**UN OHCHR SRVAW THEMATIC REPORT ON RAPE AS A GRAVE AND SYSTEMATIC HUMAN RIGHTS VIOLATION AND GENDER-BASED VIOLENCE AGAINST WOMEN**

Please indicate who is providing the response, along with contact details.

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**Questionnaire on criminalization and prosecution of rape**

**Definition and scope of criminal law provisions**

1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.

**In India, the relevant provisions on rape are found in Indian Penal Code (IPC).**

**375. Rape— A man is said to commit “rape” if he—**

**(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or**

**(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or**

**(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or**

**(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,**

**under the circumstances falling under any of the following seven descriptions:—**

**First.—Against her will.**

**Secondly.—Without her consent.**

**Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.**

**Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.**

**Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.**

**Sixthly—With or without her consent, when she is under eighteen years of age.**

**Seventhly—When she is unable to communicate consent.**

**Explanation 1.—For the purposes of this section, “vagina” shall also include labia majora.**

**Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:**

**Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.**

**Exception 1.—A medical procedure or intervention shall not constitute rape.**

**Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.**

**376. Punishment for rape—**

**(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which 1 [shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine].**

**(2) Whoever,—**

**(a) being a police officer, commits rape—**

**(i) within the limits of the police station to which such police officer is appointed; or**

**(ii) in the premises of any station house; or**

**(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or**

**(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or**

**(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or**

**(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or**

**(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or**

**(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or (g) commits rape during communal or sectarian violence; or (h) commits rape on a woman knowing her to be pregnant; or**

**(j) commits rape, on a woman incapable of giving consent; or**

**(k) being in a position of control or dominance over a woman, commits rape on such woman; or**

**(l) commits rape on a woman suffering from mental or physical disability; or**

**(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or**

**(n) commits rape repeatedly on the same woman, shall be punished** **with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.**

**Explanation.—For the purposes of this sub-section,—**

**(a) “armed forces” means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;**

**(b) “hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.**

**(c) “police officer” shall have the same meaning as assigned to the expression “police” under the Police Act, 1861 (5 of 1861);**

**(d) “women's or children's institution” means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.**

**(3) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:**

**Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:**

**Provided further that any fine imposed under this sub-section shall be paid to the victim.**

**376A. Punishment for causing death or resulting in persistent vegetative state of victim**

**Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.**

**376AB. Punishment for rape on woman under twelve years of age**

**Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:**

**Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:**

**Provided further that any fine imposed under this section shall be paid to the victim.**

**376B. Sexual intercourse by husband upon his wife during separation**

**Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.**

**Explanation.—In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (d) of section 375.**

**376C. Sexual intercourse by a person in authority**

**Whoever, being—**

**(a) in a position of authority or in a fiduciary relationship; or**

**(b) a public servant; or**

**(c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or**

**(d) on the management of a hospital or being on the staff of a hospital,**

**abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.**

**Explanation 1.—In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (d) of section 375.**

**Explanation 2.—For the purposes of this section, Explanation 1 to section 375 shall also be applicable.**

**Explanation 3.—“Superintendent”, in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.**

**Explanation 4.—The expressions “hospital” and “women's or children's institution” shall respectively have the same meaning as in Explanation to sub-section (2) of section 376.**

**376D. Gang rape**

**Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this section shall be paid to the victim.**

**376DA. Punishment for gang rape on woman under sixteen years of age**

**Where a woman under sixteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this section shall be paid to the victim.**

**376DB. Punishment for gang rape on woman under twelve years of age**

**Where a woman under twelve years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death:**

**Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:**

**Provided further that any fine imposed under this section shall be paid to the victim.**

**376E. Punishment for repeat offenders**

**Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376AB or section 376D or section 376DA or section 376DB, and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.**

**The Protection of Children from Sexual Offences Act, 2012 (POCSO) also provides for penetrative assault and aggravated penetrative assault for children below the age of eighteen:**

**Section 3- Penetrative sexual assault**

**A person is said to commit "penetrative sexual assault" if—**

**(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or**

**(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or**

**(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or**

**(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.**

**Section 4- Punishment for penetrative sexual assault**

 **(1) Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.**

**(2) Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine.**

**(3) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.]**

**Section 5- Aggravated penetrative sexual assault**

**(a) Whoever, being a police officer, commits penetrative sexual assault on a child—**

**(i) within the limits of the police station or premises at which he is appointed; or (ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or**

**(iii) in the course of his duties or otherwise; or**

**(iv) where he is known as, or identified as, a police officer; or**

**(b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child—**

**(i) within the limits of the area to which the person is deployed; or**

**(ii) in any areas under the command of the forces or armed forces; or**

**(iii) in the course of his duties or otherwise; or**

**(iv) where the said person is known or identified as a member of the security or armed forces; or**

**(c) whoever being a public servant commits penetrative sexual assault on a child; or**

**(d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or**

**(e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or**

**(f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or**

**(g) whoever commits gang penetrative sexual assault on a child. Explanation.—When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or**

**(h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or**

**(i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or**

**(j) whoever commits penetrative sexual assault on a child, which—**

**(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (b) of section 2 of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently;**

**(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault; (iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or Infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; (iv) causes death of the child; or**

**(k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or**

**(l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or**

**(m) whoever commits penetrative sexual assault on a child below twelve years; or**

**(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or**

**(o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or**

**(p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or**

**(q) whoever commits penetrative sexual assault on a child knowing the child is pregnant; or**

**(r) whoever commits penetrative sexual assault on a child and attempts to murder the child; or**

**(s) whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence or during any natural calamity or in similar situations; or**

**(t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or**

**(u) whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated penetrative sexual assault.**

**Section 6- Punishment for aggravated penetrative sexual assault**

**(1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.**

**(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.**

**Section 7- Sexual assault**

**Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.**

**Section 8- Punishment for sexual assault**

**Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.**

**Section 9- Aggravated sexual assault**

**(a) Whoever, being a police officer, commits sexual assault on a child—**

**(i) within the limits of the police station or premises where he is appointed; or**

**(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or**

**(iii) in the course of his duties or otherwise; or**

**(iv) where he is known as, or identified as a police officer; or**

**(b) whoever, being a member of the armed forces or security forces, commits sexual assault on a child—**

**(i) within the limits of the area to which the person is deployed; or**

**(ii) in any areas under the command of the security or armed forces; or**

**(iii) in the course of his duties or otherwise; or**

**(iv) where he is known or identified as a member of the security or armed forces; or**

**(c) whoever being a public servant commits sexual assault on a child; or**

**(d) whoever being on the management or on the staff of a jail, or remand home or protection home or observation home, or other place of custody or care and protection established by or under any law for the time being in force commits sexual assault on a child being inmate of such jail or remand home or protection home or observation home or other place of custody or care and protection; or**

**(e) whoever being on the management or staff of a hospital, whether Government or private, commits sexual assault on a child in that hospital; or**

**(f) whoever being on the management or staff of an educational institution or religious institution, commits sexual assault on a child in that institution; or**

**(g) whoever commits gang sexual assault on a child.**

**Explanation.—when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or**

**(h) whoever commits sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or**

**(i) whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or**

**(j) whoever commits sexual assault on a child, which—**

**(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (l) of section 2of the Mental Health Act, 1987 (14 of 1987) or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or**

**(ii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or**

**(k) whoever, taking advantage of a child’s mental or physical disability, commits sexual assault on the child; or**

**(l) whoever commits sexual assault on the child more than once or repeatedly; or**

**(m) whoever commits sexual assault on a child below twelve years; or**

**(n) whoever, being a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child, or who is living in the same or shared household with the child, commits sexual assault on such child; or**

**(o) whoever, being in the ownership or management or staff, of any institution providing services to the child, commits sexual assault on the child in such institution; or**

**(p) whoever, being in a position of trust or authority of a child, commits sexual assault on the child in an institution or home of the child or anywhere else; or**

**(q) whoever commits sexual assault on a child knowing the child is pregnant; or**

**(r) whoever commits sexual assault on a child and attempts to murder the child; or**

**(s) whoever commits sexual assault on a child in the course of communal or sectarian violence or during any natural calamity or in any similar situations; or**

**(t) whoever commits sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or**

**(u) whoever commits sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated sexual assault.**

**(v) whoever persuades, induces, entices or coerces a child to get administered or administers or direct anyone to administer, help in getting administered any drug or hormone or any chemical substance, to a child with the intent that such child attains early sexual maturity.**

**Section 10- Punishment for aggravated sexual assault**

**Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.**

**Section 11. Sexual harassment**

**A person is said to commit sexual harassment upon a child when such person with sexual intent—**

**(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or**

**(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or**

**(iii) shows any object to a child in any form or media for pornographic purposes; or**

**(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or**

**(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or**

**(vi) entices a child for pornographic purposes or gives gratification therefor.**

**Explanation.—Any question which involves “sexual intent” shall be a question of fact.**

**Section 12- Punishment for sexual harassment**

**Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.**

**Section 19. Reporting of offences**

**(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of1974)any person(including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,—**

**(a) the Special Juvenile Police Unit; or**

**(b) the local police.**

**(2) Every report given under sub-section (1) shall be—**

**(a) ascribed an entry number and recorded in writing;**

**(b) be read over to the informant;**

**(c) shall be entered in a book to be kept by the Police Unit.**

**(3) Where the report under sub-section (1) is given by a child, the same shall be recorded under sub-section (2) in a simple language so that the child understands contents being recorded.**

**(4) In case contents are being recorded in the language not understood by the child or wherever it is deemed necessary, a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, shall be provided to the child if he fails to understand the same.**

**(5) Where the Special Juvenile Police Unit or local police is satisfied that the child against whom an offence has been committed is in need of care and protection, then, it shall, after recording the reasons in writing, make immediate arrangement to give him such care and protection including admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report, as may be prescribed.**

**(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.**

**(7) No person shall incur any liability, whether civil or criminal, for giving the information in good faith for the purpose of sub-section (1).**

**The Schedule Caste/Schedule Tribe (Prevention of Atrocities) Act, 1989 (PoA) has provision for sexual assault and rape of SC/ST women in the following provisions:**

**“Section 3(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—**

**(w) (i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient’s consent;**

**(ii) uses words, acts or gestures of a sexual nature towards a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe.**

**Explanation. –– For the purposes of sub-clause (i), the expression “consent” means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act:**

**Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity:**

 **Provided further that a woman’s sexual history, including with the offender shall not imply consent or mitigate the offence;**

**(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, —**

**(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property 1 [knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member], shall be punishable with imprisonment for life and with fine;**

**(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine;”**

**The Schedule to the SC/ST (Prevention of Atrocities) Act, 1989 is read with Section 3(2) (va), which includes the following provisions of the IPC:**

**376B Sexual intercourse by husband upon his wife during separation.**

**376C Sexual intercourse by a person in authority.**

**The Rights of Persons with Disabilities Act, 2006 (RPWD) has provisions on sexual assault of a woman/girl with disabilities in the following form:**

**“92. Punishment for offences of atrocities. — Whoever,—**

**(d) being in a position to dominate the will of a child or woman with disability and uses that position to exploit her sexually;”**

**The above section must be read with Section 376 (2)(l) of the IPC.**

**The Transgender Persons (Protection of Rights) Act, 2019 has a provision on sexual abuse:**

**“18. Offences and penalties— Whoever,—**

**(d) harms or injures or endangers the life, safety, health or well-being, whether mental or physical, of a transgender person or tends to do acts including causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine.”**

1. Based on the wording of those provisions, is the provided definition of rape:
	1. Gender specific, covering women only YES/NO; **YES, in case of Rape of an Adult Woman.**
	2. Gender neutral, covering all persons   YES/NO; **NO. It is gender neutral for every person below the age of eighteen under the POCSO Act. The law presumes rape (in adults) only as committed by a man on a woman.**
	3. Based on the lack of consent of victim YES/ NO; **YES**
	4. Based on the use of force or threat YES/ NO; **YES**
	5. Some combination of the above.  YES / NO; **YES**
	6. Does it cover only vaginal rape?  YES /NO; **NO**
	7. Does it cover all forms of penetration? YES/NO. If yes, please specify. **YES.**
	8. Is marital rape in this provision explicitly included? YES / NO; **YES, by a husband upon his wife during separation**
	9. Is the law silent on marital rape? YES/NO; **NO, to the extent that it is by a husband upon his wife during separation.**

**Additionally, the POCSO Act and the case of** [**Independent Thought v Union of India (2017)**](https://indiankanoon.org/doc/87705010/) **criminalized child marital rape. Section 376B criminalizes rape of a woman by her husband when they are separated by decree.
In all other circumstances rape in a marriage is not a crime.**

* 1. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO; **NO**
	2. Is marital rape excluded in the provisions, or is marital rape not considered as a crime?   YES /NO; **Not Considered a Crime, EXCEPT under the POCSO Act (Child Marital Rape), Exception II to Section 375 of the IPC, and under the conditions of Section 376B of the IPC.**
1. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it. **NO.**

**However, the quantum of punishment for separated spouses is less— Minimum two years imprisonment, maximum seven years imprisonment. (Section 376B of the IPC.)**

1. What is the legal age for sexual consent?

**The legal age for sexual consent in India is 18 as per Section 375 of the IPC read with the Section 2(d) of the POCSO Act.**

1. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.

**NO. But the Quantum of punishment for a rape from a position of control or dominance is high. (Section 376(2)(k))**

**The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provides for civil remedies in case of any workplace sexual harassment.**

**Section 375 of the IPC does not recognise the capacity of a minor to give consent. In case of any sexual activity between minors (consensual or non-consensual), the male minor may be treated as an adult per Section 15 of the Juvenile Justice Act, 2016. This is because the Act treats a minor ( if between the age of 16-18) as an adult in cases of a heinous crime— those with imprisonment of seven years or more.**

1. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.

**Punishment for rape under Section 376(2)(k) is specified under Section 376(2)(n) as:**

“**shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life and shall also be liable to fine.”**

1. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?

**Section 357A of the Code of Criminal Procedure, 1973 (CrPC) provides for a general victim compensation scheme:**

**357A. Victim compensation scheme—**

**(1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.**

**(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).**

**(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.**

**(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.**

 **(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.**

**(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.**

**Along with this, Section 357B makes specific recognition for payment of compensation for victims of Acid Attack and Gang Rape:**

 **357B. Compensation to be in addition to fine under section 326A or section 376D of IPC. —**

**The compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Indian Penal Code (45 of 1860).**

**Section 376(3) of the IPC provides for payments of “just and reasonable” fine for victims of rape below the age of sixteen, for their medical expenses and rehabilitation. Section 376AB provides for the same for victims below the age of twelve. Section 376D provides for payment of a fine to a victim of gang rape for medical expenses and rehabilitation.**

**Similar provisions for payment of the fine to the victim is incorporated under Section 4(3) and 6(2) of the POCSO Act.**

**Section 13(3)(ii) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provides for payment of compensation in case the Internal Committee or the Local Committee finds that allegations against an accused are proved.**

**Section 15 provides the metric for payment of compensation:**

**Section 15. Determination of compensation—**

**For the purpose of determining the sums to be paid to the aggrieved woman under clause (ii) of sub-section (3) of section 13, the Internal Committee, or the Local Committee, as the case may be, shall have regard to—**

**(a) the mental trauma, pain, suffering, and emotional distress caused to the aggrieved woman;**

**(b) the loss in the career opportunity due to the incident of sexual harassment;**

**(c) medical expenses incurred by the victim for physical or psychiatric treatment; (d) the income and financial status of the respondent;**

**(e) feasibility of such payment in lump sum or in instalments.**

**Aggravating and mitigating circumstances**

1. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?
	1. Is rape by more than one perpetrator an aggravating circumstance?  YES/NO **YES**
	2. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES/NO

**YES.**

* 1. Is rape by spouse or intimate partner an aggravating circumstance? **NO**
1. Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify. **YES. Rape by a Separated Spouse.**

**376B. Sexual intercourse by husband upon his wife during separation— Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years, but which may extend to seven years, and shall also be liable to fine.**

**The law in India ensures that the sexual history of the victim/survivor does not play any role in determination of the guilt of rape (See more in answer to Q. 20). However, the law does not provide any guideline in determining the degree of punishment. It has been observed by scholars that marriage of the victim/survivor with the accused or someone else has played out as a mitigating factor in punishment. (For *e.g.,* see** [***Baldev Singh v State of Punjab (2011)***](https://indiankanoon.org/doc/70963/)***[[1]](#footnote-1)).* Sexual history of the victim/survivor are inextricably linked with notions of “chastity” and which also play out as a mitigating circumstance. Rape by acquaintances is assumed to be less traumatic than rape by a stranger, leading to mitigation of the sentence.[[2]](#footnote-2)**

1. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO; **NO.** If so, at what stage and what are the consequences?
	1. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?

**YES. Even though Rape is recognised as a non-compoundable crime, marriage of the accused person with the victim/survivor keeps sprouting as a ground for re-conciliation. The Gujarat High Court** [***Mitesh Ashokbhai Chunavlal v State of Gujarat (2020)[[3]](#footnote-3)***](https://www.livelaw.in/pdf_upload/pdf_upload-381270.pdf)  **held that holding a trial on the crime of rape shall be futile, because the victim/survivor and the accused had reached on a settlement to marry each other.**

**There have been multiple instances where bail or anticipatory bail has been granted to an accused on the fact that they have married the victim/survivor. (See more in Response to Question 26).**

1. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.
	1. if the perpetrator marries the victim of rape? YES/NO; **NO**
	2. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/NO; **NO**

**Prosecution**

1. Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO **YES. Section 301(1) of the CrPC.**
2. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO; **YES, but they must act under the direction of the Public Prosecutor. Section 301(2) of the CrPC.**
3. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES/NO; **NO**
4. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES/NO; **NO**
5. Please provide information on the statute of limitations for prosecuting rape.

**There is no limitation for prosecution of Rape.**

**However, Section 198(6) of the CrPC places one-year limitation period on cognizance of child marital rape under section 376 of the IPC.**

1. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?   YES/NO; **YES**
2. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses?  YES/NO If yes, please specify.

**Section 114A of the Evidence Act presumes lack of consent on offences as under Section 376(2) of the IPC. The Supreme Court has held that the two-finger test is violative of privacy of a woman, and hence invalid.** [**Lillu @ Rajesh & Anr vs State of Haryana (2013)**](https://indiankanoon.org/doc/78844212/)**[[4]](#footnote-4).**

1. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? YES/NO; **YES**
2. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.

**Shield from weighing questions on past sexual history:**

**Section 53A of the India Evidence Act, 1872 (IEA):**

**Evidence of character or previous sexual experience not relevant in certain cases. –– In a prosecution for an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person’s previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent**

**Section 146 of IEA:**

**Provided that in a prosecution for an offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.**

**On Disclosure of the identity of the Victim:**

**Section 228A of the IPC:**

**Disclosure of identity of the victim of certain offences, etc.—**

**(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an 3 [offence under section 376, 4 [section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB] or section 376E] is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.**

 **(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is—**

**(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or**

**(b) by, or with the authorisation in writing of, the victim; or**

**(c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim: Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.**

**Explanation.—For the purposes of this sub-section, “recognised welfare institution or organisation” means a social welfare institution or organization recognised in this behalf by the Central or State Government.**

**(3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.**

**Explanation.—The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.**

**Section 157 of the CrPC-**

**Procedure of Investigation: Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality**

**Section 273 of CrPC-**

**Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.**

**Section 327 of CrPC:**

**(2) Notwithstanding anything contained in sub- section (1), the inquiry into and trial of rape or an offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code (45 of 1860) shall be conducted in camera:**

**Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the Court: 6 Provided further that in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate.**

**(3) Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings except with the previous permission of the Court:**

**Provided that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties.**

**War and/or conflict**

1. Is rape criminalized as a war crime or crime against humanity? YES/NO; **NO. There is no provision making any specific recognition to that effect, hence it is not criminalised as a war crime through any domestic statute.**
2. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO; **NO. Rape cases in such circumstances are to be tried through the usual mechanism of the IPC and the CrPC. The limitation prescribed in those specific circumstances continue to apply.**
3. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO; **NO**
4. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO; **NO**

**Data**

1. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

Please find attached official data for the past 2 years, i.e. 2018 & 2019 from India’s National Crime Records Bureau.

**For 2018:**

<https://ncrb.gov.in/en/crime-in-india-table-addtional-table-and-chapter-contents?field_date_value%5Bvalue%5D%5Byear%5D=2018&field_select_table_title_of_crim_value=5&items_per_page=All>

Cases Registered under Rape (Section-wise) –2018: https://ncrb.gov.in/sites/default/files/crime\_in\_india\_table\_additional\_table\_chapter\_reports/Table%203A.11.pdf

**For 2019:**

<https://ncrb.gov.in/en/crime-in-india-table-addtional-table-and-chapter-contents?field_date_value%5Bvalue%5D%5Byear%5D=2019&field_select_table_title_of_crim_value=5&items_per_page=All>

Cases Registered under Rape (Section-wise) –2019:

<https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%203A.11_1.pdf>

**Other**

1. Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.

**On Patriarchal Standards in Grant of Bail:**

**There are socio-legal elements around rape laws which call for inclusive and progressive reforms. While there have been strong amendments on consent and rape, courts have often used patriarchal standards in grant of bail to an accused. The Madras HC in** [***Arun Kumar v The State (2020***](https://www.livelaw.in/pdf_upload/pdf_upload-384177.pdf)***)[[5]](#footnote-5)* granted bail to an accused who had impregnated a minor on the pretext that he would marry her after she reached the age of majority. Some cases come out from “false pretext of marriage” hence bail is granted when the accused agrees to marry victim/survivor.**

**However, there must be a difference between the choice of the victim/survivor and imposition of such choice. The Madras High Court in** [***V. Mohan v The State (2015)***](https://www.casemine.com/judgement/in/56ea7c28607dba36e94572f1)***[[6]](#footnote-6)* granted bail to a convicted appellant to allow him to mediate a marriage with the victim/survivor; the order came despite opposition from the girl. This mediated settlement was even touted as** [**a victory by the chief of Tamil Nadu Woman’s Commission.**](https://www.ndtv.com/chennai-news/rapist-victim-should-get-together-tamil-nadu-womens-panel-chiefs-shocker-775338)**[[7]](#footnote-7)**

**The Delhi High Court (HC) in** [***Roshan v NCT of Delhi (2020)***](https://www.livelaw.in/pdf_upload/pdf_upload-385252.pdf)***[[8]](#footnote-8)* granted anticipatory bail to a man on the ground that he married the victim/survivor. Similarly, the Odisha HC in** [**BLAPL No. 2596 of 2020**](https://www.livelaw.in/news-updates/orissa-hc-releases-on-bail-man-accused-of-rape-of-minor-upon-marriage-to-victim-160581)**[[9]](#footnote-9) granted bail to a man because he married the minor prosecutrix after attaining the age of majority (The victim/survivor was onboard with this marriage). The Himachal Pradesh HC in** [***Rohit Sharma v State of Himachal Pradesh (2020*)**](https://www.livelaw.in/news-updates/minor-consent-for-sexual-intercourse-relevant-for-deciding-bail-application-165818)**[[10]](#footnote-10) held that consent of minor is relevant while grant of bail to an accused. Such bail orders do not perceive the inherent power imbalance between an accused and a victim/survivor. These orders are based out of patriarchal notions of womanhood— that Rape is considered as an injury to a woman’s virginity and the same is compensated when the man marries the woman. The Madhya Pradesh HC in** [***Vikram v State of Madhya Pradesh (2020)***](https://www.livelaw.in/news-updates/visit-the-house-of-the-complainant-on-rakshabandhan-and-request-her-to-tie-the-rakhi-band-madhya-pradesh-hc-160880)***[[11]](#footnote-11)* granted bail to a rape accused with the condition that he must get a Rakhi[[12]](#footnote-12) tied by the victim/survivor. This order reimposes unwarranted victimhood and an image of a fallen woman as it expects the man to protect her. Inclusion of such patriarchal norms as a ground for granting bail creates cause for concern.**

**On Conflict Regions:**

**India is a Ratifying member to the International Covenant on Civil and Political Rights (ICCPR) and the four Geneva Conventions. While these provisions apply to conflict regions, India does not have any law under its framework which specifically recognises rape as a War crime. Rape is supposed to be tried under the framework of Section 376 of the IPC read with relevant CrPC provisions. Section 376(2)(c) makes specific recognition of Rape by Armed forces who are posted in a region by the state or central government.**

**Kashmir is one of the Conflict zones in India which has faced numerous state-sponsored human rights violations. It is under the operation of Armed Forces Special Powers Act, 1958 (AFSPA) under which section 6 grants immunity to armed forces from prosecution from any action that they performed while discharging their duty. The Human Rights Watch in its Report titled “**[**Rape in Kashmir: A Crime of War**](https://www.hrw.org/sites/default/files/reports/INDIA935.PDF)**”[[13]](#footnote-13) shows how Rape is often used as a weapon against women by Indian Armed forces and Militant groups. This report lists out major reported rape cases by Armed forces such as *Kunan Poshpura* (1991), Shopian (October 1992), Haran (July 1992). It also shows how the Indian state instead of prosecuting armed personnel has hidden this action by categorising allegation as a separatist hoax. Similar allegations were levelled through a Nude Protest in the State of Manipur by twelve-mothers, who belonged to Meitei Tribe. No prosecution has been taken up against the Armed forces because of the immunity under AFSPA.**

**Rape is inflicted to violate the autonomy and dignity one might hold with their bodies. In a society where bodies are regulated through norms on caste, gender, sexuality and disability, rape is inflicted on someone to remind them their place in the society. It becomes easier to rape because of the vulnerable positions of those bodies. While women are vulnerable because of their gender, the vulnerability is aggravated when it is taken in consideration with caste, disability, and sexuality. Rape of a lower-caste woman is not just an attack based out of her position as a woman, but also on her caste status. Similarly, a trans person is attacked because of their non-cis gender identity, which aggravates depending on the trans person’s caste, disability, class etc. These aggravated forms of rapes due to intersections of different identities are not recognised within Indian rape laws. Discrimination in access to justice is also aggravated because of a person’s intersectional identity. It is such non-recognitions and discriminations that calls for a more inclusive rape laws and easier ways to access justice. There is a desperate need for education and sensitization of law enforcement units such as lawyers, police, social workers, health workers, judges etc.**

**On Caste:**

**India has witnessed a rise on crime** [**against schedule caste women**](https://www.thehindu.com/data/data-in-2019-56-pc-cases-involving-dalit-victims-chargesheeted-32-pc-recorded-conviction/article32831534.ece)**[[14]](#footnote-14) and there has been a continuous denial of due process and basic human rights. The infamous Bhanwari Devi case of 1992 was one instance. Bhanwari Devi was a government employee belonging to the SC community for the State of Rajasthan when she intervened in a child-marriage ritual of an upper-caste community. She was later gang-raped by five men of that family. The Jaipur Sessions court acquitted the five-accused. The judgement was controversial for its caste-ist holding, one of the grounds being that a man from upper-caste shall not rape a woman of lower-caste or also he shall become impure from that act.[[15]](#footnote-15)**

**The Khairlanji Murder case of 2008 was one more instance were women from the lower-caste were paraded naked before being murdered[[16]](#footnote-16). The Hathras Rape case of 2020 in the State of Uttar Pradesh is again indicative that nothing has changed.[[17]](#footnote-17) The victim was gang-raped by five upper-caste men which later resulted in her death. She gave her dying declaration to the District magistrate, where she informed the name of the accused. She died a week after recording her dying declaration, but the police cremated her body without the consent of her family. They even declared that there was no rape based on a fallacious forensic report that no semen was found on the clothes or the body of the victim. This comes even though the Supreme Court had held in** [***Parminder v State of Delhi (2014)***](https://indiankanoon.org/doc/150376548/)***[[18]](#footnote-18)* that absence of Semen cannot be a ground to claim that there was no rape. Such cases are not isolated events. The NCRB Data 2018 and 2019 shows that reportedly 3514 and 2935 SC/ST women were Raped all over India. There has been an increase on rape crimes against SC/ST women.**

**There has not been any active legal recognition of the intersection between caste and gender in the context of crimes like rape. Rape of a SC/ST woman by a non-SC/ST man is recognised is a crime under the Prevention of Atrocities Act, 1989. Section 3(2)(va) of that Act charges such offense under section 376C of the IPC (Sexual Intercourse by a person in authority). This section lays down punishment between 5 to 10 years, which is lower than Section 376 which provides for minimum 7 years imprisonment and maximum life sentence. Despite the inherent power difference between a lower-caste and upper-caste persons, there is no direct recognition of this caste-based power differential within rape laws. Caste is an aggravating factor on rape, but the same is not statutorily recognised in rape laws.**

**On Sex-workers**

**Sex-workers have had no legal recognition in terms of their work and their status as workers. Their non-recognition extends at various points in law including their statutory non-recognition for protection under Rape laws. A Pan-India Survey report organised by Sex-worker collective shows us that nearly 56% (of 3000 respondents) admitted that they were subjected to physical violence by their clients, 40% said that they faced violence from lovers/partners. A lack of legal recognition prevents them from accessing relevant rape laws. Sex-workers are treated as unchaste women and consent is presumed by the police. They are treated as a separated and discriminated class of citizens because they do not adhere to conventional notions surrounding purity, chastity, virginity, and womanhood.**

**When the notion of rape was linked with the chastity of women, sex-workers have been considered as someone who cannot be raped. This currently stands at a strange mix, where on the one hand the Supreme Court in** [***Jai Bhagwan v NCT of Delhi (2018)***](https://indiankanoon.org/doc/3075210/)***[[19]](#footnote-19)* held that Sex-workers have a right to dignity and life, and they have a right to refuse sex. On the other hand,The SC in a 2016 judgement held that sex-workers** [**cannot prosecute a client for rape if**](https://scroll.in/latest/818886/sex-workers-cannot-allege-rape-if-denied-payment-rules-supreme-court-toi) **they denied to make their payment— despite the fact that consent was preconditioned on payment of service.[[20]](#footnote-20) It is because of such reasons that there is a need for specific recognition for sex-workers in rape laws.**

**The Devdasi system — a tradition where women are married to a deity and their life is deemed to be at the mercy of their lords— stands criminalised through state specific Devdasis Prevention of Dedication legislations.[[21]](#footnote-21) This act criminalizes deity dedication of women, but it fails to acknowledge Rape after a dedication occurs criminally. Caste based sex-work becomes an aggravated ground for discrimination in access to law. For *e.g.* Bedia caste women— bedias are traditionally sex-working and dancing women— join sex-work just after their first menstrual cycle, which is usually below the age of eighteen. This becomes a ground for child rape within the POCSO Act. It often happens that non-sex working Bedia women are deemed to be unchaste because of their caste and are often presented with societal roadblock to access rape laws. Police presume consent by looking at the caste of a Bedia woman and refuse to file FIR.**

**On Disability:**

**People with Disability are at the high risk of sexual violence. This risk is aggravated by the stigma and misconceptions attached around such disability. Human Rights Watch published a report titled** [***Invisible Victims of Sexual Violence Access to Justice for Women and Girls with Disabilities in India (2018)***](https://www.hrw.org/report/2018/04/03/invisible-victims-sexual-violence/access-justice-women-and-girls-disabilities)***[[22]](#footnote-22)* describes the difficulties faced by disabled women in accessing rape laws. Police do not file an FIR of a victim/survivor because of their stigmatized view towards women with disabilities. Sometimes there are difficulties in recording statements and the police is not equipped with the knowledge or the means to record their statement.**

**Section 92 to the RPWD Act criminalizes sexual exploitation and assumes that there is power differential in such cases. Section 376(2)(l) also acknowledges this power differential. There is a recognition of such aggravated form of rape.**

**On Transgenders and need for Gender Neutrality**

**Rape laws in India are gender specific where they presume that rape can be inflicted by a man on a woman. This lack in Gender neutrality provides limited recognition and protection of rape. The Supreme Court in** [***Priya Patel v State of MP (2006)***](https://indiankanoon.org/doc/1555191/)***[[23]](#footnote-23)* interpreted Section 375 of the IPC and held that the section criminalises rape of a woman by a man and such formulation is in line with biological impossibility of rape of a woman by a woman. It held that a woman cannot rape a woman. The Bombay HC in** [***Ashwin Ajit Dighe v State of Maharashtra (2012*)**](https://www.legitquest.com/case/ashwin-ajit-dighe-v-state-of-maharashtra-another/7D686)**[[24]](#footnote-24), granted anticipatory-bail to a woman while holding the position that a woman cannot rape but they could abet. While the 2013 Criminal Law Amendments have broadened the scope of penetration, they did not subsume it across all gender. This means that same-sex rapes are still not envisaged within rape laws. The only way out for such a legal regime is to invoke the currently read down Section 377 of the IPC. Section 377 currently criminalizes non-consensual ‘unnatural offense’, which does not recognise the context of rape. Recently, rape of a man by another man** [**was charged**](https://www.timesnownews.com/amp/ahmedabad/article/friend-turns-abuser-in-gujarat-40-year-old-man-sodomised-obscene-act-filmed/696553?utm_campaign=fullarticle&utm_medium=referral&utm_source=inshorts) **under Section 377 of the IPC.[[25]](#footnote-25)**

**Section 18(d) of the Transgender Persons Act, 2019 criminalizes sexual abuses against trans persons as a petty offense and there is no provision specifically recognises rape. There is not even any reference to the Rape provisions under the IPC. Such non-recognition causes issues in protection of trans persons in cases of rape. An interpretation can be made under Section 375 where ‘woman’ could include a trans woman, but it then becomes a matter of how many police officials realize such readings. This is a prime reason to have gender neutral rape laws which could grant legal protection to every gender. Moreover, rape of a trans person is an aggravated form of rape which needs to get its due recognition. Provisions related to rape in the PoA and RPWD Acts are only formulated as one which is inflicted on a woman by a man.**

**The Supreme Court had rejected to hear a petition on Gender neutral laws because it was their opinion that it was best if the legislature decides on the issue of gender-neutral laws. Learned Senior Advocate and Member of Parliament KTS Tulsi had introduced a** [**private member bill in the Rajya Sabha**](https://www.livelaw.in/pdf_upload/pdf_upload-362124.pdf) **which has not been heard in the parliament.[[26]](#footnote-26) The bill seeks to amend criminal laws to make them gender neutral. In October, a petition was filed in the Supreme Court to bring about an equal reading of rape laws. This matter is still pending before the Supreme Court.**

1. (2011) 13 SCC 705 [↑](#footnote-ref-1)
2. See more at <[**https://criticallegalthinking.com/2013/01/07/chastity-virginity-marriageability-and-rape-sentencing/**](https://criticallegalthinking.com/2013/01/07/chastity-virginity-marriageability-and-rape-sentencing/)**>** [↑](#footnote-ref-2)
3. R/CR.MA/11267/2020 [↑](#footnote-ref-3)
4. (2013) 14 SCC 643 [↑](#footnote-ref-4)
5. CRL OP(MD). No.11883 of 2020. [↑](#footnote-ref-5)
6. CRL. A. 402/2014 (Madras High Court). [↑](#footnote-ref-6)
7. See more at <https://www.ndtv.com/chennai-news/rapist-victim-should-get-together-tamil-nadu-womens-panel-chiefs-shocker-775338> [↑](#footnote-ref-7)
8. BAIL APPL. 2108/2020. [↑](#footnote-ref-8)
9. See more at <https://www.livelaw.in/news-updates/orissa-hc-releases-on-bail-man-accused-of-rape-of-minor-upon-marriage-to-victim-160581?from-login=204338> [↑](#footnote-ref-9)
10. CRL MP(M) No. 2001/2020. [↑](#footnote-ref-10)
11. MCRC-23350-2020. [↑](#footnote-ref-11)
12. Rakhi is the **ritual of woman tying a band to a man indicating that the man is now her brother who shall protect her from all threats.** [↑](#footnote-ref-12)
13. See more at < https://www.hrw.org/sites/default/files/reports/INDIA935.PDF> [↑](#footnote-ref-13)
14. See more at < <https://www.thehindu.com/data/data-in-2019-56-pc-cases-involving-dalit-victims-chargesheeted-32-pc-recorded-conviction/article32831534.ece>> [↑](#footnote-ref-14)
15. See more at < <https://www.bbc.com/news/world-asia-india-39265653>> [↑](#footnote-ref-15)
16. See more Teltumbde, Anand (2008) *Khairlanji. A Strange and Bitter Crop*, New Delhi: Navayana, 214 pages, ISBN 9788189059156. [↑](#footnote-ref-16)
17. See more at < https://thewire.in/women/hathras-gang-rape-and-murder-case-a-timeline> [↑](#footnote-ref-17)
18. (2014) 2 SCC 59. [↑](#footnote-ref-18)
19. CRIMINAL APPEAL NO.2299 OF 2009. [↑](#footnote-ref-19)
20. See more at < <https://scroll.in/latest/818886/sex-workers-cannot-allege-rape-if-denied-payment-rules-supreme-court-toi>> [↑](#footnote-ref-20)
21. Deekshitha Ganesan, 'Intersections of Caste and Gender: Implementation of Devadasi Prohibition Laws' (Centre for Law and Policy Research, 25 Nov 2019) <https://clpr.org.in/wp-content/uploads/2019/11/Policy-Brief-on-Devadasi-Legislations.pdf> accessed on 02 Jan 2021 [↑](#footnote-ref-21)
22. Available at < <https://www.hrw.org/report/2018/04/03/invisible-victims-sexual-violence/access-justice-women-and-girls-disabilities>> [↑](#footnote-ref-22)
23. Appeal (Crl.) 754 of 2006 (Supreme Court of India). [↑](#footnote-ref-23)
24. Criminal Anticipatory Bail Application No. 1168 Of 2012. [↑](#footnote-ref-24)
25. Available at < <https://www.timesnownews.com/amp/ahmedabad/article/friend-turns-abuser-in-gujarat-40-year-old-man-sodomised-obscene-act-filmed/696553?utm_campaign=fullarticle&utm_medium=referral&utm_source=inshorts>> [↑](#footnote-ref-25)
26. Available at < <https://www.livelaw.in/pdf_upload/pdf_upload-362124.pdf>> [↑](#footnote-ref-26)