

**DETERMINING THE SITUATION OF WOMEN THROUGH LAWS
AGAINST SEXUAL OFFENCES AND FACTORS; COMPARATIVE
ANALYSIS OF USA AND INDIA**

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Abstract

Rape is the only crime in India and the USA for which the victim is blamed, the victim has to suffer for a lifetime. This paper will demonstrate how women's mind and body is being used to establish patriarchy both in India and USA. This paper will also explain why violence against women is not the only manifestation of one's mindset but also a failure of proper implementation of existing laws. To determine the position of women we have analyzed the factors in both the USA and India, such as the age of consent for sexual intercourse, how many cases of sexual violence go unregistered, whether there is any law that provides compensation to the victim, literacy rate of women, the conviction rate in sexual offences, and how accused are treated once the crime is proved. Patriarchy is said to impede the implementation of anti-rape laws. There are many schemes available for women's safety and empowerment, still, in both countries, more than 90% of cases of sexual violence goes unregistered.

However, these statistics are quite a debated topic. In most cases of sexual offences, the perpetrator is known to the victim before the commission of the offence. In India conviction rate in rape cases is just 20%. Research shows that both USA and India is among the top 10 worst countries for women based on many factors one such factor is sexual offences and criteria which have been taken into account are also crucial in determining the women's position. At the edge of the revelation of existing facts and laws, there is the worry that there is no safer country for women

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in the world. It would not be wrong to say that the long procedure of the court and delay in delivering justice has given blanker power to perpetrators.

1. Introduction

Rape is a crime that is not against the person, instead, it is a crime against society, when any society can't protect its humankind, it is shame for society, in this paper we analyse the two superpowers who can destroy any country without going to that country through missiles but can't protect the citizen from this barbarous act, despite having many laws regarding that, and one of the countries is having death penalty also as a punishment. A crime like rape is having a greater impact not only on the victims but also on the progress of society. The reason behind choosing these two countries is because they both derived their rape law from the common law of England. So, to see how they developed their law in their respective country according to the need of society.

In the context of India, women are considered as mother goddesses & prayed as a mother goddesses. But on ground zero they are the most deprived class of society.

2. History of Rape in the USA

When we talk about rape law in the USA then, earlier in the 11-century rape was not a crime which is instituted against the body but it was a crime against the property in the simple word formerly in the USA the body of women is considered to be the property and if anything happens to them then it is considered a crime against property and the owner of the property was Father and after marriage husband, as per the **code of Hammurabi**.³ It is considered as the 'theft of virginity'⁴ and after that in the 12th-13th century major changes take place and now rape is considered a crime against the state. There is no doubt that in earlier American history Rape was a misunderstood crime⁵, but in the year 1600, the common law makes its definition of Rape and in the era 1900s, the US conservatively adopt it as in Model Penal Code. The whole concept of Rape and how the

³Kyla Bishop, *A Reflection on the history of sexual Assault laws in the US*, UALR (Apr. 15,2018), <https://ualr.edu/socialchange/2018/04/15/reflection-history-sexual-assault-laws-united-states/>.

⁴Lane Kirkland Gillespie and Laura King, *Legislative Origins, Reforms and Future Direction*, CRIMINAL JUSTICE FACULTY PUBLICATIONS AND PRESENTATIONS (March, 2014), https://us.sagepub.com/sites/default/files/upm-assets/60334_book_item_60334.pdf.

⁵JULIE A. ALISON, LAWERENCE S. WRIGHTSMAN, *RAPE: THE MISUNDERSTOOD CRIME 1* (Sage Publishing,1993).

people of the USA see the rape shift in the anti-rape movement which took place in the 1970s and first crisis management was built at that time and there were many new reforms took place, a medical examination was included, mental health was gaining its importance and hundreds of laws made to protect the victim⁶. But one major change which happened in the year 1977 was in the case **Coker v. Georgia**⁷ Supreme court held that the death penalty is unconstitutional in the case of rape, before that it was valid.

3. History of Rape in India

Now, coming to the Indian rape law got its traces way back to the Vedic law where it is clearly shown that it was considered as one of the barbarous acts and the punishment was nothing less than the death penalty. By comparing to the punishment of rape from current time, earlier people believe in the retributive punishment which simple means is an eye for an eye. In the era of Chankya's Arthashastra, it was again a retributive punishment and the whole idea was to punish a person to that extent he also started to feel the same way as the victim feels. In the modern period Lord Macaulay develops the new law which is IPC and from that time the rape was considered a heinous crime against a body, there were several changes takes place but it gets all its essence from that only.

In both India and USA patriarchy dominates, under which women are under threat.⁸ The traditional model of violence against women in both countries, in fact, all over the world is "women are inferior to men.

5. Basis of comparison

5.1. How they treat a Rape victim

In this criteria, the paper will present how the authorities treat rape victims in India as well as the USA, treatment of victims not only medical but also social is the most important way to pull the

⁶G. Kilpatrick, *Rape and Sexual Assault*, NATIONAL VIOLENCE AGAINST WOMEN PREVENTION RESEARCH CENTER, (Oct.2, 2020,9:29 PM), <https://mainweb-v.musc.edu/vawprevention/research/sa.shtml>.

⁷Coker V. Georgia, 433, US 584 (1977).

⁸Aisha K. Gill and Karen Harrison, *Sentencing Sex Offender in India: Retributive Sex offenders Treatment Programmes and Restroative Justice Approaches*, 8(2) IJCJS 166 (167), 2013.

victim from that grave trauma. As we know not only in India but also in the USA because of the behavior of the police many cases go unreported and because of that many wrongdoers move freely in society. Rape is such a heinous crime that many times it takes a lifetime to completely overcome that trauma and if the authority also started treating them badly then it's like a grain of sprinkling salt on a burn. But the problem is not only the Police; there is another person also involved in the scenario who affects the mental condition of the victim like the medical professional, family members, and society.

- In India

Rape is always a heinous crime in India but there are still many people who think that the victim is responsible for the rape, because of the choice of clothes or roaming in the night or various dumb reasons, many times elected representatives have seen giving this type of stupid statement.

This type of statement can be taken as to understand the society's perspective but still, many people think otherwise and that can be seen in the infamous case of Delhi gang-rape then the people come out in the streets for justice for victims and reforms in the laws. However, no law in the world can change the orthodox thinking of society. According to Meenakshi Ganguly (South India Director) *"It takes time to change the mindset, but Indian government should ensure medical, counselling and legal support to the victims and their family and on the same time do more to ensure the sanitization of the police officers, judicial officials and medical professionals on the proper handling of the sexual violence case."*⁹

In India, victims do not only suffer after the crime but Assault has also been seen very common before raping in cases where the accused is known to the victim.¹⁰

- In the USA

It is very surprising to know the condition of India and the USA is similar in dealing the rape cases victim, how they treat victim or their family although the USA got independence almost 200 years

⁹HUMAN RIGHT WATCH, <https://www.hrw.org/news/2017/11/08/india-rape-victims-face-barriers-justice>, (Last visited Oct. 4, 2020).

¹⁰PLD, *Toward Victim friendly Responses and Procedures for Prosecuting Rape*, DOJ 4, 48 (2015), <https://doj.gov.in/sites/default/files/PLD%20report.pdf>.

earlier than India. In the year 2019 the several victims of 7 states of the USA mainly Austin, San Francisco, Houston, Memphis, Baltimore, Greenwich, Conn, and the Village of Robbin's filed a suit against the authority to change their practice deal with the rape victims.¹¹ In one of the lawsuits of Greenwich where the victim accused the authority to cover up the sexual assault in the school and instead of punishing the accused the school give the disciplinary warning to the student.¹² In the state of Memphis the federal court finds that in the year 2013-14, there was almost 12000 rape kit that was not tested because of the negligence of the police department¹³ which means that 12000 people didn't get any type of justice after coming forward and filing a complaint.

And the same incident happens in the state of Houston, there also rape kit was not tested¹⁴ and it is well known that it is very hard for women to come forward and file a complaint because there are many pressures including mental, social, etc. And after filing a complaint, no action is being taken, are- rape of the victim firstly by the accused then by the authority itself.

In the state of San Francisco, the same incident happens to the lady who is the victim of the rape and police failed to check her rape kit bag and also asked her to tell them about the place and give a sneak peek to the police.¹⁵ This is an inhumane activity because for the rape victim it is like going through the same stigma again n again. And the lady fails to describe so the police drop the case.

In the city of Baltimore, the incident is crueller because here the police department is not only accusing of not testing the rape kit but also destroying the rape kit bag.¹⁶ So, this is some incident

¹¹ValeriyaSafronova And Rebecca Halleck, *These Rape Victim Had To Sue To Get The Police To Investigate*, NEW YORK TIMES, (May 23,2019), <https://www.nytimes.com/2019/05/23/us/rape-victims-kits-police-departments.html>.

¹²Daniel Tepfer and Robert Marchant, *Lawsuits Claim Greenwich PD helped coverup sex assaults at School*, GREENWICH TIME, (Aug. 28, 2018, 4:05 PM), <https://www.greenwichtime.com/local/article/Lawsuits-claim-Greenwich-PD-helped-coverup-sex-13188113.php>.

¹³Linda A. Moore, *Memphis can't Block deposition of former sex crimes unit head in lawsuit over rape kits*, *Judge Rules*, COMMERCIAL APPEAL, Dec.17,2018 1:59 PM, <https://www.commercialappeal.com/story/news/2018/12/17/memphis-police-rape-kit-lawsuit-sex-crimes-unit/2335459002/>.

¹⁴Mike Morris, *Judge dismisses victims' lawsuit over Houston rape kit backlog*, CHRON. (Aug 3,2018, 5:26 PM),<https://www.chron.com/news/politics/houston/article/Judge-dismisses-victims-lawsuit-over-Houston-13129436.php>.

¹⁵EvanSernoffsky, *Woman files suit charging S.F. cops not investigating her rape*, SFGATE, (Jan.13,2016, 6:16 PM), <https://www.sfgate.com/news/article/Woman-files-suit-charging-S-F-cops-not-6754375.php>.

¹⁶Catherine Rentz, *Baltimore Country Destroyed Hundread More Rape Kits Than Police Reported. Official Can't Explain Why*, THE BALTIMORE SUN, (Apr. 23 2019, 5:00 AM), <https://www.baltimoresun.com/news/investigations/bs-md-destroyed-rape-kits-20190423-story.html>.

of the world superpower which is not able to deal with the rape victim and creating so much chaos in the life of the victim by not giving them justice.

5.2. How Rape Cases are dealt

- InThe India

After the FIR is registered by the victim, police officers must go to the hospital for a medical examination of the victim and it should be done in 24 hours. There should be one more person with the victim who shall go with police in hospital and medical examination should be conducted by the certified doctor and prescribed hospital by the government. It is given in section 163A of the CrPC and in the case of *Delhi Domestic Women Forum v. UOI*¹⁷ Supreme Court it made the guidelines to follow in the case of the rape. And in the case of *State of Punjab v. Gurmit Singh*¹⁸ that the identity of the victim should not be disclosed by the Police because it's her fundamental right to live with liberty and the for his family also because after the rape victim is suffering from anxiety, depression, and PTSD so, after disclosing the matter in the society it will create more problem for the victim to live in the society.

However, this guideline is not followed on the ground zero many times we see that in numerous cases where the Police are not ready to register the FIR and if the FIR is registered then there is a delay in medical examination.¹⁹ This can result in the loss of pieces of evidence. In rape cases, police must know all the rights of the victim because by that they will know that how to deal with the rape cases, not only that because of not knowing various legislation and guidelines many reports shows accused convicted in the case. And because of the incompetency of the police official, many cases went unreported in India.²⁰

Former Supreme Court Justice Ruma Pal said: "*Were the police interested in tracing harassers or where they play harassers themselves?*"²¹ By this statement, it can easily understand the current

¹⁷Delhi Domestic Women Forum v. UOI, (1995) 1 SCC 14.

¹⁸State of Punjab v. Gurmit Singh, (1996) 2 SCC 384.

¹⁹Manoj Singh, *In UP, Rape Survivor Struggle to get the Police to register the FIRs, Let Alone investigate Them*, The WIRE, (Oct.4,2020), <https://thewire.in/women/uttar-pradesh-police-rape-fir-discrimination>.

²⁰Manish Kaithwas and Neena Pandey, *Incompetency and Challenge for Police In Rape Cases*, 7 SWC 52, 54 (2018).

²¹The Telegraph, <https://www.telegraphindia.com/>, Last Visted 6 Oct.2020.

situation of India in dealing with rape cases. This is only a general case where police delay in registering the FIR, however, there are many cases where the victim itself is held responsible because she belongs to a certain caste or community. Many reports from the village say that the police officer firstly refuses to register FIR then they harass the victim by saying you are responsible for that or this is your business to get raped and ask for compensation. Police resistance to file FIR in the case where the victim belongs to SC and ST community has been rampant.²² Sometimes police discourage the victim to register the case²³. If rape cases are reported to the police, then it is considered a shame for both the victim and her family member.²⁴ This is also the reason that many victims withdraw their cases after such harassment from police and society. One stigma is that they won't get justice.²⁵ A fewer number of women officers report the cases, blaming the victim for their clothing, low status of women is another reason why there are so much unreported cases.²⁶

We are living in a society where women's body is used as a battleground to take revenge, to make established patriarchy. This is because in most cases perpetrators are known to the victim, they have either done this to take revenge, or to show women their position, or to establish patriarchy. Even SC has said that rape victims are being treated as 'untouchables', to save their dignity, one must not disclose their identity.²⁷

- In the USA

Between 2005 to 10, females who were of age 34 or younger (also lived in the lower-income house) experienced a higher rate of sexual violence. Also, 78% of sexual violence accused were

²²Jayshree Bajoria, "Everyone Blames Me" Barriers to Justice and Support Services for Sexual Assault Survivors in India, 17, (Human Right Watch, 2017).

²³PLD, *supra* Note 8, at 48.

²⁴INDIRA JAISINGH, WOMEN'S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES 52, (Psychological Press, 1995).

²⁵Anna MehlarPaperny, *Why don't women report rape? Because most get no justice when they do*, GLOBAL NEWS, (Feb. 23, 2015, 5:10 PM), <https://globalnews.ca/news/1845136/why-dont-women-report-rape-because-most-get-no-justice-when-they-do/>.

²⁶Olga Khazan, Rama Lakshmi, *10 reason why India has a sexual violence problem*, THE WASHINGTON POST, (Dec. 29, 2012, 1:06 PM), <https://www.washingtonpost.com/news/worldviews/wp/2012/12/29/india-rape-victim-dies-sexual-violence-proble/>.

²⁷THE PRINT, <https://theprint.in>, (Last Visited Oct. 12, 2020).

in close relation with the victim.²⁸ Many factors are responsible for the prevalence of sexual offenses in both countries such as rape myths, poverty, location literacy rate of both men and women, and rape myths.²⁹

By seeing slow movement growth of rape legislation in the USA and keeping in mind that they became independent in the year 1776 and the USA is that country who always sending their troops to the other country like Vietnam, Israel, Italy, etc. for their independence and to teach them the civilized way to live in the world. But in their country, there was a serious bone of contention till about the 1970s to how to deal with the rape case. As mentioned earlier at the same time they ruled out capital punishment for rape. The anti-rape movement was one of those moves where America should proud of themselves as they unite as one to fight against such as heinous crime but still there is so much room for improvement. From the history of the USA, it can be interpreted that they always want to evolve their legislation to counter rape and this is the sign of a progressive country.

In the year 2015 Mr. Barack Obama once said that “Right now, nearly one in every 5 women is the victim of rape or attempted rape.”³⁰ This was a huge statement considering at that time he was the President of the USA.

In both India and USA patriarchy dominates, under which women are under threat.³¹ The traditional model of violence against women in both countries, in fact, all over the world is “women are inferior to men.”

Works done by police officials is such inglorious that we must say that they are the one who is supporting the crime. By treating victims in such a way, they make damnation for them.

²⁸Michael Planty, ET.AL., *Female Victims of Sexual Violence, 1994-2010*, BJS 1,1 (March 2013), <https://www.bjs.gov/content/pub/pdf/fvsv9410.pdf>.

²⁹Catie Carson, *A Comparison of Sexual Assault in the U.S., Canada, and England*, 3, UG Rev.57, 62 (2007), https://vc.bridgew.edu/cgi/viewcontent.cgi?article=1055&context=undergrad_rev.

³⁰Glenn Kessler, *Obama's claim that one in five American women has been a victim of rape or attempted rape*, THE WASHINGTON POST, (Feb. 12, 2015) <https://www.washingtonpost.com/news/fact-checker/wp/2015/02/12/obamas-claim-that-one-in-five-american-women-have-been-raped/>.

³¹Aisha K Gill, *supra* note at 6, 167.

It is a fact that women are vulnerable to sexual offenses, but there are multiple causes why women are more prone to these offenses, as per the report by WHO;

- Being young
- Consuming alcohol or drug
- Having previously been raped or sexually abused
- Having many sexual partners
- Involvement in sex work
- Poverty
- Becoming more educated and economic empowered (where the perpetrator is an intimate partner)³²

5.3. Conviction rate

- Conviction in India,

In India conviction rate among IPC-related crimes is just 40% while in cases of sexual offenses it is even lower.³³As per the 2019 NCRB report, the total number of reported cases was 35194 people who were arrested in rape cases, and the person against whom the charge sheet was filed was 32413. 5800 were convicted, and 13372 were acquitted, 1746 were discharged.³⁴Out of 35194 arrests, what happened to 14276 arrested people, no data is available for this. Rest are acquitted, discharged, and convicted.

While in cases of attempt to commit rape, 3583 people were arrested, against 3550 charge sheet was filed, and only 369 of them were convicted, 72 were discharged, and 945 were acquitted.³⁵

³²WHO, <https://www.who.int/>(Last Visited on 12 Oct.2020).

³³Arun Bothra, Why is our conviction rate is so slow, The Indian Express,(Feb.21,2019), <https://www.newindianexpress.com/opinions/2019/feb/21/why-is-our-conviction-rate-so-low-1941680.html>.

³⁴Government of India, *Annual Report*,3 NCRB 1,1193(2018), <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%203.pdf>.

³⁵Government of India, supra note at 32.

Since in most of the cases the accused is known, and are belonged to a close relation, the victim and her family are convinced to withdraw from cases.³⁶ Shaming of victims is very much prevalent in India,³⁷ this can be the reason why many victims withdraw their cases or even don't report the case to the police.

Corruption among police, intimidation of a victim,³⁸ lack of well maintained forensic laboratories, witnesses turning hostile, poorly equipped police officers, lack of female police officers,³⁹ less number of judges, is among the various reasons why many reported cases are being withdrawn, or many cases go unreported.

There can be much reason in less conviction rate on one of such is that public prosecutors don't meet with victim personally, they relied only on the official record to defend their case.⁴⁰ This results in dampening the case for the victim and letting the perpetrator go free.

Denial of registration of a case by the police officers,⁴¹ Inadequate reporting procedure⁴² Even after the virginity test, often referred to as the 'two-finger test' has been banned, it is still in practice. ⁴³, all this led to the withdrawal of the case over the period, because in India it not just takes time to get justice, instead it takes the whole life of a person to get justice.

- **In the USA,**

³⁶Amrit Dhillon, *Why the death penalty will not solve India's rape problem, but speedy justice would go a long way*, SCMP, (Aug.4,2018, 3:45 PM), <https://www.scmp.com/comment/insight-opinion/asia/article/2158033/why-death-penalty-will-not-solve-indias-rape-problem>.

³⁷Jayshree Bajoria, *supra* note 20 at 17.

³⁸DHNS, *Low rape convictions alarming rate*, DECCAN HERALD, (Dec.22,2019, 11:11 PM), <https://www.deccanherald.com/opinion/second-edit/low-rape-convictions-alarming-787905.html>

³⁹DivyaShukla, *An analytical study of decreasing rate of conviction in India*, 4 INT. JOURN. LAW 91. 92(2018).

⁴⁰PLD, *supra* note 8 at 48.

⁴¹B.N.Chattoraj, *Sex Related Offenses and their Prevention and Control Measures: An Indian Perspective*, 133RD INTERNATIONAL TRAINING COURSE VISITING EXPERTS' PAPER, TOKYO (JAPAN), 82, 84(2006).

⁴²Shobhit Jain, Harjeet Jain, *Mandatory reporting of sexual offences in Indian legislation: An ethical dilemma for medical professionals*, 31 TNMJI, 125, 126(2018).

⁴³AFP, *Victims are treated like animals': Indian police accused of failing to take sexual assault and rape cases seriously, despite reforms*, SCMP (Apr.2, 2018, 5:42 PM), <https://www.scmp.com/news/asia/south-asia/article/2139961/victims-are-treated-animals-indian-police-accused-failing-take>.

Research conducted by RAINN says that out of 1000 assault cases 995 perpetrators will go free⁴⁴ and out of 1000, 4.6 rapists will be incarcerated. And less than one percent of rape cases will lead to a felony conviction.⁴⁵

A report says that the police department is destroying the pieces of evidence like rape kits that were being reported.⁴⁶ Such instances are a hurdle in a way of justice.

Only a few rape cases progress till the conviction, non-availability of witnesses, laxness on the part of police officers, incomplete medical reports, led to the acquittal in most cases.⁴⁷

5.3. Rate of Literacy in both Countries

- In India

Education is said to be the most powerful tool which can change the world, it is also because educated person

Prisoners have a poor literacy rate as compared to the general population.⁴⁸ (have written this because of custodial rapes and harassment). Thus is linked that educated people are more aware of their rights, do's and don'ts. While it is also a fact that, a crime against women who are more educated and economically well.⁴⁹ While Kerala is the most literate rate in the country, it also has

⁴⁴RAINN, <https://www.rainn.org/statistics/criminal-justice-system>, (last visited 14 October 2020, 3:29 PM).

⁴⁵Andrew Vann Dam, *Less than 1% of the rape leads to the felony convictions. At least 87% victim face emotional physical consequences*, THE WASHINGTON POST, (Oct. 6 2018, 4:30 PM), <https://www.washingtonpost.com/business/2018/10/06/less-than-percent-rapes-lead-felony-convictions-least-percent-victims-face-emotional-physical-consequences/>.

⁴⁶ASHLEY FANTZ, ET.AL., *DESTROYED How the trashing of rape kits failed victims and jeopardizes public safety*, CNN (Nov.29,2018), <https://edition.cnn.com/interactive/2018/11/investigates/police-destroyed-rapekits/index.html>. 15 October 2020,

⁴⁷Dr. Barindra N. Chatteraj, *supra* note 39 at 84.

⁴⁸Christina Clark and George Dugdale, *Literacy changes lives: The role of literacy in offending behaviour – a discussion piece*, NLT 1, 5 (2008), <https://lemosandcrane.co.uk/resources/NLT%20The%20role%20of%20literacy%20in%20offending%20behaviour.pdf>.

⁴⁹WHO, *supra* note 30 at 157.

the highest rate of conviction rate in the country.⁵⁰ However, the role of literacy can be seen in the victim's awareness about her legal right and the importance of reporting the crime to the police.⁵¹

As per the 2011 census, India's literacy rate is 74.0%, among men, it is 82.1% and among women it is 65.6%.⁵² Although female literacy rates have increased, after independence, crime against women has also increased.

- **In the USA**

While the worldwide literacy rate is 82%, among men it is 87% and among women, it is 77%. A large part of America exceeds the literacy rate above 90%.⁵³ However lower literacy rates can say to impede the reducing rate, multiple factors led to crime, anger, debt, relationship problem, mental health, unemployment.⁵⁴ This is true also because, in most prisoners, mental health problems are more common than in the general population.

Education plays a vital role in the prevention of crime.⁵⁵ Because an educated person is aware of his right and understands the importance of reporting a crime to the police because the law has been made to protect them.

5.4. Age of Consent

- *In the USA*

In the USA several laws prohibit sexual activities among teenagers.⁵⁶ US Department of Health and Human Services defines the age of consent as the "age at which an individual can legally consent to sexual intercourse under any circumstances". However the age of consent in the United

⁵⁰Divya Shukla, *supra* note 37 at 91.

⁵¹Lakshmi Iyer, ET.AL., *The Power of Political Voice: Women's Political Representation and Crime in India*, 4 AEJ:APPLIED ECONOMICS, 165,182(2012).

⁵²Government of India, *Status of Literacy*, 15 CENSUS INDIA,125,126(2011) .

⁵³Dr.CoinneM.Flick, ET.AL., *Geographies of the world's Knowledge*, 8OXFORD INTERNET INSTITUTE,3,6(2011).

⁵⁴Christina Clark, *supra* note 46 at 7.

⁵⁵Cheryl Frank,*Missed Opportunities: The Role of Education, Health and Social Development in Preventing Crime*,126 ISS,2,27(2006).

⁵⁶Kate Sutherland, From JailBird to JailBait :Age of consent laws and the construction of teenage sexualities,9 Wm. & Mary J. Women & L. 313,313 (2002-2003).

States differs from state to state, it ranges from 16 to 18.⁵⁷ In most of the states, it is 16, in eleven states it's 18 and very few have 17.⁵⁸

Alaska has reported the highest rate of forcible rape in 2019⁵⁹ in the USA where the age of consent is 16⁶⁰(lowest in the USA).

- ***In India***

Age of consent is always a matter of dispute in India as there is no mention either in IPC or any other law what is the age of consent. However, in India after attaining the age of 18 years it is considered as a person is major and can take their decision so, Supreme Court also held that below this age even the female consent is there but also the sexual intercourse amounted to the rape.⁶¹ On the other hand, in the marital sexual intercourse until 2017 there is no provision regarding that but in the case of Independent thought v. UOI, Supreme Court held that if the wife is below the age of 18 years then any type of sexual activity amounts to rape regardless of the consent. However, in one of the cases, the Madras High court asked the competent authority to reduce the age of consent from 18 years to 16 years as this is the age when teenagers have a spark for the sexual activity and if there is any consent then this should not have amounted as rape.⁶²

6. Laws regarding Rape

It is a sign of a civilized society that they have laws regarding all the laws committed against a person, state, and property. So, here in this section researchers explore the various laws regarding rape and in how much time the victim got justice and compensation (if any). There are numerous legislations regarding rape in India, various act deals separately with rape, but all those acts derive

⁵⁷ASPE, <https://aspe.hhs.gov/report/statutory-rape-guide-state-laws-and-reporting-requirements-summary-current-state-laws/sexual-intercourse-minors>, (Last visited Oct. 24, 2020).

⁵⁸AGE OF CONSENT, <https://www.ageofconsent.net/highest-and-lowest>, (Last visited Oct.11, 2020)

⁵⁹STATISTA, <https://www.statista.com/statistics/232563/forcible-rape-rate-in-the-us-by-state/>, (last visited Oct.17,2020)

⁶⁰AGE OF CONSENT, <https://www.ageofconsent.net/states>, (Last Visited Oct.17,2020).

⁶¹LEX LIFE INDIA, <https://lexlife.in/2020/03/21/law-regarding-consensual-intercourse-with-minors-in-india/>, (Last visted on Oct.18,2020).

⁶²Kaunain Sheriff M and Abantika Ghosh, Explained: What Madras HC suggested on age of consent & age gap, and the implications, The Indian Express, (Apr.30,2019), <https://indianexpress.com/article/explained/what-madras-high-court-suggested-on-age-of-consent-age-gap-and-the-implications-pocso-act-5701591/>.

their origin from Section 375 of the IPC (India Penal Code)⁶³. All the acts including SC and ST act or the POSCO differ generally by the age of victims or sometimes by the punishment durations.

In the USA, there are also various other laws regarding the age of consent (statutory rape) but their age of consent differs from state to state differ. In the USA there is some state which has laws regarding martial law some has not. Some states make their laws according to the MPC (Model Penal Code) and as MPC is not legally binding so there is some state who doesn't follow this.

In the USA

In the USA there is a Model Penal Code developed by the American law institute that consists of rape as a crime, earlier it was just a conservative reform of common Law. As the USA was the colony of Britain so they also derived their law from there only. But in the 1970s the great movement started in the USA for the new reform named as Anti-rape movement. Earlier the definition of rape contains the nonconsensual penial-vaginal intercourse between men and women who are not the spouse. This definition always seems incomplete because there some much room for improvement and that happened after the anti-rape movement. Now the definition of rape included the attempt part, men as the victim, and penetration of penial is not necessary, any object or trying to put any object inside the body of the victim from the mouth (oral), anus or vagina.⁶⁴

As said earlier a progressive society always has a chance to improve and this can be seen in the evidentiary reform also, earlier the history of the victim (chastity, earlier involvement in sexual activity) is also seen as evidence to disprove the charge. Now the Supreme Court of the US change this and held no need to check the previous history of the victim.

As per Rule 412 of the Federal Rule of Evidence,

(a) Prohibited Uses. The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct:

- (1)** the evidence offered to prove that a victim engaged in other sexual behavior; or

⁶³Indian Penal Code § 375, No. 45, Acts of Parliament, 1860 (India).

⁶⁴Lane Kirkland Gillespie, *supra* note 2 at 19.

(2) the evidence offered to prove a victim's sexual predisposition.⁶⁵

This is known as rape shield law. Many reformers see this as the greatest reform of the US in the history of the rape movement.⁶⁶

Now the reform in consent age is also happened during that time to protect the child from this felony crime. The age of consent is differed from state to state in the USA⁶⁷. On one side there are many laws to protect the consensual sex between the teenagers like Romeo and Juliet law⁶⁸, on the other hand, statutory laws are also made to protect the child and are divided into three degrees based on the age of the victim and offender.⁶⁹

Now, the third important reform or point in the rape statute is punishment, as it is different from state to state but some guidelines must be followed by each state in the rape case. Before the 1970s rape was seen as a property crime against the husband or father of the victim included the death penalty as punishment. But it changes after the landmark judgment in the case *Coker v. Georgia*⁷⁰ in the year 1997 where it was held that no capital punishment is given in the case of the rape. However, many states started capital punishment in the case of a child's rape, many controversies arising due to the unconstitutionality of the matter. So, in the case of *Kennedy v. Louisiana* (2008),⁷¹ Supreme Court ruled that the death penalty in the matter of rape is a violation of the 8 Schedule.⁷²

In India

Since in India from 1860 there is a law for rape which was enacted in the period of British, but several changes took place after that due to the reforms and awareness in the society and major changes that took place is after the Nirbhaya case, however, it doesn't change the number of rapes

⁶⁵LII, https://www.law.cornell.edu/rules/fre/rule_412, (last visited on Oct.18,2020).

⁶⁶Lane Kirkland Gillespie, supra note 2 at 19.

⁶⁷Lane Kirkland Gillespie, supra note 2 at 20.

⁶⁸Jessica Gillespie, Alaska Statutory Rape Laws, CDL(Oct.19,2020 10:30 PM), <https://www.criminaldefenselawyer.com/resources/alaska-statutory-rape-laws.htm>.

⁶⁹RAINN, <https://apps.rainn.org/policy/policy-crime-definitions-export.cfm?state=Alaska&group=3>,(last visited 19 Oct.2020).

⁷⁰*Coker v. Georgia*, 433 U.S. 584 (1977).

⁷¹*Kennedy v. Louisiana*, 554 U.S. 407 (2008).

⁷²*Id.*

in India. The law regarding rape in India is deriving its power from one section i.e. section 375 of IPC⁷³ which include the rape means any penetration either by the penis, any part of the body, or any object into either vagina, mouth, urethra, or anus by men or manipulating the child to attempt of penetration is called rape. But earlier this was not the case; it changes from time to time. Punishment for rape is given in Section 376 IPC⁷⁴. Section 376 involves subsection from a to the which includes by the public servant in the custody, jail superintendent in Jail or the in the remand, hospital management at the time of treatment and the gang rape respectively. The time of punishment is varying from seven-year to the death penalty at the discretion of the type of rape.

Other Acts which includes the Rape cases are-

1. **POCSO Act (2012)**⁷⁵- This act is a comprehensive law for the child below the age of 18 years who is the victim of sexual activity. The punishment under this ranges between 20 years to Life Imprisonment.
2. **SC and ST (Prevention of Atrocities) Act**⁷⁶- Section 3(2) (v) gives this act power to punish a person who commits a crime which is defined under IPC and having punishment of 10 years or more. This act will only apply if the victim belongs to SC and ST. The punishment is Life imprisonment and a fine.

7. Recommendations and Conclusion

Like the USA, India should also incorporate “rape –shield law” in its penal code.

Prevalence of “two-finger test even after banning it is, shows a lack of awareness and knowledge, hence it should be declared is sexual harassment.

While shaping one’s mindset is very hard, and it is a time-consuming process, proper implementation of existing laws, and transparency and accountability is the only way to get rid of this stigma.

⁷³Indian Penal Code, *supra* note 61.

⁷⁴Indian Penal Code, *supra* note 61 at 376.

⁷⁵POCSO, No. 32, Acts of Parliament, 2012 (India).

⁷⁶SC and ST (Prevention of Atrocities) Act, No. 33, Acts of Parliament, 1989 (India).

We believe in women's status can't be changed unless they are considered as only homemakers. In both, the countries condition of women can't be said to be good, because we are living in a society where women have the right to vote and property rights, but still, she is controlled by her father till marriage and after marriage, she is controlled by her husband. In this paper, we have used a term such as sexual assault and sexual offenses, because we have also included an attempt to rape, and also because in some USA states rape is considered a crime under the head of sexual assault. All the above revelations suggest that both countries are obsessed with maintaining their patriarchy. The culture of saving the perpetrator is common in both countries.

Throughout our research, we find out that there are so not so many lacunae in the laws of these countries, but the insertion of some new provision is the need of the hour and while proper implementation is very necessary. In both, countries recklessness on the part of police and investigation agencies is very common. At the edge of revelations of all the above facts and data is the worry that both countries are not the safest place for women. The foolhardiness of police officials in both countries shows that they all have done a cursory reading of the laws and procedures that are to follow in these kinds of cases.