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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **A COMPARATIVE ANALYSIS OF CRIMINAL LAW: SEXUAL OFFENSES AGAINST WOMEN IN INDIA, USA, AND ENGLAND**

AUTHORED BY - FRANCIS RON AVEREV

## **Abstract:**

This paper endeavors to dissect and lay bare the legal frameworks addressing sexual offenses against women in India, the United States (specifically California, Florida, and New York), and England. It focuses on substantive legal provisions, judicial interpretations, and the apex courts' influence in each jurisdiction. By analyzing legal definitions, consent laws, societal attitudes, and judicial pronouncements, the study highlights similarities in legal frameworks, such as the importance of consent and protecting vulnerable individuals, while underscoring differences in sanctions and implementation. The research concludes that while progressive reforms have been introduced, each region faces unique challenges in ensuring justice for victims of sexual offenses.

Keywords: Sexual Offence, India, USA, England

## **Introduction**

Everyone agrees that sexual offenses against women are among the most heinous breaches of human rights. Different jurisdictions legal frameworks addressing these offenses have changed dramatically over time, reflecting changes in society and the increasing demand for justice. The laws pertaining to sexual assaults against women in India, three U.S. states (California, Florida, and New York), and England are compared in this research study. The main points of emphasis are the substantive laws, court interpretations, and the supreme courts impact on the development of criminal jurisprudence.

Significant changes have been made to India's legal system for dealing with sexual offenses, especially in the wake of high-profile cases like the 2012 Delhi gang rape. Stricter restrictions were implemented by the Criminal Law (Amendment) Act, 2013, which included harsher penalties for various forms of sexual violence including the death penalty for repeat offenders<sup>1</sup>.



When interpreting these statutes, the Indian judiciary—particularly the Supreme Court—has been crucial in highlighting the importance of prompt justice and frequently broadening the protections afforded to women.

In the US, each state has its own laws pertaining to sexual offenses; California, Florida, and New York, for example, have different laws. The "Yes Means Yes" statute, which requires affirmative permission, is one of the progressive laws of California<sup>2</sup>. Serious punishments for sexual offenses are part of Florida's legislative structure, which prioritizes safeguarding minors. Comprehensive reforms have been put into place in New York, such as the Child Victims Act, which prolongs the statute of limitations in cases involving sexual assault. In interpreting these laws, the U.S. Supreme Court and state supreme courts have played a critical role, frequently establishing decisions that affect national legal standards.

Common law is the foundation of English law, although there have also been major changes made. A comprehensive law that handles several types of sexual violence and places a strong emphasis on consent and the protection of those who are vulnerable is the Sexual Offences Act of 2003. The court has had a crucial role in influencing how these laws are interpreted and applied, making sure that they change to reflect modern society ideals. This is especially true of the Supreme Court and the Court of Appeal.

This comparative study shows that different jurisdictions' approaches to sexual assaults against women exhibit both similarities and differences. Consent is often emphasized, disadvantaged people are protected, and judicial interpretation plays a key role in extending legal protections. Nonetheless, variations in legal definitions, sanctions, and procedural features draw attention to the particular difficulties and strategies encountered by each country. Significant legal changes that are frequently prompted by particular cases highlight how dynamic criminal jurisprudence is in addressing the widespread problem of sexual violence.

### **Research Objective**

The objective of this study is to conduct a comparative analysis of the laws and judicial responses governing sexual offenses against women in India, California, Florida, New York, and England. The research aims to identify similarities and differences in the legal definitions of rape, consent, and punishment, as well as highlight significant judicial pronouncements and



their influence on the legal systems. By examining societal responses and challenges in implementation, the study seeks to assess the effectiveness of legal reforms and their role in protecting women from sexual violence.

### **Research Question**

How do the legal frameworks, judicial interpretations, and societal responses to sexual offenses against women compare between India, California, Florida, New York, and England, and what impact have these factors had on the development of criminal jurisprudence in these jurisdictions?

### **Research Methodology**

This study employs a comparative legal research method. It involves an in-depth analysis of the substantive laws governing sexual offenses against women in each jurisdiction, particularly focusing on statutory provisions and significant amendments. Judicial interpretations, especially those made by the Supreme Courts of India, the United States, and England, are analyzed to understand how courts have shaped legal standards. Key cases, such as the Nirbhaya case in India and the Brock Turner case in the U.S., are examined to assess the impact of legal reforms on public policy. The study also reviews scholarly articles, legal commentaries, and governmental reports to assess societal attitudes and challenges in law enforcement.

### **Legal Framework**

#### **INDIA**

In India, sexual offenses, including rape, are predominantly governed by the Indian Penal Code, 1860 (IPC). The law defining rape was significantly reformed after the infamous Nirbhaya Case (2017)<sup>3</sup>, which led to mass public outrage and demands for stricter laws to protect women.

Section 375 of the IPC defines rape as non-consensual sexual intercourse by a man with a woman under various circumstances<sup>4</sup> such as the use of force, deceit, or when the victim is underage (below 18 years). This section has undergone amendments to broaden the scope of what constitutes rape, responding to societal demands for greater protections for women. The Criminal Law (Amendment) Act, 2013, passed in the aftermath of the Nirbhaya case, expanded the definition of rape to include not just penile-vaginal intercourse but also oral and anal

penetration and the use of objects. This marked a significant departure from earlier definitions, recognizing that sexual violence can take many forms.

Section 376 of the IPC prescribes punishment for rape, which can range from seven years to life imprisonment. The 2013 amendment also introduced the death penalty for repeat offenders, reflecting the growing sentiment for harsher penalties for sexual crimes.

The Bharatiya Nyaya Sanhita (BNS), 2023, which replaces the IPC, retains these provisions with some modifications<sup>5</sup>. For instance, new punishment form called community service has been added in the BNS. Certain offences such as sedition and attempt to commit suicide has been removed. The criminal procedure code has also been replaced by the Bharatiya Nagrik Suraksha Sanhita These changes aim to streamline and modernize the legal framework while maintaining stringent penalties for sexual offenses.

## USA

### California

California's legal framework for sexual offenses is robust, with stringent laws in place, particularly following high-profile cases such as the Brock Turner Case (2016).

California Penal Code Section 261 defines rape as non-consensual sexual intercourse<sup>6</sup>, including provisions for intoxicated and unconscious victims. The California Proposition passed in 2016, sought to improve the state's approach to criminal justice, particularly for sexual offenses, emphasizing rehabilitation and public safety. The judicial handling of sexual offenses in California, particularly lenient sentencing in some cases, has sparked legal reforms to ensure consistency in sentencing

### Florida

Florida's Chapter 794 of the Florida Statutes deals with sexual battery<sup>7</sup>, defining it as oral, anal, or vaginal penetration by, or union with, the sexual organ of another person, or the use of an object, without the victim's consent. Following high-profile trials such as State of Florida v. William Kennedy Smith (1991), Florida enacted several reforms aimed at improving the prosecution of sexual offenses, including better training for law enforcement and the establishment of sexual offense task forces

### New York

New York has a comprehensive set of laws under Article 130 of the New York Penal Law<sup>8</sup>, which covers offenses ranging from rape to sexual misconduct. The Harvey Weinstein Case (2020) became a landmark case in New York, where the former Hollywood producer was convicted of rape and sexual assault.<sup>10</sup> The case was instrumental in galvanizing the #MeToo movement globally, highlighting the systemic nature of sexual abuse in the entertainment industry.

### ENGLAND

In England, sexual offenses are governed by the Sexual Offenses Act 2003<sup>9</sup>, which replaced older laws and introduced a comprehensive definition of rape, sexual assault, and consent.

Section 1 of the Sexual Offenses Act 2003 defines rape as intentional penetration of the vagina, anus, or mouth of another person with a penis, without consent, and where the perpetrator does not reasonably believe that the victim consents. The Act emphasizes the importance of free agreement and removes outdated notions of resistance as a sign of non-consent.

Additionally, the Act includes provisions for other sexual offenses. Section 2 addresses assault by penetration, which involves non-consensual penetration of the vagina or anus with any part of the body or an object. Section 3 covers sexual assault, defined as intentional sexual touching without consent. Section 4 deals with causing a person to engage in sexual activity without consent, which can include forcing someone to perform sexual acts on themselves or others.

The Sexual Offenses Act 2003 also includes specific offenses against children and vulnerable individuals, ensuring comprehensive protection across various scenarios. This legislation represents a significant step forward in addressing sexual violence and ensuring justice for victims.

## **Judicial Pronouncements**

### INDIA

Nirbhaya Case (2012) In December 2012, the brutal gang rape of a 23-year-old medical student in Delhi shocked the nation and the world. The victim, later known as "Nirbhaya" (fearless), was gang-raped on a moving bus and subsequently died from her injuries. This incident sparked



widespread protests across India, with citizens demanding justice and more robust protections for women. The case highlighted the systemic failures in handling sexual violence and drew attention to societal attitudes toward women's safety. Following the case, the Indian Supreme Court affirmed the death sentences of the perpetrators in 2017, stating that the crime fell under the "rarest of the rare" category, deserving the maximum penalty. The Justice Verma Committee, set up in the aftermath, recommended comprehensive reforms in criminal law<sup>10</sup>, which eventually led to the enactment of the Criminal Law (Amendment) Act, 2013. The committee emphasized the need for victim-centric laws and better police training. The Nirbhaya case has had a lasting impact on the Indian legal landscape, prompting discussions about women's rights and safety and leading to changes in the legal framework surrounding sexual offenses.

**Mathura Rape Case<sup>11</sup> (1972)** In this case, a young tribal girl named Mathura was raped by two policemen inside a police station. The trial court acquitted the accused, and the High Court convicted them, but the Supreme Court of India controversially acquitted them again in 1979, citing that the victim had not shown enough signs of resistance, implying "consent." This judgment revealed deep-seated biases within the legal system and illustrated the victim-blaming mentality prevalent in society at the time. The Mathura case led to public protests and a nationwide demand for changes in the law, culminating in the Criminal Law (Second Amendment) Act, 1983, which clarified the definition of consent and introduced custodial rape as a specific offense. The case was a turning point in the fight for women's rights in India, highlighting the need for judicial reforms and better protections for victims of sexual violence.

**Shakti Mills Case<sup>12</sup> (2013)** The Shakti Mills case involved the gang rape of a photojournalist in Mumbai in 2013. The case drew significant media attention and public outrage due to the brutality of the crime. The trial court sentenced the three accused to death in 2014 under Section 376E of the IPC, which was introduced after the Nirbhaya case. The case marked a turning point in how sexual offenses were prosecuted in India, with the court declaring that the crime was one of the "most horrific" in nature. The judgment emphasized the need for strong deterrents against sexual violence and reinforced the importance of swift justice for victims.

This case further solidified the narrative around the need for harsher penalties for rapists and greater accountability in the judicial process.

## USA

The Harvey Weinstein Case (2020) became a landmark case in New York<sup>13</sup>, where the former Hollywood producer was convicted of rape and sexual assault. The case was instrumental in galvanizing the #MeToo movement globally, highlighting the systemic nature of sexual abuse in the entertainment industry.

The conviction of Weinstein, who received a sentence of 23 years in prison, marked a turning point in how sexual offenses are prosecuted and publicized. The case not only brought attention to the actions of a powerful figure but also prompted widespread discussions about consent, power dynamics, and the culture of silence surrounding sexual abuse in Hollywood.

The case of State of Florida v. William Kennedy Smith (1991) became a high-profile rape trial<sup>14</sup> involving the nephew of a former U.S. President. Smith was accused of raping a woman in a Florida resort. The defence argued that the sexual encounter was consensual, and Smith was ultimately acquitted, which led to significant media scrutiny regarding the trial's conduct and the public perception of victims of sexual assault. The trial was notable not just for the high-profile defendant but also for the way it raised questions about consent and the treatment of women in the legal system.

Following this case, the Florida legislature enacted several reforms aimed at improving the prosecution of sexual offenses, including better training for law enforcement and the establishment of sexual offense task forces. These reforms reflected a growing awareness of the need for a more sensitive approach to handling sexual assault cases and addressing the complexities surrounding consent.

In the Turner case, a Stanford student was convicted of sexually assaulting an unconscious woman behind a dumpster<sup>15</sup>. Despite the jury's conviction, the judge sentenced Turner to only six months in county jail, citing concerns about the impact of a lengthy sentence on his future. This lenient sentence sparked widespread outrage, leading to protests and calls for judicial reform. The backlash resulted in the passage of Senate Bill 967, which mandated that universities adopt affirmative consent standards, requiring that all parties involved in a sexual encounter provide clear, affirmative, conscious, and voluntary consent.

The Turner case exemplified the flaws in the judicial system regarding sexual assault cases,

particularly in the leniency shown towards privileged defendants. It also highlighted the importance of institutional changes in addressing sexual violence on college campuses

## ENGLAND

One of the earliest and most significant cases was Directorate of Public Prosecution v Morgan where the House of Lords ruled that a mistaken belief in consent could be a defence to rape, even if the belief was unreasonable<sup>16</sup>. The court decided that an honest belief by a man that a woman with whom he was engaged with sexual intercourse was consenting was a defence to rape, irrespective of whether that belief was based on reasonable grounds. This case was superseded by the Sexual Offences Act 2003 which came into force on 1 May 2004. The defendant was a Royal Air Force Pilot and he had invited his friends over to have sexual intercourse with his wife. He told them that any signs of struggle were not to be seen as a lack of consent and that she enjoyed it. The men were convicted of rape, while Morgan was convicted of aiding and abetting his wife. The men had argued that they had the honest belief that the complainant had consented to sexual intercourse. This decision underscored the subjective nature of the defendant's belief but also led to widespread criticism, ultimately influencing later reforms that incorporated an objective standard of reasonableness in assessing consent claims.

The case of R v Olugboja (1982) clarified that submission does not equate to consent<sup>17</sup>. The case involved a defendant who engaged in sexual intercourse with the victim after she had been subjected to intimidation and fear by his associates. The victim did not physically resist but later stated that she had felt compelled to comply. The Court of Appeal ruled that submission does not equate to consent and emphasized that genuine consent must be freely given. Lord Justice Dunn highlighted that juries should not approach consent as a binary "yes or no" but instead consider the surrounding circumstances, including whether coercion or pressure had influenced the victim's decision. This judgment played a crucial role in shaping later statutory definitions of consent under the Sexual Offences Act 2003.

The court further expanded the understanding of consent in R v McNally by ruling that deception about one's gender can vitiate consent in sexual offences<sup>18</sup>. In this case, the defendant, born female, presented as male and engaged in sexual activity with a female partner who was unaware of the defendant's biological sex. Upon discovering the truth, the complainant argued that she would not have consented if she had known the defendant was not



biologically male. The Court of Appeal ruled that deception about one's identity, particularly in a manner that affects a fundamental aspect of consent, can render that consent invalid. The judgment expanded the understanding of consent by recognizing that misleading a partner about material facts—such as biological sex—could amount to rape or sexual assault. This case set an important precedent in addressing modern issues of consent, particularly in cases involving gender identity and deception. It also reinforced the principle that consent must be informed, highlighting the evolving nature of legal protections in sexual offences.

### **Comparative Analysis**

The examination of sexual offenses against women in India, California, Florida, New York, and England reveals both similarities and differences in legal frameworks, societal attitudes, and judicial responses.

#### **Legal Definitions of Rape and Consent**

All jurisdictions have taken steps to refine the legal definitions of rape and consent, though the nuances differ:

- **India**: The Indian Penal Code (IPC) defines rape primarily in terms of penile-vaginal intercourse and has historically included patriarchal notions that often shift the burden of proof onto the victim. Recent reforms, particularly after the Nirbhaya case, have broadened the definition to include various forms of sexual penetration and have emphasized the importance of consent.
- **Florida, California and New York**: These states emphasize affirmative consent, requiring that all parties engage in clear, conscious, and voluntary agreement before any sexual act. This approach aims to ensure that consent is explicit and ongoing.
- **England**: The Sexual Offences Act 2003 established a clear standard that consent must be given voluntarily and that incapacitated individuals cannot consent. This law underscores the necessity of free agreement and removes outdated notions of resistance as a sign of non-consent.

#### **Judicial Responses and Public Outcry**

High-profile sexual offense cases often catalyze societal movements and legal reforms:

- **India**: The Nirbhaya case led to immediate legal reforms and sparked a national conversation about women's rights, safety, and systemic injustices within the legal system. The case resulted in the Criminal Law (Amendment) Act, 2013, which

introduced stricter penalties and expanded definitions of sexual offenses.

- **United States:** The Brock Turner case in California incited outrage, resulting in changes to university policies regarding consent and sexual assault, as well as legislative amendments like California's Senate Bill 967. This case highlighted the need for clearer consent standards and harsher penalties for sexual offenses.
- **England:** Operation Yewtree, which investigated historical sexual abuse allegations, demonstrated the potential for historical cases to receive renewed attention. This operation led to societal acknowledgments of past abuses and significant legal reforms, emphasizing the importance of addressing historical sexual offenses.

### Societal Attitudes Towards Victims

Societal attitudes toward victims of sexual offenses differ across jurisdictions:

- **India:** Cultural stigma often prevents victims from reporting crimes, although recent public movements have started to shift perceptions. The Nirbhaya case, in particular, has led to greater awareness and advocacy for women's safety.
- **United States:** Following the #MeToo movement, there has been a growing acknowledgment of the importance of believing survivors and addressing the societal barriers that discourage reporting. This movement has led to increased support for victims and calls for systemic changes.
- **England:** High-profile investigations like Operation Yewtree have shifted societal attitudes towards supporting victims and recognizing the need for sensitivity in handling sexual offense cases. There is now a greater emphasis on ensuring justice for survivors of historical abuse.

### Challenges in Implementation

Despite legal reforms, challenges remain in each jurisdiction regarding the enforcement of laws:

- **India:** While the laws have been amended to reflect a more modern understanding of sexual offenses, implementation remains inconsistent. Many cases face systemic delays and societal pushback, hindering the effectiveness of legal protections.
- **United States:** Disparities in the judicial process can lead to lenient sentences for offenders, as seen in the Brock Turner case. This highlights the need for systemic changes in how sexual violence is prosecuted and the importance of ensuring that justice is served.

- **England:** Ongoing issues regarding underreporting and the handling of sensitive cases, particularly concerning historical allegations, continue to pose challenges. Ensuring that victims feel supported and that their cases are taken seriously remains a priority.

This comparative analysis underscores the importance of robust legal frameworks, societal support for victims, and effective judicial responses in addressing sexual offenses against women.

### **Conclusion**

The comparative analysis reveals that legal reforms in India, the U.S., and England share a common goal of strengthening protections for women against sexual violence, with significant emphasis on consent. However, legal definitions and punishments vary, reflecting each society's historical, cultural, and legal evolution. India's legislative changes following the Nirbhaya case have made significant strides in broadening the scope of sexual offenses, while the U.S. states, especially California, emphasize affirmative consent. England's comprehensive Sexual Offences Act 2003 sets a strong precedent for modern legal frameworks. Despite these reforms, the study identifies challenges in legal implementation, societal attitudes, and judicial responses, all of which continue to hinder the consistent application of justice.

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1 The Criminal Law (Amendment) Act, 2013, No. 13, Acts of Parliament, 2013 (India).

2 Cal. Educ. Code § 67386 (West 2015)

3 Mukesh & Anr v. State for NCT of Delhi & Ors, (2017) 6 SCC 1 (India).

4 Indian Penal Code, 1860, § 375

5 Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India)

6 Cal. Penal Code § 261 (West 2022).

7 Fla. Stat. Ann. § 794.011 (West 2023).

8 N.Y. Penal Law § 130 (McKinney 2023).

9 Sexual Offences Act 2003, c. 42, § 1 (Eng.)

10 Justice Verma Committee Report, 2013, available at <http://www.prsindia.org>.

11 Tukaram v. State of Maharashtra, (1979) 2 SCC 143

12 State of Maharashtra v. Vijay Mohan Jadhav, 2021 SCC OnLine Bom 4563

13 People v. Weinstein, 147 N.Y.S.3d 889 (N.Y. App. Div. 2021).

14 State v. Smith, No. 91-5672CF (Fla. Cir. Ct. 1991).

15 People v. Turner, No. B157716 (Cal. Super. Ct. 2016)

16 DPP v Morgan [1975] UKHL 3

17 R v. Olugboja, [1982] QB 320 (CA).

18 R v. McNally, [2013] EWCA Crim 1051.