

## SRVAW 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.**

Ans. Rape/Sexual offence in different laws and codes in India-

*a. Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Amendment Act*

**Section 3(1)(w)**

- i. Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe 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 Tribes.

*b. Indian Penal Code 1860*

**Section 375-** A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a **woman** under circumstances falling under any of the six following 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 sixteen years of age. Explanation.— Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

*c. Criminal Amendment Act 2013*

**Section 354-** Assault or Criminal force to women with intent to outrage her modesty

**Section 354A-** Sexual harassment

**Section 354B-** Assault or use of criminal force to women with intent to disrobe

**Section 354C-** Voyeurism

**Section 354D-** Stalking

**Section 375 – Under the new section, a man is said to commit rape if there is:**

- Penetration of penis into vagina, urethra, mouth or anus of any person, or making any other person to do so with him or any other person;
- Insertion of any object or any body part, not being penis, into vagina, urethra, mouth or anus of any person, or making any other person to do so with him or any other person;
- Manipulation of any body part so as to cause penetration of vagina, urethra, mouth or anus or any body part of such person or makes the person to do so with him or any other person;
- Application of mouth to the penis, vagina, anus, urethra of another person or makes such person to do so with him or any other person;
- Lastly, touching the vagina, penis, anus or breast of the person or makes the person touch the vagina, penis, anus or breast of that person or any other person.

The 2013 Act expands the definition of rape to include oral sex as well as the insertion of an object or any other body part into a woman's vagina, urethra or anus.

*d. The Protection of Children from Sexual Offences Act 2012*

**Section 3(a)(b)(c)(d) Penetrative Sexual assault-** A person is said to commit “penetrative sexual assault” if he inserts his penis /any object or any part of the body/manipulates any part of the body of child/applies his mouth to the penis, vagina, anus, urethra of the child.

**Section 5-** Aggravated penetrative sexual assault- Whoever, being a public officer/member of armed force/public servant/jail staff/hospital staff/staff of educational institution commits penetrative/gang penetrative sexual assault on a child

*e. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*

**Section 2(n)** “sexual harassment” includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:— (i) physical contact and advances; or (ii) a demand or request for sexual favours; or (iii) making sexually coloured remarks; or (iv)

showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature

**Section 3**-Prevention of sexual harassment.—(1) No woman shall be subjected to sexual harassment at any workplace.

*f. Devadasi Abolition Act*

The Madras Devadasis (Prevention of Dedication) Act (also called the Tamil Nadu Devadasis (Prevention of Dedication) Act or the Madras Devadasi Act) is a law that was enacted on 9 October 1947 just after India became independent from British rule. The law was passed in the Madras Presidency and gave devadasis the legal right to marry and made it illegal to dedicate girls to Hindu temples. The bill that became this act was the Devadasi Abolition Bill. (Though this bill does not prominently mention the sexual violence but it prevents the gender based violence against the women).

*g. The Immoral Traffic (Prevention) Act, 1956*

**Section 6(2)(1)**- Where a child or minor found in a brothel, is on medical examination, detected to have been sexually abused, it shall be presumed, unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes.

*h. The Protection of Women from Domestic Violence Act, 2005*

**Section 3 (a)** - For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse.

**2. Based on the wording of those provisions, is the provided definition of rape:**

**1. Gender specific, covering women only YES/NO**

Yes, Most of the laws are women centric protecting women from sexual offences except Protection of Children from Sexual Offences (POCSO), 2012 which covers both girl and boy child/minors as victims and men and women as offenders. There is one more law called “The Immoral Traffic (Prevention) Act, 1956” which also gender neutral protecting minors (both boy and girl) in section 6.

**2. Gender neutral, covering all persons YES/NO**

No, as per the definition of rape and sexual offence under various Acts and Codes, the definition covers only women except two laws POCSO and The Immoral Traffic (Prevention) Act.

**3. Based on the lack of consent of victim YES/ NO**

Yes, as defined in *Section 375 IPC; Section 2(n)* of Sexual Harassment at Workplace Act. The words “Against her will; without her consent and unwelcome” indicate the lack of consent of the victim. Apart from it, the age of consent under the POCSO Act is 18, therefore, the consent of the victim under the 18 years is immaterial.

**4. Based on the use of force or threat YES/ NO**

Yes, *Section 354 and Section 375 of Indian Penal Code* clearly mention the application of force and threat to obtain the consent of women and commit sexual acts.

**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, The Criminal Amendment Act 2013 expands the definition of rape to include oral sex as well as the insertion of an object or any other body part into a woman's vagina, urethra or anus (Section 375 IPC).

**8. Is marital rape in this provision explicitly included? YES / NO**

No, the absence of law on marital rape (sexual assault), would also fail the objective as married women cannot be protected. The *Section 3* of Domestic Violence Act is only applicable in grave life threatening scenario the need for consent of woman isn't important leaving her as an object of sex. Marital rape is an exception to section 375 IPC, provided that the wife is not under 15 years of age. There is another “*Section 376-B IPC (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*” also deals with this concern.

**9. Is the law silent on marital rape? YES/NO**

Yes, though there are some exceptions but they are not explicit. For instance, section 375 IPC and Section 3 of Domestic Violence Act.

**10. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO**

No, it is not covered in the general provisions.

**11. Is marital rape excluded in the provisions, or is marital rape not considered as a crime?  
YES /NO**

Yes, marital rape is excluded in the provisions and is not considered as crime provided, the wife is under the age of 15 to the section 375 Indian Penal Code

**3. 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

**4. What is the legal age for sexual consent?**

18 years. The age of consent under the POCSO Act is 18 years.

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

No

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

Minimum 7 years of imprisonment, and maximum life imprisonment under the Indian Penal Code.

**7. 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?**

Yes, *Section 357A CrPC* provides the provision of payment of compensation to the victim of crime (also includes the rape offence victim) and also rehabilitation thereof. The Scheduled Caste/Scheduled Tribes (Prevention of Atrocity) Act also focuses on the rehabilitation of the victims of caste and gender based violence. It specifically mentions the compensation in cash and kind to the survivors of rape and sexual harassment under Rule 12(4) for offence under *sections 326B, 354, 354(A), C,D; 375; 376B, C, D; 509 IPC*. The *Rule 7* of POCSO Act also provides compensation to the victims of sexual violence. It is pertinent to mention here that PoA Act and POCSO Act also speak about the physical and mental rehabilitation of the victims. Witness Protection Schemes in Delhi and Rajasthan for protection of witnesses based on the threat assessment and protection measures inter alia include protection/change of identity of witnesses, their relocation, installation of security devices at the residence of witnesses, usage of specially designed Court rooms, etc.

## **Aggravating and mitigating circumstances**

**8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?**

Yes, the court foresee aggravating circumstances when sentencing rape cases like conduct and state of mind of Accused and age of sexually assaulted victim and gravity of criminal act were factors of paramount importance - Court must exercise its discretion in imposing punishment objectively considering facts and circumstances of case. (Criminal Appeal No. 1887 of 2008, Supreme Court of India Decided On: 18.05.2012)

**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, rape of a single vulnerable person like Dalit woman/Dalit minor girls is an aggravating circumstance. Given the social status to the Dalit women in Indian society, the Dalit woman is always in a vulnerable circumstance. The power dynamics of the caste structure in India always entitles a member of the so-called "upper caste" to be in a position to perpetrate violence against Dalits. Also, sexual violence against Dalit women is a measure for caste assertion and maintaining the power dynamics of Indian society which in itself is an aggravating circumstance.

**3. Is rape by spouse or intimate partner an aggravating circumstance?**

No

**9. Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.**

There is no such law to foresee mitigating circumstances for the purpose of punishment but it is the court's discretionary power to reduce the punishment as laid by Supreme Court in the Criminal Appeal No. 263 of 2006 (Arising Out of S.L.P (Crl.) No. 5753 of 2005) Decided On: 28.02.2006

**10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO If so, at what stage and what are the consequences?**

No

**1. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?**

Yes, in practice it is widely prevalent at the stage of registration of criminal complaint and investigation and the victim of rape hailing from socially excluded sections are compelled to compromise with the perpetrators. In some cases, it also happens at the court level even in the PoA Act cases. Though, PoA Act is a non-compoundable law.

**11. Is there any provision in the criminal code that allows for the non-prosecution of the perpetrator? YES/NO If yes, please specify.**

No

**1. If the perpetrator marries the victim of rape? YES/NO**

No, there is no such provision to prevent the perpetrator from prosecution but in practice, the perpetrators managed to escape from it. The victims of rape enter into such compromise because of prolonged prosecution, weak socio-economic status and impunity enjoyed by the perpetrators.

**2. If the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/NO**

No

### **Prosecution**

**12. Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO**

Yes

**13. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO**

No

**14. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES/NO**

No

**15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES/NO**

No

**16. Please provide information on the statute of limitations for prosecuting rape.**

Yes, the prosecution of rape under PoA Act is 60 days whereas, in IPC, it is 90 days from filing of charge sheet till its final judgment. The POCSO Act has the limitation of prosecution of the offence of one year from the date of taking cognizance of the offence. The Criminal Amendment Act to section 309 CrPC has the additional proviso that when the inquiry or trial relates to an

offence under sections 376 to 376D IPC, the inquiry or trial shall, as far as possible, be completed within a period of two months from the date of commencement of the examination of witnesses.

**17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES/NO**

Yes, *Section 473* of The Code Of Criminal Procedure, 1973- Extension of period of limitation in certain cases. Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice. The POCSO Act does not provide for any period of limitation for reporting the child sexual offences.

**18. Are there mandatory requirements for proof of rape, such as medical evidence or the need for witnesses? YES/NO If yes, please specify.**

Yes, the medical evidence are required to establish rape offence as per the laws but some legal precedents (Mohit Yadav vs The State Of Bihar on 11 January, 2018) (<https://indiankanoon.org/doc/174419049/>) stresses only upon victim's testimony for the conviction of the offence.

**19. Are there rape shield provisions aimed at preventing judges and defence lawyers from exposing a woman's sexual history during trial? YES/NO**

Yes

**20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.**

Yes, *Section 37* POCSO Act- The Special Court shall try cases in camera and in the presence of the parents of the child. *Section 33* POCSO- The Special Court shall ensure that the child is not called repeatedly to testify in the Court. The CrPC amendment of 1983 to section 327CrPC itself mandated in camera inquiry and trial for rape of an offence under section 376, 376A, 376B, 376C or 376D IPC, victims of rape were still not comfortable in court proceedings.

**War and/or conflict**

**21. Is rape criminalized as a war crime or crime against humanity? YES/NO**

No

**22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO**

No

**23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO**

No

**24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO**

No

**Data**

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

Number and percentage of crimes committed against SCs & STs women from 2015-19 as per National Crime Record Bureau:

<b>Number of Crimes registered and Disposal by courts under SCs and STs (PoA) Act as per NCRB (2015 - 2019)</b>										
<b>Year</b>	<b>Crime Head</b>	<b>Number of crimes against SC Women &amp; minor girls under (PoA) Act</b>	<b>Cases Pending Trial from Previous year</b>	<b>Cases in which Trials were Completed</b>	<b>Number of Cases ending in Conviction</b>	<b>Number of Cases ending in Acquittal</b>	<b>Cases Pending Trial at the End of the year</b>	<b>Conviction Rate</b>	<b>Acquittal Rate</b>	<b>Pendency percentage</b>
<b>2015</b>	Rape	<b>2326</b>	7218	1015	345	670	6198	34	66	85.9
<b>2016</b>	Rape	<b>2541</b>	8259	1064	309	755	7191	29	70.95	87.1
<b>2017</b>	Rape	<b>2714</b>	9300	985	330	611	8311	33.5	62.03	89.4
<b>2018</b>	Rape	<b>2936</b>	10855	917	270	604	9932	32.85	65.86	86
<b>2019</b>	Rape	<b>3486</b>	9567	1052	339	613	11394	32.2	58.27	91.4
	Total/Average	<b>14003</b>	<b>45199</b>	<b>5033</b>	<b>1593</b>	<b>3253</b>	<b>43026</b>	<b>32.31</b>	<b>64.62</b>	<b>87.96</b>

15 Civil Society Organizations working for Dalit Human Rights across India have been monitoring and advocating in more than 500 cases against the Dalit women in all operational states. We are enclosing here a list of cases to get the overview of the response, inaction, delay practice, deliberate negligence and injustice made on the part of state, police and administration

in the serious cases of sexual assault, rape, sexual harassment of Dalit women and Dalit minor girls.

### **Other**

**26. 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.**

There is a series of lacunae and barriers for the Dalit women in accessing justice, particularly in the cases of sexual violence at social and legal context. The social context is way too complex for Dalit women and it also makes the legal context more critical to access as the duty bearers in law enforcing agencies hold the same caste and gender prejudice and perspective while handling the cases of Dalit women.

#### ***In social context-***

- a. The caste, class and gender play a critical role in suppressing the voice of the Dalit women in accessing justice, especially in the cases of sexual violence. A Dalit woman is regulated by the social norms set by the so called “upper caste” which always compel them to maintain silence over the injustice committed by them. The culture of silence is also followed in the families in the name of pride and honor of the family.
- b. In the rural context, the Dalit communities are governed by the rule of the so called “upper caste” communities. In the cases of sexual violence against the Dalit women, the voices are always oppressed at local level. The Dalit victims and families are compelled to compromise with the perpetrators.
- c. When the Dalit women approached the police station, the families or women face the dire consequences and subsequent violence by the hands of the perpetrators.
- d. The Dalit women and families face social and economic boycott or have to migrate from the village for rising voice against the powerful accused.
- e. The Dalit women also bear the stigma of filing the false case of sexual offence just to gain the monetary compensation under PoA Act.

#### ***In legal context-***

- a. The police do not entertain the Dalit women with dignity and respect in the police stations. They are made to sit in the police stations hours together or chased out without lodging the FIRs.
- b. The police deny registering the cases of Dalit women or if registered, the proper sections of SCs&STs (PoA) Act and POCSO Act are not invoked in the FIR.

- c. The counter cases are filed against the Dalit women and their family members to harass them and to force to compromise their cases.
- d. The investigation officers' conduct poor, biased and partial under the influence of so called "upper caste" perpetrators or political pressure.
- e. The deliberate delay is caused by the police in medical examination of the Dalit woman or minor relating to the sexual assault. The manipulation in the medical and forensic reports leads to failure of justice.
- f. The arrest of the accused is not made immediately.
- g. The monetary compensation and other rehabilitation measures prescribed under PoA Act are denied at a larger level.
- h. Delay is occurred in filing the charge sheet within the stipulated time of 60 days as per SC/ST Act.
- i. Caste and gender prejudice of the judges and advocates in dealing with the Dalit women cases. This contributes to a high acquittal rate.