, the historical role of women as “property,” obsolete rape laws, stereotyped legal notions of how women should act when they are forcibly attacked, and an unreasonable concern for the rights of the accused. The institutional nature of sexism is so deeply embedded in the criminal justice system that it appears to be more concerned with the threat of false accusation against the rapist (which, in fact, is extremely rare), than the brutal fact that a woman was raped.

The legal system's double victimization of rape victims is a mockery of justice. An Indian Supreme Court Judge criticized the treatment of rape victims as "the ravishment of justice," reflecting societal values. This process disqualifies women and celebrates phallocentrism, shaping broader societal attitudes. The focus on corroboration, consent, and the prosecutrix's character, along with the standard of proof beyond reasonable doubt, alienates the public from the legal system. These issues negate rape victims' access to justice and human rights, including social stigma and conceptualization issues. One such issue is the classification of rape as a sexual offense, reflecting historical views on female sexuality and property ownership, which often fails to recognize rape as a form of sexual assault.

Confusing rape with sex leads to male fantasies that rape is pleasurable for women, hindering a broader understanding. When rape is viewed as a crime against a woman's property, status, and character, her attributes become central to determining the value of redress, tying it to her property's value. Treating rape as a sexual offense allows special rules of evidence, like consent and character, in rape trials.

Rape is not just sexual intercourse; it is force, fear, and violence, denying the victim self-determination. It leaves women feeling humiliated, degraded, fearful, and angry. Recent research shows that rape is about violence and aggression, reflecting the assailant's feelings of

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inferiority and insecurity, not sexual desire. It is a declaration of domination, not uncontrollable sexual desire.

In a male-dominated world, women's experiences are often ignored, and the physical pain, fear, intimidation, and coercion inherent in rape are disregarded. Women perceive rape as an assault on their physical person and a violation of their right to sexual autonomy. Some feminists argue that rape should be viewed simply as assault, without any special status attached to it.

Others argue for viewing rape as sexual assault, emphasizing its violent nature while acknowledging its sexual aspects. They believe rape is a crime of power against female sexuality, as the choice of genitalia as the target of aggression is intentional to inflict a specific kind of damage.

This perspective emphasizes rape as a crime of power, not pleasure, as articulated by Rosemarie Tong. Most legal systems define rape as a sexual offense, such as the UK's Sexual Offences Act, 2003. In India, it was categorized under 'rape' in the Indian Penal Code until 1983, when it was changed to 'sexual offences', a regressive move. Feminist scholars advocate for reclassifying rape as assault to uphold women's human rights, as long as society eroticizes male dominance, sexual violence will persist.

Our criminal justice system often treats rape victims with suspicion, failing to protect their human rights. Legislative flaws in rape laws are overshadowed by the prejudice faced by raped women, who must prove their innocence, shifting the burden from the accused to the victim. Sue Lees notes that unlike other crimes, a woman's word in a rape trial is often doubted, reflecting society's problematic view of female sexuality. This bias is evident from police to judges, perpetuating the notion that rape is a woman's fault, either as a false accuser or a seductress.

WOMAN AS A LIAR - FALSE ACCUSATIONS OF RAPE

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Lord Hale, in 1680, noted rape as an accusation easy to make, hard to prove, and harder to defend, casting doubt on victims and rape occurrences.

This perception of women as liars has influenced rape laws, perpetuating patriarchal myths and failing rape victims.

Some legal scholars suggest women may fantasize about rape and even fabricate memories, contributing to the belief that women lie about rape.

Human Rights Watch found doctors and police in Pakistan believing women often lie about being raped, leading to insensitivity in medical examinations.

The idea that women fabricate rape cases is based on notions of hysteria and emotional causes. In cases involving minor children, false accusations are often linked to family enmities.

Indian courts have noted reasons why women would be reluctant to fabricate rape charges, including fear of societal ostracism and personal repercussions.

The Supreme Court of India has emphasized that women, especially young girls, are unlikely to falsely accuse others regarding their chastity.

False accusations of rape, often framed as "woman as a liar," are a complex and sensitive issue. While false rape accusations do occur, research suggests they are relatively rare, with estimates ranging from 2% to 10% of reported cases. These false accusations can have serious consequences for the accused, including damage to their reputation, emotional distress, and in some cases, legal repercussions. However, it's essential to approach this topic with care and sensitivity, as false accusations should not overshadow the prevalence and impact of actual sexual violence against women.

One of the challenges in discussing false accusations of rape is the societal stigma surrounding rape and sexual assault. Women who come forward with rape allegations often face disbelief, scrutiny, and victim-blaming. This can create a climate where women may fear reporting rape or feel pressured to recant their allegations, especially if they fear they will not be believed or if they face backlash from the accused or their supporters.

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The issue of false accusations is often weaponized in debates around rape and sexual assault, used to discredit women who come forward with allegations. This can perpetuate harmful stereotypes about women as deceitful or manipulative, further discouraging survivors from seeking justice. It's crucial to recognize that false accusations are not a widespread phenomenon and should not be used to undermine the credibility of rape survivors.

False accusations of rape can also be a result of various factors, including mental health issues, personal vendettas, or misunderstandings. Some false accusations may stem from a lack of understanding of what constitutes consent or from pressure to conform to societal expectations regarding sexual behavior. It's essential to consider these complexities when discussing false accusations and to avoid simplistic or sensationalized narratives.

Addressing false accusations of rape requires a balanced approach that acknowledges the harm they can cause while also recognizing the importance of supporting survivors and holding perpetrators accountable. This includes ensuring that investigations into rape allegations are thorough and fair, respecting the rights of both the accuser and the accused. It also involves challenging harmful stereotypes and beliefs that contribute to a culture of disbelief and victim-blaming.

In cases where a false accusation of rape has been proven, it's crucial to handle the situation with care and sensitivity. While the accused may have been wrongfully accused, they are still entitled to dignity and respect. It's essential to avoid further stigmatizing the individual and instead focus on addressing the underlying issues that may have led to the false accusation.

It's also important to recognize that false accusations of rape can harm genuine survivors by casting doubt on their credibility and discouraging others from coming forward. This underscores the importance of supporting all survivors, regardless of the outcome of individual cases, and working to create a culture that believes and supports survivors of sexual violence.

In conclusion, false accusations of rape are a complex and sensitive issue that requires careful consideration. While they do occur, they are relatively rare and should not detract from the broader conversation about sexual violence against women. It's essential to approach this topic with empathy, understanding, and a commitment to supporting all survivors of sexual violence.

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Indian courts have noted reasons why women would be reluctant to fabricate rape charges, including fear of societal ostracism and personal repercussions.

The Supreme Court of India has emphasized that women, especially young girls, are unlikely to falsely accuse others regarding their chastity.

False accusations of rape are a complex and emotionally charged issue that intersects with broader societal attitudes towards women and the criminal justice system. While it is essential to acknowledge that false accusations of rape do occur, they are relatively rare compared to the prevalence of actual sexual assaults. Studies suggest that false rape allegations account for only a small percentage of reported cases, with estimates typically ranging from 2% to 10%. However, these statistics should not diminish the seriousness of false accusations when they do occur, as they can have severe consequences for the accused.

One of the challenges in addressing false accusations of rape is the stigma and skepticism often directed towards rape victims. Women who come forward with allegations of sexual assault are sometimes met with disbelief, suspicion, or blame. This skepticism can create a hostile environment for victims and deter them from reporting their experiences. Additionally, the fear

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of being labeled as a liar or facing retaliation can further silence victims and prevent them from seeking justice.

The reasons behind false accusations of rape are varied and complex. Some false accusations may stem from mental health issues, such as factitious disorder or Munchausen syndrome, where individuals fabricate stories for attention or sympathy. In other cases, false accusations may be motivated by revenge, jealousy, or a desire to gain an advantage in a legal or personal dispute. It is crucial to approach each case with sensitivity and caution, recognizing that false accusations can harm both the accused and genuine victims of sexual assault.

False accusations of rape can have devastating consequences for the accused, including damage to their reputation, relationships, and career. In some cases, false accusations have led to wrongful convictions, further highlighting the need for a thorough and fair investigation process. It is essential to strike a balance between supporting victims of sexual assault and ensuring due process for the accused to prevent miscarriages of justice.

The media plays a significant role in shaping public perceptions of false accusations of rape. Sensationalized or biased reporting can perpetuate myths and stereotypes about rape, further stigmatizing victims and reinforcing skepticism towards their claims. Journalists and media outlets have a responsibility to report on these issues accurately and responsibly, avoiding sensationalism and respecting the rights of both the accuser and the accused.

To address false accusations of rape effectively, it is essential to improve the way society responds to sexual assault allegations. This includes providing better support for victims, improving education and awareness about sexual consent, and ensuring that the legal system treats all parties involved with fairness and respect. By fostering a more supportive and understanding environment, we can encourage more victims to come forward and reduce the likelihood of false accusations.

Legal reforms may also play a role in addressing false accusations of rape. Some advocates argue for harsher penalties for those found to have made false accusations, while others emphasize the importance of improving the investigative process to ensure that all claims are

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thoroughly and impartially examined. Ultimately, addressing false accusations of rape requires a multifaceted approach that addresses the underlying societal attitudes and systemic issues that contribute to the problem.

It is important to recognize that false accusations of rape are not a justification for disbelieving or dismissing genuine victims of sexual assault. Every allegation of rape should be taken seriously and investigated thoroughly, with the goal of determining the truth and delivering justice for all parties involved. By fostering a more supportive and equitable society, we can create an environment where victims feel empowered to come forward and where false accusations are less likely to occur.

GENITAL PENETRATION V. DIGITAL RAPE

The Oxford Companion to Law defines rape as a man having sexual intercourse per vagina with a female not being his wife, without her consent. Under Indian law, rape is defined as penetration without consent. This definition focuses solely on vaginal-penile penetration, neglecting other forms of sexual assault like oral/anal sex or penetration with objects. This narrow definition often leads to miscarriages of justice, especially in cases of child rape where penile penetration may not be possible. Legal experts and feminist groups advocate for a broader definition of rape, including non-orifice and non-instrument specific acts, to better address the violence involved.

False accusations of rape are a complex and sensitive issue that has been studied and debated extensively. One of the most damaging aspects of false accusations is the harm they can cause to the reputation and lives of those accused. When a person, particularly a woman, is falsely accused of rape, it can have devastating consequences for their personal and professional life.

False accusations can lead to the loss of employment, social ostracization, and even physical violence. Moreover, false accusations can erode trust in the legal system and make it harder for true victims of sexual assault to come forward and seek justice.

It is important to note that false accusations of rape are relatively rare, and studies have shown that the vast majority of rape allegations are true. However, even though false accusations are uncommon, they can have serious consequences. For this reason, it is crucial to handle all rape

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allegations with sensitivity and care, while also ensuring that the rights of the accused are protected.

One of the reasons why false accusations of rape can be so damaging is the stigma attached to being accused of such a serious crime. Society often views those accused of rape as guilty until proven innocent, and even when they are cleared of wrongdoing, the stigma can linger. This can make it difficult for those falsely accused to rebuild their lives and reputations.

Another issue is the impact false accusations can have on the broader conversation around sexual assault. When high-profile cases of false accusations occur, they can be used to undermine the credibility of all rape victims. This can make it harder for victims to come forward and seek justice, as they may fear not being believed.

In recent years, there have been several high-profile cases of false accusations of rape that have garnered significant media attention. These cases have sparked debates about the prevalence of false accusations and the need to balance the rights of the accused with the need to support victims of sexual assault.

False accusations of rape are a serious issue that can have devastating consequences for those accused. While it is important to take all allegations of sexual assault seriously and support victims, it is also crucial to ensure that the rights of the accused are protected. By approaching these cases with sensitivity and care, we can help ensure that justice is served for all parties involved.

- **THE SPOUSAL EXCEPTION CLAUSE – MARITAL RAPE**

The narrow definition of rape excludes married women as victims of rape by their husbands. This implies that rape is not solely defined by violent or unwanted sex, but rather as illegal sex, i.e., sexual assault by a man without legal rights over the woman. Catherine McKinnon argues that the law categorizes women based on their relationship to men, determining presumed consent. This means a woman's consent is determined by her relationship to a man, not by her own words or actions.

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Sexual assault within marriage is often overlooked. Marital rape is not uncommon, yet it is seldom discussed. It is a significant issue, with studies showing that sexual assaults by husbands are more prevalent than assaults by strangers. Marital rape is rooted in violence and predatory sexuality, where male entitlement and dominance play a central role. It often occurs in relationships characterized by other forms of abuse, leading many to consider it an extension of domestic violence.

Indian law has exceptions that allow sexual intercourse by a husband with his wife, even if she is a minor. This reflects the prioritization of the husband's rights over the wife's, even when she is below the legal age of marriage. Marital rape is only recognized in cases of legally separated couples, while the majority of cases remain outside the scope of the law. The court has ruled that a husband does not have an absolute right to his wife's body without considering her safety.

The law only acknowledges encroachment upon a husband's right to sexual intercourse in extreme circumstances where the woman's safety is at risk. Marital rape of adult women lacks legal protection in India, and even minor wives face minimal consequences. The Law Commission Reports express reluctance to change laws regarding the age of consent and deletion of exceptions, citing interference with marital relationships. In rape trials, victims often endure double victimization due to systemic biases and evidentiary obstacles, leading to underreporting and rare convictions. Consent is the pivotal issue in rape trials, distinguishing between consensual intercourse and rape, necessitating proof of lack of consent or consent obtained through coercion. Consent, whether express or implied, must be based on intelligent understanding, inferred from surrounding circumstances.

Consent need not be wholly willing for it to count. A woman's agreement to intercourse can be hesitant or reluctant, but as long as she consciously allows it, it's considered consent. The Supreme Court of India stated in *Vijayan Pillai alias Babu v. State of Kerala* that proving the prosecutrix's consent requires demonstrating her free submission while in full possession of her physical and mental faculties. Consent is a thoughtful, reasoned act, indicating an active willingness to allow an act and an understanding of its nature. It involves the physical and moral capacity to act, along with a serious and determined exercise of these capacities. Consent given by a woman who is asleep, intoxicated, or of unsound mind is invalid; such acts are

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considered rape. Jowitt's Dictionary of English Law explains that consent requires three elements: physical power, mental power, and a free, serious use of them. If consent is obtained through intimidation, force, or undue influence, it is not considered genuine consent. Consent must be a voluntary, conscious acceptance of what is proposed. Fraud can invalidate consent, but this principle is not absolute in rape cases. According to *Queen v. Clarence*, only fraud about the nature of the act or the identity of the perpetrator can convert consensual intercourse into rape.

The spousal exception clause, often referred to as marital rape exemption, historically allowed a husband to have sexual intercourse with his wife without her consent. This legal concept was deeply rooted in traditional notions of marriage, where the wife was considered to have given perpetual consent to sexual relations upon marriage. The origins of this exemption can be traced back to English common law, which formed the basis of many legal systems around the world.

The spousal exception clause was a stark reflection of the subordinate status of women in marriage and society at large. It viewed wives as the property of their husbands, with no legal autonomy over their own bodies. This notion persisted for centuries, even as women's rights movements gained traction and challenged societal norms regarding gender roles and relationships.

One of the key arguments used to justify the spousal exception clause was the idea of preserving the sanctity of marriage. It was believed that criminalizing marital rape would undermine the institution of marriage by interfering with the privacy of marital relations. This argument, however, failed to acknowledge the fundamental right of individuals to autonomy over their own bodies, regardless of their marital status.

The spousal exception clause was widely criticized for perpetuating gender inequality and enabling spousal abuse. By legally sanctioning non-consensual sexual activity within marriage, it effectively denied women the right to bodily integrity and sexual autonomy. This legal loophole also created a barrier for many women seeking justice and protection from abusive spouses.

In recent decades, there has been a significant shift in attitudes towards marital rape, leading to legal reforms in many countries. The recognition of marital rape as a criminal offense reflects a

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broader recognition of women's rights and a rejection of outdated and discriminatory legal concepts. Countries around the world have amended their laws to remove the spousal exception clause and criminalise marital rape, aligning with international human rights standards.

Despite these legal reforms, challenges remain in addressing marital rape effectively. Cultural attitudes and social norms that perpetuate the idea of spousal ownership and control continue to influence how marital rape is perceived and addressed. Many survivors of marital rape still face stigma, disbelief, and lack of support when they come forward, highlighting the need for broader societal changes.

Efforts to address marital rape require not only legal reforms but also education and awareness-raising initiatives to challenge harmful gender norms and promote healthy and respectful relationships. Providing support services for survivors of marital rape is also crucial in ensuring that they can access justice and recovery.

The spousal exception clause was a discriminatory legal concept that denied women the basic right to bodily autonomy within marriage. Its removal through legal reforms is a significant step towards gender equality and the protection of women's rights. However, addressing marital rape requires a comprehensive approach that includes legal, social, and cultural changes to challenge harmful attitudes and ensure that survivors receive the support and justice they deserve.

INJURIES — THE PROOF OF RESISTANCE

Injuries on the victim's body indicate physical resistance and violence by the rapist, serving as the most reliable evidence of her lack of consent.

For the court, the victim's testimony alone is insufficient; tangible evidence is required to establish absence of consent.

To be credible, the woman must resist the rapist to the best of her abilities.

The law assumes all sexual intercourse is consensual unless proven otherwise, requiring credible proof of the victim's strenuous resistance.

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Women facing life-threatening situations may act to minimize injury or prolong their lives, risking accusations of cooperating or consenting to rape.

The traditional requirement of "resisting to utmost" reflects a philosophy of "death before dishonor."

The Wisconsin Supreme Court defined "utmost resistance" as the most vehement physical resistance until the offense is consummated, requiring the woman to be "bruised, bloody, and damned near death" to prove non-consent.

This principle is followed in all rape cases, often failing to consider situations where the victim may be unable to muster sufficient strength to resist or may be numbed by shock or fear.

According to a report by the National Women's Study of the United States, 70% of rape cases involve no physical injuries, 4% involve serious injuries, and 24% involve minor injuries.

Many rape cases result in no injuries because women find it difficult to retaliate against men due to their dominant/subordinate position.

INJURIES — THE PROOF OF RESISTANCE

Injuries on the victim's body indicate physical resistance and violence by the rapist, serving as the most reliable evidence of her lack of consent.

For the court, the victim's testimony alone is insufficient; tangible evidence is required to establish absence of consent.

To be credible, the woman must resist the rapist to the best of her abilities.

The law assumes all sexual intercourse is consensual unless proven otherwise, requiring credible proof of the victim's strenuous resistance.

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Women facing life-threatening situations may act to minimize injury or prolong their lives, risking accusations of cooperating or consenting to rape.

The traditional requirement of "resisting to utmost" reflects a philosophy of "death before dishonor."

The Wisconsin Supreme Court defined "utmost resistance" as the most vehement physical resistance until the offense is consummated, requiring the woman to be "bruised, bloody, and damned near death" to prove non-consent.

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THE LEGAL PROVISIONS RELATING TO CONSENT

The statutory definition of rape in India emphasises the element of absence of consent.

The clauses firstly and secondly to section-375 IPC state that sexual intercourse by a man with a woman against her will or without her consent is rape. According to the High Court of Rangoon, every act done against a person's will is an act done without their consent, but the reverse is not necessarily true. An act done without a person's consent is not necessarily against their will.

The definition of consent has been expanded through judicial decisions to mean positive cooperation in act or attitude pursuant to an exercise of free will. A person must act freely and

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voluntarily and have knowledge of the nature of the act involved. However, the legal definition is not as broad. To address this, the 84th Law Commission Report emphasized that consent must be real and active, not merely implied by silence due to timidity or meekness of the woman. It was suggested that the expression "free and voluntary consent" replace the term "consent." Clauses thirdly, fourthly, and fifthly to section-375 IPC describe the circumstances that invalidate consent.

Clause thirdly to section-375 IPC recognizes that consent is invalidated only when a woman is put in fear of death or harm. The 42nd Law Commission Report pointed out that section-90 IPC, which describes circumstances invalidating consent, includes fear of "injury," a term of broader connotation. "Injury" includes any harm illegally caused to a person's body, mind, reputation, or property. The 84th Law Commission Report noted that there can be circumstances where actual physical force is neither used nor threatened, but the intended consequences are no less serious. If consent is obtained by threatening to spread false or scandalous rumors about the victim's character, destroy her property, injure her parents or children, or threaten her person, reputation, or property or that of someone else she is interested in, that consent should not be considered valid under section-375 IPC.

The Law Commission suggested adding the expression "injury to any person" to clause thirdly to section-375 IPC. This suggestion was reiterated by the 156th Law Commission Report, proposing the addition of "or of any other injury" after the words "fear of death or of hurt" in clause thirdly. Clause fourthly to section-375 IPC acknowledges that only one kind of misconception of fact, namely, the belief induced that the man is her husband, invalidates the woman's consent. However, under section-90 IPC, any misconception of fact invalidates consent provided the man knows or has reason to believe that consent was given as a result of such misconception. The 42nd Law Commission Report considered the possible view that the third and fourth Clauses of section-375 IPC relating to hurt and misconception are special

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provisions and hence exclude the application of the general provision section-90 IPC, but refrained from suggesting any amendment.

This kind of legal interpretation reflects patriarchal biases, which operate against rape victims as nothing else can justify the exclusion of rape cases from the ambit of section-90 IPC. Clause fifthly to section-375 IPC acknowledges that consent is invalidated by unsoundness of mind or by intoxication or administration of any stupefying substance by the accused himself or through another, at the time of giving consent. Consent given under such circumstances is not genuine or real. The 84th Law Commission Report emphasized the need for a clause covering such circumstances, and clause fifthly was incorporated in the 1983 Amendment Act. There is slight ambiguity regarding a situation where the woman herself administers the stupefying substance and under its effect, gives her consent to intercourse.

The sixth clause of section 375 of the Indian Penal Code defines statutory rape and sets the age of consent at 16, below which a girl is deemed incapable of giving consent. However, an exception to this clause states that sexual intercourse by a man with his wife, who is above 15, is not considered rape. This age of consent has been criticized for not aligning with other laws, such as the Child Marriage Restraint Act of 1929, which sets the age of marriage at 18. The discrepancy between these laws raises questions about how a girl can be unfit for marriage below 18 yet considered fit for sexual intercourse, with or without consent, without it being considered rape.

The punishment for marital rape of a child wife between 12 and 15 is considered too lenient, at two years or a fine under section 376(1) of the IPC. Critics argue that the low age of consent reflects patriarchal biases and the supremacy accorded to a husband over his wife's sexuality. Suggestions have been made to raise the age of consent to 18, supported by the 84th and 156th

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Law Commission Reports, although the 172nd Law Commission Report recommended maintaining it at 16. In contrast, the UK's Heliborn Committee (1976) and Rape and Criminal Law Revision Committee (1984) recommended introducing legislation to exclude threats other than immediate force from the scope of rape.

The Sexual Offences Act of 2003 in the UK brought several progressive changes but left the issue of consent largely revolving around the *D.P.P. v. Morgan* case. The Crimes Act of 1900 in New South Wales takes a more progressive approach, stating that the accused's recklessness in cases of sexual assault and aggravated sexual assaults will not diminish the absence of consent from the victim. The Act clarifies that submission under threats or terror does not constitute consent, and the absence of physical resistance by the victim does not imply consent. These legislative provisions from various countries paint a bleak picture regarding consent, offering little protection to victims. The requirement for corroborating evidence to establish non-consent further complicates rape law and worsens the plight of victims.

Legal provisions relating to consent vary across jurisdictions but generally encompass the fundamental principle that for an action to be considered lawful, it must be done with the free and voluntary agreement of all parties involved. Here, I will discuss the broad concepts and principles surrounding consent in legal contexts.

- **Definition of Consent:** Consent is typically defined as the voluntary agreement to engage in a particular act or transaction. In the context of criminal law, it often refers to the agreement to engage in a sexual act. For contracts and other civil matters, consent is the agreement to a set of terms or conditions.

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- **Capacity to Consent:** The ability to consent is crucial. Minors, individuals with certain mental impairments, and those under the influence of drugs or alcohol may not have the legal capacity to consent in certain situations. Laws often require that consent be given by individuals who are of sound mind and above a certain age, typically 18 years old.
- **Consent in Sexual Offences:** In cases of sexual offences, laws often specify that consent must be given freely and voluntarily. This means that consent obtained through force, threat, deception, or when the victim is incapable of understanding the nature of the act, is not valid. The burden is on the prosecution to prove that consent was not present.
- **Consent as a Defense:** In some legal contexts, consent can be used as a defense. For example, in cases of assault, if the defendant can prove that the other party consented to the physical contact, it may negate the element of the offense. However, this defense is not applicable in cases of serious harm or crimes against the person.
- **Statutory Rape Laws:** These laws typically define an age below which individuals are considered incapable of giving legal consent to sexual activity. Even if the minor appears to consent, the law considers them unable to do so due to their age. This is to protect minors from exploitation.

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- **Medical Consent:** In the medical context, consent is required before any medical treatment or procedure is performed. This ensures that individuals have the right to make informed decisions about their own bodies and healthcare.
- **Consent in Contract Law:** In contract law, consent is a critical element. For a contract to be legally binding, both parties must freely agree to the terms. If consent is obtained through fraud, duress, or mistake, the contract may be voidable.
- **Capacity to Consent in Contract Law:** Similar to criminal law, capacity is essential in contract law. Individuals who lack the mental capacity to understand the nature and consequences of the contract (such as those with severe mental impairments) may not be able to give valid consent.
- **Implications of Lack of Consent:** When consent is lacking, the consequences can be severe. In criminal law, sexual acts without consent can result in charges of rape or sexual assault. In contract law, lack of consent can render a contract unenforceable or void.
- **Evolution of Consent Laws:** Consent laws have evolved over time to reflect societal values and changes. There is an increasing emphasis on the importance of affirmative consent, which requires clear, voluntary, and unambiguous agreement before engaging in sexual activity. This shift aims to ensure that all parties involved are willing participants.

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These principles form the foundation of consent in various legal contexts, emphasizing the importance of voluntary agreement and respect for individual autonomy.

THE CORROBORATION REQUIREMENT

The myth of women falsely accusing men of rape has led to special rules of evidence in rape trials. Unlike other crimes where the victim's testimony alone suffices, in rape trials, it must be corroborated. This rule emphasises evidence supporting the possibility of rape, a requirement absent in other offenses. Corroboration necessitates the victim's testimony to be supported by independent evidence, such as forensic and medical evidence, injuries, presence of blood or semen, torn clothing, and victim's immediate conduct.

While criticized, the corroboration rule remains prevalent in criminal justice. It's not a statutory requirement but a common law principle influenced by Sir Mathew Hale's doctrines. Hale argued that rape accusations are easily made and hard to defend against. His observations, though lacking empirical support, have shaped the common law. Corroboration requires additional evidence confirming the victim's account, reflecting a distrust of women's credibility and the fear of false accusations.

The focus of corroboration is on two main concerns: the accused's innocence and the perception of women as liars. If women aren't seen as habitual liars, corroboration isn't necessary. It confirms the occurrence of the event, the identification of the accused, penetration, and lack of consent due to force. The prosecution must prove penetration with evidence like bodily injuries

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or pregnancy and lack of consent with evidence like bruises, torn clothing, and the victim's resistance.

Feminists argue that these rules stem from a fear of deceitful women, making it nearly impossible to convict rapists. Some jurisdictions have abandoned the corroboration requirement, considering it a relic of patriarchal biases. For example, the UK's Criminal Justice Act, 1994, abolished the mandatory corroboration warning.

In India, old English precedents guided British Indian Courts, leading to a reliance on corroboration, similar to that needed for an accomplice, impacting the weight given to victim

testimony. However, in 1952, the Supreme Court ruled in *Rameshwar v. State of Rajasthan* that corroboration is not always necessary for conviction, signaling a shift. Subsequent cases, like *Rafiq v. State of U.P.*, challenged the requirement of corroboration as outdated, suggesting that victim testimony alone could be sufficient.

In *State of Punjab v. Gurmit Singh*, the Court emphasized the reliability of victim testimony in rape cases. These cases marked a departure from the previous strict requirement of corroboration, recognizing the importance of victim testimony. Another contentious issue in rape trials is the admissibility of the victim's past sexual history, which is often used to undermine her credibility based on outdated notions of virtue and chastity. This practice has been criticized for unfairly prejudicing the perception of the victim's credibility based on societal norms rather than the facts of the case.

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Although linking chastity to consent is unfair, it has been part of the evidentiary process, posing a difficult question on how to evaluate such evidence. The core issue lies in whether a willingness to have intercourse outside of marriage indicates consent to intercourse with another person. Is such sexual behavior logically indicative of consent on a specific occasion, making it more likely that the girl consented? This assumption, though, denies autonomy and dignity to women. However, our judicial truth test relies on probabilities, even if it may exhibit prejudice.

The test is normative and perpetuates bias, unfairly treating women and limiting alternative perspectives. This bias is also evident in Indian law, as British Indian courts commonly warned juries not to trust the testimony of women with questionable character. A woman's chastity affected her credibility, with past unchastity suggesting a higher likelihood of consent. Modern judicial interpretations continue to reflect these patriarchal biases, often presuming consent based on the victim's past sexual history.

Regarding legal provisions related to past sexual history, the 84th Law Commission Report criticized the discriminatory provisions of the Indian Evidence Act, 1872. It recommended modifications to prohibit questioning about past sexual history except regarding relations with the accused. The report emphasized that assuming a female witness is less truthful due to a generally immoral character is wrong, as it can lead to lasting harm. The 172nd Law Commission Report reiterated the need for modifications, suggesting the complete deletion of certain sections. The Indian Evidence (Amendment) Act incorporated these recommendations, barring questions about the victim's general immoral character in rape cases.

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The Criminal Justice Act, 2003, abolished common law rules, allowing evidence of bad character for witnesses and defendants if agreed upon. However, the Act does not expressly prohibit evidence regarding the sexual character of the prosecutrix in rape cases.

- TRIAL PROCEDURES AND PUBLICITY

During rape trials, court procedures can worsen the victim's trauma. Victims need to be treated with courtesy, compassion, and respect for their dignity and privacy. Many countries have special rules for rape trials, like in-camera trials or closed courts, to protect victims from the public eye.

IN-CAMERA TRIALS

While courts are generally open, exceptions are made for sexual offense cases. In rape trials, intimate details can be embarrassing for victims to narrate publicly, affecting the quality of their evidence. Undue publicity can harm victims socially and emotionally, leading to in-camera trials to protect their privacy.

Section 327 of the CrPC was amended to allow in-camera trials after the 84th Law Commission Report. The Supreme Court endorsed in-camera trials, noting they help victims feel more comfortable and provide better evidence. However, debates persist over whether in-camera trials truly benefit victims or hinder fair trials.

Women's groups initially supported in-camera trials but later recognized practical difficulties and changed their stance. They argue that closed trials may not offer further protection once the case is registered and could potentially benefit the defence. Current provisions also restrict who can accompany victims, posing challenges, especially for minors or those from rural backgrounds.

PUBLICITY DURING THE TRIAL

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Rape victims face social ostracism, viewed as dishonouring their family rather than a violation of their human rights, leading to stigma and trauma. This often deters them from seeking help or support, hindering their rehabilitation. Recognising this, the law includes section 228-A in the Indian Penal Code, 1860, to protect the anonymity of rape victims during trials. This provision prohibits the printing or publishing of the victim's or accused's name in rape cases without their written authorization.

However, this provision has been criticized for being too restrictive, hindering the advocacy efforts of women's groups and limiting public awareness of issues like poor investigation practices. The ban on publication does not apply to High Court and Supreme Court judgments, making these protective provisions largely ineffective.

- **MEDICAL EXAMINATION OF THE VICTIM**

The examination of the victim is crucial in rape cases as it provides the most important supportive evidence, often deciding the fate of the accused. The identity of the victim must be verified to the doctor's satisfaction, usually by the accompanying police officer. In rape cases, the victim's age is vital due to the age of consent (16 years and above) specified in Section 375 IPC. The examination should include questions about health, menstrual cycle, and sexual history for mature victims. A thorough examination for injuries and stains should be conducted, especially in areas suggesting the offence occurred outdoors.

LEGAL PROVISIONS RELATING TO MEDICAL EXAMINATION:

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The Code of Criminal Procedure (Amendment) Act, 2005 introduced significant changes to rape laws, including detailed procedures for examining both the victim and the accused. New sections such as 164-A, 174 (1A), (b), and 53-A (a) CrPC were added, requiring the examination of various samples and use of modern techniques like DNA profiling.

CHAPTER -V CONCLUSION AND SUGGESTION

6.1 CONCLUSION

It's ironic that Indian mythology venerates women as goddesses yet society often fails to uphold their rights. Moral values have declined, especially in India, with progress overshadowing these values. Despite celebrating women's rights, there's a lack of concern for their honor and dignity, reflecting societal indifference. Women are often treated as property, and unchaste women face severe stigma and exclusion. Ensuring a safe life for women requires serious attention and a change in societal attitudes.

The legal framework, despite laws against dowry, rape, and violence, hasn't addressed the ground reality. Society must recognise women as individuals with rights, not mere statistics. The concept of rape should be understood as a crime of power, not lust, and is a severe form of violence against women. The societal emphasis on female chastity exacerbates the trauma of rape victims, who are often blamed and ostracised. Rape is a social and political issue linked to power imbalances between men and women. In patriarchal societies, the belief in male sexual aggression and female passivity contributes to the normalisation of rape. This intertwining of violence and sexuality blurs the lines between consensual sex and rape. Rape victims undergo

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a traumatic experience and face societal rejection. Virginty and chastity are highly valued in such societies, often defining a woman's worth.

The Hindu scriptures severely criticise unlawful sexual encounters, prescribing severe punishment ranging from property confiscation to death. Women also face penance. Muslim law emphasises respect and protection for women, forbidding all promiscuous relationships. The Holy Quran prohibits adultery, prescribing heavy punishment without qualification. Countries like England, the USA, and India have laws to preserve female dignity. In India, the Indian Penal Code of 1860, drafted during British rule, includes provisions on rape, defining it as non-consensual sexual intercourse or obtaining consent through fear or deception.

Due to mental incapacity, intoxication, or administration of stupefying substances, a person may be unable to comprehend the nature and consequences of the act to which they consent. If the victim is under sixteen years old, the act is considered rape, punishable by imprisonment for at least seven years, up to life, or up to ten years and a fine. However, if the victim is the perpetrator's wife and not under twelve years old, the punishment is imprisonment for up to two years, a fine, or both. Courts can impose a lesser sentence for valid reasons. This definition of rape focuses only on vaginal-penile penetration, ignoring oral and rectal penetration, and does not acknowledge digital rape.

The criminal justice system often treats rape victims with disbelief and hostility, reinforcing institutionalised sexism. Victims are subjected to a process that does little to help them recover, instead compounding their trauma. Victims must prove they were raped, with their prior lifestyle and sexual conduct scrutinised. Courts play a crucial role in addressing rape and sexual violence cases realistically. Such violence violates privacy, dignity, and self-esteem, particularly harming innocent children. Justice Krishna Iyer emphasized the fight for human

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worth and cosmic harmony, not just women's status. Recent years have seen the judiciary extend its role to ensure fair implementation of directives on social issues. Judges must proactively eliminate discrimination in the courtroom.

Courts in India have expanded fundamental rights to include women's experiences and concerns, engendering rights by mainstreaming women's rights into them. This involves critically appraising existing laws and practices from a gender-sensitive perspective. Courts have shown sensitivity in rape and sexual harassment cases, recognizing the need for institutional changes to enforce women's rights effectively. Judges should heed the call for social justice and creative interpretation of laws to keep pace with social change. Some judicial decisions have gone against the principle of equality and non-discrimination, highlighting the need for the judiciary to interpret laws for social justice. Like other branches of government, the judiciary recognizes that women want to be actively involved in the country's development, not just beneficiaries of welfare programs.

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