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Efficacy of Enhanced Punishment in Reducing the Offence against Women in India

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The Indian Country continues to face significant challenges from violent crimes against women, affecting individuals across all age groups and casting a shadow on societal progress. Despite the introduction of numerous legislative initiatives and stricter laws, the persistence of such crimes highlights deep-rooted systemic and cultural failures. Recognising the gravity of the issue, the Indian government has implemented stringent measures, including the Aparajita Bill, Shakti Bill, and Disha Act, aimed at ensuring swift justice and deterring offenders. These laws represent a commitment to creating a safer environment for women and upholding justice. The deterrence theory supports the idea that harsh, certain, and swift punishments instil fear in potential offenders, thereby reducing crime. However, while stricter penalties provide immediate relief and a sense of justice, they do not necessarily guarantee a long-term decline in offences. The paper discusses the severity of penalties and their impact on the decline of crimes against women by studying various laws such as the Aparajita Bill, Shakti Bill, and Disha Act, changes in criminal legislation, and their effects on society. This paper also provides measures for the prevention of crimes and assistance to victims with implications in the norms of society and culture, while assessing the effectiveness of punitive measures.

Keywords: *crime rate against women, crime rate, deterrent, statistical data.*

INTRODUCTION

Even after being tried through the legislation and programs in society, crimes against women have been a major issue in India. The debate about whether stricter punishments will reduce such crimes is complex. Legal reforms involving the safety of women always talk about deterrence, implying that stricter punishments may even deter future crimes. But in most cases, the implications of such actions are much more complicated on the ground. One such response by India enacts legislation like the Disha Act and the Shakti Bill to respond to the violent acts performed against women, particularly acid attacks and sexual abuse leading to rape. However, there is no clear effect of these legislations on decreasing crime levels. What deters crime is also associated with the levels of penalties, how effective they work, and how quickly they are enforced. However, only an increase in punishment level, however stern it may be, will not resolve the basic problems of violence against women. This paper explores the relationship between the severity of punishments and their actual impact on crimes against women in India.

The results are going to take into account formal legal and judicial aspects as well as informal cultural elements that would determine the effect of harsh punishments. In this regard, it is an effort to gauge if the system needs a more elaborate solution or if stern sentences alone would be sufficient to bring down the crime against women. This will involve situating analysis from case studies and the general data available in the National Crime Records Bureau (NCRB). The findings indicate that a safe environment for women calls for the incorporation of legal reforms with more significant social, educational, and support systems.

REVIEW OF LITERATURE

This article¹ primarily focuses on capital punishment, tracing its evolution and outlining the legal framework through various legislations and landmark cases. It delves into the psychological impact on society, discussing aspects like the psychological toll, ethical and moral dilemmas, deterrence, and behaviour. However, it does highlight some research gaps,

¹ Dr. Sangeeta Thakur, 'Capital Punishment In India: A Complex Issue' (2023) 5(4) International Journal for Multidisciplinary Research <<https://www.ijfmr.com/papers/2023/4/5525.pdf>> accessed 15 March 2025

such as the limited examination of how socioeconomic status affects sentencing decisions, especially in cases where marginalised groups are disproportionately impacted.

Additionally, a deeper comparative analysis of India's capital punishment policies alongside those of other countries could shed light on best practices and alternative approaches. While the study touches on societal effects, it could further explore the psychological ramifications of prolonged death row incarceration on both convicts and their families. There's also room for more research into rehabilitative justice models and alternative sentencing options that might serve as substitutes for the death penalty.

This article² provides a thorough overview of sentencing policy in India, pointing out its shortcomings. It makes a strong case for the need for a Uniform sentencing policy and discusses potential pathways for its development, supported by various case studies. However, it also identifies some research gaps, including the absence of a well-defined sentencing policy or structured guidelines in India, a lack of exploration into corporate sentencing policies, and the need for a balanced approach that respects victims' rights. Future research could look into how discretion affects sentencing outcomes and propose ways to harmonise flexibility with fairness.

This book³ explains how the death penalty differs from one country to another, with a particular emphasis on the Indian viewpoint regarding various offences. It also touches on the role of non-state actors in shaping the death penalty landscape and examines public opinion on the subject from various countries. There are some gaps in the research that could be filled, such as looking into the long-term trauma faced by families of both victims and convicts. A more in-depth analysis of how effective rehabilitation and deterrence are would be beneficial. Furthermore, conducting a detailed cost-benefit analysis that compares the death penalty with other sentencing options could yield valuable information. The influence of non-state actors on legal reforms and abolition movements is another important area to consider, along with a comprehensive comparative study of sentencing trends across different legal systems to uncover best practices.

² Mr. Puranjay Das, 'Sentencing Policy in India: A Study of Criminal Justice System' (2023) 4(8) International Journal for Multidisciplinary Research <<https://www.ijmrtjournal.com/wp-content/uploads/2023/08/SENTENCING-POLICY-IN-INDIA.pdf>> accessed 12 March 2025

³ Sanjeev P. Sahni and Mohita Junnarkar, *The Death Penalty Perspectives From India and Beyond* (1st edn, Springer Nature Singapore, 2020)

This journal⁴ discusses the connection between the severity of punishments and crime rates in various jurisdictions, explaining how tougher penalties can lead to a decrease in crime. It also touches on the paradox of countries with strict punishments still facing high crime rates, pointing out factors like law enforcement efforts and how offenders manage to avoid capture.

There's a research gap here that could delve into why some areas with severe penalties still see high crime rates, how criminals adapt to these harsh measures, and the effectiveness of different crime prevention strategies compared to punitive actions. A more thorough analysis of sentencing trends across various legal systems could reveal best practices, and it would be beneficial to explore the wider societal impacts of severe punishments, such as their effects on recidivism and rehabilitation.

This book⁵ provided a detailed history of how rape has been treated within the legal system. It also shed light on the experiences of rape victims as they navigate the criminal justice process. Additionally, it discussed the responses from judges, taking into account societal biases and perspectives, and suggested various policies aimed at improving the handling of rape cases. There are notable research gaps, such as investigating the reasons behind the high attrition rates from reporting to conviction. Further studies could delve into how prevalent myths affect jury decisions and sentencing, conduct comparative analyses of rape laws and justice systems around the world, and examine how victim support services influence the willingness to report and pursue cases.

METHODOLOGY

The methodology followed by the researcher is doctrinal, analytical, and descriptive. For convenience and better understanding, research has been conceptualised into two basic facets - descriptive and analytical. Firstly, a descriptive study of the existing legal framework in the Indian context and an analytical study for analysing the NCRB data on crime rate against women and then research gives some regulatory and suggestive measures based on analysis.

⁴ Tim Friehe and Thomas J. Miceli, 'On Punishment Severity And Crime Rates' (2017) 19(2) American Law & Economics Review < <https://doi.org/10.1093/aler/ahx017> > accessed 20 March 2025

⁵ Jennifer Temkin, *Rape and the Legal Process* (OUP 2002)

The primary sources in this research are legislation, regulations, Judicial decisions, and Government documents like official reports. The secondary sources are legal commentaries like law review articles, academic theses like dissertations, books, Reports like NGO findings, and policy papers.

PROBLEM

The role of punitive measures in affecting crime rates is a key concern in criminal justice policy, impacting everything from legislative frameworks to how judges hand down sentences. While many think that tougher punishments can help prevent criminal behaviour, what's the real effectiveness of the enhanced punishment on the reduction of crime?

RESEARCH QUESTIONS

1. Whether the increase in the quantum of punishment for sexual offences decrease the crime rate?
2. Whether the enhanced and stricter punishments can cause deterrence and reduce the crime rate
3. Can better trials and implementation result in better management of the reduction of crime?

RESEARCH OBJECTIVES

1. To see the efficacy of enhanced punishments for offences against women
2. To analyse the relationship between enhanced punishment and crime reduction, evaluating whether harsher penalties lead to measurable reductions in criminal behaviour or if alternative approaches
3. To compare Indian laws with those of other countries.

HYPOTHESIS

The hypothesis for the research paper is the increase in the severity of punishment does not reduce the rape crime rate in India.

DISCUSSION

Crime: Crime usually involves an act or omission against the law, which has been committed and is punishable by the State. It involves conduct considered harmful or dangerous to persons, society, or the state itself. There are various types of crime, including personal crimes, property crimes, Inchoate Crimes, Statutory Crimes, and Financial Crimes. Crime occurs for various reasons that are often set off by a combination of social, economic, psychological, and environmental factors.⁶

Rape: Rape is defined as the sexual assault where one person penetrates or has intercourse or other forms of sexual activity with another without that other's consent. Rape commonly involves physical force, compulsion, threats, or trickery although the situation may often be such that the victim cannot consent since he or she may have been overwhelmed by drink, unconscious, or mentally incapable of doing so.⁷

The causes of the offense rape are multi-dimensional just like the power of domination over the victim, patriarchy, and male dominance, in places where women are objectified and sexualized and rape myths. Legal causes also exist, such as a weak legal framework or lack of deterrence, for example judicial process is slow and corrupt. Poor education on gender equality can and the normalisation of violence in upbringing and many more.

LEGISLATION FOR WOMEN'S SAFETY IN INDIA

Constitution of India: In India, under the Constitution of India, there are articles made to support the safety of women. Article 14 guarantees that women enjoy equal rights as men, and their rights and freedoms are equal. For example, any crime committed against a woman, including domestic violence or sexual harassment, is dealt with just like any other. The court provides justice and protection under the law.⁸ Article 15(1) denies discrimination based on gender.⁹ Women are entitled, like men, to access public places, education, and job opportunities. This truly gives women a safe and friendly environment. Article 15(3)¹⁰ special

⁶ *Ibid*

⁷ John Mascolo Esq, 'Rape Laws' (*Find Law*, 30 November 2023)

<<https://www.findlaw.com/criminal/criminal-charges/rape.html>> accessed 25 March 2025

⁸ Constitution of India 1950, art 14

⁹ Constitution of India 1950, art 15(1)

¹⁰ Constitution of India 1950, art 15(3)

provisions for women and children, special measures in the form of the state guarantee protection for women and their well-being. Such examples are women's police stations, helplines, and shelters, especially for those who are victims of violence.¹¹ Article 16 affirms equal opportunities in government jobs, thereby providing more opportunities to women in law enforcement and other related positions of power, resulting in a safe society for women.¹²

Article 39(a)¹³ gives women an adequate means of livelihood, which will eventually lead them to financial independence and away from exploitation and abuse and gives the women the right to an adequate means of livelihood, which automatically allows them to gain financial independence and saves them from becoming a victim of exploitation and harassment. Article 39(d) is related to equal pay for equal work significant source that reduces economic disparities and provides women with the muscular power to counter exploitation and harassment at their workplace.¹⁴

Article 51A(e) encourages citizens to dislike those practices that debase the dignity of women, like dowry, child marriage, and female infanticide. This encourages a culture of respect and protection to be inculcated for women. When such constitutional provisions are implemented properly, they develop an entire structure that supports the safety, dignity, and empowerment of women in India.¹⁵

Criminal Laws: The IPC/BNS contains severe punishments for crimes against women such as rape, domestic violence, and sexual harassment. This aims to make the legal environment so inappropriate that would-be offenders know of the seriousness of the consequences of their actions. The Act Criminal Procedure Code (CrPC)/Bharatiya Nagarik Suraksha Sanhita (BNSS) deals with the procedure followed after an act is done. In contrast, the Indian Evidence Act 1872 (IEA)/Bharatiya Sakshya Adhiniyam (BSA) deals with the evidentiary value, admissibility, production, and evaluation of evidence in Indian Courts.

Indian Penal Code 1860 r/w Bhartiya Nyaya Sanhita 2013: The Indian Penal Code 1860 mentioned the rape provisions and defines rape and circumstances under which sexual

¹¹ Constitution of India 1950, art 15

¹² Constitution of India 1950, art 16

¹³ Constitution of India 1950, art 39(a)

¹⁴ Constitution of India 1950, art 39(d)

¹⁵ Constitution of India 1950, art 51A(e)

intercourse is considered to be rape under section 375¹⁶. Section 376 prescribes the punishment for rape, which can extend from rigorous imprisonment up to life and/or even a fine.¹⁷ According to section 376A¹⁸, punishment is given in cases when the act leads to death or leaves the victim in a vegetative state for any amount of time. Section 376B¹⁹.

One of the IPC deals with sexual intercourse by a husband with his wife during separation. Section 376C of the IPC²⁰ Deals with sexual intercourse by a person in authority. Gang rape is dealt with under 376D and repeat offenders of offenses dealt with in the above sections are punished under section 376E of IPC.²¹

In BNS, section 375 is reproduced in section 63²², the changes made in the section are the exception 2 of 375 states that the sexual acts between a man and his wife who was not under 15 years of age were not considered rape and this was changed into sexual acts between man and he was who was not under 18 of age are not considered rape.

Section 64 of BNS²³ -rovides punishment of rape where 376(1) and 376 (2) of IPC are replaced as clause (1) and (2). Section 65 (1) of BNS is the replica of section 376(3) which gives punishment for rape of a woman below 16 years. Section 65(2) is the replica of section 376AB which gives punishment of rape of a woman below 12 years of age.

Section 66 of BNS²⁴ deals with punishment for causing death or a persistent vegetative state of the victim. This is a reproduction of section 376 A of the IPC. Section 67²⁵ is the replacement of section 376B of the IPC, which deals with sexual intercourse by a husband upon his wife during separation. Newly introduced provisions of section 69 BNS²⁶.

Deal with the provision of punishment wherein sexual intercourse is committed employing deceitful means, etc. Section 70 BNS²⁷ Deals with gang rape offence. Section 71 BNS provides

¹⁶ Indian Penal Code 1860, s 375

¹⁷ Indian Penal Code 1860, s 376

¹⁸ Indian Penal Code 1860, s 376A

¹⁹ Indian Penal Code 1860, s 376B

²⁰ Indian Penal Code 1860, s 376C

²¹ Indian Penal Code 1860, s 376

²² Bharatiya Nyaya Sanhita 2023, s 63

²³ Bharatiya Nyaya Sanhita 2023, s 64

²⁴ Bharatiya Nyaya Sanhita 2023, s 66

²⁵ Bharatiya Nyaya Sanhita 2023, s 67

²⁶ Bharatiya Nyaya Sanhita 2023, s 69

²⁷ Bharatiya Nyaya Sanhita 2023, s 70

punishment to a repeat offender. Section 72 BNS identifies that victim in rape cases shall not be disclosed.²⁸

Criminal Procedure Code (CrPC), 1973 R/w Bharatiya Nagarik Suraksha Sanhita, 2013: The Criminal Procedure Code (CrPC) deals with the procedural aspect after a complaint about the offence. According to Section 154(1), the information relating to sexual offenses including rape must be recorded by a female police officer.²⁹ The statements from the rape victims may be audio-video recorded and must be recorded by a women police officer under section 161³⁰ and according to section 164(5), the Judicial Magistrate must record the statement of the rape victim.³¹ The offenses relating to rape should be tried by a court presided over by a woman judge, as far as possible under section 26.³²

The Criminal Procedure Code (CrPC) was repealed and replaced with Bharatiya Nagarik Suraksha Sanhita, 2023. In Bharatiya Nagarik Suraksha Sanhita (BNSS), Section 154(1) of CrPC³³ has been replaced with Section 173 in BNSS.³⁴ This introduces recording FIRs through audio-video recordings and e-FIRs to make the process more accessible and efficient, and the concept of zero-FIR allows FIRs to be filed at any police station irrespective of jurisdiction.

Section 161 of the CrPC was replaced with section 180 in the BNSS. The changes made are to enhance the provisions for protection of witnesses during investigation, and section 164(5) of CrPC was changed to section 187 in BNSS, making additional procedural safeguards to confirm the voluntariness of confession of the accused.³⁵

Indian Evidence Act, 1872 R/w Bharatiya Sakshya Adhiniyam, 2013: The Indian Evidence Act of 1872 section 114A, 53A, 146 deals with the evidentiary value of rape cases. Section 114A deals with the presumption as to the absence of consent. Section 53A states that in prosecutions for rape or attempt to rape, the evidence of the character or previous sexual experience of the victim is not relevant and cannot be used to discredit the victims, and

²⁸ Bharatiya Nyaya Sanhita 2023, s 63

²⁹ Code of Criminal Procedure 1973, s 154(1)

³⁰ Code of Criminal Procedure 1973, s 161

³¹ Code of Criminal Procedure 1973, s 164(5)

³² Code of Criminal Procedure 1973, s 26

³³ Code of Criminal Procedure 1973, s 154(1)

³⁴ Bharatiya Nagarik Suraksha Sanhita 2023, s 173

³⁵ Bharatiya Nagarik Suraksha Sanhita 2023, s 173 and 180

section 146 prohibits questions in cross-examination that intend to insult or annoy the victim.³⁶

The Indian Evidence Act, 1872, was replaced with Bharatiya Sakshya Adhiniyam, 2023. The BSA continues to uphold the presumption that if the victim states she did not consent, the court shall presume the absence of consent. This ensures that the victim's testimony is given significant weight in rape cases. The burden of proof remains on the accused to demonstrate that the sexual act was consensual, thereby protecting the victim's rights and dignity.³⁷

AMENDMENTS IN CRIMINAL LAW

Criminal Law Amendment 1983 -

Mathura Rape Case:³⁸ This criminal law amendment was based on the Mathura Rape case, also referred to as the case *Tukaram and another v The State of Maharashtra* which involved the rape of a young tribal girl by the name Mathura by two police constables, Tukaram and Ganpat at the Desaijanj police station in Maharashtra in 1972. Mathura had gone to the police station to complain about her abduction, but she ended up facing sexual assault at the hands of the constables.

The main questions this case raised are: Did Mathura consent to the sexual intercourse? Had the police officers relinquished their position or taken advantage of the situation due to their official status? For this judgment of the high court, it acquitted the accused, based on a decision that Mathura had given her consent to intercourse. The high court reversed this decision and convicted the accused of imprisonment. The case was appealed to the Supreme Court, which gave an unscrupulous judgment acquitting the accused on the pretext that there was no evidence of resistance from Mathura, and of their view that she must have given consent.

The judgment of the Supreme Court brought up much public furore and protest, highlighting the lacunas in the legal regime regarding sexual assault cases. It led to far-reaching legal

³⁶ Indian Evidence Act 1872

³⁷ Bharatiya Sakshya Adhiniyam 2023

³⁸ *Tukaram v State of Maharashtra* (1979) 2 SCC 143

reforms in the form of the Criminal Law Amendment Act of 1983, which incorporated changes made in the IPC, CrPC, and IEA for better protection of the victims of sexual assault.

Amendments: This amendment brought the biggest changes and sections 228, 376-B, 376-C, and 376-D were inserted to deal with custodial rape in Indian Penal Code, Section 114A³⁹ It was inserted in the Indian Evidence Act, 1872. Now let's get into detail about the sections that were changed. IPC sections 376B⁴⁰, 376C⁴¹, and 376D⁴² were inserted in section 376⁴³ Which provided stringent punishment for rape, especially custodial rape. There was recognition of the power play and vulnerability of victims. It was prohibited by section 228A⁴⁴ To disclose the identity of the victim of rape.

Any attempt to break this provision would attract imprisonment of up to two years and a fine. For example, amendments are made to the Criminal Procedure Code so that cases of rape are tried in-camera so that the dignity of the victim is protected along with anonymity. Moreover, female judges can be appointed for the trial of rape cases so that a more sympathetic platform of the victims can be portrayed.

Section 114A of the Indian Evidence Act created a presumption that in rape cases, there was no consent at all. Whereas the girl herself declares not consenting to sexual intercourse, the court shall presume that she had not given her consent. This is a rebuttable presumption as the accused may prove some other thing to the contrary. The intent was to give further protection to victims and to ensure that a better kind of legal process takes place in such cases. There are more similar cases before the Mathura case; these cases are mentioned below.

Rameeza Bee Case: The Rameeza Bee case is the one that occurred in 1978 in Hyderabad, India. Rameeza Bee claimed that four policemen inside the Nallakunta police station raped her. Her husband, Ahmad Hussain, was beaten to death by the police when he protested against the attack. Consequently, there were widespread riots and violence in Hyderabad. As a result, curfews and police firing ensued. The core issues, in this case, are the case highlighted police officers' abuse of power and their role in serious crimes such as rape and

³⁹ Indian Evidence Act 1872, s 114A

⁴⁰ Indian Penal Code 1860, s 376B

⁴¹ Indian Penal Code 1860, s 376C

⁴² Indian Penal Code 1860, s 376D

⁴³ Indian Penal Code 1860, s 376

⁴⁴ Indian Penal Code 1860, s 228A

murder, and the other issue is to ensure that justice was served to Rameeza Bee (the victim) for the atrocities committed towards her and her husband. The incident paved the way for the formation of the Mukhtad Commission of Inquiry, which ensued with an investigation into the whole affair.

The Commission established that indeed Rameeza Bee was raped by police officers, and her husband was killed for protesting. The Commission recommended the prosecuting of the accused police officers under Section 376 of the Indian Penal Code (IPC) for rape. In addition to Mathura rape, the Rameeza Bee case was an active participant in leading public discourse on police brutality and the necessity of legal reform to safeguard victims of sexual assault. Both of these also came into the ambit of the more general women's movement of India during the late 1970s and early years of the 1980s.

Maya Tyagi Case:⁴⁵ The facts of the case are incident occurred on June 18, 1980, in Baghpat, Uttar Pradesh. Maya Tyagi was car broke down; on repairing the car, in the meantime, a policeman in civics tried to molest Maya Tyagi. Her husband intervened, and there was a scuffle. They falsely claim to have had an encounter and wrongfully detained and assaulted Maya Tyagi. Issues of this case include the case highlighted severe police misconduct, including false accusations and physical assault. A judicial inquiry committee was, therefore, set up by the Baghpat inquiry committee to inquire into this incident.

The committee rejected the police encounter theory and attributed the causation of injuries to Maya Tyagi by the policemen. The case evoked public indignation throughout the land and made the government take assurance of a proper inquiry and accountability over police misbehaviour. The trial court acquitted the accused with the reasoning that the testimony of the victim was incredible and full of inconsistencies. This particular case brought about sensitivity in dealing with rape cases and the importance of never stigmatizing a victim. The Supreme Court of India set aside the order of acquittal given by the trial court, and that judgment highlighted the importance of the victim's testimony in rape cases.

Of course, the Court did criticise the trial court for its callousness in how the said court wrongly questioned the character of the victim. The Supreme Court convicted the accused

⁴⁵ *Maya Tyagi v State of Uttar Pradesh* CrI App No 183/1988

with a clear statement that the testimony of a rape victim cannot be taken lightly and assigned minimal importance.

The State of Punjab v Gurmit Singh & Ors:⁴⁶ The facts of the case are that it took place at Pakhowal, Punjab when a minor girl who is below 16 years of age and was studying in the 10th class was abducted by three men named Gurmit Singh, Jagjit Singh, and Ranjit Singh, in a blue Ambassador car while she was going to her uncle's house after her Geography exam. She was taken to a tube well where she was raped by all three accused. The court acquitted him in the case because the evidence was contradictory, and there were contradictions in her statements and evidence. This case reiterated that rape cases are not to be treated lightly and deserve sensitivity and care not to brand the victim.

The Supreme Court of India set aside the judgment of the trial court acquitting the accused on the ground that no importance was given to the testimony of the victim in rape cases. Here again, the Court blamed the impugned judgment for its insensitivity towards the facts of the case and for questioning the character of the victim, not properly. The Supreme Court convicted the accused and held that a rape victim's testimony should not be belittled and deserves due importance.

It overruled the acquittal of the trial court and gave importance to the testimonial evidence of a victim in rape cases. It was unconscionable on the part of the trial court to single out the accused for sheer insensitivity in raising unnecessary questions about the character of a victim that were unjust and not called for. The Supreme Court convicted the accused while holding that testimony of a victim of rape cannot be belittled lightly. This is a landmark case of Indian jurisprudence, and it lays great importance on the role of judicial sensitivity and proper handling of a rape case.

Criminal Law Amendment, \ 2013 -

Nirbhaya case/Delhi Rape Case:⁴⁷ The facts of the case are such that on 16 December 2012, a 23-year-old paramedical student, Jyothi Singh, and her male friend boarded a private bus after watching a movie in South Delhi. Both were attacked by six men, including the driver of the bus. Jyoti was gang-raped and assaulted with an iron rod. Her friend was beaten

⁴⁶ *The State of Punjab v Gurmit Singh & Ors* 1996 SCC (2) 384

⁴⁷ *Mukesh & Anr v State for NCT of Delhi & Ors* (2017) 6 SCC 1

unconscious. Viscera injuries had been caused to the abdomen, intestines, and genitals of Jyoti. She was first treated at New Delhi's Safdarjung Hospital and later transferred to Mount Elizabeth Hospital in Singapore. There, she died on December 29, 2012. The assailants identified were Ram Singh (the driver), Mukesh Singh, Vinay Sharma, Pawan Gupta, Akshay Thakur, and a juvenile. Ram Singh hanged himself in prison before the trial. Many questions were raised - from this incident, mass protests erupted all over India demanding justice for the girl and better safety for women. The protests brought out the widespread nature of sexual violence and the necessity for systemic reforms. The case led to vast legal reforms, such as the Criminal Law (Amendment) Act of 2013, whereby stricter punishments were introduced for sexual offences. The Amendment Act, of 2013, also established fast-track courts for cases related to rape.

Due to one of the accused being a juvenile, debates and amendments were wide-ranging that had to be done to allow minors between 16-18 years of age to be tried as adults when committing heinous crimes. The four adult defendants on September 10, 2013, were convicted of rape and murder Mukesh Singh, Vinay Sharma, Pawan Gupta, and Akshay Thakur. They were sentenced to death on 13 September 2013. The juvenile was given a three-year term in a reform facility, the maximum punishment the Juvenile Justice Act allowed at that time.

The Supreme Court upheld the death sentence in May 2017. After receiving a spate of rejection dismissals of successive appeals and mercy petitions, the four convicted persons were hanged on March 20, 2020. The Nirbhaya case represents an iconic landmark in India's legal and social history for continuing to embody a fight against sexual violence and seeking justice and legal reforms. Hon'ble Justice R. Banumathi said in this solution that governments, employers, and institutions must take steps so that all the stakeholders might be aware of gender sensitisation and respect women. Besides that, she opined, effective implementation of the various legislation for the protection of women and also in changing the mindsets of the society at large and making the public aware about gender justice would indeed take the fight against violence against women a long way. A few of the propositions become practical suggestions.

Public transport vehicles (autos, taxis, buses, etc.) should have banners and placards. Light pollution (side lighting) should be kept strictly in check in places like streets and parks where

there is the likelihood of such occurrences of crimes. Mobile applications accessible through smartphones are supported for women in emergencies.⁴⁸

Justice Verma Committee: The Justice Verma Committee was instituted after the Delhi gang rape case in 2012 to suggest changes in criminal law so that sexual assault crimes are dealt with faster and heftier penalties are meted out. The Committee under the Chairmanship of Justice J.S. Verma presented its report on January 23, 2013. The Justice Verma Committee recommended police reforms and electoral and educational reforms.

Reforms to the police suggested ways of improving the way sexual assault cases would be handled. This included training for police officers as well as the formation of special units. Electoral reforms and educational reforms were recommended to prevent charged perpetrators from participating in elections or to make gender sensitisation a part of any educational curriculum.

This brought many changes to the Indian Penal Code. The rape definition in Section 375 was expanded to include acts even beyond penetration, including non-penetrative forms of sexual acts and also any kind of penetration that is non-consensual regarding sexual nature. Non-penetrative sexual contact has been classified as sexual assault; the imprisonment is up to five years. Marital rape was recommended to be included as a criminal offense even though not incorporated fully into the amendments.⁴⁹

The Act of 1995 widened the scope of provisions with tougher sentences, such as capital punishment for a repeat offence and for those in which the victim succumbed or was left in a permanent vegetative state. The age of consent was raised to 18 years from 16 years. Consent had been defined very clearly as an unambiguous, explicit, voluntary assent. Resistance at any stage does not imply consent. It also permits punishment to public servants who do not record a complaint of rape or refuse medical treatment of a rape victim. Provisions were made for the speedy trial and inquiry in cases of sexual offences.

⁴⁸ Krishnadas Rajagopal, 'Harsher Anti-Rape Laws Alone Do Not Deter Crimes Against Women, Supreme Court Had Warned Government in Nirbhaya Verdict' *The Hindu* (New Delhi, 18 August 2024) <<https://www.thehindu.com/news/national/harsher-anti-rape-laws-alone-do-not-deter-crimes-against-women-sc-had-warned-govt-in-nirbhaya-verdict/article68537350.ece>> accessed 08 March 2025

⁴⁹ Sudipta Datta, 'What did Justice Verma panel say on death penalty for rape?' *The Hindu* (26 August 2024) <<https://www.thehindu.com/news/national/what-did-justice-verma-panel-say-on-death-penalty-for-rape-explained/article68566587.ece>> accessed 08 March 2025

Victim Protection provisions were made to protect the privacy and dignity of victims who can also be assured that their identity shall not be disclosed and provisions are the prohibition of revealing the identity of rape victims. Guidelines for medical examination of the rape victims have been standardized and are done with sensitivity and care. It is specially presented to particularly deal with acid attacks in the 326A & 326B, which consist of punishment and compensation for the victim. It defined criminalised sexual harassment under section 354A. The act of disrobing women was criminalised under section 354 B. Under 354C, voyeurism was introduced. New offences of stalking and voyeurism were introduced with specific punishments. Stalking of women has been criminalised under section 354D.

This amendment replaced the old section 370 to include women trafficking as per the UN Trafficking Protocol and enhanced penalties for the trafficking of persons, especially minors. Introduced section 376A of IPC which deals with sexual assault leading to death or a persistent vegetative state and section 376D which deals with gang rape with stringent punishments.⁵⁰

Criminal Law Amendment 2018 -

Unnao Rape Case:⁵¹ The Unnao rape case refers to the case of gang rape of a 17-year-old girl. This incident occurred on June 4, 2017, in Unnao, Uttar Pradesh. Kuldeep Singh Sengar, who was the main accused, was a former MLA from the Bharatiya Janata Party (BJP). According to the victim, she was raped by Sengar at his residence. At first, the police at the local level appeared not to want to take up the case and initiate appropriate legal processes against the suspects, considering the political influence that is supposedly behind a cover-up attempt. There is a lot of delay in filing charges and initiating a proper investigation. After public agitation, the case landed at the Central Bureau of Investigation, with Sengar being arrested.

In April 2018, the victim had set herself on fire outside the residence of Uttar Pradesh Chief Minister Yogi Adityanath, accusing it as a case police of inaction. On December 20, 2019, he was convicted to a life sentence. Sengar was also convicted in the case of the death of the victim's father, who had died in judicial custody after allegedly being framed and beaten by Sengar's associate. Sengar was also convicted in the case of the death of the victim's father,

⁵⁰ *Ibid*

⁵¹ *Kuldeep Singh Sengar v State of Uttar Pradesh* (2020) SCC OnLine Del 1638

who had died in judicial custody after being alleged to have been framed and beaten by Sengar's associates.⁵²

Kathua Rape Case:⁵³ The Kathua rape case is an abduction and gang-rape cum murder case perpetrated upon an 8-year-old girl named Asifa Bano, belonging to the nomadic Bakarwal community, near the Rasana village in Kathua in Jammu and Kashmir, last January. She was abducted and confined captive in a temple where she was continually raped before being murdered. Her dead body was discovered after a week. This incident gives rise to the motive that the crime was allegedly committed to throw the Bakarwal Community out of the place.

At the trial stage, eight males were prosecuted, comprising one minor. The case was filed in April 2018, and on June 10, 2019, six of the seven accused were convicted and punished by the court. Three were given sentences for lifetime imprisonment, while another five were imprisoned for destroying evidence. It was one of those cases that unleashed deep-seated communal tensions, given that the victim was from a Muslim nomadic tribe, and the accused belonged to the Hindu community. There are allegations that local police officers, who were later convicted for the destruction of evidence, also destroyed other evidence.

Both cases brought widespread outrage and protests in all parts of the country, throwing light on the lacunas in the existing legal framework which had the lacunas to deal with such heinous crimes and led to great legal and social reforms, such as the Criminal Law (Amendment) Act, 2018, which changed the sentencing for cases related to sexual offenses with more stringent punishments. Within a short period, reactions were taken by the government toward the public outcry. The President allowed on 21st April 2018 the amendment of the Indian Penal Code (IPC) the Criminal Procedure Code (CrPC), the Protection of Children from Sexual Offences (POCSO) Act, and the Indian Evidence Act (IEA) to be amended by an ordinance. The services were later on replaced by the Criminal Law Amendment Bill, passed by the Parliament on August 6, 2018, and received the assent of the President on 11th August 2018.

The Criminal Law (Amendment) Act of 2018 has brought some very radical changes to the legal framework relating to sexual crimes in India. They harshly amended some of the

⁵² Saumya Sinha, 'The Criminal Law (Amendment) Act, 2018' (*iPleaders*, 24 October 2018) <<https://blog.ipleaders.in/criminal-law-amendment-act-2018/>> accessed 12 March 2024

⁵³ *Mohd. Akhtar v State of Jammu and Kashmir* (2018) 5 SCC 499

recruitment rules in Criminal Laws like the increase in the minimum punishment from 7 to 10 years for rape enhancement under section 376 and even stretching up to life incarceration without parole.

They added subsections 376AB, 376DA, and 376DB. The explanation for section 376AB speaks involved the rape of a girl under 12 years. Sentence: Imprisonment for a term that may extend to life imprisonment or even death. Section 376DA of the Indian Penal Code deals with the Crime of Gang Rape of a girl not 16 years of age. It prescribes a minimum of 20 years of imprisonment, which may even be converted into life imprisonment. Section 376DB lays down that gang rape of a girl under 12 years obliges the convict to 20 years minimum, extendable to life imprisonment or death.

The Criminal Procedure Code mentions that section 173 assures that the investigation of the rape cases should be done in 2 months. Section 374 of CrPC states that the appeal case in rape cases has to be disposed of within six months. Further, anticipatory bail cannot be given to the accused people committing rape against girls below the age of 16 under section 438 of CrPC.⁵⁴ This will leave no discretion upon the High Court or Court of Sessions and Bail application in all the rape cases involving girls under 16 years of age shall be mandatorily heard by a High Court or Court of Sessions under section 439 of CrPC.

In the Indian Evidence Act, IEA section 53A states that the evidence of the character of the victim or earlier sexual experience is not relevant to determine consent or quality of consent, and section 146 also prohibits questioning the character of the victim in cross-examination. This process made the investigation and trial much speedier. The Criminal Law (Amendment) Act, 2018, brought important amendments to the POCSO Act in the protection of minor girls against other minor girls.

It introduced rape of the girl below 12 years of age and enhanced minimum punishment for rape of the girl below 16 years of age from 10 years to 20 years, extendable to imprisonment for life. The investigations should be completed in 2 months, and fast-track courts established

⁵⁴ Shraddha Chaudhary, 'Reforms to the Legal Framework of Child Sexual Abuse in India: Legislative Band-Aids on Systemic Wounds' (2020) 44(1) Statute Law Review <<https://doi.org/10.1093/slr/hmaa007>> accessed 27 March 2025

for a speedy trial under the POCSO Act. The amendments look to strengthen deterrence against child-related sexual offences, along with providing speedy justice to victims.⁵⁵

Disha Act 2019: The Disha case, officially known as the 2019 Hyderabad gang rape and murder case, doesn't have a specific legal citation because the encounter was extrajudicial and the court case is a result of the vigilante incident. On the night of November 28, 2019, a young veterinary doctor, known by her address as Disha (name changed to protect her identity), was kidnapped, gang-raped, and murdered by four men. Her body was later burned and thrown out on the outskirts of Hyderabad. The four accused were Mohammad Arif, Jollu Shiva, Jollu Naveen, and Chinta Kunta Chennakeshavulu. The police killed the four accused at Chatan ally in Ranga Reddy district on December 6, 2019, claiming they attempted to escape while reconstructing the crime scene.

The legitimacy of police actions raised serious questions concerning the coming of delivering instant justice. The Supreme Court constituted a three-member inquiry commission to determine the circumstances behind such an encounter. This created waves of public debates on the efficacy and ethics behind such extrajudicial killings. The inquiry commission found many discrepancies in the police version of events. The report said that the encounter was concocted and beyond belief. The commission called for further investigation and even legal action against those police officers involved in this case. The Disha case has exposed serious anomalies in the criminal justice system, such as a long-standing demand for quick dispensation of justice and the ethical implications of extrajudicial executions.

The Disha Act was brought into force to prevent brutal gang rape and murder incident. The aim of this act is to it must fasten the trail of investigation along with trial in respect of crimes against women and children to ensure justice within 21 days, enforce stiff punishments in the form of capital punishment for heinous crimes to serve as a deterrent to prospective offenders. Another objective is to institute special courts and police teams to deal with these cases more effectively and efficiently.

The Act also provides for the creation of a Women and Children Offenders Registry, which will be made public. It allows the appointment of exclusive police stations dealing with

⁵⁵ 'Death Penalty for Rape of Children Below 12 Years Age: Union Cabinet Approves Ordinance' *The Indian Express* (21 April 2018) <<https://indianexpress.com/article/india/union-cabinet-approves-ordinance-for-death-penalty-for-rape-of-children-5146104/>> accessed 28 March 2025

women-related offences. The Disha Act criminalises acts of spreading fake news, defamatory posts, or offensive material targeting females through social media, making those liable for punishment. A provision has also been made for swift measures for addressing cyberbullying and harassment as well. Although the Act has been appreciated for the prompt steps it has undertaken against violence against women, it has also been criticised on a few counts. The legal professionals find that the provisions of the Act are misused by imposing the death penalty, and speedy trials may serve in the interest of justice. Nevertheless, the Disha Act is one of the strict laws of India for women's protection with urgent justice delivery.⁵⁶

Shakti Criminal Laws (Maharashtra Amendment) Bill 2020: The Shakti Criminal Laws (Maharashtra Amendment) Bill, 2020, specifically deals with the amendments related to the legal structure of Maharashtra concerning crimes against women and children. The critical amendments relate to the insertion of provisions and introduction of certain punishments including introducing the death penalty, for a new set of offenses, for eg, grievous hurt by causing acid splurging rape/ gang rape and the circumstantial merits or demerit warrant exemplary sentencing.

Enhancement for imprisonment and also for the level of fine related to the imprisonment for many offences under the IPC or the POCSO Act. Bill has given a relatively shorter period for an investigation, trial, and disposal of appeals in sexual offence cases. It made social media platforms and mobile data companies liable to provide data to the authorities within three working days on notice in rape cases, sexual harassment, etc. The Bill incorporated new sections to address problems such as sexual harassment through threats or offensive communications to encompass digital communications. These changes are straining towards tougher punishments with the swift delivery of justice to sexual crime victims. In doing this, it's making women and children in Maharashtra better protected and safer.⁵⁷

Aparajita Bill 2024: The Aparajita Bill, also known as the Aparajita Woman and Child Bill (West Bengal Criminal Laws and Amendment) 2024, has been passed by the West Bengal Legislative Assembly. It is to amend the Bharatiya Nyaya Sanhita, 2023, the Bharatiya

⁵⁶ Andhra Pradesh Criminal Law (Amendment) Act 2019

⁵⁷ Shakti Criminal Laws Bill 2020

Nagarik Suraksha Sanhita, 2023, and the Protection of Children from Sexual Offences Act, 2012, in application to the West Bengal State, to enhance punishment and to constitute the framework. This bill will strengthen the laws on rape and sexual crimes and would go down in record history as the first amendments to related crimes in West Bengal enacted by any other state in India. Once the Governor gives his assent to it, it will be pending for enactment by the President.

The major difference between Bharatiya Nyaya Sanhita(BNS) and Aparjita Bill is that the former prescribes the death penalty on conviction for rape if the cause of the injury inflicted leads to death or leaves the victim in a vegetative state. The BNS mandates the investigation to be completed in 21 days from the date of the first report. Aparjita Bill lays down a special task force so that the investigation is completed within a stipulated timeframe.

BNSS has brought into its purview section 150, which encompasses a broad spectrum of offences associated with acts being utilised against the sovereignty and integrity of India. New sections take into account the issues related to organised crime, like human trafficking, drug trafficking, and cybercrimes, and even suggest elevated surveillance techniques for high-risk areas to prevent crimes against women and children. The bill strengthens provisions about victim protection and witnesses, to make it completely safe and anonymous while undergoing investigation and trials.

The Aparjita Bill also amended the Bharatiya Sakshya Adhinyam in several ways: increasing penalties for different offences, whereby the fine is increased and the imprisonment term is also enhanced; Bharatiya Sakshya Adhinyam has been rationalised so that it contains fewer sections, which makes it relatively shorter and more manageable. This has introduced provisions relating to the admissibility of digital evidence and allowing electronic records and digital footprints to be effectively used in courts of law. It strengthens the framework for the protection of witnesses, whereby safety and anonymity are assured during the investigation as well as the trial process. In addition, the Aparajita Bill also proposed several amendments to the POCSO Act.

Bill now increased the minimum sentence from 3 years to 7 years for sexual assault. The Bill further introduces a mandatory clause that says recorded evidence of a child must be done within 7 days, as against the existing provision of 30 days under the POCSO Act. The special

court must conclude the trial within 30 days, as against the overall period of one year as stipulated under the POCSO Act. It has provided for raising the minimum sentence that would be awarded for committing aggravated sexual assault from 5 years to 7 years. In this Bill, imprisonment for the rest of the remaining natural life is dealt with under the head of rigorous imprisonment for life. Further, for extreme cases, it also provides for the death penalty. These changed provisions of law aimed at providing stricter punishments and faster justice to victims of sexual crimes, thereby strengthening child protection.⁵⁸

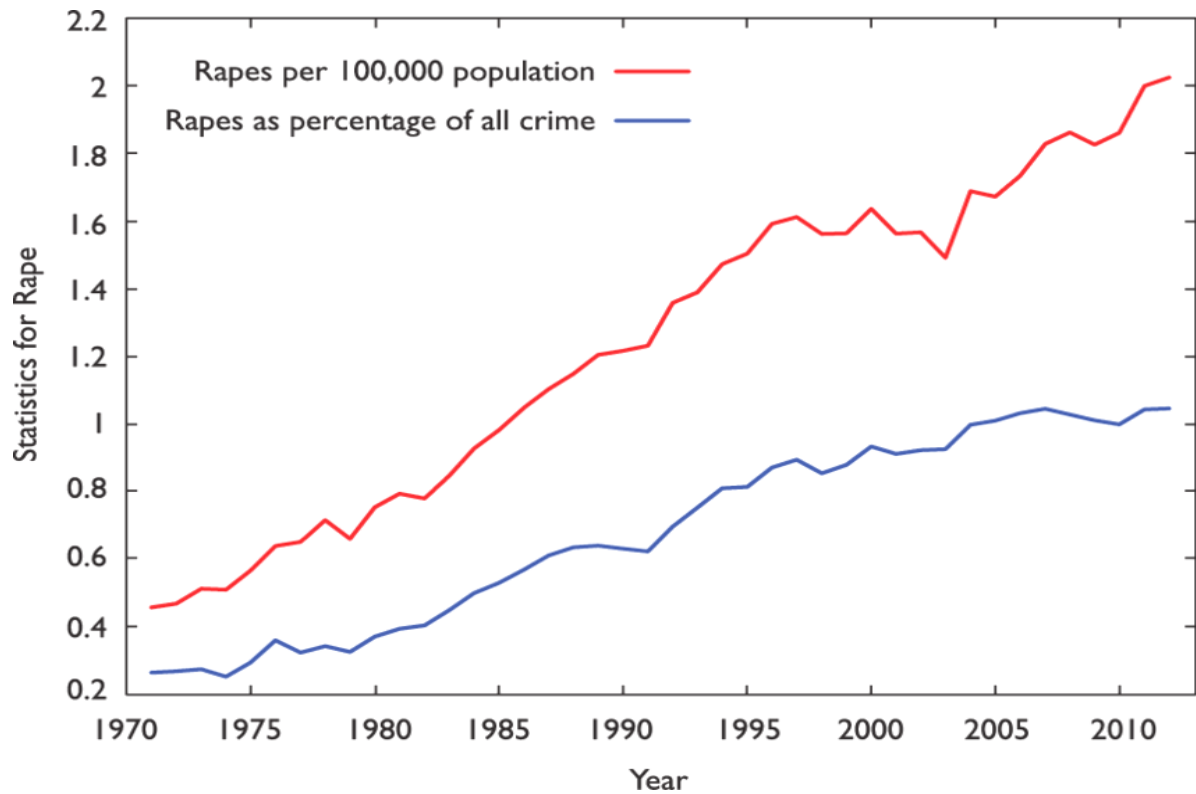
ANALYSIS

Comparison of the Crime Rate with other Countries: There are many countries with low crime rates, even though there are fewer punishments with properly executed. The table given below shows the countries with crime rates and various features they follow for execution.

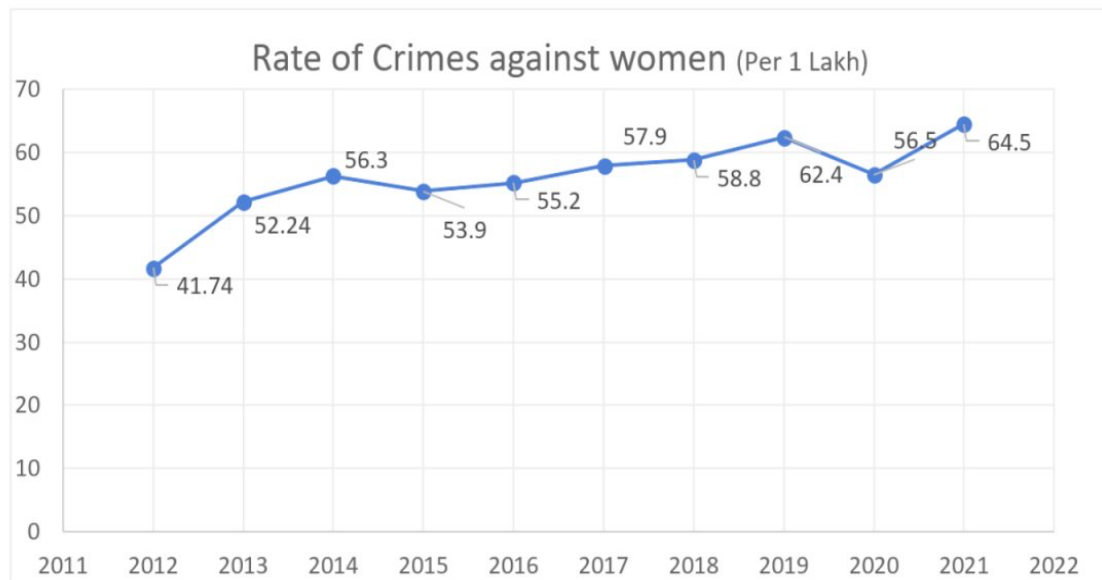
Country	Rape Rate (per 100,000 people)
India	2.0
Egypt	0.11
Azerbaijan	0.17
Mozambique	0.19

Comparison of the rape-crime rate in India

⁵⁸ Aparajita Women and Child (West Bengal Criminal Laws Amendment) Bill 2024



Graph - 1



Graph - 2⁵⁹

⁵⁹ Deepanshu Mohan and Shreeya Bhayana, 'Big Talk, Small Action: Modi Govt's Work on Women's Empowerment in the Last 9 Years' *The Wire* (02 June 2023) <<https://thewire.in/women/big-talk-small-action-modi-govts-work-on-womens-empowerment-in-the-last-9-years>> accessed 28 March 2025

The Criminal Laws in India, including the Indian Penal Code (IPC), the Criminal Procedure Code (CrPC), and the Indian Evidence Act (IEA), have undergone significant amendments over time to address the issue of crimes against women, particularly rape. These amendments, introduced in 1983, 2013, and 2018, have progressively increased the severity of punishments and introduced age-specific considerations to provide enhanced protection for women and minors. Despite these efforts, statistical data suggests that stricter punishments alone have not resulted in a reduction in crime rates against women.

As shown in Graph-1 before 1983 i.e., Before the first amendment in 1983, crimes of rape in India were recorded at a rate of 0.8 per 100,000 population, and rape constituted 0.4% of all crimes. The 1983 amendment introduced crucial provisions such as defining custodial rape and prescribing higher penalties for offenders. Despite these measures, data indicates that the incidence of rape continued to increase in subsequent years. This trend suggests that while the law aimed to create a deterrent effect, its practical implementation and societal attitudes may not have sufficiently supported its intended outcomes.

The next amendment to criminal laws was made in 2013. As per graph 2, before the 2013 amendment, the rate of crimes against women was 41.74 per 100,000 population. The new law introduced stringent provisions, including broader definitions of sexual offenses, higher penalties, fast-tracking of rape cases, and the establishment of stricter age-based punishment criteria. However, statistical data reveal that the crime rate against women did not decrease post-2013. In fact, by 2013, the rate of crimes against women rose to 52.4 per 100,000 population. This upward trend persisted in the years following the amendment, suggesting that while legal reforms were extensive, they were insufficient in addressing the root causes of crimes against women or deterring offenders effectively.

After the 2013 Criminal Law Amendment, again in 2018, another Criminal Law Amendment was made. Before the amendment, the rate of crimes against women was 57.9, but after the Amendment was made in 2018, the rate of crimes against women has not decreased. The rate of crimes against women increased to 64.5 in 2012, and it's increasing even till now, i.e., in 2014. This shows that even though the punishments for women's offences were made stricter, the crime rate against women did not decrease.

The 2018 amendment brought further changes, particularly in response to heinous crimes against minors, such as the Kathua rape case. Before the 2018 amendment, the rate of crimes against women was 57.9 per 100,000 population. Despite the introduction of harsher penalties, including the death penalty for rapes of minors below 12 years, the crime rate against women continued to escalate, reaching 64.5 per 100,000 in 2019. The trend indicates that stricter legal measures, while symbolically significant, failed to reduce the incidence of crimes against women.

Even though, after successive amendments, there has been an increase in crime rates against women across decades. The effectiveness of punitive measures under the acts is not sufficient. Still, more disciplinary measures and multidimensional strategies should be taken to reduce crimes against women.

The trends depicted in Graphs 1 and 2 underscore that while India has made commendable efforts to strengthen its legal framework to address crimes against women, the desired impact on reducing crime rates has not been achieved. This emphasises the need for a holistic approach that not only punishes offenders but also works toward prevention, awareness, and creating a societal shift towards greater respect and equality for women.

RECOMMENDATIONS

For the prevention of crimes, the Prevention of sexual offences against women needs a comprehensive approach beyond strict punishment. Implementation of sexual education in schools about gender equality, consent, and respectful relationships.

1. Implementing public awareness campaigns to change the attitude of society toward women. The government has to establish various centres, helplines, and shelters for sexual violence survivors.
2. The government has to engage heads, local organisations to prevent sexual violence, and supporters.
3. Encouraging men to participate actively in preventing violence against women and promoting gender equality.
4. Providing specialised training to the police officers on handling sexual violence cases.

Assistance to Victims –

1. Helping victims of crime while considering societal and cultural norms.
2. Counselling services should be provided in such a manner that the process is done with some norms and cultural considerations.
3. The awareness should be promoted by engaging area heads and organisations and supporting victims.
4. The laws which support victims' rights should be strengthened and provide them with services.
5. The families of the victims should also get counselling to provide support to the victims without imposing the pressures of society and culture.
6. The effectiveness of punitive measures should be assessed regularly and services to ensure that victim meet their needs.
7. There should be a feedback mechanism so that the victim can address the issues and provide feedback about the support systems for continuous improvements.

CONCLUSION

The crime of rape has always been an issue faced by the government only owing to public outrage whenever a new and more savage incident raises its ugly head. Our system still cannot guarantee some form of a secure environment and protective environment for victims. While progressive reform has taken place concerning the law, such debated issues as marital rape, gender neutrality in rape laws, etc. need urgent attention, as flagged by the Justice Verma Committee. In several cases, ambiguity and inconsistency in judgments passed by the courts should be pointed out. The pronouncement of judgments such as that in the Farooqui case is a demeaning blow to decades-long efforts to reform and takes us back thirty-eight years to the Mathura case. This is the deep-seated reflection of patriarchy, which is still embedded in our society. This has been due to a colonial mindset that tends to cast a shadow on the judgments today, leaving the status of women unperturbed.

This is a nightmare for many victims. To date, the majority of these cases remain hidden as the communities they pass through punish the victim by humiliation. From the police stations to the courtrooms, the victims are harassed at every step. The advantages brought by the hospitals are insufficient to repair what has already happened, and every step taken along the way only adds to the trauma of the victims seeking justice. It is, therefore, important to note that our very own society poses the greatest hindrance to justice. Hence, one must remember that the full realisation of the laws can only be achieved with a corresponding change in the social fabric and legislative changes.