



## **DOMESTIC VIOLENCE: AN ISSUE FOR INTERNATIONAL OR DOMESTIC LEGISLATION?**

The gang-rape of the 23-year-old physiotherapy student in a Delhi bus last December, who died from severe injuries as a result, received global media attention. In India the incident unleashed heated debates over national rape laws as well as their enforcement and prosecution of perpetrators. This report compares existing legislation on sexual violence including sexual assault, rape and sexual harassment, and domestic violence against women in India and Turkey. In the past decade both Turkey and India witnessed passage of legislation on gender equality and women's rights, most notably, domestic violence and sexual assault. The report argues that legislation in both countries addressed international protocols: yet the Turkish legislation remained more faithful to international trends while the Indian legislation sought to steer a middle course between international standards and societal imperatives.

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<sup>1</sup> <http://www.tepav.org.tr/en/ekibimiz/s/1298/Feride+Inan>

## Facts and Figures

According to UN Women (2011) statistics, 33.5 % and 8.5% of Indian women, respectively, suffered from physical and sexual violence in their lifetime; 37.2 % of Indian women were subject to some form of physical violence and/or sexual violence by the intimate partners their lifetime (UN Women 2011). In absolute terms, the Indian National Crime Records Bureau (NCRB) reported 24,206 rape cases in 2011 (NCRB 2011) or 2.04 per 100,000 population<sup>2</sup> ; experts say the number of unreported sexual assault cases is much higher (Human Rights Watch 2012). Only 26.4% of reported cases in 2011 were prosecuted under the Indian Penal Code (IPC) pointing to ineffective implementation of legislation against violence against women. Furthermore, in 92.9 % of reported rape cases the offenders were known to the victims, indicative of the domestic nature of the crime (NCRB 2011).

In Turkey the rate of physical violence and sexual violence victims stood at 17,8 % and 3,3 %, respectively (UN Women 2011). In absolute terms the number of police recorded offences of sexual violence in 2008 was 1,071 (TUIK 2008) or 1.5 per 100,000 population<sup>3</sup>. Data provided by the Turkish Statistical Institute (TUIK) shows that in 2008 13.7 % of women were subject to physical/ sexual violence by their intimate partners; 41.9 % suffered from physical/sexual violence by their intimate partner at some point in their lifetime (TUIK 2008)<sup>4</sup>.

## Legislative Outlook

Globally, violence against women is increasingly acknowledged as a violation of human rights and discrimination against women. Steps are taken to criminalize acts of violence such as sexual assault, marital rape and sexual harassment and to provide civil remedies for the protection and support for victims of domestic violence. Violence against women is addressed under different areas of law including civil, criminal and constitutional law and accompanied by changes in other laws<sup>5</sup> to provide for a consistent approach to gender equality (UN 2010).

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<sup>2</sup> Population of India in 2012 was approximately 1.22 billion.

<sup>3</sup> Population of Turkey in 2008 was approximately 71.5 million.

<sup>4</sup> With respect to violence by intimate partner the UN Women Report, shows that 10% and 7 % of women in Turkey reported being subject to some form of physical violence and sexual violence, respectively, in 2010; 39% and 15% of women in Turkey have suffered from physical violence and sexual violence, respectively, at some time (UN Women 2011)

<sup>5</sup> For instance, in the new Turkish Civil code the terms "wife" and "husband" were substituted by the term 'spouse(s)'. The Code incorporated spouses as equal partners ascribing equal rights to them over the family abode, over property acquired during marriage as well as equal representative powers. Furthermore, the new Code abolished the concept of "illegitimacy" for children born out of wedlock giving them the same inheritance rights. The legal minimum age for marriage, which was formerly 15 for women and 17 for men, was raised to 18 (Benninger-Budel & O'Hanlon 2004) .

India, by contrast, follows a plural system of family law based on religion with various religious communities following their respective laws for matters regarding marriage, divorce, child custody, guardianship and such other matters related to rights within the family. This plural system makes it difficult to ensure a uniform legal framework that is consistent in promoting gender equality and women's rights. For instance, while the Hindu Succession Act of 2005 granted women co-equal inheritance rights to ancestral and jointly owned property, the Muslim population of India follows inheritance rights stated in Sharia law which do not grant such a right. The Constitution of India (Article 44) imposes an obligation on the State to secure for its citizens a uniform civil code but is yet to do so (CEDAW 2005).

Major developments in the past ten years in Turkish legislation dealing with violence against women are as follows <sup>6</sup>:

- The revision of the Turkish Civil Code in 2002, under which Family Courts became part of the legal system;
- Amendments to the new Labor Act (enacted in 2003), which for the first time included provisions on sexual harassment in the workplace;
- Additions to the Constitution in 2004, which cast the State responsible for ensuring against sex-based discriminatory practices and for taking necessary measures to enable equal gender rights;
- The new Turkish Criminal Code (here after cited as TCC), 2004 (enacted in 2005) bringing significant changes to laws on sexual violence;
- The Prime Ministry Circular (2006) on 'Measures to be Taken to Prevent Honor and Custom- Motivated Murders and Acts of violence against Children and Women';
- Turkey signed the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence treaty in 2011<sup>7</sup>.
- The revised domestic violence law called "Law for the Protection of the Family and Prevention of Violence against Women" in 2012 ( previously the law was called 'The Law for Protection of the Family' (1998)) .

In the same period in India progress in legislation on violence against women has been relatively uneven. Relevant sections of the Indian Penal Code ( here after cited as IPC) dealing with sexual violence against women (including the laws on sexual molestation, 'rape', sexual harassment) have remained unchanged since 1983. There have, however, been important developments in some areas including the reformed domestic violence law in 2005 and the revised Indian Evidence Act in 2003. The following provides a snapshot of Indian legislation that addresses violence against women <sup>8</sup> -:

- The Indian Constitution guarantees the rights to equality and provides for discrimination in favor of women (Article 15(3) (CEDAW 2005).
- The IPC (which includes rape, punishment for rape, molestation, adultery etc. ) (last amended in 1983).
- The amendment to the Indian Evidence Act (2003) prohibiting the disclosure of the identity of a complainant in any publication (UN 2010) and barring the prosecutor from cross-examining a rape victim about her 'general immoral character'.<sup>9</sup>
- Special and Local Laws (SLL): Immoral Traffic (Prevention) Act, 1956, Dowry Prohibition Act, 1961 (amended in 1985), Indecent Representation of Women (Prohibition) Act, 1986; Commission of Sati (Prevention) Act, 1987; Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994 (amended in 2003) ; and Prohibition of Child Marriage Act, 2006.
- Supreme Court judgment in 1997 on sexual harassment of women in the workplace.
- Protection of Women from Domestic Violence Act, 2005

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<sup>6</sup> Developments in Turkish legislation was taken from The Turkish Republic Prime Ministry's 'National Action Plan: Gender Equality 2008-2013.' ( The Turkish Republic Prime Ministry 2008)

<sup>7</sup> The treaty is also known as the "Istanbul Convention" because Turkey hosted the signing, creates a comprehensive legal framework to combat violence against women through prevention, protection, prosecution, and victim support.

<sup>8</sup> The list does not include state laws. Nor does it include many of the Supreme Court and High Court judgments, which are important considerations for the India common law system.

<sup>9</sup> However Section 53 of the Indian Evidence Act which reads in criminal cases, previous good character relevant, does not make an exception about rape victims (Indian Evidence Act 2003).

## LEGISLATION ON DOMESTIC VIOLENCE:

### 1. *Brief history of women's rights and domestic violence legislation*

Today, a record number of 125 countries have adopted laws against domestic violence (UN Women 2013). Yet not long ago domestic violence was considered a strictly private matter rarely addressed by national laws. This view was challenged by women's rights movements in the 1970s and by the 1980's domestic violence became a political issue and entered the agendas of local, national and international governments. In India the women's movement initiated in the late 1970s brought to the attention of lawmakers and the judiciary, issues of violence against women including rape and dowry. In Turkey women's rights movement took off a decade later in the 1980s along with economic liberalization and addressed violence against women including domestic violence, harassment, assault, rape, and honor killings (Kardam 2005).

Since the 1990s international organizations have mainstreamed the issue as a violation of basic human rights (UNICEF 2000). For instance, in 1992 the UN Committee on the Elimination of Discrimination against Women adopted a general recommendation (No. 19) which was the first international human rights instrument to deal exclusively with violence against women as a form of discrimination that impairs or nullifies women's enjoyment of human rights and fundamental freedoms under international law. Similarly at the UN Platform for Action document of the World Conference on Women in Beijing in 1995, governments around the world declared: "violence against women constitutes a violation of basic human rights and is an obstacle to the achievement of the objectives of equality, development and peace" (UN website for Women and Violence). The document also listed concrete actions to be taken by individual governments, the United Nations, international and nongovernmental organizations (UNICEF 2000).<sup>10</sup>

Given impetus by international policy platforms, government policy and legislation intensified on violence against women and domestic violence in both developed and developing countries. More specifically, both in Turkey and India international incentives during the 1980s and 1990s, ensured that both states addressed gender issues through national policies and legislation. The ratification of International Conventions such as the Convention for the Elimination of All forms of Violence Against Women (CEDAW) by the Turkish state<sup>11</sup> in 1986 and the Indian State<sup>12</sup> in 1993 were contributing factors. However, while Turkish legislation has been responsive to international trends, India followed its own pace on gender issues.

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<sup>10</sup> In addition, the World Conference on Human Rights in Vienna (1993) accepted that the rights of women and girls are "an inalienable, integral and indivisible part of universal human rights." One year later in 1994, the Commission on Human Rights appointed the first UN Special Rapporteur on Violence against Women. (UNICEF 2000)

<sup>11</sup> Turkey signed the Vienna Declaration and Program of Action, 1993, Declaration on the Elimination of Violence Against Women, 1993, Platform for Action of the Fourth World Conference on Women in Beijing, 1995 and Optional Protocol to CEDAW, 1999 (ratified by Turkey in 2002) (Rodríguez 2009).

Some of the major national developments in the 1990s in Turkey included the setting up of a women's affairs unit called the Directorate General of the Status and Problems of Women (KSGM) (Kardam and Ertürk 1999) and the enactment of the domestic violence legislation in 1998 (Law 4320).

<sup>12</sup> One major contributory factor to the women's rights movement in India was the Report of the Status of Committee for Women brought out in 1974 as the background country paper for the forthcoming United Nations Conference in 1975 (Agnes 2008).

Turkey's candidacy for EU membership played a major role in encouraging the enactment and implementation of Turkey's law against domestic violence in 1989. Similarly the new Civil Code (2002) is in conformity with the EU, the Convention of the Rights of the Child and the CEDAW while recent amendments to the penal code and domestic violence law bring these legislations closer to EU standards (UNFPA 2007 ; Ertürk 2006).

By contrast, Indian legislation has been more responsive to local demands or grievances. For instance, the Indian Penal Code, was revised much earlier in 1983, mostly prior to pressures from international organizations and global trends in women's rights. The amendment to rape laws was the result of a sustained campaign against regressive laws following the infamous Supreme Court judgement in the Mathura case (Agnes 1998).<sup>13</sup> Amendments to the IPC in 1983 also criminalized domestic violence chargeable under section 498-A of the Indian Penal Code that defines domestic violence as any act of cruelty by a husband (or his family) towards his wife (usually used for dowry related cases) (IIPS & Macro International 2007) . However, until 2005, there was no separate civil law addressing the complexities associated with domestic violence, including the need for protection and maintenance of abused women and the fact that holding a criminal case against the husband may not be the best resolution in every case (IIPS & Macro International 2007). Agnes (1998) argues that in India, the women's movement did not raise the demand for a domestic violence law because the emphasis was put on dowry related violence both by activists and the State. As a result general violence faced by women did not receive separate recognition. In effect, Indian legislation prioritized societal imperatives.

## 2 . Definition of Domestic Violence

Domestic violence legislation that includes broad and comprehensive definitions of violence is relatively new. The inclusion of different types of violence in defining domestic abuse, traditionally limited to physical abuse, is an important step forward for combating violence. Today, the definitions of domestic violence in both Indian (*Protection of Women from Domestic Violence Act, 2005*) and Turkish (*Law for the Protection of the Family and Prevention of Violence against Women 2012*) legislation include physical, sexual, verbal and economic abuse; in Turkish law psychological abuse and Indian law emotional abuse are also considered domestic violence. Both legislations also provide detailed definitions of types of abuse, which ensures that interpretation is not left solely to the discretion of courts. Furthermore, both definitions of "domestic violence" include actual abuse as well as the threat of abuse that is physical, sexual, verbal, emotional and economic.

## 3. Who does the legislation address?

Legislation is also concerned with the scope of persons that a domestic violence law protects. For instance, before Indian and Turkish laws were revised, domestic violence was perceived as violence between spouses only. In the Indian case, the scope was

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<sup>13</sup> Mathura, a 16-year-old tribal girl, was raped by two policemen within a police compound. The Supreme Court set aside the earlier the High Court judgement which convicted the policemen, on the grounds that the victim had not raised considerable alarm and that there were no visible marks of injury on her body (Agnes 1998).

broadened to include 'any woman who is, or has been, in a domestic relationship<sup>14</sup> with the respondent' including any adult male or relative of the husband or male partner i.e. a father-in-law, mother-in-law, or even siblings of the husband and other relatives can be proceeded against. This extension was an important step given that it is often the entire family of the husband that harasses the wife for dowry demands and so forth.

Similarly, the revised Turkish law reaches out to women victims who are violated by male partners who they are not married to, as well as to other family members. In fact, Turkish legislation does not even require that victim and the perpetrator of violence co-habit for any given period of time.

#### 4. Rights and Protection of Victims

Legislation on protection of women against domestic violence includes legal and institutional measures to protect, support and assist survivors of violence. Turkey and India have both adopted systems for authorities (courts or other) to issue protection (or restraining) orders. Separate from criminal prosecutions and divorce proceedings, these orders ensure that the abuser refrain from violence against the victim and their children (UN 2010). Both Indian and Turkish domestic violence law also give women legal rights to request residence orders, monetary relief, compensation as well as custody orders. In addition to these, laws seek to provide access to services such as healthcare, shelter, financial support and/ or counseling to survivors of domestic violence.

The new Turkish *Law for the Protection of the Family and Prevention of Violence against Women* 2012 establishes a protection order system providing for the police<sup>15</sup>, local administrative authorities as well as family courts to grant various levels of protection and support services to victims of violence or to those at risk of violence<sup>16</sup>. In India, in addition to courts, authorities including Police Officers, Protection Officers (the Indian Domestic Violence legislation provides for their appointment) and Service Providers (private organizations including NGOs) provide shelter, legal and medical assistance, counseling services etc. to victims of domestic violence.

The Turkish domestic violence law authorizes courts to pass 'protective orders' which include registering victims shared household as matrimonial property, changing the victim's workplace and residence, and even providing a new identity for the victim upon her request. Victims can also ask for restraining orders, to prevent the perpetrator from further violating the victim; the courts also give custody orders as well as temporary monetary relief, and medical aid to be provided by the State.<sup>17</sup>

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<sup>14</sup> A "domestic relationship" is defined as 'a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.'

<sup>15</sup> Police are undergo training on children and women rights as well as gender equality.

<sup>16</sup> Furthermore, Section 14 of the Law states that the Turkish Ministry for the Family and Social Policies will establish "violence prevention and monitoring centers" to increase resources and staff dedicated to combating domestic violence and assist in carrying out the law. Experts, preferably who are women, will be employed at these centers that operate twenty-four seven.

<sup>17</sup> In Turkey, one of the most pressing problems in the implementation of the law (particularly in small provinces) is the lack of mechanisms to provide women victims with information about the legal process and legal mechanisms available to them. Problems that may arise during legal proceedings include women victims' lack of access to lawyers or lawyers who lack the expertise (or sensitivity) to deal with victims of violence. For instance, such lawyers may

Furthermore, local authorities in Turkey are directly authorized to provide temporary financial assistance to victims and issue temporary protection orders if the victim is under life-threat; police officers can also authorize these orders<sup>18</sup>. Police are also authorized to pass certain restraining orders without court approval including orders to prevent the respondent from making verbal and physical violent threats, insults etc. to the victim; asking the respondent to remove himself from the shared household and giving the matrimonial property to the victim; the respondent from getting near the victim as well as her residence, school and workplace; to prevent the respondent from getting near people close to the victim, witnesses and children<sup>19 20</sup>.

Women victims in India can receive 'protection orders' (the equivalent of a restraining order in Turkey), custody orders and residence orders (securing the right to residence)<sup>21</sup> from courts. However, unlike Turkish local authorities and police, Indian Police Officers, Protection Officers and Service Providers are not authorized to issue temporary protection orders, restraining orders and residence orders. Women can apply for a protection orders directly at court or get a police officer, protection officer, lawyer or anyone to apply for them; Protection Officers are obliged to make an application if the aggrieved person asks for a protection order<sup>22</sup>.

An important feature of the Indian Act is the woman's right to secure housing, providing woman's right to reside in the matrimonial or shared household. The right to residence is not subject to judicial approval but is secured by a residence order, in which case the court can ask the 'respondent to remove himself from the shared household' or 'secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same.'

An area of concern in the Indian system is the judge's power to direct the respondent or the aggrieved person to undergo counseling, singly or jointly, with the judge fixing the next date of hearing of the case within a two months period. In effect this removes cases from judicial scrutiny<sup>23</sup>. Furthermore the judge has the right to conduct proceedings in camera, which may be problematic for the victim.

Common to both systems is that there is no evidential requirement to obtain a protection order. Moreover the breach of a protection order (or restraining order) is

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underestimate a case if there are no physical signs of violent assault. In the case of economically underprivileged victims who can not afford legal counsel, volunteers or public lawyers may be reluctant to provide women victims with the necessary information on laws and procedures. Furthermore, the absence of support systems (health services, housing, education, psychological support, business support, financial assistance, etc.) to support women (and their children) during the legal proceedings is a significant problem. (Şener 2013).

<sup>18</sup> Temporary financial assistance to victims and temporary protection orders issued by police officers are subject to the local authority's approval within 48 hours.

<sup>19</sup> These are subject to the approval of the judge within 24 hours.

<sup>20</sup> While special domestic violence units are set up within police headquarters in larger provinces, police stations in small provinces and towns lack such specialized units. There are, however, *Women's Children's Partial Headquarters* in 14 provinces attached to gendarmerie units, providing professional help on domestic violence. (Şener 2013)

<sup>21</sup> Orders granted at the request of and for the benefit of one party only, without notice to or contestation by the other party.

<sup>22</sup> Importantly, a Protection Officer can be penalized for failing/refusing to discharge his duty.

<sup>23</sup> Furthermore, the police in India continue to 'counsel' and 'settle' cases of domestic violence the Hindu reports: 'Of a total of 7557 court orders examined from across 16 states, 1401 had been settled in a compromise, said the report prepared by the Lawyers Collective, Women's Rights Initiative, Centre for Budget and Governance Accountability in collaboration with the International Centre for Research on Women and the UN Trust Fund to End Violence Against Women.' (Dhar 2012, February7)

punishable with imprisonment up to six months in Turkey and up to one year or with a fine in India<sup>24</sup>.

## LEGISLATION ON SEXUAL VIOLENCE - SEXUAL ASSAULT AND SEXUAL HARASSMENT

### 1. Definition

In criminal law, rape was traditionally understood as the main “form” of sexual violence focusing on proof of penetration. This definition of rape is increasingly considered as being insufficient in covering ‘the full range of sexual violations experienced by women and the impact of such violations on the complainant/survivor’ (UN 2010). This has led to some countries adopting broader definitions of “sexual assault” that addresses sexual assault as a violation of bodily integrity and sexual autonomy of a person<sup>25</sup>.

As a case in point, the reformed TCC defined sexual assault broadly as sexual conduct that violates the bodily integrity of a person (Section 102/1) and the insertion of ‘an organ or an another object into the body’ (Section 102/2) as sexual assault, which is prescribed more severe punishment. Furthermore, the revised TCC took out all references to “morality”, “chastity” and “honor” redefining sexual violations as “crimes against the individual” instead of “crimes against moral customs and society”. Provisions that provided lesser or no penalties for violence against unmarried or non-virgin women were removed in the new law ensuring the non-discriminatory application of the law (UN 2010).

On the other hand, sexual assault under Section 354 of the IPC is defined as ‘(a)ssault or criminal force to woman with intent to outrage her modesty’<sup>26</sup> focusing on the act as a “crime against moral customs and society”. Furthermore, the definition of rape in Section 375 of the IPC is limited to sexual intercourse (penetration) excluding other forms of penetrative sexual assault, which are ultimately tried under the molestation section (354) of less gravity than rape (Mukherjee 2011).

The new TCC also prohibits unauthorized genital examinations of victims (Human Rights Watch 2011)<sup>27</sup>. In India the so-called “finger test” on complainants where the examining doctor determines whether the victims are “virgins” or “habituated to sexual intercourse” (by noting the presence or absence of the hymen and the size and so-called laxity of the vagina of the rape survivor) is optional when the doctor finds it necessary and with the consent of the victim (Thacker 2011, March 18)<sup>28</sup>.

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<sup>24</sup> In Indian law the victim does not need to provide evidence that the protection order is breached.

<sup>25</sup> Article 102 of the new Turkish Penal Code defines sexual assault as an offence of violating the bodily integrity of another person by means of sexual conduct. The law does not use the term ‘rape’, however the offence of violating the bodily integrity of another person by means of inserting an organ or an another object into the body, is prescribed as an aggravated circumstance.

<sup>26</sup> IPC 354: ‘Assault or criminal force to woman with intent to outrage her modesty: Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.’

<sup>27</sup> Although genital examinations ordered by a judge are still legal (Human Rights Watch 2011). Furthermore, in 2008 the Ministry Responsible for Women and Family signed a protocol with the Health Ministry on the role of health personnel and the procedures for their training (Turkish Ministry for Family and Social Policy 2012).

<sup>28</sup> However, doctors, police, and judges often look for evidence of “struggle” or “injuries,” especially hymenal injuries, in the medical examination report, discrediting those who do not report such injuries (Human Rights Watch 2012, December 29).



Furthermore, the new TCC criminalizes 'non-consensual sexual intercourse within a marriage' subject to complaint by the victim (Article 102). The IPC, on the other hand, does not consider 'sexual intercourse by a man with his own wife' as constituting rape (given that the wife is 15 years of age). Marital rape is only criminalized in India when the couple is legally separated for which the sentence is lower than that of normal rape (see section on *Punishment for Sexual Assault*).

In addition to sexual assault, countries have been recognizing sexual harassment as a form of sexual violence and criminalizing it. One of the major reforms to the TCC in 2004 was the criminalization of sexual harassment (Article 105). Sexual harassment is also a criminal offence in India. However, the definition of sexual harassment in the IPC, a 'word, gesture or act' with the intention to 'insult the modesty of a woman', is again treating violence against woman as a crime 'against moral customs and society'<sup>29</sup>.

## 2. *Punishment for Sexual Violence*

The TCC is harsher than Indian criminal law on sexual violence including sexual assault, rape, child rape and sexual harassment violence<sup>30</sup>. Minimum sentences prescribed under the TCC are generally more severe than those under the IPC and cannot be avoided or reduced. In the revised TCC Article 462, which previously granted sentence reductions to a person killing or wounding a family member who had committed adultery, was removed and marital rape was included as a form of rape. Furthermore, although both countries have in common mandatory minimum sentences, Indian law states that the court may impose a lesser sentence than the mandatory minimum given in the law 'for adequate and special reasons to be mentioned in the judgment.' This exception in the law that leaves sentencing up to the discretion of the courts applies for rape, for special cases of rape such as gang rape, rape of a pregnant woman, rape by a police officer etc. as well as in cases of child abuse. Furthermore, in Indian law sentences in jail can be substituted or reduced by paying a fine. The punishments of perpetrators of sexual violence in the TCC are also more consistent with the gravity of the crime committed, especially with respect to sexual abuse of children.

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<sup>29</sup> The Supreme Court of India (*Vishaka v. State of Rajasthan & Ors* AIR 1997) has incorporated a definition of sexual harassment drawn from the General Recommendations under Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) into law. This was done through a case that used this definition of sexual harassment to ensure that guidelines could be developed for use by institutions in sexual harassment cases since no existing domestic law had dealt with the issue (Singh & Kapur 2001). The Supreme Court of India also mandated that workplaces and other institutions ensure that complainants of sexual harassment are provided confidentiality, are not subject to victimization or discrimination and have a right to seek transfer of the perpetrator or their own transfer from the workplace (UN 2010).

Furthermore there is a the Protection of Women against Sexual Harassment at Workplace Bill, 2010) pending in the Parliament. The bill was passed by the lower house of the Indian parliament (Lok Sabha) but not the upper house (Rajya Sabha).

<sup>30</sup> Moreover the Turkish Code for Criminal Procedure explicitly bans mediation in sexual assault cases.

Table 1. Punishment for Sexual Assault and Rape

	TURKEY (TCC)	INDIA (IPC)
<b>Sexual Assault</b>	2-7 years imprisonment	Max. 2 years, or with fine, or with both.
<b>RAPE</b>		
<b>Rape</b>	7-12 years imprisonment	Min. 7 years to life imprisonment OR A term which may extend to 10 years and a fine. Note: 'Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than seven years'
<b>Marital Rape</b>	7-12 years imprisonment	-If woman is 12 years of age and above: imprisonment for max. 2 years or with fine or with both; -If woman is 15 years and above: it is not rape . - Unconsented Intercourse by a man with his wife during separation: imprisonment of max. 2 years and fine.
<b>Rape in specific relationships/ under special circumstances</b>	Rape by public servant; armed persons; by third degree blood kin or kinship-in-law; against physically or mentally helpless persons: prescribed punishment is upped by half.	-Rape by police officers, public servants, superintendent of jail, remand house, etc., any member of the management or staff of a hospital; as well as rape of a pregnant woman, Gang rape, Rape of a woman who is under 12 years of age: Imprisonment of 10 years to life and shall also be liable to fine. Note: 'Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.' -Sexual Intercourse not amounting to rape by public servants, superintendent of jail, remand house, etc. and any member of the management or staff of a hospital: imprisonment up to 5 years and fine.
<b>Rape resulting in physical /mental harm</b>	min 10 years	N/A
<b>Rape resulting in coma/ death</b>	Lifetime imprisonment	N/A

The TCC prescribes a sentence of 2 -7 years of imprisonment for sexual assault, the same crime being punishable by up to 2 years or a fine in the IPC.

For rape the TCC imposes a punishment of 2 -7 years of imprisonment, if the victim is physically or mentally harmed this punishment is set to a minimum of 10 years and if she enters a coma or dies to life imprisonment. What is puzzling about the Turkish law is that it assumes that under certain circumstances , the rape victim may not be physically or mentally harmed.

In the IPC rape is punishable with 7 years to life imprisonment. Although the IPC's sentence may seem harsher as there is no maximum limit to the sentence, the law states that this sentence can be substituted with a term extending to 10 years of imprisonment plus a fine.

Marital rape under the IPC is not considered rape if the wife is of 15 years of age. The sentence for raping a wife 12 years of age is given a sentence of 2 years, which can be substituted with a fine . Unconsented intercourse of a man with his wife during separation is punished with 2 years of imprisonment and a fine. The TCC, on the other

hand, explicitly states that marital rape is rape and imposes the same punishment thereof.

In the TCC specific rape cases including rape by public servant with woman in his custody, by armed persons, rape by relatives up to the third degree and of physically or mentally helpless people, prescribed sentences are upped by half. Similarly, the IPC considers rape by police officers<sup>31</sup>, by public servants, by superintendents or managers of a jail, remand house, etc., by members of the management or staff of a hospital as well as special cases such as the rape of a pregnant woman and gang rape as aggravated rape cases, punishing offenders with imprisonment of 10 years to life and a fine. Furthermore, the IPC punishes sexual intercourse not amounting to rape by public servants, by superintendents or managers of a jail, remand house, etc., by members of the management or staff of a hospital, with up to 5 years of imprisonment and a fine. This part of the law recognizes the vulnerability of victims in a hierarchy relationship.

The punishment of sexual violence committed against children under Turkish law are again more severe with Indian law not always addressing or not explicitly stating circumstances of sexual violence against a child.

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<sup>31</sup> The IPC specifies a list of locations where rape committed by a police officer is considered under this Section of the law - in effect, narrowing the scope of law.

Table 2. Punishment for sexual assault and rape committed against children

	TURKEY (TCC)	INDIA (IPC)
<b>Sexual assault</b>	-Sexual Assault of a child meaning 1) a sexual behavior with a child who is of 15 years of age or a child who is not able to grasp the legal meaning and consequences of a sexual behavior ; 2) Sexual behavior against other children only when done by scheming , threatening, tricking or any other act that impeding their judgment :3 to 8 years of imprisonment. -Sexual acts with an underage child (15 – 18 years old): 6 months to 2 years imprisonment ; if the age difference between the child and perpetrator is more than 5 years , the prescribed punishment is doubled.	Not specified for child.
<b>Rape</b>	-Sexual acts with a child (as been described above) : 8 to 15 years of imprisonment	-Sexual acts with a Child under 16 years of age: 7 years to life imprisonment OR A term which may extend to 10 years and a fine. - Sexual acts with Child under 12 years of age: 10 years to life and a fine - Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years
<b>Aggravated Child Rape</b>	Sexual assault by second or third degree blood kin, step father, adoptive parent, guardian, instructor, teacher, caregiver, health care providers, or by any other person responsible for protection of the child or anyone who abuses his/her influence: Prescribed punishment for rape is upped by half.	Not specified for child.
<b>Rape resulting in physical /mental harm</b>	Min. 15 years imprisonment	Not specified for child.
<b>Rape resulting in coma/ death</b>	Lifetime imprisonment	Not specified for child.

In the TCC sexual abuse of a child is broadly defined including sexual acts against children (with or without consent) who are 15 years of age and under, children who are not able to grasp the legal meaning and consequences of a sexual acts as well as sexual acts against other children ( over 15 years of age) when done by way of scheming, threatening, tricking or any other act impeding their will. Sexual abuse amounting to sexual assault is punished with 3 to 8 years of imprisonment and sexual abuse by inserting an organ or object into the body of a child is punished with 8 to 15 years of punishment; both are higher than sentences given to sexual assault and rape of an adult. In India, sexual abuse of a child under the age of 16 (regardless of consent) amounting to sexual assault and sexual intercourse are prescribed the same punishment as sexual assault and rape of an adult, respectively. However, sexual

intercourse with a child under the age of twelve is prescribed a punishment going up to 10 years to life imprisonment and a fine <sup>32</sup>.

The TCC also prescribes higher sentences for sexual abuse of children in cases where the abuse was done by second and third degree blood kin, step father, parent who adopted the child, teacher, carekeeper, health provider etc . Sentences prescribed in cases when a child is physically or mentally harmed and when a child enters a coma or dies are also higher than for those prescribed when the victims are adults.

Furthermore, in the TCC sexual acts with an underage child (15 – 18 years old) with consent is punishable by 6 months to 2 years of imprisonment upon complaint; if the age difference between the child and perpetrator is more than 5 years , the prescribed punishment is doubled.

On the other hand, there are traditional offences such as Unnatural Offences, which punishes 'carnal intercourse against the nature of any man, woman or animal with imprisonment for life as well as 'Adultery ' punishing sexual intercourse with another person's wife with imprisonment of 5 years or a fine or both ; the wife in this case is also punishable as an abettor.

Table 3. Punishment of Other Offences of Sexual Assault

	TURKEY	INDIA (IPC)
Unnatural offences	N/A	Carnal intercourse against the order of nature with any man, woman or animal: imprisonment for life, OR with imprisonment which may extend to 10 years, and a fine.
Adultery	N/A	Sexual intercourse with another person's wife: imprisonment which may extend to 5 years, or with fine, or with both. In such case the wife shall be punishable as an abettor.

Lastly, Sexual harassment in the TCC is punishable with 3 months to 2 years of imprisonment or a fine ; if the act is committed in a relationship of hierarchy, service or in the workplace , the prescribed punishment is upped by half; if the act causes the victim of harassment to leave her/his work the minimum sentence is 1 year of imprisonment. The IPC prescribes a sentence of imprisonment of up to one year or a fine or both and does not take into account the nature of the relationship or the severity consequences of the act.

<sup>32</sup> The definition of a child in India is puzzling. The Indian Penal Code does not define a "child". On one hand the age of consent for a girl to have sexual intercourse is 16 under the IPC while the age of consent in married couples the age of consent is 15 years of age (Singh & Kapur 2001) .

Table 4. Punishment Sexual Harassment

	TURKEY	INDIA
Sexual Harassment	3 months to 2 years imprisonment OR fine	Imprisonment which may extend to 1 year, or with fine, or with both.
Sexual Harassment in a hierarchal or service relationship	Prescribed punishment is upped by ½	
If Sexual harassment forces the victim to leave work	Min. 1 year imprisonment.	

## CONCLUSIONS

- *Legislation on gender equality and women's rights: Different rhythms of change in Turkey and India.*

In the past decade both Turkey and India witnessed passages of legislation on gender equality and women's rights, most notably with respect to domestic violence and sexual assault. Such legislation addressed international protocols and blue-prints: yet the Turkish legislation remained more faithful to the latter of international protocols while the Indian legislation sought to steer a middle course between international standards and societal imperatives. At the same time, differences between the two countries are largely a result of differences in the social organizations of these societies, in the ways religious communities are organized. For instance with respect to gender equality, the New Turkish Civil code incorporated spouses as equal partners ascribing equal rights to them over the family abode, over property acquired during marriage as well as equal representative powers. Moreover, the concept of "illegitimacy" for children born out of wedlock has been abolished with the same inheritance rights given to these children. By contrast, India follows a plural system of family law based on religion with various religious communities following their respective laws making it difficult to ensure a uniform legal framework that is consistent in promoting gender equality and women's rights.

- *India follows its own pace, more responsive to local demands or grievances whereas Turkish legislation is more responsive to international trends.*

The Turkish Criminal Code was revised in 2004. The Indian Penal Code, however, was revised much earlier in 1983, mostly prior to pressure of international and global trends in women's rights. This difference in the timing of the two legislations which point to a difference in attitude towards 'change' may also account for

differences in definitions of sexual violence and prescribed punishments under the respective criminal codes of the two countries.

- *Violence against Women as Domestic violence.*  
Both Turkey and India have a serious problem of violence against women in general and domestic violence in particular with most of sexual assault and rape cases committed in the domestic sphere.
- *Extending the Definition of violence and of the 'domestic'.*  
The revised Indian and Turkish laws on domestic violence laws have extended the definition of violence to include physical, sexual, emotional/psychological, verbal and economic abuse as well as threat of abuse. In both Indian and Turkey the scope of persons that domestic violence law protects has gone beyond violence between spouses. In the Indian case, the scope was broadened to include extramarital relationships as well as other domestic relationship i.e. family of the husband. Turkish domestic violence legislation has gone even farther in its scope not even requiring that the victim and the perpetrator of violence co-habit for any given period of time.
- *Sexual Assault : A Crime Against the Individual or Society.*  
Individuation is a feature of international human rights formulations. Subscribing to these formulations e.g. UN Turkey has adopted a broad definition of "sexual assault" and rape focusing on sexual violations as "crimes against the individual". Instead of "crimes against moral customs and society." By contrast, Indian sexual assault law addresses the societal dimension of sexual violence and describes violence as an act forcing a woman 'with intent to outrage her modesty.' Hence, Indian legislation views sexual assault as a "crime against moral customs and society". Consistent with this perspective, marital rape is not criminalized in India and is punished less severely than 'normal' rape when a woman and man who were once married are legally separated. This suggests that Indian law continues to uphold marriage as a socially sanctioned act. Furthermore and underlining the 'societal dimension', Section 53 of the Indian Evidence Act that makes 'previous good character relevant' in criminal cases does not make an exception about rape victims. Notwithstanding that the amended Indian Evidence Act (2003) prohibited the disclosure of the identity of a complainant in any publication and barred the prosecutor from cross-examining a rape victim about her 'general immoral character'.
- *Varying Harshness in Punishment in Turkish and Indian Legislation.*  
With respect to punishment for sexual assault (including sexual assault, rape, child rape and sexual harassment), Turkish law is harsher than Indian law prescribing higher minimum sentences, which cannot be avoided or reduced. By contrast Indian law states that the court may impose lighter sentences 'for adequate and special reasons', suggesting that individual rights can be compromised upon the

court's decision .In Indian law sentences in jail can be substituted or reduced by paying a fine.

- *Varying Attitudes in Turkish and Indian legislations towards Sexual violence against Children.*  
Subscribing to international standards punishments of perpetrators of sexual violence against children in the TCC are harsher ; the IPC does not treat child rape differently than rape of an adult. Different from the Indian Code, the TCC punishes sexual acts with an underage child (15 – 18 years old) with consent upon complaint suggesting that the TCC moves away from traditional practices of child marriage .
- *Bias of Indian legislation towards family and society.*  
Assigning priority to family and social custom, the IPC considers gang rape and rape of a pregnant woman to be aggravated rape. Furthermore, Indian law punishes acts such as 'carnal intercourse against the nature of any man, woman or animal with imprisonment for life' (Unnatural Offences) as well as 'Adultery' which punishes sexual intercourse with another person's wife where the wife is also punishable as an abettor.
- *Common Grounds: Turkish and Indian legislations protecting the 'weak' against sexual violation by socially powerful violators.*  
Both legislations have prescribed harsher punishments for violators in powerful social positions. Turkish law addressed rape by public servants, by armed persons , rape by relatives up to the third degree and of physically or mentally helpless people- sentences in these cases are raised by half . Similarly, in Indian law, rape by police officers, by public servants, by superintendents or managers of a jail, remand house, etc. and by members of the management or staff of a hospital are considered aggravated rape cases. The IPC also punishes sexual intercourse not amounting to rape by public servants, by superintendents or managers of a jail, remand house, etc., by members of the management or staff of a hospital recognizing the vulnerability of victims in a hierarchy relationship.
- *Criminalization of Sexual Harassment.*  
Subscribing to international standards both legislations criminalize sexual harassment. However, the TCC is more in line with these standards also taking into account the nature of the relationship and the severity consequences of the act when prescribing the punishment. Furthermore, the Indian definition of sexual harassment once again treats violence against woman as a crime 'against moral customs and society". There is, however, a Supreme Court judgment in India which has incorporated a definition of sexual harassment drawn from the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) into law.



- *Who implements the Law? Who or what institution has greater weight in implementing the law? - The courts or administration makes a difference on how law affects /impacts society/individuals.*

Implementation of legislation in India and Turkey involves issuing of protection or of restraining orders, orders for residence, monetary relief, compensation and custody orders as well as provide support and assistance to survivors of violence. In both India and Turkey there is no evidential requirement to obtain a protection order and the breach of a protection order is punished. In Turkey local administration and the police seem to participate equally with the courts in the implementation process. For instance, local authorities and police in Turkey are authorized to provide temporary financial assistance to victims and issue temporary protection orders if the victim is under life-threat. By contrast in India monetary relief and protection can only be extended if there is a court order. This points to a difference in the justice system whereby in India, under the common law system, access to courts has priority in justice dispensing whereas in Turkey administrative order has priority.

## BIBLIOGRAPHY

Agnes, F. (2008) "Women's Rights and Legislative Reforms: An Overview," *International Journal of Legal Information*: Vol. 36: Iss. 2, Article 10. Available at:

<http://scholarship.law.cornell.edu/ijli/vol36/iss2/10> [accessed 30 July 2013]

Agnes, F. (1998) 'Violence Against Women: Review of Recent Enactments.' in Swapna Mukhopadhyaya (ed.), *In the Name of Justice: Women and Law in Society* (pp. 81–117). New Delhi: Manohar Publications .

Benninger-Budel, C. & O'Hanlon, L. (2004) 'Violence against Women in Turkey' In: OMCT (2004) 'Violence Against Women: 10 Reports/Year 2003 for the Protection and Promotion of the Human Rights of Women' prepared by World Organisation Against Torture, 2004, France pp. 339-385.

CEDAW (2005) 'Combined second and third periodic Reports of States parties: India',

Report by Committee on the Elimination of Discrimination Against Women, October 19, 2005, available at <http://www.un.org/womenwatch/daw/cedaw/cedaw36/India2-3E.pdf> [accessed 16 January 2013]

Dhar, A. ( 2012, February 7). 'Survey: Women as victims' *The Hindu*. available at: <http://www.thehindu.com/life-and-style/society/article2866364.ece> [accessed 16 January 2013]

Ertürk, Y. (2006), "Intersections between culture and violence against women", A/HRC/4/34, Report of the Special Rapporteur on violence against women, its causes and consequences, Implementation of General Assembly Resolution 60/251 of 15 March 2006 titled "Human Rights Council."

*Human Rights Watch* (2012, 29 December) *India: Rape Victim's Death Demands Action*, available at: <http://www.unhcr.org/refworld/docid/50eaaa082.html> [accessed 16 January 2013]

Human Rights Watch (2011) ' 'He Loves You, He Beats You' -Family Violence in Turkey and Access to Protection', Report by Human Rights Watch , May 2011, available at: <http://www.hrw.org/sites/default/files/reports/turkey0511webwcover.pdf>

International Institute for Population Sciences (IIPS) and Macro International ( 2007). National Family Health Survey (NFHS-3), 2005–06: India, Volume I. Chapter 15:Domestic Violence, Mumbai: IIPS. pp.493-524. <http://www.measuredhs.com/pubs/pdf/FRIND3/15Chapter15.pdf>

Kardam, N. (2005) 'Turkey's Engagement with Global Women's Human Rights.' Burlington: Ashgate Publishing Company.

Kardam, N. & Ertürk, Y. (1999), "Expanding Gender Accountability? Women's organizations and the State in Turkey", International Journal of Organization Theory and Behavior, Symposium Issue on Grassroots Organizations and Policymaking, 2(1&2): 167-197

Mukherjee, M. ( 2011) . 'Judging in the Presence of Women as Legal Persons – Feminist Alternative to the Indian Supreme Court Judgment in Sakshi v. Union of India' *Journal of feminists@law* Volume 1 , No 2 (2011) University of Kent , available at : <http://journals.kent.ac.uk/index.php/feministsatlaw/article/view/25/90> [accessed 16 January 2013]

NCRB (2011) Crime in India 2011 National Crime Records Bureau , Ministry of Home Affairs (Government of India) available at: <http://ncrb.nic.in/> [accessed 16 January 2013]

Rodriguez, B.L. (2009) 'Justice Through Domestic Violence Legislation: Improving the Implementation of Turkey's Law 4320 on the Protection of the Family', *Journal of Public and International Affairs*, Vol. 20 , Spring 2009 Available at: <http://www.princeton.edu/jpia/past-issues-1/2009/2.pdf> [accessed 30 July 2013]

Singh, K. & Kapur, D. (2001) Law, Violence, and the Girl Child, *Health and Human Rights Journal* Vol. 5 No 2, available at : <http://www.hhrjournal.org/archives-pdf/4065363.pdf.banned.pdf>

Şener, Ü. (2013). Kurum İçi Bilgi Notu, TEPAV

Thacker , T. (March 18, 2011) 'Govt makes 'finger test' optional for rape victims' *The Indian Express* , available at: <http://www.indianexpress.com/news/govt-makes-finger-test-optional-for-rape-victims/764085> [accessed 16 January 2013]

The Turkish Republic Prime Ministry (2008) , 'National Action Plan: Gender Equality 2008-2013', Ankara September, 2008 – Ankara, available at : <http://www.undp.org.tr/publicationsDocuments/National%20Action%20Plan%20on%20Gender%20Equality.pdf> [accessed 16 January 2013]

TUIK (2008) Domestic Violence Against Women Statistics , Turkish Statistical Institute , available at: [http://www.tuik.gov.tr/VeriTabanlari.do?vt\\_id=31&ust\\_id=11](http://www.tuik.gov.tr/VeriTabanlari.do?vt_id=31&ust_id=11) [accessed 16 January 2013]

Turkish Ministry for Family and Social Policy (2012) National Plan of Action for Violence Against Women 2012-2015 Prepared by the General Directorate for the Status of Women , available at : [http://www.kadininstatusu.gov.tr/upload/mce/2012/kadina\\_yonelik\\_siddet\\_uep.pdf](http://www.kadininstatusu.gov.tr/upload/mce/2012/kadina_yonelik_siddet_uep.pdf) [accessed 16 January 2013]

UN (2010) Handbook for Legislation on Violence against Women, NY ,2010

UNFPA (2007) "Advocating for Gender and Reproductive Health Issues", 2007-02-26. Available at: [http://www.unfpa.org.tr/turkey/print/Turkey\\_Advocacy.htm](http://www.unfpa.org.tr/turkey/print/Turkey_Advocacy.htm)

UNICEF (2000) 'Domestic Violence against Women and Girls.' *Innocenti Digest*, No.6. June, Innocenti Research Centre, Florence, Italy. Available at: <http://www.unicef-irc.org/publications/pdf/digest6e.pdf> [accessed 30 July 2013]

UN Website for Women and Violence Available at: <http://www.un.org/rights/dpi1772e.htm>

UN Women (2013) Annual Report 2012 -2013, NY. Available at: <http://www.unwomen.org/~media/Headquarters/Attachments/Sections/Library/Publications/2013/6/UNwomen-AnnualReport2012-2013-en%20pdf.pdf> [accessed 30 July 2013]

UN Women (2011) Violence against Women Prevalence Data: Surveys by Country Compiled by UN Women, March 2011, available at: [http://www.endvawnow.org/uploads/browser/files/vaw\\_prevalence\\_matrix\\_15april\\_2011.pdf](http://www.endvawnow.org/uploads/browser/files/vaw_prevalence_matrix_15april_2011.pdf) [accessed 16 January 2013]

## **LEGISLATION**

*The Indian Evidence Act*

*The Indian Penal Code*

*The Turkish Civil Code 2002*

*The Turkish Code for Criminal Procedure*

*The Turkish Criminal Code*

*Law for the Protection of the Family and Prevention of Violence against Women 2012*

*Protection of Women from Domestic Violence Act 2005*

*Supreme Court Judgment : Vishaka and others V. State of Rajasthan and others (AIR 1997 SUPREME COURT 3011)*