

CONSENT MATTERS: A COMPARATIVE STUDY OF RAPE LAWS IN INDIA, UK AND CANADA

***B. V. ANJALI**

RESEARCH PROBLEM.

In plain English, rape is a crime of violence committed by a man against a woman without the latter's consent. The crucial element of consent decides whether or not sexual activity qualifies as rape. Sadly, marital rape of women over the age of 18 still occurs. Our Indian law does not consider it to be rape, and rules against husbands who coerce their spouses into having sex with them against their will are needed. A relationship with a name and the time of the hour should not be an exception to the rule. In Common law defines rape as forcible sexual contact with a woman without her permission. It is possible to define rape as an invasion of a woman's body that occurs when her privacy is breached. There is a breach of privacy. The rape laws in India have changed legislatively throughout time and have been subject to numerous judicial interpretations. An attempt is made to compare and contrast the statutory rape statutes of India, Canada, and the United Kingdom. This also includes international treaties created to defend against violence against women and girls. The current idea of "Stealthing" is also included because it is acknowledged as a crime in everyday speech but has yet to be covered by any of the Acts created to prevent crimes against women. The summary of the research, the shortcomings of the legal systems in each nation, and solutions are included in the conclusion.

Introduction

Rape is a global problem that affects every country and community. It affects people from various social classes and societal sectors and occurs in a variety of circumstances. Women, men, girls, and boys can all be raped. Rape occurs everywhere—in homes, workplaces, jails, public places, hospitals, and institutional settings—as well as during times of war and conflict. Individuals from marginalized groups and communities, such as members of racial or ethnic minorities, prostitutes, the poor, the homeless, and the abandoned, as well as those who identify as someone of a different gender or sexual

orientation, are especially vulnerable to rape. Fathers, brothers, intimate partners, husbands, acquaintances, strangers, those in positions of professional or institutional power, members of the armed services, or police are among the perpetrators. Victims of rape bear both physical and invisible scars from the assault. It has a variety of negative effects on the victim's physical and mental health, leaving them to deal with trauma, despair, anxiety, difficulties with their reproductive and sexual health, injuries, and suicidal impulses. It offends the person's autonomy, agency, and integrity in regards to their bodies and their sexuality. The social context of the area where the rape takes place, as well as the level of support and care a victim can receive, moderate the damages and effects of rape. Rape has significant ideological and sociological roots and is frequently a crime that is misconstrued in a patriarchal and sexist society like the one that is prevalent in many parts of the world. The evaluation, classification, and standard of treatment and counseling that a rape victim receives are impacted by this misunderstanding. The rights to life, privacy, dignity, and health belong to rape victims. Police, medical professionals, courts, and community post rape therapy frequently infringe on or violate these rights while also re-traumatizing the victim. Rape itself infringes or violates these rights. Insensitive and biased actions of criminal justice personnel, incredibly intrusive and unscientific medical procedures, and careless judicial procedures all contribute to the denial of victims' rights. The term "rape" and the punishment that is applied for the crime have been defined in statutes that address rape. If the two people are very similar in age yet one of them is underage, some states will not recognize this as a crime or may only treat it as a misdemeanor. Statutory rape is only a felony in more than half of the states if one of the participants is at least several years older than the other. However, not all states have rules governing close-in ages. 2. "The penalty for any sort of rape is typically a substantial prison sentence, the length of which will be determined by the laws of your state. Additionally, a convicted offender typically must perpetually register as a sex offender.

Council of Europe Convention on preventing and combating violence against women and domestic violence (also known as the Istanbul Convention)

In addition to focusing on victim compensation, the agreement aspires to end all forms of violence against women. Additionally, it seeks to deter, prosecute, and end domestic abuse. This treaty calls on all citizens, especially men and boys, to assist Europe in achieving its aim of establishing a violent-free society. The parties to this convention are required by Article 36 to enact the requisite legislative measures to make it illegal to engage in any extramarital sexual activity.

The United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee)

Has urged various European nations over the past five years to align their rape laws with international norms, such as the Istanbul Convention, and to define rape in terms of the absence of consent.

On consent, the UN Handbook

For legislation on violence against women, it is suggested that any requirement that a sexual assault be performed with force or violence, as well as any necessity of proof of penetration, be removed from the law.

Rome Statute of the International Criminal Court

When perpetrated frequently or deliberately, rapes and other sexual assaults are considered "crimes against humanity," regardless of whether they take place during an armed war.

UNSC 1889 on Women, Peace and Security (2009)

Draws attention to the state's need to put an end to impunity and bring charges against those responsible for all forms of violence committed against women and girls during armed conflicts, including rape and other sexual assault.

Sexual offence ACT, 2003 In United Kingdom.

The Sexual Offence Act, 2003 is a law enacted by the British Parliament. The Sexual Offences Act of 1956 was largely repealed by the Act when it went into effect on May 1, 2004. The Act is only applicable to England and Wales. The Sexual Offence (Scotland) Act of 2009 and the Sexual Offence (North Ireland) Act are each countries' individual sexual offence laws. Order for (North Ireland), 2008. A significant reform to the law regarding sexual offence was made with the passage of the Sexual Offence Act (SOA), 2003. Older sexual crimes legislation was replaced with more precise and explicit language. It defines rape and establishes rape laws under English law. It is also the main piece of legislation addressing child sex abuse.

“**Section 55** of the Violent Crime Reduction Act of 2006 is applicable where it is impossible to establish whether the crime was committed before or after May 1, 2004. Each offence must be charged alternatively under the old and new regimes in order to rely on section 55. If the offence drew a penalty, it will be assumed incontrovertibly that the activity occurred when the previous statute was in effect. Less severe maximum punishment: if not, it will be assumed that the behaviour happened after the new law went into effect. There are two sections to the Act. The available sexual offence are outlined in Part 1, and the notification requirements and various preventative civil measures are outlined in Part 2. Since the original version of the **SOA** was put into effect in 1956, society has advanced and faced numerous problems, including growing concerns about child sexual abuse and new forms of sexual abuse like voyeurism. These offence were not listed in the 1956 SOA, and no other laws or punishments applied to them. The Home Office refers to the earlier sexual offence as The law is "just a consolidation of the law of the nineteenth century," and it is "archaic, illogical, and discriminatory." Many crucial phrases were not defined in the Sexual Offence Act of 1956. The Act did not include a concept of consent, but as time went on, the government improved the systems in place to protect the public from sex offenders. In order to "provide additional provisions about sexual offence, their prevention, the protection of children from harm from other sexual actions, and for related purposes," the Sexual Offences Act of 2003 was introduced. A few terminology have been updated and clarified in the SOA of 2003, and new categories of sexual offence have also been added. The SOA, 2003 expanded the definition of rape to include penetration of another person's mouth in addition to the terms vagina and anus that were already listed in the SOA, 1956. The Act also makes reference to previously

unmentioned new categories of sexual offence, including assault by penetration, non-consensual voyeurism, and sexual assault depicts a corpse and others being penetrated. The Sexual Offence Act of 2003's Section 1 defines rape. A person (A) commits an offence if:

1. he knowingly inserts his penis into the vagina, anus, or mouth of another person ;
2. Does not consent to the penetration; and 3. A does not reasonably believe that B consents. The definition of "vagina" included the phrase "surgically created vagina." In this way, by extending its authority to "male to female transsexual people," the Act has broadened its purview. While the Indian Penal Code, 1860's section 375 defines the term "rape," it only refers to victims who are female. Transgender individuals are not included in this definition. A person consents for the purposes of this Part if they agree by choice and have the freedom and capacity to do so, according to the Act's definition of the crucial term "consent" under section 74. The concept of consent is crucial to the crime of rape as well as the other three major offence in England, particularly those involving nonconsensual sexual activity, such as (1) assault by penetration, (2) sexual assault, and(3)inducing someone to participate in sex without their consent. 13 Several "Evidence-based presumptions" for consent were introduced under Section 75 of the Act. It listed circumstances when it was presumed that approval was not given. The grounds for "conclusive consent presumptions" under Section 76 also included the misrepresentation of the "nature or intent". According to section 375 of the Indian Penal Code (IPC), consent in India is defined as "an unequivocal voluntary agreement when the woman conveys her willingness to participate in the specific sexual act through words, gestures, or any other form of verbal or nonverbal communication."15 The onus of proof shifts to the accused after the victim claims there was no consent, and the statutory presumption that had been formed against him must be removed. The victim bears the sole responsibility for determining the lack of authorization. According to the Evidence Act, there is a presumption in favour of the victim regarding the element of consent.

R Vs Bree (Case related to the consent matter to consent).

According to Section 74, consent is defined as "if he agrees voluntarily and has the freedom and capacity to do so." The Court of Appeal examined the relationship between capacity and consent and determined that, depending on the defendant's mental condition, engaging in sexual activity would constitute rape if the complainant had momentarily lost her capacity due to alcohol or any other cause. However, it would not be rape if the complainant had voluntarily drunk large amounts of alcohol but was still conscious and capable of choosing to engage in sexual activity and consenting to do so. A person who commits the crime of rape is subject to life in prison upon conviction on an indictment, as stated in Section 1(4) of the SOA, 2003. The Act established the extraterritorial applicability by providing that UK residents who perform an act outside of the UK that would constitute a sexual offence under the SOA 2003 may nonetheless face the same charges as if they had done so on UK soil. Whereas in India, a person convicted of rape is subject to a sentence of strict imprisonment of at least seven years, but up to a life sentence, and a fine under Section 376 of the INDIAN PENAL CODE, 1860. But the Criminal Law has changed this provision.

Punishment for the offence under of rape under sexual offence Act, 2003.

According to the (Amendment) Act of 2018, the sentence must be at least ten years in jail but may go as far as life in prison along with a fine. According to the Criminal Law (Amendment) Act of 2018, anyone found guilty of raping a victim under the age of 16 faces a minimum sentence of 20 years in prison and a possible maximum sentence of life in prison, which would mean they would spend the rest of their natural lives behind bars. They would also be subject to a fine. Any additional fine imposed under this section shall be paid to the victim, and the fine shall be appropriate and reasonable to cover the victim's medical costs and rehabilitation.

Rape of the children against the children under sexual offence act, 2003.

The Sexual Offence Act, 2003's Section 5 in the United Kingdom outlines the crime of raping a child under the age of 13 in detail. If found guilty on indictment, a person who violates this law is subject to life in prison. A new section 376 AB will be added to the Indian Penal Code under Section 5 of the Criminal Law (Amendment) Act, 2018. According to Section 376AB, anyone who violates the law by raping a woman who is under the age of 12 would be punished with harsh imprisonment for a term that must not be less than 20 years but may also result in life in prison life, which means the person will be imprisoned for the remainder of their natural lives, along with a fine or death.

Regina Vs GGM- (Case related to rape of the children under 13years)

The victim, who was born in July 1995, was repeatedly sexually assaulted by the appellant. At the time, the victim was younger than 13 years old. When the victim told the police about the offence in 2009, they were discovered. Appellant was taken into custody. Considering the appellant's immaturity, his prior personal struggles, and the considerable disagreement he had with his mother, the judge who rendered the verdict reduced the sentence from 15 to 10 years because the appellant was only 15 or 16 at the time of the punishment. The Appellate Court upheld the prior Honorable Court's ruling and believed that a 10-year sentence in the case was appropriate for the reasons the accused stated.

The Criminal Code, 1985 In Canada.

The majority of criminal offence in Canada are codified in the Criminal Code. The Code was initially passed in 1892, continued in 1906 and 1927, considerably changed in 1953–54, and carried through in 1970 and 1985 legislative amendments. "The Criminal Code was created on the premise that no one could be found guilty of a crime unless it was clearly defined and mentioned in a statute. This Criminal Code has contributed significantly to the development of other laws and legal acts as well as to Canada's history. In Canada, rape was first formally defined by law in 1892. "Rape is the act of a man having carnal knowledge of a woman, who is not his wife, without her agreement, or with assent, which has been extorted by threats or fear of bodily damage," stated Section 266 of the Criminal Code, 1892. The consent standard was accepted with the words "rape is the act of a male having carnal knowledge of a woman who is not his wife without her consent" when the crime of rape was officially codified in 1892. To this day, this statutory definition has essentially not changed. " In Canada, rape is also considered to encompass sexual activity with a woman's consent that is obtained under duress. physical injury

Rape under Criminal Code,1985.

The Code defines the term "sexual assault" under Section 271. The sexual assault crime encompasses a wide range of actions. Sexual assault can be defined as any physical act that is conducted with intent to sexually exploit another person. Examples range from slapping someone in the buttocks at a pub to blatant rape. This offence replaced the more serious rape, which is no longer listed in the Canadian Code of Criminal Procedure.

In Canada, the rape is also includes intercourse with the women's consent if the consent is extorted by consent by threats or fear o fbodily harm.

Punishment of offence under sexual assault.

Everyone who commits a sexual assault is guilty of either: 1. an indictable offence, which carries a maximum sentence of ten years in prison and, if the victim is under the age of 16, a minimum sentence of one year in prison; or 2. an offence punishable on summary conviction, which carries a maximum sentence of 18 months in prison and, if the victim is under the age of 16, a minimum sentence of one year in prison.

Consent under criminal code,1985.

In Canada, rape also includes engaging in sexual activity with a woman's permission that is "extorted by threats or fear of bodily damage." At least theoretically, when assent is coerced through the fear of violence, it is not essential to demonstrate the absence of consent. On the other hand, the prosecution need not demonstrate that force was used or that substantial injury was threatened if lack of consent can be demonstrated. Although consent is the primary substantive question, British and Canadian courts base their decisions mostly on evidence of force and resistance. According to Section 150 of the Code, a person who is accused of committing a sexual offence under Sections 151, 152, 271, 272, or 273 involving a complainant under the age of 16 cannot raise the defense of the complainant's consent.

There are a few exceptions to this rule, including the following:

If the complaint is older than 14 years, but younger than 12 or 13, the complainant's consent may still be considered if the accused is under two years older than the complainant and does not hold any position of trust or authority over the complainant. The complainant's consent may be taken into account if the accused is less than five years older than the complainant and also if the accused is not in a position of trust or authority toward the complainant if the complaint is 14 years or more but less than 16 years old. If the accused has not taken all necessary steps to ascertain the complainant's age, they cannot utilize the error of age as a defense.

R Vs Bernie (case of sexual assault and lack of consent).

The accused worked as a nursing aide in a home for individuals with disabilities. He was accused of sexual assault after he repeatedly touched the testicles and breasts of residents

to make jokes with the other staff members. No claims of sexual enjoyment were made. Because of the touching nature and the victims' "lack of consent," the accused was found guilty.

Burden of Proof under the Criminal Code, 1985.

The majority of sexual assault cases are prosecuted and defended based on the complainant's or the accuser's statements. Courts have the necessary tools to evaluate oral testimony. The reliability of a person's evidence is examined, and it is evaluated based on that person's credibility. Consider a witness who is retelling an incident from

ten years ago as evidence that may be credible but not dependable. In Canada, it is ultimately the responsibility of the Crown to establish guilt beyond a reasonable doubt. However, neither the accused nor the complainants' evidence is subject to stricter or laxer standards.

Conclusion.

An examination of the rape laws in the United Kingdom, Canada, and India sheds light on some improvements that merit praise and other problems that require modification. India's rape laws and regulations have changed to give rape victims' freedoms and opinions more consideration within the criminal justice system and related organization. The concept of rape has expanded in breadth and now calls for a higher level of consent. There are now penalties for serial offenders and group rape, among other new offences. All states that offer rape victims compensation have put victim compensation plans into place. The fine levied on the defendant is adequate to pay for the victim's medical costs, and the victim will get a direct payout of any further fines levied against the offender. First assistance and medical care are provided without charge. Police and medical workers are being held more accountable for how they treat rape victims. Even though India's statutory rape laws have evolved over the years, they still lack many crucial provisions. The United

Kingdom's Sexual Offence Act, 2003 expanded the definition of rape to include the surgically created vagina, which now includes transgender people. However, only the word "woman" is used in the Indian Penal Code's definition of rape under section 375, indicating that this clause exclusively applies to one specific gender. Second, the Sexual Offence Act of 2003 has broadened its scope of application such that any citizen of the United Kingdom who commits rape outside of British territory will be prosecuted in the same way as if he did it inside the country. There is no such provision in Indian law for punishing an Indian person who commits the crime of rape outside of Indian territory. India needs therefore adopt a few concepts from wealthy nations in order to make its regulations more stringent and expand their application to cover all facets of society.