



## Sexual Violence against Women in India: A Review

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### ABSTRACT

*The Constitution of India provides certain special privileges to the women considering their tender nature but still strong patriarchal traditions persist in many different societal parts which prevent the actual realization of these rights. Patriarchal notion treats women as their chattel and there are everyday instances of sexual violence against women. Sexual violence against women is the most odious form of violence and it is nothing less than the showcasing of male dominance. Women's sexuality is one important area of women's subordination and sexual harassment. There are ample laws to deal with cases relating to sexual violence but still, there is no lessening of these ghastly incidents against women. This paper intends to highlight the trauma of sexual violence faced by women in India historically and the nuances of the prevalent laws in their protection.*

**Keywords:** Constitution of India, Sexual harassment, Violence.

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### INTRODUCTION

The Constitution of India provides certain special privileges to the women considering her tender nature, but still strong patriarchal traditions persist in many different societal parts which prevents the actual realisation of these rights. Sexual violence can happen with woman of any age, any race and of any region. It is only the perception of society and other corroborating factors which determines the character of woman and accordingly the gravity of the instance is determined by law. Sexual violence can happen within marriage or outside marriage. Instances of sexual violence were also prevalent in ancient times. Infidelity to husband was considered a grave sin and it was believed that such women went to hell but the person who commits non-consensual and forced sexual intercourse cannot be held guilty of any offence. During the Maurya period, even if a woman found victim of a carnal intercourse her generative organs were cut off and she was ultimately sentenced to death. Even in modern times this type of practice is very common but in a different shape. There are no specific laws to deal with such cases. Khap Panchayats usually deals with such cases and woman is forced to marry the offender. Though after the Nirbhaya case provisions are incorporated for more stringent punishment for offence of rape but it has failed to maintain the deterrent effect in the society. New law defines the penetration, and the oral sex is also included in it, still there are certain flaws which need to be reconsidered by the society and law makers. Constitution of India provides the Right to live to with human dignity to everyone although an Indian woman who is facing or has faced the sexual violence in her life is waiting for realisation of this right in true spirits. Rape cases are most common among all forms of violence against women. Here firstly, the problem lies with word 'Rape' as it has a very limited connotation under law. Only if the instance of penetration comes within the ambit of word rape then only conviction is possible. In certain cases courts insists that mere statement of victim or medical evidence is not sufficient to convict the offender because prosecution has failed to corroborate the incidence beyond reasonable doubt. One more concern, in instances of sexual violence against women is related to the persons who can commit rape and the person with whom it is committed. In majority of rape cases the offender is one who has entered into the agreement to marry with the victim or in a live-in-relationship with the woman or he may be in some way known to the offender. If the rape survivor is a prostitute, then the whole perception of the society changes as the objectification of her image begins. Though many developed countries have criminalised the marital rape but again India is lagging behind the notion of patriarchal pattern and considers that it will de-stabilise the society. Most of the Indian women are forced to sexual intercourse with her husband at least once in her life time. Instances of marital rape are rarely reported and in cases if they are reported then it is dealt under domestic violence or as unnatural offence. There is no specific relief to such women. Psychological and gynaecological trauma of forced sexual intercourse is very severe and leaves a mark on women for her lifetime. India is a party to many international conventions and treaties relating to the protection of women's rights, but we refrain to include all rights and privileges to women on the belief of our cultural settings. It is the necessity of time that law should be designed in such a way that merely by the technicality of law, offender should not go easily after the

committing the crime. Further, it is also for the rights of rape survivors which need to be reconsidered. Under criminal law system provisions relating to compensation to rape survivors are given but they are not enough to deal with all aspects of her trauma. Starting with the trauma of medical examination of rape survivor where she has to undergo so called 'two finger test', police inquiries and gruesome court proceedings she is re-raped at every step. Moving further, in cases she gets pregnant then there are multiple proceedings for termination of pregnancy. She has no right over her body and she is forced to bear the fruit of forced sexual intercourse. Here it is necessary that appropriate agencies working for rape survivors must ensure that survivors are provided adequate rehabilitation compensation, and other measures of reparation, and so, that their economic and social needs are fulfilled. We need a more modern outlook towards the rape-survivors and offer more sensible helpful hands to her.

Sexual violence is the most reprehensible atrocity committed against women. It is the highest torture inflicted upon virginity, youth, motherhood and womanhood itself. It is not only an act against the women victim, but also a crime against the entire society. It causes physical, mental, emotional, sensitivity and psychological disturbance. Thus, to stop this kind of violence is of outmost importance for the society. We have ample of laws to fight against sexual violence, but the numbers of cases are continuously increasing because these laws either failed to deter the rapist or not able to change the perception of society towards women. Rape is not only an attack on bodily integrity of woman but also gives unlawful and un-consented carnal knowledge about her virginity which in turn disturbs her whole life psychologically as well as physically. Further, it is only by criminal law amendment Act, 2013 oral sex and penetration of any object into her sexual organs are considered as rape but still there are flaws and rape-victim is at mercy of judicial interpretation in many cases. It is also to be noted that research is important because it analyses how the system deals with rape survivors. Thus, it is of vital importance to know about getting a complete insight about different dimensions of rape, and rape-survivors by doing a comprehensive and pragmatic study of this subject. Women continues to suffer despite having various constitutional safeguards for her like

1. Right of free and compulsory education – Article 45
2. Right to education- Article 21A
3. Education for women- Article 15(1) (3)
4. Promotion of education and economic interests of SC, ST and other weaker sections- Article 46
5. Religious education- Article 25 28(1), (2), (3)
6. Education of minorities, protection of interests of minorities-Article 29
7. Right of minorities to establish and administer educational institutions- Article 30
8. Instruction in mother-tongue at primary stage- Article 350-A
9. Education in union territories- Article 239
10. Fundamental duty to provide opportunity for education-Article 51 (A)

All such provisions are of no use if she faces gruesome violence in her lifetime. Sexual violence has severe impact on life of woman. We need a complete makeover in handling of such instances of woman. Much of the time women's health policies and regulations are either ignored or not properly enforced in keeping with international standards. Violence-related laws themselves pose greater obstacles to women's justice.

In case of Delhi Commission for Women v. Delhi Police, this landmark judgment of apex court is related with victims of rape. It is mandated by Hon'ble Supreme Court to make necessary changes in the working mechanism of police system, health services, child welfare committees, legal services and other authorities. Any action taken by these authorities while dealing with the case must be in favour of rape victim as she should not be re-traumatized again.

The traditional roles fixed or attached to each gender in our ancient societal system has created hegemony of male gender over female and perpetuated the same generations after generations where even the females had been categorized as male property.

Though there is very small change in the condition of women in terms of her right over bodily integrity but there is a change in way in which society react to such incidents. It is the feminist movement also which propelled the focus of the society towards rehabilitation of such victims. Though, we know that women now have more confidence because of the women's movement, or simply because the society has changed, thus the common perception that abuse is part of women's daily life

may be seen because it has changed. Yet it has also been shown, according to the findings, that women are still reluctant to report violence as they tolerate it and consider it part of life, because it has become normalized in Indian society.

## **CONCLUSION**

Article 21 of the Constitution gives a fundamental right to every woman irrespective of her marital status to live life with dignity and these incidents against a woman lowers her self esteem and confidence. Though we discuss about woman empowerment in various ways but if her rights are violated at home then there is no meaning of other empowerment measures. Her education and employment status plays no role in it. It is not that sexual assault against woman happened with lower middle-class females of the society, it is a case with all classes. Patriarchal norms of the society are so deeply embedded in the society that it is very difficult to kick them out.

Therefore, from the above-mentioned situation, it is clear beyond a shred of doubt that there is a high prevalence of all types of violence against women in all socio-economic contexts in all over the Indian region. In our jurisdiction we already have sufficient legal measures for ensuring women safety provided under Constitution of India. We need maximum sensitization from society towards survivor of sexual violence so, that they can come forward with confidence and without any fear of social re-traumatization. Several agencies must work in this direction. Separate training programmes must be organized for them so, they can understand the real meaning of gender sensitization and woman empowerment. There always exist a scope of improvement in our approach towards existing system where safety is an uncompromised feature or base fabric of legal system ensuring gender justice and improving the society with changing time

## **REFERANCES**

Chauhan, Neha. "How Gender-Based Violence in India Continues to Rise." YourStory.com, 17 Sept. 2019, [yourstory.com/socialstory/2019/09/genderviolence-india](https://yourstory.com/socialstory/2019/09/genderviolence-india)

Arellano, Lisa, et al. *Reconsidering Gender, Violence, and the State*. Duke University Press, 2016.

Violence against Women in India Cases of Rape, Domestic ... [behindthequest.com/documenting-violence-women-india-actionaid/](https://behindthequest.com/documenting-violence-women-india-actionaid/).

Card, David, and Gordon B. Dahl, 2011, "Family Violence and Football: The Effect of Unexpected Emotional Cues on Violent Behavior", *Quarterly Journal of Economics* 126:103-143.

Dahl, Gordon, and Stefano DellaVigna, 2009, "Does Movie Violence Increase Violent Crime?", *Quarterly Journal of Economics* 124:677-734

Marie, Olivier, 2016, "Police and Thieves in the Stadium: Measuring the (Multiple) Effects of Football Matches on Crime", *Journal of Royal Statistical Society Series A* 179:273-292.

Montolio, Daniel, and Simon Planells-Struse, 2016, "How Time Shapes Crime: The Temporal Impacts of Football Matches on Crime", *Regional Science and Urban Economics* 61:99-113

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