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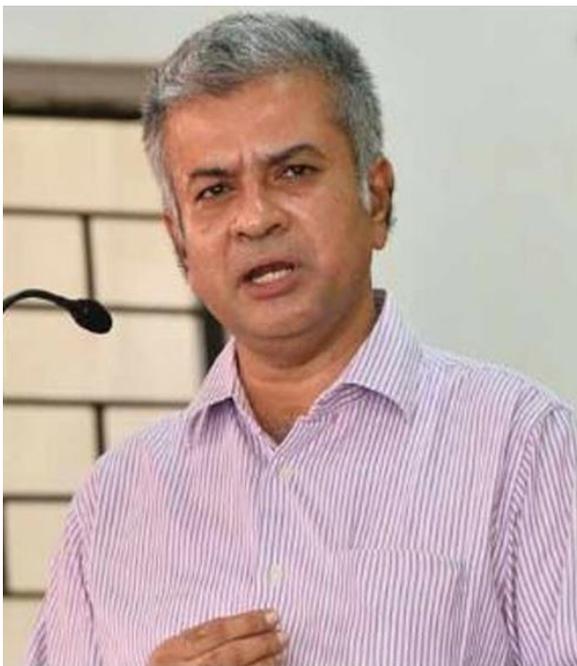
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Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

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Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

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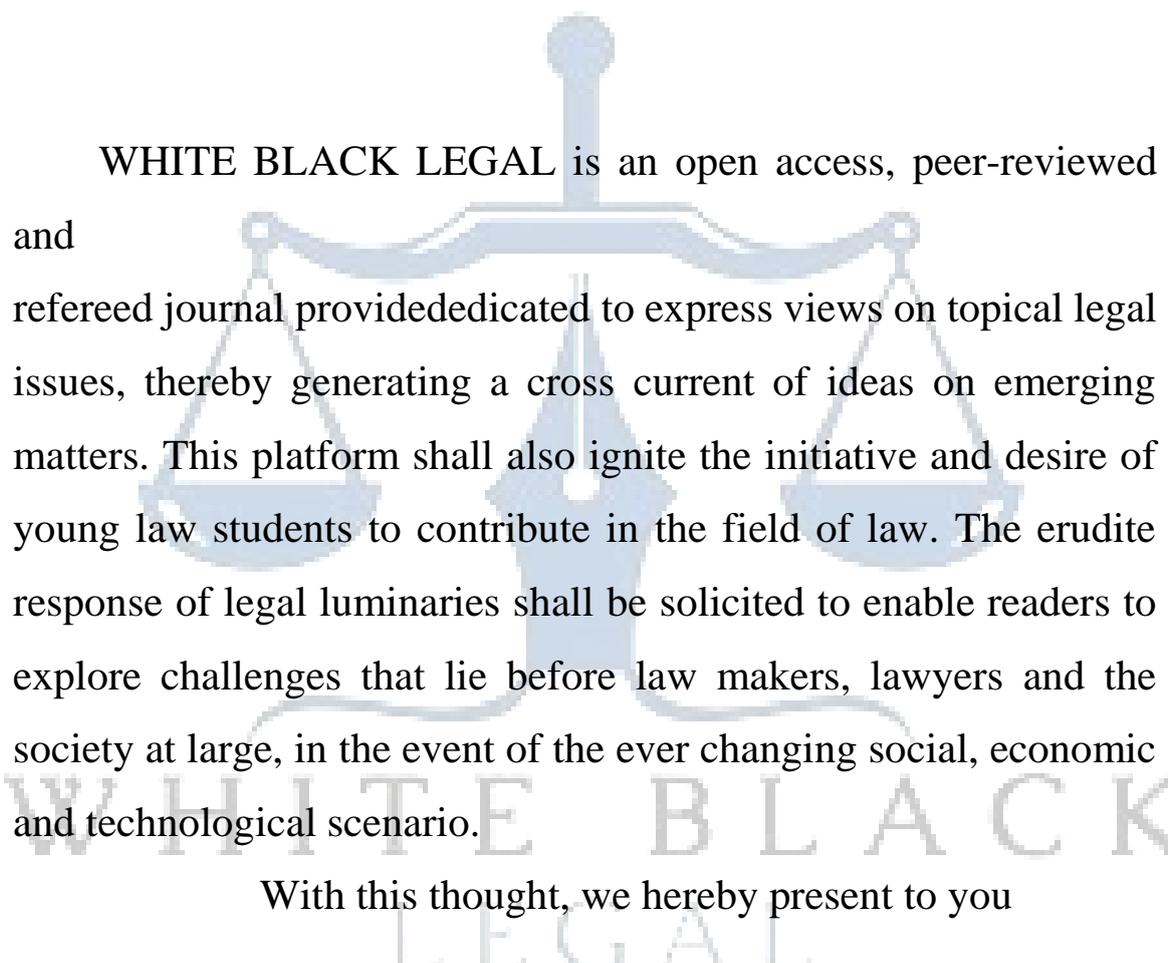


Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

REFORMING ANTI-RAPE LAWS IN INDIA: TOWARDS GENDER-INCLUSIVE JUSTICE

AUTHORED BY - DEVAYANI SHUKLA

Abstract

One of the most horrific crimes that disturbs judicial systems and social norms worldwide is rape. The study looks into how anti-rape laws have developed in India, analysing their legal, historical, and cultural aspects while contrasting them with international models. It looks into gender-neutral laws, how patriarchal systems affect the legislative process, and the socio-legal effects of reforms based on the recommendations of the Justice Verma Committee. The study explores the need for equal protection for all genders and highlights the importance of inclusive legal regulations. In order to effectively address the complex reality of sexual violence, the paper's multifaceted analysis attempts to suggest significant changes to the Indian Penal Code and other pertinent statutes.

Key Words - Anti-rape legislation, sexual violence laws, gender-inclusive justice, legal reforms in India, Justice Verma Committee, patriarchal influence, gender-neutral laws.

1.1 Introduction

Rape is among the most terrible and violent crimes ever committed. Yet, it has taken a while for people to recognize that rape is an assault on women's sexual and physical autonomy. Women were denied privileges and were treated like property for most of history. As time passed, social norms and practices changed, dramatically altering the meaning of rape as an offense. The anti-rape legislation was initially incorporated into the Indian Penal Code in 1860, and the Indian rape laws are based on English common law. The trial courts were more focused on demonstrating the victim's virtue than establishing the accused's guilt because it was assumed that the ladies were lying. Focusing on her past sexual relationships or virginity impacted the case's outcome.

Over the years, anti-rape laws were eventually reinforced due to numerous violent incidents that led to significant legislative changes. The demand for modifications to the law gained

traction with the rise of the Women's Movement, which changed societal views and brought about awareness. The paper looks at the recommendations made by the Justice Verma Committee, established in response to the Delhi rape case, to change the anti-rape laws. It looks into the multiple changes made to the definition and outcomes of anti-rape laws. It focuses on the modifications made due to these updates to the rape legislation in the Indian Penal Code.

Although there are many viewpoints on rape and associated crimes, these studies are fragmented and need to be integrated comprehensively to dive further into the reasons behind and effects of rape. The current study, grounded in root cause analysis, attempts to not only incorporate various viewpoints but also to imagine a fresh perspective of investigation and multidimensional understanding of the occurrence of rape.

1.2 Research Objectives

1. Analyze how different societal traditions and norms contribute to formulating rape laws.
2. Examine the different types of punishments prescribed by different countries in the cases of rape.
3. Assess whether there is a need to make the laws gender-neutral and include people of every gender.
4. Compare the Indian Legal Framework related to rape with that of different countries and analyze if there is a scope for development in the Indian Framework

1.3 Research Methodology

To write this research paper, several tools and methods were used to examine the focus of examination of the study methodically. The research paper aims to examine the rape laws in India and compare it with other countries. The researcher employed a mixed study methodology, drawing their conclusions from quantitative and qualitative data; the latter was mostly objective, while the former was primarily subjective. The researcher emphasizes examining whether there is a need for rape laws to be more inclusive to include provisions to protect male victims, as well as answering the research questions mentioned above.

1.4 Research Questions -

1. The Predominance of Rape in India - Where did the movement against rape begin?
2. Is there a need for a change in punishments prescribed for the offense of Rape under IPC?
3. Is there a need to make gender-neutral rape laws?

1.5 Hypothesis

1. In a patriarchal society like India, which has traditional and cultural norms that have been downplaying the role of women and not creating strict sanctions for the protection of women, it has also been a factor in deciding the punishment for women.
2. Gender equality and societal attitude toward women's rights is directly related to the laws that have been made regarding rape. Societies not biased against women tend to make more rigorous laws for women's safety.
3. Rape laws are supposed to be gender-neutral. Extending rape laws to include protection for men is important and female perpetrators cannot run away from their crimes. It will acknowledge that rape laws are inclusive and apply to every human regardless of gender.

1.6 Review of Literature

The journal articles, books, and other works listed below have been utilized to investigate various elements of rape laws:

The Indian Penal Code, 1860, defines Rape under Section 375 and stipulates the punishments that are pronounced; it also defines consent and provides the essential conditions required to constitute rape, which is the primary source of information for the current study. The provision also talks about marital rape, also mentioned in the *Domestic Violence Act of 2005*. The researcher has used these two provisions to understand and analyze the Rape laws in India.

The objective of *Rape Laws in India* by *Dipa Dube* is to start a discussion among academics, judges, and policymakers. It looks into some of the major issues with India's rape laws. The subject has received a great deal of attention, with historical legal implications exposed, sexist overtones exposed, and old, rigid legal decision-making practices criticized. Examined with the judicial activism of the 1990s, which significantly contributed through the declaration of rights and preventive decision-making, are the different legislation revisions defining the

offense, improving punishments, and administrative complexities. The book offers assistance for readers as well as discussion of the evolving issues with Indian rape legislation. As a whole, it takes on a critical and educational assessment of the subject from several perspectives.

In *No Nation for Women by Priyanka Dubey*, The author examines the factors that render India dangerous to its women in a relevant and crucial study. The reason India is regarded as being one of the world's rape capitals can be summed up in numbers. A woman is raped every fifteen minutes in India. Figures, however, merely convey a piece of reality. The author of the book spent six years traveling all over large areas of India, exposing the tales of oppressed women caught in the grips of patriarchy.

The book *Rethinking Rape Law: international and comparative perspectives by Clare McGlynn and Vanessa E. Munro* comprehensively analyzes the current rape legislation in many countries. In light of significant developments in the law governing sexual offenses, Rethinking Rape Law investigates global, regional, and national trends. The book is the first authentic and reliable literature on rape law that crosses jurisdictional boundaries, examines its philosophical and empirical underpinnings, and places its provisions in its regulatory information. Renowned scholars across the globe authored it. It will be the main resource for scholarly investigation and discussion on sexual crime laws.

The threats to men have been completely neglected in India's controversy over the rights of women. The book *Is India ready for gender-neutral laws? by Ayushi Raghuwanshi and Udit Malik*, attempts to support the argument for gender-inclusive laws. Why must men not receive legal recourse when women call for gender equality in all spheres? Gender neutrality should be advantageous to both sexes if it is promoted. It is crucial to address the issue as quickly as feasible, given that gender-neutral laws and the growth in crimes against men are present in most countries.

The updated version of *Male Victims of Sexual Assault, edited by Gillian C. Mezey and Michael B. King*, provides information on recent developments in the field of study, data accessibility, and philosophical viewpoints. By examining issues, including the prevalence of gender-based victimization, changes in legislation and their effects, and improvements in rehabilitation for male rape victims, the book broadens the conversation on sexual assault against males.

1.7 Chapterization

The researcher in this paper has been divided into the following chapters by the researcher:

Chapter 1: Introduction

The researcher goes into detail about rape in this chapter. The chapter elaborates on the literature, the paper's methodology, the sources, the questions and objectives, and their importance.

Chapter 2: History and Cultural Aspects of Rape Laws

In this chapter, the researcher will study the cultural and historical aspects of rape laws in India and discuss the uproar of the feminist movement against rape laws.

Chapter 3: Comparative Study

In this chapter, the researcher will make a comparative study of different countries with Indian rape laws and discuss if there is a need for a change in Indian laws and take recommendations from other countries.

Chapter 4: Gender-Neutral Rape Laws

In this chapter, the researcher will discuss the importance of gender-neutral laws and cite different instances where the Country has tried to bring a change in the legislation.

Chapter 5: Conclusion and Suggestions

In the concluding chapter, the researcher will summarize the research findings and discuss the suggestive measures for changes in Rape laws.

Chapter - 2

History and Cultural Aspects of Rape Laws

For a long time, the status of women in society, compared to men, is dominated. A patriarchal society like India has always tried to undermine the status of women. The stories from the past are evidence that society has reduced a woman's role to merely a child-bearing object. In the present era, mythological stereotypes have been subtly imprinted in the subconscious of individuals, causing them to accept sexual violence as usual. As a result, the innocent individual is limited to serving as the face of activism or a well-established media topic, much like in mythological narratives from earlier times.

2.1 The Predominance of Rape in India - The beginning of the movement against rape

Rape has been associated with additional issues of governmental oppression and the dominant social group in the Indian feminist movement. For instance, the nationalist-feminist notion of the British government's persecution as a foreign power during the colonial era was intricately linked to rape. After becoming independent, during the emergence of feminism in the 1970s, 'landlord rape,' in addition to rape by the police, the armed forces, and security agencies, were significant concerns. This was most likely because it was simple to draw attention to them as a larger issue since they could be integrated into the larger context of oppression by the government and influential groups in society and address the problems of gender, class, and caste oppression. Additionally, feminists were acquainted with these problems because previous movements like the Maoist movement had exposed them.

Other incidents have prompted campaigners and people to speak out against rape. Such instance of this was the rape of **Rameeza Bee in 1978**. It happened in Hyderabad, where several police officers assaulted a woman named Rameeza Bee. Her husband, an auto driver, was killed when he protested the gang rape. In the aftermath, 22,000 people proceeded to the police station, placed the husband's corpse on the porch, broke telephone cables, destroyed the buildings, and set flame on some bikes on the property. The crowd was only contained after two squads of cops arrived to step in. The mainstream press likewise disregarded the primary issue of Rameeza Bee's gang rape by police personnel. Finally, even though the inquiry panel found the police officers guilty, the Sessions Court cleared them of all charges, and only a small number of feminist organizations objected to the ruling. There were many such incidents in other states of the country, but none were big enough to create a commotion of a movement.

A national clamor over the **Mathura Rape Case** in the state of Maharashtra allowed feminist organizations to come together for the very first time in the country. In 1972, Mathura, a young Adivasi woman, was apprehended by multiple police officials, taken to the police station, and raped there. The officers received clearance in the Sessions Court. On further appeal, the High Court found them guilty. But the verdict was again overturned by the Supreme Court. The police claimed that Mathura was a "loose" girl because she had a partner and couldn't have been raped. The Supreme Court agreed with this contention. Lawyers Upendra Baxi, Ragnath Kelkar, Lotika Sarkar, and Vasudha Dhagamwar published an open letter after this decision, questioning the reasoning behind consent utilized to make the judgment. Through this letter, the feminist group Forum against rape coordinated with other feminist groups nationwide and

demanded that the case be reopened. This was the first time they had come together to fight for a cause against rape.

But the effect did not last long as politics also played a great role in the movements; for example, the incident involving *Shiela Devi of Dabwali in Haryana*, who was allegedly raped and killed at the police station by a police officer, sparked indignation across the country. The incident became out of control, and 22 people were hurt as the police started shooting at them. Opposing parties sought the Haryana government to resign, claiming it had failed to protect the people's "lives, property, and honor."

There were repercussions because the government changed the rape laws and the definition of rape after legislator Raj Narain announced a death fast during the Shiela Devi case. Despite being on the table for some months, the government finally gave in to feminist pressure and changed the rape statute. As part of the definition of "custodial rape," it listed employees, employers, and direct superiors. Mass and "gang" rape are now considered to be types of individual rape. According to reports, the penalty for custodial rape is ten years in prison, an "in-camera" trial, and transferring the burden of proof from the accused to the victim. However, many argued that though a statute has been made, some aspects people found discriminative against women. The most controversial clause was the 'burden of proof.' If the victim had proof that she was pressured into sexual activity, the accused would be considered guilty unless proven innocent.

The law was further modified due to the *2012 Delhi gang rape*, which caused protests and demonstrations nationwide. **The Criminal Law (Amendment) Act 2013** was enacted, changing **Section 375 of the IPC, the Criminal Procedure Code, and the Evidence Act** to reinforce the laws against rape and sexual assault against women. Extending the definition of rape, instituting the death penalty for rapes that result in death or leave the victim in a "persistent vegetative state," and requiring a minimum term of 20 years in prison for gang rapes were among the amendments.

The Act was also condemned for being insufficiently comprehensive since it failed to mention the other genders in the victim or offender categories, did not identify marital rape, and failed to reduce the age of consent from 18 to 16. The Justice Verma committee's recommendations for changes to **the AFSPA Act**, which indicated that no punishment was necessary to prosecute an armed forces member accused of rape or sexual assault, were also not implemented.

2.2 The role of gender equality while deciding on cases related to rape.

Rape misconceptions often play a serious role at different trial stages; regrettably, courts have relied on vaginal injuries, physical harm to the victim, and neighbors overhearing the woman's cries for rescue when evidence is needed. Ideas of purity and honor gave rise to the belief that women must always fight being raped. If chastity were important to a woman, she would fight to prevent it from being taken away. Based on this notion, she also made up the myth that an unchaste lady shouldn't be believed. The woman's previous sexual experience damaged her credibility, making her testimony unreliable and raising the possibility that she gave consent to the encounter.

Such pretenses are not common to India alone but at courts all over the country, and a preconceived notion was that an average rape victim (who the court believes to be a victim) should have combatted the assault and would have acquired injuries and might have been unfamiliar with sexual intercourse and could have been able to lead a "respectable lifestyle." If two of these components were exhibited, the guilty decision rate increased from 33% to 72%. If these components were not present in the case, it was decided in favor of the accused, and he was acquitted. In the Indian scenario, it has been observed that Judges often consider a perfect rape victim as 'pure, chaste, austere, honorable and restricted to home' and a 'virgin daughter or a loyal wife.' When such a woman was the victim and testified in the trial, she was more believable when compared to a rape victim who did not comply with these conditions. If she does not fit into these pretenses of the judges, then the victim's fight for justice for the protection of her dignity becomes weak, if not completely lost.

Over the years, there have been significant changes in India's rape sentencing laws. A conservative and constrictive legal system characterized the years following independence up to the 1970s. Still, in the late 1980s and 1990s, judicial activism increased and reached a height in *Sakshi V UOI*.

Before the *Tukaram v. State of Maharashtra* decision, the judiciary had construed statutory rape legislation in the accused's favor. The stringent verification requirements, the victim's prior sexual past, and consent were all taken to degrade and disgrace the women of the nation. In the past, fierce opposition to rape legislation was necessary. With this strategy, courts and prosecutors are informed that any indication of consent—even a passing friendship—would make achieving the necessary level of opposition more difficult. As a result, strong criteria for

lack of consent are often needed in rape legislation. The elements that make a sexual act constitute rape must have happened before the activity.

Regardless of several liberal Supreme Court rulings, traditional moral principles nonetheless impacted whether the accused was found guilty or innocent. The judiciary repeatedly promoted the virtues of chastity and honor while perpetuating outdated stereotypes of women. To this day, a woman's virtue is seen as an honor that defines how she lives. Rape takes that honor away from her. Because of the stereotype of rape upheld by the criminal justice system, it is very challenging for women to obtain retribution through the process of law.

Chapter - 3:

Comparative study of rape laws:

Rape is a worldwide problem that affects every nation and community. Rape has extensive philosophical and psychological origins, and it is commonly misconstrued in patriarchal and discriminatory societies like those prevalent in numerous regions of the world. This misconception affects the evaluation, classification, and effectiveness of counseling and treatment given to rape victims. The definition of "rape" and the associated penalties have been drafted into statutes to address this issue. If the two parties are very close in age, yet one is a minor, certain jurisdictions do not recognize statutory rape as an offense or may only classify it as a misdemeanor. Statutory assault is only a crime in most states if one of the parties involved is at least several years older than the other. A close-in-age law is not, however, present in every state.

3.1 Is there a need for a change in punishments prescribed for the offense of Rape under IPC? Should separate legislation be made concerning rape?

A law passed by the UK Parliament in 2003 is called the Sexual Offences Act. The Sexual Offences Act of 1956 had most of its provisions abolished by the Act. The Act is only effective in England and Wales. In Scotland, sexual offenses are governed by the Sexual Offences (Scotland) Act of 2009, whereas in Northern Ireland, sexual offenses are governed by the Sexual Offences (North Ireland) Order of 2008. The 2003 Sexual Offences Act (SOA) substantially changed the law regulating sexual assaults. It introduced more precise and clear terminology for out-of-date sexual crime statutes. The document lays out and specifies the legal standards for rape under English law. The SOA, 1956 did not define important terms like Consent. However, the government has tried to include provisions to protect the people from

sexual offenders. Therefore, The SOA 2003 was implemented to make the provisions of rape law more inclusive and protect women and children.

Definition of Rape -

Section 1 of SOA, 2003 defines rape as - "A person(A) commits the offense of rape if he intentionally penetrates the vagina, anus, or mouth of another person(B) with his penis, B does not consent to the penetration. A does not reasonably believe that B consents."

The term vagina used in the section also included 'surgically created vagina.' In this way, the statute's authority has been broadened to encompass "male-to-female transsexual individuals." In contrast, rape is defined in India by section 375 of the Indian Penal Code, 1860, and is limited to female victims; transgender people are not covered by this definition.

Rape is defined under Section 266 of the Criminal Code of Canada, 1892. It defines 'rape as an act of a man having carnal knowledge of a woman, who is not his wife without her consent, or with consent, which has been extorted by threats or fear of bodily harm.'

The term 'consent' is defined under Section 74 of the Act; it includes that a person is said to give consent if he/she agrees by choice and has the freedom and capacity to make that choice.' Under the IPC, section 375 in India, consent means "*an unequivocal voluntary agreement when the woman, by words, gestures or any form of verbal or non-verbal communication, communicates a willingness to participate in the specific sexual act.*'

A person convicted of rape risks life in captivity if found guilty of an accusation, according to Section 1(4) of the SOA, 2003. The Act established extraterritoriality by stating that UK citizens who perform an act that would be considered a sexual offense under the SOA 2003 while outside of the UK may nonetheless face the same charges as if they had done so on UK soil. Whereas, under Section 376 of IPC, a person convicted of rape is liable to receive a punishment of not less than seven years, which can also extend to imprisonment and a fine.

In ***R v Bree***, the Court of Appeal investigated the concept of consent and capacity. It stated that if the plaintiff refused to comply and could not decide whether to have a sexual relationship owing to intoxication or another cause, any contact would be considered rape. If the plaintiff had purposefully consumed large amounts of alcohol but were still conscious and able to choose whether to engage in sexual activity and made that decision, rape would not have occurred.

In *R v Chase*, A suspect who grabbed a young girl's breasts during a sexual assault appeal was charged with common assault. The Canadian Supreme Court ruled that any breach of the victim's sexual integrity would constitute sexual assault, contrary to the trial judge's limitation on the concept of sexual assault to unwanted genital contact. The sentence for sexual assault was added to the ordinary assault penalty.

A comparison of the rape laws in the UK, Canada, and India reveals some significant advancements and areas that still need to be adjusted and improved. Indian rape laws have seen a significant change towards including the rights and perspectives of rape victims. The definition of the term rape has been expanded and includes a stronger definition of the term consent. It also includes a clause for a severe punishment for the crime. However, there are a few aspects where the Indian law has setbacks. UK law includes transgenders in the definition of rape, whereas the Indian law does not have any such provision. Secondly, under UK law, any person convicted of rape outside the country's territory shall be prosecuted as if the crime had been committed within the country. In contrast, Indian laws do not have any such provisions.

Chapter -4

Gender-Neutral laws

Rape does not have a gender; any human being, regardless of gender, can be raped. And therefore, rape laws should be more inclusive and include males and other genders in the definition of rape under Section 375 of IPC. India does not recognize males as a victim of sexual assault, and that is a notion that needs to be developed to be able to provide justice to every victim of such a grave offense.

4.1 A need to make gender-neutral laws in India

The Delhi High Court ruled in *Smt. Sudesh Jhaku v. KCJ* in 1996 that women who rape males or other women should be charged as regular rapists and that men who are sexually abused should receive the same protection as female victims. It was suggested that the Law Commission adjudicate on the subject. The report proposed by the 172nd law commission recommended removing bias in rape laws and including gender-neutral laws. The Justice Verma Commission widening the nature of rape also recommended the potential scope of gender-neutral laws. Advocate Righi Malhotra in 2013, filed a petition to the Supreme Court to seek remedies for the male victims of sexual assault, but unfortunately, the petition was

dismissed.

Countries like the USA, Canada, Finland, Ireland, and Australia have gender neutralized the law. However, India still believes and is adamant that women can only be the victims, not the perpetrators of the crime. It is clear from the reports and appeals mentioned above that there is a long road ahead before India makes provisions to protect men as victims of rape.

Chapter -5

Suggestions and Conclusion

Rape is a heinous crime and needs a severe punishment. The paper has highlighted how rape laws came to be and compared Indian rape laws to other countries. The researcher has concluded that India can borrow legislation from other countries to make the rape laws more inclusive and stricter. From the police office to the courthouse, victims endure abuse throughout the process. The victims' struggle for justice is hampered by every stage, from a deficient healthcare system to a broken criminal justice system. Our society contributes significantly to the difficulty in obtaining justice. Thus, until social transformation also occurs in parallel with legal reforms, the full impact of laws can never be realized.

The hypothesis of the researcher that Gender biases in the court and the culture of India impact the formulation of rape laws is proved to be true in a limited sense. It means that cultural aspects may not significantly affect the rape laws but have a significant effect while deciding on such issues.

The second hypothesis that India can borrow punishments and regulations from the legislation of different countries is proved. The researcher has found a few aspects that there is a scope for expanding Rape laws in India.

The third hypothesis that Rape laws ought to be gender-neutral in India has also been proved. Many countries have already done the same. There have been cases of male victims of sexual assault, and it is high time that India makes laws to protect them.

Therefore, the law needs to be changed in India to make it more inclusive and the current paper is evidence for that.