INCONSISTENCIES IN RAPE SENTENCING IN INDIA DUE TO PREVALENT MYTHS AND STEREOTYPES

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ABSTRACT

This paper examines inconsistencies in rape sentencing in India arising from entrenched myths and stereotypes. Using qualitative doctrinal analysis of ten Supreme Court judgments and key secondary literature, the study shows how judicial discretion, social bias, procedural practices, and institutional gaps contribute to disparate sentencing outcomes. The analysis reveals that while the Supreme Court has progressively issued directives against stereotype-based reasoning, a lack of binding guidelines allows these same myths to continue influencing disparate sentencing outcomes. It recommends structural reforms such as a statutory Sentencing Guidelines Authority, mandatory gender-sensitivity training for judges, clear reason-recording obligations, and a sentencing database—paired with procedural and educational measures to reduce bias.

INTRODUCTION

Rape sentencing in India has been inconsistent despite legislative reforms aimed at strengthening substantive law and victim protection. These inconsistencies often surface in the sentencing phase, where judicial discretion interacts with social stereotypes about victims, procedural weaknesses, and institutional lacunae. This paper analyses ten Supreme Court judgments to trace patterns of judicial reasoning, identify causes of disparity, and propose reforms.

EVOLUTION OF RAPE LAW IN INDIA

The legal framework for rape in India has undergone significant changes, often driven by public outrage against specific cases. The journey has moved from old, colonial-era ideas to a broader, more victim-focused legal standard, although challenges in sentencing remain.

The Colonial Starting Point - Initially, the Indian Penal Code (IPC) was framed with colonial attitudes. In its early interpretation, Section 375 (which defines rape) was understood in a way that required a victim to provide proof of resistance. This meant that if a victim couldn't show she had physically fought back, it was harder to prove the rape, which reflected a deep-seated stereotype about how a "real" victim should behave.

The First Major Change: The Mathura Case (1983) - A major turning point was the Tukaram v. State of Maharashtra (1979) case, commonly known as the Mathura case. Mathura, a young tribal girl, was allegedly raped in police custody. The Supreme Court initially acquitted the accused, partly by questioning the absence of resistance and implying consent. Public Outrage: This judgment caused massive public outrage across India. The protests directly led to the Criminal Law (Amendment) Act, 1983. This was a crucial reform that, among other things, introduced Section 114A into the Indian Evidence Act. This new rule stated that in cases of custodial rape, if the woman stated she did not consent, the court shall presume she did not consent, shifting the burden of proof to the accused.

The Second Major Change: The Nirbhaya Case (2013) - The next major shift came decades later, following the brutal gang-rape and murder case in Delhi in 2012 (often called the Nirbhaya case). The widespread protests led to the Criminal Law (Amendment) Act, 2013. These reforms were significant. They broadened the very definition of sexual offences to

include many acts beyond just penetration. They also raised minimum sentences for those crimes.

The Lingering Problem: Sentencing - A key point made in your paper is that while these amendments were vital, they mostly focused on changing the "substantive law" (i.e., the definition of the crime and the minimum punishment). They did not, however, create a new framework for how judges should decide a sentence, which is known as sentencing practice. This is why, despite stronger laws, inconsistencies in the actual sentences given by different courts remain a major problem. [1]

METHODOLOGY

This study uses qualitative doctrinal analysis. Ten Supreme Court judgments were selected for their doctrinal importance and illustration of sentencing approaches. Each judgment was read for: facts, legal issues, judicial reasoning at sentencing, references to victim conduct or character, and final sentence. The analysis is supplemented by secondary literature on sentencing and Mrinal Satish's framework. [2]

ANALYSIS: JUDICIAL CONFRONTATION WITH RAPE MYTHS

The selected judgments illustrate the Supreme Court's evolving, and sometimes conflicting, approach to handling entrenched stereotypes in sexual offence cases. Rather than a simple chronological list, the cases are analyzed thematically based on the myths they confront.

The Myth of Resistance and Consent

The most pervasive myth in rape law is that a "real" victim must physically resist, and the absence of injury implies consent. ***Tukaram v. State of Maharashtra (1979) 2 S.C.C. 143*** [3] is the archetypal example. A young tribal girl (Mathura) was allegedly raped in police custody. The Court acquitted the accused, finding no evidence of force and commenting on the victim's "absence of visible resistance" as a factor implying consent. This judgment sparked nationwide protests, highlighting how stereotypes of resistance can shape judicial outcomes, and led to the 1983 Criminal Law Amendment.

Decades later, the Court actively dismantled this myth in ***State of U.P. v. Pappu @ Yunus (2005) 4 S.C.C. 123.***[8] In this case due to limited physical evidence, the Court held that a lack

of medical evidence of injury is not fatal to the prosecution's case, especially where the victim's testimony is consistent. This signaled a clear move away from requiring "injury" as necessary proof of rape.

The "Ideal Victim" Myth (Moral Character of Victim, Delay in Reporting, and Sexual History)

Judgments frequently grapple with stereotypes that a victim must be "chaste," report immediately, and have an unblemished character. In ***State of Maharashtra v. Madhukar Narayan Mardikar (1991) 3 S.C.C. 364*** [5] the Court directly rejected the promiscuity stereotype. It held that a victim's prior sexual history cannot be used to discredit her testimony, affirming that even a woman of "easy virtue" (a problematic term in itself) is entitled to dignity and protection. In ***State of Punjab v. Gurmit Singh (1996) 2 S.C.C. 384*** [4] the court affirmed victim-centric standards. The Court held that the sole testimony of the victim is sufficient for conviction if credible, and warned against "character attacks" on the victim during trial . In ***State of H.P. v. Gian Chand (2001) 7 S.C.C. 568*** [7] the court addressed the issue of delay in reporting. It cautioned against penalizing a victim for delay without considering the immense trauma and social stigma she may face, undermining simplistic assumptions that "delay equals falsehood". In ***State of H.P. v. Raghubir Singh (1993) 2 S.C.C. 622*** [12] the Court explicitly directed that judges must avoid making demeaning remarks about a victim's moral conduct. While this affirmed a norm against character-based reasoning, its enforcement has remained uneven.

The Central Problem: Sentencing Inconsistency

While the above cases show progressive statements, the paper's core thesis is proven by cases that show wild inconsistency in actual sentencing, often for similar crimes. In ***Om Prakash v. State of U.P. (2006) 9 S.C.C. 887*** [9] despite a case of aggravated sexual assault on a minor and the offender being found guilty, received a minimal sentence in later proceedings. While in case of ***State of Rajasthan v. Om Prakash (2002) 5 S.C.C. 345*** [10] while dealing with a child rape with aggravating circumstances, the Court imposed strict, exemplary sentences.

The fact that two cases involving aggravated child sexual assault can lead to such different outcomes—one minimal, one strict—is the clearest evidence of the disparity and inconsistency

this paper addresses. It exposes a system reliant on individual judicial discretion rather than standardized principles.

The Shift Towards Victim-Centred Jurisprudence

Finally, several judgments show the Supreme Court attempting to reform the system at a policy level, focusing on the victim's rights and dignity. In ***Bodhisattwa Gautam v. Subhra Chakraborty (1996) 1 S.C.C. 490*** [6] a case of rape in police custody , the Court treated rape as a violation of Article 21 (Right to Life and Dignity) and, significantly, awarded compensation to the victim. This advanced a victim-centered jurisprudence recognizing the "dignity harms" of rape. Meanwhile in ***Delhi Domestic Working Women's Forum v. Union of India (1995) 1 S.C.C. 14*** [11] the court addressed systemic institutional failures. The Court sought broad procedural reforms, including counselling, privacy, and victim support mechanisms , influencing policy on how sexual offence cases are handled.

FINDINGS

The judgments show a mixed trajectory: progressive dicta from the Supreme Court have attempted to curtail stereotype-driven reasoning, but sentencing outcomes at lower levels often continue to reflect social bias. There is a pattern where socio-cultural myths around females, vagueness in sentencing guidelines and pseudo-medical reasoning reduces sentence severity in comparable cases. [13]

CAUSES OF INCONSISTENCY

1. **Structural Causes [14]**

    a. **Lack of Sentencing Guidelines:** India lacks a centralized sentencing authority. Judges apply Section 376 and other provisions without a standardized scale for aggravating and mitigating factors, leading to disparate results.

    b. **Ambiguity of 'Special Reasons':** CrPC S.354(3) asks for recording special reasons for lesser sentences but does not define standards for what qualifies. This creates interpretive freedom.

    c. **Precedential Gaps:** While some Supreme Court decisions are clear, appellate

divisions sometimes diverge, leaving trial courts with conflicting signals. [15]

2. **Sociocultural Causes [16]**

    a. **Patriarchal Myths**: Beliefs about chastity, resistance, and 'real rape' influence credibility assessments. Mathura is the archetypal example where absence of resistance was read as consent.

    b. **Victim-Blaming Norms**: Courts occasionally reference victim behavior or delay, reinforcing social stigma and reducing perceived harm.

    c. **Moralizing Language:** Implying the victim was 'habituated' or 'of easy virtue' has historically influenced sentencing. [17]

3. **Procedural Causes [18]**

    a. **Overemphasis on Medical Evidence:** Some courts have historically demanded medical corroboration or misinterpreted clinical findings, e.g., linguistic focus on 'absence of injury' as proof of consent.

    b. **Cross-Examination Tactics:** Aggressive cross-examination that highlights inconsistencies or delay can unjustly affect sentencing sympathies.

    c. **Use of Pseudo-Scientific Tests:** The notorious two-finger 'test' had a chilling effect on perceptions of sexual violence until condemned by the Courts. [19]

4. **Institutional Causes [20]**

    a. **Judicial Training Gaps:** Many judges receive limited continuous education on gender, trauma psychology, and contemporary sexual offence jurisprudence.

    b. **Appellate Reticence on Quantum:** Higher courts intervene on sentence only when manifestly disproportionate; gradual, subtle disparities often go unchecked.

    c. **Resource Constraints:** Overburdened courts and limited support infrastructure for victims lead judges to seek expedient resolutions, sometimes favoring

leniency. [21]

RECOMMEDATIONS

Below are detailed, actionable reforms designed to address the structural, sociocultural, procedural, and institutional causes of sentencing inconsistency.

1. Establish a Sentencing Guidelines Authority [22] : Create a statutory Sentencing Guidelines Authority (SGA) under the CrPC to research, propose, and publish guideline ranges for offences, including rape and sexual assault. The SGA would identify aggravating and mitigating factors with recommended weightings (e.g., use of weapon, abuse of position of trust, victim vulnerability). The SGA should consult judiciary, victim groups, criminologists, and international models (UK Sentencing Council, Canadian Sentencing Commission). Benefits include predictability, transparency, and facilitating appellate review when departures occur.

2. Mandatory Gender-Sensitivity and Trauma Training for Judiciary [23]: Introduce compulsory certification modules for all judicial officers handling sexual offence cases. Training should cover trauma-informed interviewing, unconscious bias recognition, cultural competence, and evidence evaluation without resorting to victim-blaming tropes. Judicial academies (e.g., National Judicial Academy) must integrate these modules into continuing education, with periodic recertification.

3. Statutory Reason-Recording and Review Mechanism [24] : Amend CrPC to require judges to state, in clear terms, the specific legal reasons when imposing less-than-standard sentences for sexual offences. The provision should set out mandatory content: reference to specific factual findings, legal precedent relied upon, and why mitigating factors apply. A specialized appellate review channel (fast-track review of sentencing orders) would deter arbitrary leniency.

4. Ban on Pseudo-Scientific Tests and Clear Medical Protocols [25]: Reinforce the prohibition of invasive or pseudo-medical tests (e.g., two-finger test) through statutory clarification and medical protocols endorsed by the Medical Council of India. Courts should rely on accredited forensic evidence interpreted by qualified experts, not lay impressions of injury.

5. Sentencing Database and Transparency Portal [26]: Establish a central database that records sentencing decisions for sexual offences (anonymized where necessary), searchable by offence, region, and quantum. Transparency enables researchers and policymakers to identify patterns and monitor compliance with guidelines.

6. Victim Impact Statements and Support Mechanisms [27]: Institutionalize victim impact statements at sentencing, allowing survivors to communicate harm and context. Pair this with legal aid, counseling, and confidentiality protections to ensure statements are submitted safely and effectively.

7. Judicial-Academic Collaboration and Periodic Reviews [28]: Create partnerships between judiciary, law schools, and social scientists to review sentencing trends annually. Publish 'Sentencing Reports' that analyze departures from guidelines and recommend corrective actions.

8. Media and Legal Education Campaigns [29]: Launch public campaigns and law-school curricular reforms to debunk rape myths, educate on consent, and foster a culture that supports survivors rather than stigmatizes them. Such normative shifts can indirectly influence judicial perspectives over time.

CONCLUSION

This paper has traced how myths and stereotypes infiltrate sentencing practices despite statutory reforms and progressive dicta from the Supreme Court. Effective reform requires a multipronged approach: institutional structures (guidelines and databases), procedural safeguards (reason-recording, ban on pseudo-tests), institutional culture change (training and academic engagement), and public education. Only by addressing legal, social, and institutional causes together can India achieve consistent, principled, and victim-centred sentencing in rape cases.[30]

ENDNOTES

[1] See Criminal Law (Amendment) Act, 1983; Criminal Law (Amendment) Act, 2013.

[2] See Mrinal Satish, Discretion, Discrimination and the Rule of Law: Reforming Rape Sentencing in India (Oxford Univ. Press 2016).

[3] Tukaram v. State of Maharashtra, (1979) 2 S.C.C. 143 (India).

[4] State of Punjab v. Gurmit Singh, (1996) 2 S.C.C. 384 (India).

[5] State of Maharashtra v. Madhukar Narayan Mardikar, (1991) 3 S.C.C. 364 (India).

[6] Bodhisattwa Gautam v. Subhra Chakraborty, (1996) 1 S.C.C. 490 (India).

[7] State of H.P. v. Gian Chand, (2001) 7 S.C.C. 568 (India).

[8] State of U.P. v. Pappu @ Yunus, (2005) 4 S.C.C. 123 (India).

[9] Om Prakash v. State of U.P., (2006) 9 S.C.C. 887 (India).

[10] State of Rajasthan v. Om Prakash, (2002) 5 S.C.C. 345 (India).

[11] Delhi Domestic Working Women's Forum v. Union of India, (1995) 1 S.C.C. 14 (India).

[12] State of H.P. v. Raghubir Singh, (1993) 2 S.C.C. 622 (India).

[13] See case law review in Satish, supra note 2.

[14] See discussions on sentencing guidelines: Law Commission of India, Reports on Sentencing (various).

[15] See scholarly analyses on patriarchal bias in courts: (collective literature cited in Satish, supra note 2).

[16] On medical evidence and its limits, see Lillu v. State of Haryana, (2013) 14 S.C.C. 643 (India) (rejecting two-finger test).

[17] On cross-examination and victim treatment, see Bodhisattwa Gautam, supra note 6.

[18] On judicial training needs, see National Judicial Academy curriculum notes and recommendations (various).

[19] For international sentencing authority models, see Sentencing Council (UK) materials.

[20] On victim impact statements, see comparative law literature (e.g., U.S. Federal Victim Impact Statement practice).

[21] See IPC, No. 45 of 1860, §§ 375–376 (India); Code of Criminal Procedure, 1973, § 354(3) (India); Indian Evidence Act, 1872, § 114A (India).

[22] Suggested model based on comparative institutions: Sentencing Council (UK); U.S. Sentencing Commission.

[23] Training models referenced from NJA and international human rights guidelines on victim-centred justice.

[24] See procedural reform proposals in Law Commission reports and academic literature.

[25] Lillu v. State of Haryana, (2013) 14 S.C.C. 643 (India) (holding two-finger test unconstitutional).

[26] Data transparency recommendations inspired by criminological best practices.

[27] Victim impact statement frameworks discussed in international comparative literature.

[28] Judicial-academic collaborations recommended in various law reform reports.

[29] Media literacy and legal education proposals drawn from public law reform literature.

[30] See Satish, supra note 2, and associated case law for doctrinal context.