

## Socio-Legal Status of Rape Victims: A Comparative Analysis in South Africa and India

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### Abstract:

Rape is a concerning global issue that affects people worldwide. This article through a comparative analysis aims to shed light on the prevalence of sociolegal frameworks & health concerns that surround rape in South Africa & India. By examining the legal status relating the rape victims in the countries, the medical facilities that are available to them, and the structure of the societies we can identify commonalities and differences in the experiences of survivors, the challenges they face, and responses following them. The occurrences are influenced by systematic oppressions in history, socioeconomic disparity, gender inequality, and pervasive patriarchal beliefs. Rape occurrences in India & South Africa have attracted attention from the world, bringing to light pervasive social-legal problems. It will be evident through this study whether both countries need broad and multifaceted ways to combat rape. Legal changes and increased enforcement are important, but efforts are also needed to address social and cultural changes that challenge deeply rooted attitudes and behaviors. This paper aims at providing a detailed idea about the various attributes attached to the crime of rape, i.e. the governing laws; the medical care & various social stigma that surrounds the victims with special reference to both countries.

**Keywords:** Assault, Heinous, Non-consensual, Rape, Rehabilitation, Socio-Legal.

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**Introduction:**

Rape is defined by the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") as violence that is committed against a woman solely or primarily for that woman's benefit that promotes women more than adults. It includes threats of such acts, coercion, and forms of liberty infringement, along with acts that cause bodily, mental, or sexual injury or suffering. Even though rape is one of the most horrifying and heinous crimes in history, it has taken a long struggle for it to be acknowledged as a crime against the bodily integrity and sexual liberty of women. For most of history, women had no rights and were seen as simply property; hence, rape was solely seen as a crime in terms of violating another man's property. According to a survey, rape rates are highest in states like Rajasthan, Kerala, and Delhi while being far lower overall in India than in many Western nations.(Anand, A. 2020, October 6). Every day in 2019 there were 88 rape cases reported in the nation but when compared to other nations, India has fewer rape incidences (per lakh people) than South Africa, the United States, Australia, New Zealand, and South Korea. While South Africa tops the list of ten Countries which have the highest cases of rape.

**Table 1**

*Demonstrates the number of rape victims (per 100,000 citizens)*

<b>Country</b>	<b>No. Of Victims (per 100,000 citizens)</b>
South Africa	66,196
India	32,033

**(Source: World Population Review, United Nations, NCRB India, BBC)**

**Legal implications of rape in South Africa & India:**

Rape is pervasive in South Africa. This is supported by national annual police crime data. 7,749 sexual assaults and 42,289 rapes were reported in 2019 and 2020, respectively. Even after nine years of democracy in South Africa, the rates of violence against women, especially violence related to sex, remain dangerously high. Over the past few years, sexual assault in South Africa has drawn attention from around the world because of its incidence, severity, and nature. According to South African law, rape is defined as "Intentional unlawful sexual intercourse with a female without her consent," which is a term that is also essentially universal.

When we talk about India, the notion of rape as a crime has lived through major modification with the flow of time due to changes in cultural norms, beliefs & practices. The English common law is the source of the Indian rape laws, which were passed into law in 1860 those were initially referenced in IPC. Sir Matthew Hale, a law practitioner from the 17<sup>th</sup> century, decodes rape as "an accusation easily to be made and hard to prove, and harder to be defended by the party accused, though never so innocent." This statement illustrates the prejudiced attitude of colonial courts towards the victims. Because it was thought that the women might be lying, the trial courts focused more on establishing the victim's innocence than on establishing the accused's guilt. Focusing on her past sexual relationships or her virginity was what ultimately decided how the case turned out. The Economic and Political Weekly published an editorial in 1999 titled "Stinking Criminal Justice System" that emphasized the need for significant changes to be made to India's current criminal justice system. The condition is still the same and has even gotten worse since the story was published more than twenty years ago. The National Crime Records Bureau (NCRB) in 2019 annual report that a woman is raped in India every 16 minutes.

#### **Legal status in South Africa:**

Rape shielding laws are intended to safeguard complainants from having their sexual reputations or behaviors exposed to undermine their credibility, especially given that the conclusions reached are founded on historical biases against women and do not help the court in its job of fact-finding. [In the concept of](#) common law, rape is committed by a male who engages in willful and illegal sexual activity with a woman without her consent. The police statistics are the most accessible source of data about the extent of the rape problem and serve as a basis for international comparisons. There may have been a significant increase in rapes, but Africans may not have reported cases before the democratic elections in 1994 because of their extremely poor relations with the police during the apartheid era, because statistics from the 'independent' Bantustans were not included in national figures before 1994, and because also there was [a significant growth in the](#) population ~~growth~~ between 1983 and 1994 but no reliable denominator for estimating the rates were available. There is no precise breakdown of rapes by age. The reporting of rape and attempted rape differs substantially across provinces. Between 12 and 28% of adult women in South Africa have experienced rape, and 29% are HIV positive. There are striking gaps in our understanding of the medium and long-term health effects of gender-based violence, HIV, and mental health. The systematic evaluations found significant data gaps and scant support for the health impacts, therefore the Global Burden of Disease 2010 omitted numerous health outcomes related to rape and other kinds of gender-based violence.

**The South African Law Reform Commission:**

The inquiry into such offenses committed by and against children by the South African Law Reform Commission (SALRC) was expanded to include adult victims in 1998. The SALRC's Discussion Paper titled "The Legal Aspects of Rape" that got published in September 1999 dealt with the authentic laws relating to sexual offenses. The then Deputy Minister of Justice had commissioned a research report on the legal aspects of rape that would serve as its foundation. The goal of the authors' recommendations was to advance and sharpen how sexual offenses should be dealt with by the legal system. Substantive and procedural suggestions on the treatment of rape survivors were provided in that report & recommendations about the redefinition of rape, which should include protective measures, the admissibility of consistent prior statements, prior sexual history, expert testimony, legal counsel, use of private medical and counseling records, victim impact statements, and compensation, etc., were also highlighted.

The "Legal Aspects of Rape" made a strong case for victim-centered protective provisions in legislation and criminal justice practice by outlining how rape differs from other violent crimes and how this crime is inherently distinct from others. The SALRC supported this victim-centered approach, which was reflected in the Discussion Paper on method and procedure and the SALRC's final report. By 2003 Department of Justice drafters had largely removed the comprehensive victim protection safeguards that were suggested from the draught bill. In this approach, the law has gradually lost its radical feminist focus and eventually, we would argue, the potential it had to dramatically change how the criminal justice system deals with an issue that is of utmost importance to women.

The purposeful and illegal act of sexually penetrating a person without their consent is referred to as rape in South Africa. Sexual penetration can take many different forms, including the use of any part of the body or an instrument to penetrate the vagina, anal, or oral regions. The fact that the victim can be a man and the perpetrator a woman is one of the features of the law commission's revised definition of rape that it particularly singles out as an improvement. While this goal is admirable, a closer look at the definition shows that the latter adjustment has not been adequately implemented. For a woman to engage in "an act that causes penetration by her genital organs into or beyond the anus or genital organs of another person" is claimed to be physiologically impossible.

The people who would be held for the crime of rape, who do not have any aggravating circumstances would get a minimum 10-year term. For second offenders, the sentence will be at least 15 years; for third offenders, it will be 25 years.

Only a man by placing his penis into the victim's vagina—can commit rape. One cannot "accidentally" or negligently commit rape. Also, the sexual activity had to have taken place without her consent. In these situations, sex is seen as being prima facie illegal. For instance, we are aware that sexual exploitation can occur in ways other than vaginal-penile penetration. It is commonly known that, in addition to utilizing a penis, women are also frequently raped orally, anally, and with several other implements. So, expanding the definition of rape according to the common law concept to encompass sexual penetration into orifices other than the vagina and the use of penetrating devices other than the penis was essential in terms of the law reform agenda. This is what the updated rape definition does. All men are capable of committing rape, but their motivations vary and depend on the victim they choose as well as on their and their victims' structural positions in society.

In the case of *S v Blaauw* (1999 (2) SACR 295), it was said that repeated and independent acts of rape cannot be equated with simple and recurrent acts of penetration. In general, a court is less likely to determine a succession of discrete rapes has taken place, the closer the separate acts of penetration are to one another in terms of time and location. Even if the second rape occurred immediately after the first and in the same location, it was assumed that the accused had formed the intention to rape the victim again when he excreted and withdrew his penis from the victim before penetrating her again.

In the case of *S v Malgas* (2001 (1) SACR 469), a court must know a minimum term should typically be imposed when using the sentencing guidelines if the legislature has set one. Recognizing the easily foreseen inequities that may arise, the Courts reserved the remaining power to give lighter punishments for those offenses.

### **Child victims:**

Understandably, the mass media in South Africa and around the world have called for narratives about child rape in the country, frequently fabricating facts of the occurrences when the truth was unknown. Two NGOs completed a survey on more than 27,000 young South African people in June 2000. One in four of the male respondents acknowledged having sex with a female before turning 18 without her permission. According to some statistics, one in three South African girls has experienced sexual assault or rape. Many believe that a woman is raped in South Africa every 26 seconds based on these and other data. The children of South Africa in particular encounter and go through extraordinarily high levels of crime, according to recent research conducted on the victimization of children there. For instance, the prevalence of child rape and sexual assault against them has increased to epidemic proportions.

The fundamental rights of every South African are guaranteed under the Bill of Rights. These rights are not only recommendations; rather, it is the duty of the state "to respect, promote, and fulfill" these rights. The promotion, defense, and realization of children's rights are explicitly mandated by the Bill of Rights for the State. This provision makes a distinction between juveniles involved in cases of sexual offense and those involved in other types of crimes. According to Section 60 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, the nature of the offense does not warrant a court treating a complainant's evidence in a sexual offense with suspicion.

In the case of *Leven Stein v. Estate of the Late Sidney Lewis Franke* [2018] ZACC 16; 2018 (8) BCLR 921 (CC); 2018 (2) SACR 283 (CC), the Court rendered a ruling on an application to confirm a ruling by the High Court declaring it to be unconstitutional. The High Court ruled that Section 18 of the Criminal Procedure Act is unconstitutional and ailing to the extent that it restricts the ability to bring a criminal case for all sexual offenses, excluding rape and forced rape trafficking in persons for sexual purposes, and using a child or a person with mental disabilities for pornographic purposes, 20 years after the commission of the offense.

In *Centre for Child Law v. Media, 24 Limited* [2019] ZACC 46 the Supreme Court of Appeal rendered a decision in relation to a request for the High Court's order of constitutional invalidity to be confirmed. The Criminal Procedure Act's section 154(3) was found by the High Court to be unconstitutional and unlawful insofar as it does not provide protection for crime victims under the age of 18. Children who are the victims of crimes do not receive the same protection as those who are accused or witnesses in criminal proceedings under section 154(3) of the Criminal Procedure Act. In accordance with the High Court, the Supreme Court of Appeal noted that there are two goals behind the restriction on the disclosure of any material that indicates or may reveal the name of a victim. In the first place, as in cases involving an accused person and a witness who are both under the age of 18, to shield young victims of crime from the spotlight of courtroom proceedings. Second, to confirm that the clause complies with section 9 of the Constitution's equality clause. Accordingly, the Supreme Court of Appeal ruled that it is unreasonable and in violation of section 9(1) of the Constitution, which guarantees everyone the right to equal protection and benefit of the law, to exempt child victims from the terms of section 154(3) of the Criminal Procedure Act. The court emphasized that it is not justifiable to deny young victims equal protection when they are equally vulnerable.

In *Director of Public Prosecutions, Transvaal v. Minister of Justice and Constitutional Development* [2009 (7) BCLR 637 (CC)] the Constitutional Court reaffirmed this position and stated that every child "must be treated as a unique and valuable human being with his or her individual needs, wishes, and feelings respected. Children need to be treated

with respect and kindness. These factors, in my opinion, should also be considered when applying the Constitution's s. 28(2) mandate that the child's best interests come first in all cases involving children.

The Constitutional Court emphasized in *Teddy Bear Clinic for Abused Children v. Minister of Justice and Constitutional Development* [2013] ZACC 35 that children's rights to dignity are independent of their parents' rights and are not restricted until they reach a certain age, in addition to reiterating the significance of dignity in recognizing the inherent worth of children. The right to freedom and security of the person is protected under Section 12 of the Constitution. The right to be free from violence, guaranteed by section 12(1)(c) of the Constitution, as well as the right to be treated or punished in a way that is not cruel, inhumane, or degrading, guaranteed by section 12(1)(e), are of particular importance to the child victim and child witness.

### **Legal status in India:**

As observed by Justice Arjit Pasayat in the case of *Tulshidas Kanolkar vs The State of Goa* [Appeal (crl.) 298 of 2003] "While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female".

Rape is defined in Section 375 of the IPC as sexual contact between a man and a woman without the woman's knowledge or permission. The law recognizes that consent should be given voluntarily, and it is deemed non-consensual if it is gained through pressure, threat, fraud, or when the woman is unable to understand the nature of the act. In India, the legal age of consent is 18. Even consensual sexual behavior is forbidden with anyone under the age of 18. However, with various limitations and protections, there are explicit legal rules for consensual sexual conduct involving people between the ages of 16 and 18. Marital Rape: Indian law does not expressly recognize the idea of marital rape. By an exception under Section 375, sexual contact of a husband with his wife who is older than 15 years old is not considered rape. To make marital rape a crime, there have been efforts to remove this provision, which has drawn criticism. Section 375 of the IPC defines rape, but it does not recognize forceful intercourse by a husband with his wife as rape.

### **Role of the law commission in India:**

The Law Commission has a significant role in these dynamics because it is a body that both represents and, possibly, stands outside of State interests. Additionally, it may be thought of as being less resistant to and more receptive to feminist interventions than, for example, the parliament or the police. The rape law was framed in part by the Law Commission reports from 1980, 2003, and 2013, yet as we will see, there was frequently a discrepancy between the Law Commission and the statute.

### Indian penal code, 1860:

The English common law is the source of the Indian rape laws, which were first referenced in the IPC in 1860. Focusing on her virginity or previous sexual relationships affected how the case turned out. The unfair and backward ruling of the Supreme Court, in the Mathura rape case sparked calls for reforms in the rape laws. However, amendments had an impact on rape sentences. Sec. 155(4) of the Indian Evidence Act of 1872, which allowed the defense to contest the veracity of the character witness, was repealed. It is not at all essential for the male organ to be completely penetrated, for semen to be released, or for the hymen to have ruptured for the act of rape to be committed.

Sections 375–377 of the Indian Penal Code (IPC) 1860 deal with sexual offenses. IPC states that a man commits "rape" if he places his penis in a female victim's body part or uses his mouth or another instrument to do so the woman's mouth, urethra, anus, or vagina, or forces her to do any of the acts on him.

In the famous Nirbhaya Gang Rape case where a girl was severely gang raped in a moving bus in Delhi in 2012, and after being thrown out, she suffered internal injuries and died a few days later. The horrifying nature of the crime, the public outcry, and the government's amendment in the legislation to prevent a crime of this magnitude if this happens again caused this to shake the entire nation. The Indian Penal Code legislation and the juvenile justice legislation were amended as a result in 2013. This amendment broadens the definition of rape, increases the sentence to a maximum of 20 years in prison, and adds the death penalty in cases of the vegetative condition.

In the case of *Mohd. Chaman v. State* [(2001) 2 SCC 28] the defendant violently raped and killed a young girl who was just one year old. The lower court gave the accused the death penalty after determining that this instance was among "the rarest of the rare." However, the Supreme Court decreased the sentence to rigorous life imprisonment because they felt this case was not justifiable enough to warrant the death penalty. They held that the defendant poses no threat to society and therefore, the death penalty should not be applied.

In the case of *State of Maharashtra v. Prakash* [AIR 1992 SC 1275, 1992 CrLJ 1924, 1993 (1) SCALE 721, 1993 Supp (1) SCC 653] According to the Bombay High Court, the police officer instilled terror in the minds of those helpless laborers. The only explanation left is that she was forced into the sexual encounter since neither love nor money was involved. According to the third of the circumstances listed in Section 375, consent may also be obtained by putting another person whose life the victim had an interest in fear for their safety. The victim's spouse was beaten, which is a given. They were both found guilty of rape by Section 376.



### **Child victims:**

19% of the world's children reside in India. According to the 2001 census, 42% of India's population were under 18 years of age. India has the highest rate of CSA instances in the world, with a kid under the age of 16 being violated every 155 minutes, a child under the age of 10 every 13 hours, and one child in 10 being sexually molested at some point. According to studies, approximately 7,200 children including infants are raped annually, and many more incidents likely go unreported. Every second child in India experiences some kind of sexual abuse, and every fifth child experiences severe forms of it. Child in India. (2008, April) According to a demographic and health survey carried out in India between 2005 and 2013 by the United Nations International Children's Education Fund (UNICEF), 10% of Indian girls may have suffered sexual violence between the ages of 10 and 14, and 30% between the ages of 15 and 19. In total, before they reached adolescence, over 42% of Indian girls experienced the trauma of sexual violence. Anne Mager's account of how masculinity was constructed in a geographically and historically constrained space (the Eastern Cape between 1945 and 1960) demonstrates how closely local cultural norms and historical events shape patterns of gender violence.

### **Protection of children from sexual offenses act, 2012:**

The gender-neutral POCSO Act, 2012 is a piece of law. It protects all children under the age of 18 from sexual abuse. The following are included in the comprehensive definition of child sexual abuse: Penetrative sexual assault, aggravating penetrating sexual assault, sexual assault, aggravating sexual assault, sexual harassment, utilizing a child in a pornographic act, and trafficking in minors for sex are only a few examples. The following legal provisions have some shortcomings:

(a) Consent: If the child or adolescent refuses to undergo a medical examination but the family member or investigating officer insists, the POCSO Act is silent and offers no specific guidance. In these circumstances, the issue of consent needs to be established right away. When the victim is a child (under the age of 12), it is wise to get their parent's informed consent. When the victim is a teenager (between the ages of 12 and 18), it is wise to get both the victim's and their parent's consent. However, without addressing the consent or legality difficulties, emergency care must be initiated to save the child's life.

(b) Medical examination: According to POCSO Act Section 27(2), a female doctor must examine a female child or teenage victim. The available medical officer must, nevertheless, offer emergency medical care according to the law.

(c) Cost of treatment: The legal requirement that the medical community and institution provide survivors with free medical care. The State should be responsible for

covering the costs if there are inadequate facilities or if expensive procedures are necessary; otherwise, the hospital might provide poor medical care or deny the survivor thorough care.

(d) Consented sexual intimacy: An act of sexual encounter with a person under the age of 18 is illegal regardless of consent, gender, marital status, or age of the victim/accused. Sexual contact between two adolescents or between an adolescent and an adult is therefore considered illegal under the POCSO Act of 2012. To avoid prosecution under the POCSO behavior of 2012, it is proposed that any consensual sexual behavior that could be considered penetrative sexual assault should not be a crime when it occurs between two consenting minors.

According to the Supreme Court, having sex with a minor wife who is between the ages of 15 and 18 is illegal. It contravenes the Protection of Children from Sexual Offences Act (POCSO)'s provisions as well as articles 14, 15, and 21 of the Indian Constitution. In this instance, the Indian Penal Code's exemption 2 to section 375 was invalidated. No matter whether she is married or not, a child who is between the ages of 15 and 18 is still a child.

In the case of *Sakshi v. India and ors* [Writ Petition (crl.) 33 of 1997] the writ petition was dismissed by the court with the following instructions: "Section 327(2) Cr.P.C i.e. regardless of what is stated in sub-section (1), the investigation into and trial for offence under sections 376, 376A, 376B, 376C, or 376D of the IPC shall be held in private: With the caveat that the presiding judge may, if he sees appropriate, or upon application, it shall also apply to offenses under sections 354 and 377 of the IPC that are the subject of an inquiry or trial.

In the case of *Harpal Singh & others v. State of Himachal Pradesh* [AIR 1981 SC 361, 1981 CriLJ 1, (1981) 1 SCC 560, 1981 (13) UJ 63 SC] The prosecutrix was a girl under the age of 16. The accused approached her as she was leaving and informed her that her brother was laying ill in the pharmacy. He hurried after her, locking her in a room with two other people. They then engaged in sexual activity with her against her will. Later, she was saved by her family, who decided to remain silent. After the incident was later reported in a newspaper, the police launched their investigation. According to the accuser, the girl was accustomed to having sex and provided her consent. The Supreme Court found sufficient evidence to establish that she was under the legal age of consent at the time of the sexual encounter because of which her consent was invalid. Following Section 376 of the Indian Penal Code, the defendants were found guilty of rape.

### A comparison of legal aspects in South Africa and India

Issues	South Africa	India
Definition	The illegal and purposeful act of sexual penetration with a person without their consent is referred to as rape in South Africa. The law also acknowledges a variety of sexual assaults, including forced acts of prostitution.	The non-consensual insertion of a man's penis into a woman's vagina, anus, or mouth is referred to as rape in India. Molestation, sexual harassment, and acid attacks are examples of further sexual offenses that are recognized by the law.
Consent	Consent is significant according to South African law. Absence of opposition does not imply consent; consent must be freely given and informed. According to the law, a person cannot provide their consent if they are unable to understand the nature of the act or if they are being coerced or intimidated.	According to Indian law, every sexual behavior requires explicit consent. Consent must be freely granted, uncoerced, and with knowledge of the nature of the conduct.
Gender Neutrality	By South African legislation, both men and women can be raped. The law also recognizes that rape can happen in intimate partner or marriage situations.	According to Indian law, rape is predominantly committed against women, and men are typically the offenders.
Sentencing	In South Africa, rape involves a mandatory life sentence. The court has the authority to impose a reduced sentence, but it must provide a reason for doing so.	The severity of the offense determines the type of sentence given for rape in India. The minimum term for rape is 10 years in jail, but in circumstances of violent rape, the sentence can be increased to life in prison or even the death penalty.

## **Healthcare provisions in South Africa and India:**

### **South Africa:**

In South Africa, 29% of adult women carry HIV and 12–28% of adult women have been sexually assaulted. The systematic evaluations found significant data gaps and scant support for the health impacts, therefore the 2010 Global Burden of Disease omitted numerous health outcomes related to rape and all kinds of gender-based violence. Providing sufficient, gender-sensitive medical care for rape victims within the limitations imposed by locally available resources is a major challenge for public health services. Concerns about the treatment of rape survivors have been raised in South Africa and other developing nations.

To provide care for rape survivors, the State in South Africa until 1999 hired designated physicians. Human Rights Watch reported in a 1997 inquiry that district surgeons had few incentives to "do a good job." District surgeons were discontinued in 1999 as part of efforts to enhance services, advance towards more integrated care, and adhere to a primary health care philosophy. At present, a rape survivor can receive medical care from any doctor in a public or private practice. A preliminary analysis of the services in one region, however, revealed that adjustments had been made without considering the need for formal training or for the practitioner to present proof of competence. As a result, many medical professionals were unprepared and hesitant to examine rape survivors. South African pregnant women who have HIV and syphilis experience adverse pregnancy outcomes. There is not much information available regarding the frequency, incidence, seroconversion, and risk factors for people who visit an obstetric unit operated by a midwife.

### **Procedures for the victim's examination:**

Victims of sexual offenses are expected to provide medical samples. The victim must be informed of the medical evaluation process before any samples are taken. This can reassure the victim. One or more of the following samples may be requested from the licensed medical professional: It is necessary to let the swab (posterior fornix) air dry. Crime tool 1 or 3 Swab must be rolled over glass slides to smear the surface. Avoid using fixative and stacking slides on top of one another. If necessary, anal, or oral swabs or a smear Whenever necessary, anal, oral, or vaginal swabs and smears (it must be dry before placing in the tube) Hair exhibit: These must be combed from the victim's pubic area and placed in a soft paper envelope. The hairs must be foreign hair, not the victim's. Crime tool 4. From the victim's head and a public location, take control hair samples: There must be at least 20 hairs. These need to be removed from various locations on the victim's head.

**Impacts on the health of the rape victims:**

Numerous women who have been raped suffer long-term health effects, incorporating psychological and physical aspects both directly and indirectly. (PTSD) and other anxiety disorders, depression, and suicidality are examples of psychological effects. Women with histories of rape in South Africa are at a higher risk of mental health issues than women with other trauma experiences, according to research. The effects of rape on one's physical health are much less well understood. However, research on rape-related intimate partner violence (IPV), which includes both physical and sexual assault, confirms a range of physical health consequences, including STI and HIV acquisition unplanned/unwanted pregnancies and (unsafe) abortions, and maternal and child health consequences such as pregnancy loss, low birth weight, and prematurity. Women's health was substantially worse during the rape than it was for non-victims. They were also more likely to have experienced pregnancy-related problems. These health concerns may result from recent rape victims' increased exposure to poverty, as well as from the fact that they were considerably more likely to have previous instances of rape, childhood fear, other trauma, and IPV. It has been demonstrated that poverty and past trauma increase the chance of health issues.

**India:**

Ministry of Health & Family Welfare has recently developed a guideline for doctors who could be asked to treat female victims of sexual abuse, assault, or rape while performing their duties, whether in a government hospital or even a private one. When sexual assault victims contact any of these facilities, they cannot be denied care because, as of recently, denial has been made a criminal infraction with a recognized punishment of either jail time, a fine, or both. All medical and legal examinations and procedures must respect patient privacy and require their informed consent. A Standard Operating Procedure (SOP) for the administration of sexual assault cases must be in place in every hospital. The examination room ought to contain enough area, an examination table, the tools necessary for a comprehensive examination, and the SAFE kit for gathering and preserving physical evidence after a sexual assault.

**Procedure for examining rape victims:**

1. Within 24 hours of receiving the allegation, the lady against whom the rape violation has been committed must be sent for a medical examination, according to Section 164A Criminal Procedure Code.
2. The victim's permission must be obtained for the medical examination, or permission must be obtained from a qualified individual acting on her behalf.

3. Signs of identification: Two markers of identification, such as moles, and scars should be noted.
4. A second examination is necessary to record the injuries if the victim is menstruating at the time of the assessment. Menstrual and immunization histories must also be recorded.
5. History of incident: The medical examiner must document the incident's history in the survivor's own words so that it can be used as evidence in court. If someone other than the survivor recounts the history, their name must be mentioned.
6. Two-fingertests: The prosecution must first demonstrate that the defendant had sexual contact with the victim or entered her skin to prove rape. Hymen rupture is one of the signs of penetration, according to Modi Jurisprudence and other medical jurists. As a result, assessing the victim's hymen is thought to be a crucial part of the medical evaluation. However, he also mentions instances in which prostitutes, pregnant women, and married women had healthy hymens. As a result, he made a distinction between "true virgins" and "false virgins." He asserts that only the hymen of genuine virgins allows for the insertion of the phalanx of a finger, but if the hymeneal opening allows for the passage of one, two, or more fingers, it may mean that the woman's vagina has been entered once or more, rupturing the hymen. [Sudhansu Sekhar Sahoo v. State of Orissa, 2003 Cri. L. J. 4920 (SC)]
7. Presence or absence of injuries: The Supreme Court of India stressed that it was essential to show that the victim had injuries on her body to establish that she did not consent to intercourse. However, this did not imply that the accused had to be found not guilty if the woman did not have any physical injuries. But the fact that these wounds were present was strong proof that she resisted or fought during sexual activity. Since injuries indicate violence in the context of sentencing, they could be viewed as an aggravating factor. As a result, judges frequently impose harsher punishments than usual to legitimize violence. Krishan v. State of Haryana (Crl Appl No. 1342/2012)
8. Marital Status of the Victim: In India, the courts award the offender more severe punishment for "taking away" the virginity of a chaste woman, which can be considered one of the significant aspects of rape sentencing. In the case of Kunhimon v. State of Kerala [1988 Cri. L. J. 493 (Ker)] held that the possibility of a rape victim getting married thereafter is remote. Even though it does not result in less trauma or "loss of value" for the victim, courts typically give the accused a lesser sentence if the woman is married. However, since the unmarried victim's chances of getting married are diminished because of being raped, courts frequently impose longer sentences on her. The punishment imposed on the defendant appears to be increased to reflect the intangible

loss incurred by the unmarried lady and is more than the sentences given to those found guilty of raping married women.

#### **Comparison of health facilities in both the countries:**

1. **Medical Examination:** To conduct medical examinations of rape victims, South Africa and India typically adhere to certain norms. These examinations serve to record physical injuries, gather proof, and evaluate the victim's general health.
2. **Forensic Evidence Collection:** The gathering of forensic evidence is essential for legal processes in both nations. To preserve potential DNA evidence, medical experts gather samples from the victim's body, such as swabs. This information is admissible in trials and investigations.
3. **Emergency Contraception and Post-Exposure Prophylaxis (PEP):** Sexually transmitted infections (STIs), HIV, and unexpected pregnancies are all possible risks for rape victims. Emergency contraception is typically offered by medical practitioners in South Africa and India to avoid pregnancy, and PEP may be recommended to lower the risk of HIV transmission.
4. **Psychological Support:** It is important to address the emotional and psychological damage that rape victims have gone through. Both South Africa and India understand how crucial it is to offer victims of assault counseling and other forms of support to help them deal with the fallout from the assault.

#### **Social issues faced by victims in both countries:**

1. In a patriarchal society, the victim is occasionally blamed for the crime. These things cause trauma and self-blame in the victim & her feelings of guilt and self-pity drive her to consider suicide.
2. Her body parts are damaged by physical trauma, which results in several physical issues.
3. Some women never fully recover from their trauma and steer clear of all physical and social contact with men. She never puts her trust in men or strangers
4. Women also experience financial difficulties since they lose their actual income. They sometimes quit their job because they struggle with social contact, feel uneasy around people, or suffer from mental health concerns.
5. Sexual assault against her might have an impact on her relationships with her family and friends as well. She occasionally recovers less because of the way her family and friends treat her.

6. Nobody desires to get married to a rape victim. People today are more educated and understanding. Many people claim that they are unaffected by these issues and that it is not her fault that she has the right to live her life, begin a new chapter, get married, and live happily, but they do not want her in their home. She is welcome to marry in their neighbor's home, but not in their own. There are very few people who accept her without hesitation.

**Conclusion:**

The incidence, socio-legal factors, and health-related factors around sexual violence in these two countries show both startling similarities and clear variations, according to a comparative analysis of rape in South Africa and India. Despite differences, both countries face significant challenges in tackling this serious problem and delivering justice and support to survivors. Deeply ingrained socio-cultural elements make people more susceptible to rape in both South Africa and India. Both nations have high levels of gender inequality, patriarchal norms, and social attitudes that support victimization and stigmatization. Additionally, the issue is exacerbated by economic inequalities, historical injustices, and restricted access to education, which increases the risk factors for sexual violence. Both South Africa and India have made changes to their legal systems to combat rape and improve survivor support. Stricter laws, the creation of special tribunals, and the support of victim-centered strategies are all significant advances in the fight against sexual abuse. The efficient application of legal frameworks is hampered by low conviction rates, underreporting because of fear and social stigma, and delays in the court process.

Both South Africa and India need broad and multifaceted ways to combat rape. Legal changes and increased enforcement are important, but efforts also need to address social and cultural changes that challenge deeply rooted attitudes and behaviors. This comparative examination has provided us with important new insights into the intricate processes underlying rape in South Africa and India. Informed policymaking, advocacy campaigns, and the development of successful measures to address sexual violence are all things that we hope these findings can help with, not only in these two nations but also globally.

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