Rape as a grave and systematic human rights violation and gender-based violence against women

*The responses consolidated herein reflect a brief and concise statutory understanding of rape as a human rights violation and sexual and gender-based violence against women (SGBVAW). At the onset of this report it is mentioned that national reporting on crimes against women is relatively limited and does not encompass diverse social groups. Information is sourced from reports by national data repositories, civil society groups, national human rights institutions, academia and other stakeholders, based in India.*

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.**

The Code of Criminal Procedure (CrPC), Protection of Children Against Sexual Offences Act (POCSO) and Indian Penal Code (IPC) are the relevant pieces of national legislation for the purpose of this report. The CrPC delineates [procedure](https://en.wikipedia.org/wiki/Procedural_law) for administration of [criminal law](https://en.wikipedia.org/wiki/Criminal_law)[[1]](#footnote-1) while the IPC is the substantive piece of legislation covering criminal law in India. Protection of Children Against Sexual Offences Act (POCSO) is the law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography. It is at this junction that attention is drawn to the fact that repertoire of law in India consists of statutes passed by the legislature and by legal precedent (or case law) set forth by the judiciary. Courts of India have clarified on the definition of rape and held that ‘only heterosexual intercourse, will be considered as rape[[2]](#footnote-2) within the purview of the IPC. The [Indian Evidence Act](https://indiankanoon.org/doc/1953529/) specifically carves out a provision to the effect that if a victim in her evidence states that her consent was not given, the court shall presume the absence of consent when prosecuting rape.

It is prudent to also mention that the law does not recognise marital rape or sexual violence by intimate partner violence to fall within the purview of rape. Additionally, the law downplays the gravity of sexual offences including but not limited to rape against a transgender[[3]](#footnote-3) person to a petty offence.[[4]](#footnote-4) In both the formal and informal sectors, the government is mandated by law to set up effective monitoring systems for committees and publish regular reports to ensure transparency and accountability so as to protect female employees from sexual harassment in the workplace and to provide procedures for resolution, settlement, or prosecution.[[5]](#footnote-5)

Post the diabolical rape, assault and torture of a physiotherapy intern in New Delhi, in 2013, the law was modified and new offences, such as use of criminal force on a woman with intent to disrobe, voyeurism and stalking were created to fit the needs of the society. Consequently, following the highly publicised rape, murder and setting ablaze of a veterinarian in Hyderabad and the burning of a rape survivor in Uttar Pradesh, (both in 2019) there has been a clamour, on behalf of the state, to make the criminal justice system tougher on an offender committing sexual crimes against women and children.[[6]](#footnote-6)

With regard to punishment of rape, except in certain aggravated situations, the statute prescribes punishment for a period exceeding seven years [[7]](#footnote-7) that may be extend to imprisonment for life[[8]](#footnote-8), and shall also be liable to a fine. In aggravated situations (such as gang-rape), punishment will be rigorous imprisonment for a term which shall be imprisonment for life or death penalty , and the accused shall also be liable to pay a monetary fine[[9]](#footnote-9).

1. **Based on the wording of those provisions, is the provided definition of rape:**
* **Gender specific, covering women only YES/NO-** Yes, the primary provision of the IPC is worded to expressly and exclusively cover only women.[[10]](#footnote-10) That is to say that an in-built presumption in the legislation surmises the accused to a male and the victim to be a female.
* **Gender neutral, covering all persons   YES/NO-** No, the penal provision of the IPC defining rape has an in-build presumption that classifies the accused as a male and the prosecutrix/victim as a woman. However, it was suggested in 2013 to widen the definition of rape to sexual assault thereby deeming it inclusive and gender-neutral.[[11]](#footnote-11) However, the same was declined by the central government and the law remains women specific. Additionally, Protection of Children Against Sexual Offences Act (POCSO) which defines and provides punishment for sexual assault under 18 years is gender neutral and covers all genders.
* **Based on the lack of consent of victim YES/ NO** - Yes, the singular section elucidating what constitutes as an offence of rape includes and elaborates on the following instances of lack of consent:
	1. *Against her will;*
	2. *Without her consent;*
	3. *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;*
	4. *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;*
	5. *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;*
	6. *With or without her consent, when she is under eighteen years of age.[[12]](#footnote-12)*

It is imperative to point out that multiple judgments have pronounced consent to be *“specific, unambiguous and unequivocal”* when prosecuting a case of rape. However, in a controversial and extremely problematic judgment, the apex court upheld[[13]](#footnote-13) the connotation of the word ‘consent’ indicating that a woman while being subjected to sexual assault has to say no in clear words and any hesitation on that front would result in her consenting to the act.[[14]](#footnote-14) What this does is transfer the burden of proof of consent on the victim which can be potentially disastrous especially for weaker groups of victims who may be particularly disadvantaged in such situations.[[15]](#footnote-15)

* **Based on the use of force or threat YES/ NO.** Partially yes. As previously mentioned, a man is said to commit rape if he engages in any sexual act with a woman wherein the latter is acting from a lack of volition or under duress or fear. [[16]](#footnote-16)
* **Some combination of the above.  YES / NO** - Yes.
* **Does it cover only vaginal rape?  YES /NO -** No, prior to the landmark 2013 amendment, rape was understood to mean only penile-vaginal penetration. However, the present definition includes penetration of a woman’s vagina, urethra, anus or mouth by a penis and penetration of the vagina, urethra or anus by fingers objects, body parts, is considered “rape.” Presently, acts of cunnilingus and fellatio without consent are also within the ambit of said definition.[[17]](#footnote-17)
* **Does it cover all forms of penetration? YES/NO.** **If yes, please specify.** Yes, the current definition includes within in ambit penetrative acts, such as oral sex, digital penetration, or penetration by objects.
* **Is marital rape in this provision explicitly included? YES / NO-** Yes, the primary section defining rape in the Indian context carves out two exceptions within the statute and one of them is of marital rape.
* **Is the law silent on marital rape? YES/NO -** The criminal provisions are not silent on marital rape and in fact explicitly exclude martial rape from the definition of rape. Courts on the other hand have strayed away from criminalising marital rape on the pretext of de-institutionalising the sanctity of marriage.[[18]](#footnote-18) Additionally, law commission reports and parliamentary committees have chosen to place the institution of marriage and family values over that of women’s sexual and reproductive autonomy. [[19]](#footnote-19) Additionally, the Indian Penal Code demarcates an exception to marital rape if the wife is above 15 years of age. However Prevention of Children from Sexual Offences, which is a special law for sexual violence against children under the age of 18 years, does not have any exception for marital rape. A supreme court judgement has deemed that all sexual contact under the age of 18 years irrespective of marriage will be termed as sexual violence.
* **Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO -** Marital rape is a statutory exception to the provision defining rape.[[20]](#footnote-20) Furthermore, Sexual violence and other forms of assault within a marriage towards a woman is covered under Protection of Women from Domestic Violence Act, which is a civil enactment.
* **Is marital rape excluded in the provisions, or is marital rape not considered as a crime?   YES /NO -** Yes, marital rape is not considered a crime as it is recognised as one of the statutory exceptions to rape.[[21]](#footnote-21) The National Family Health Survey-4 reported that 4 per cent of women were forced into sexual intercourse by their husbands without consent of the former, 2.1 per cent were forced to perform sexual acts they did not want to, and 3 per cent were threatened to make them perform sexual acts that they did not wish to perform.[[22]](#footnote-22)
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.**

There has been general advise from the apex court in India for subordinate courts to "very carefully examine whether the man actually wanted to marry the victim or had malafide motives from the start and had made a false promise only to satisfy his lust”.[[23]](#footnote-23) A live-in relationship is however recognised by law. By virtue of aforementioned provision, the court interpreted the expression “relationship in the nature of marriage”. Key provisions in the Protection of Women from Domestic Violence Act are presently made applicable to the individuals who are in live-in relationships. Courts presume live-in relationships to be covered under the ambit of the expression of ‘nature of marriage’ and live-in relationship stand on the same line and meaning[[24]](#footnote-24). This gives women some basic rights to protect themselves from the abuse of fraudulent marriage, bigamous relationships and sexual violence in a live in relationship.[[25]](#footnote-25)

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

Age of consent and sexual initiation are inextricably intertwined owing to various societal factors. With that said, 18 years is recognised as the legal age of sexual consent in India.[[26]](#footnote-26) However, according to the National Behavioural Surveillance Survey of India[[27]](#footnote-27) 50% of both male and female youth in the age group 18-25 years have engaged in sex prior to attuning the age of 18.[[28]](#footnote-28) For the purpose of clarity it is also mentioned that the law lays down 18 years as the legal age of marriage for girls as opposed to 21 years as the legal age of marriage for boys. [[29]](#footnote-29) Attention is drawn to the fact that since India is a country with a population comprising of diverse religious minorities, the law is drafted in such a manner so as to leave room for harmonious coexistence of the multiple faiths in tandem with common law principles. With that as the guiding principle, statutes are bifurcated into secular and personal laws (those specific to a certain community[[30]](#footnote-30)) and incase of conflict between the two, specific laws or personal laws trump secular laws. Under Muslim laws, one of the conditions for valid marriage is that both individuals should have attend the age of puberty. Chapter 3 of the Constitution of India lays down certain fundamental and inviolable rights to the citizens of India. Citing marriage and sexual orientation as a core tenet of one of the six fundamental rights- right to privacy, the Supreme Court of India in 2018, in its acceptance of the plurality and diversity of our culture, upheld attainment of puberty as a legal age for Muslims to marry in India.[[31]](#footnote-31)[[32]](#footnote-32)

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

Decriminalising the colonial era/pre-independence provision on consensual sex between peers of the same sex, the apex court in 2018 noted that human sexuality cannot categorise individuals using a binary male/female construction[[33]](#footnote-33).As previously mentioned, the Constitution of India guarantees all citizens, independent of their sexual orientation or gender identity, fundamental rights. In a landmark judgment,in 2018, the apex court of India emphasised that the Constitution also protects an individual’s sexual autonomy and intimate personal choices thereby recognising the right to sexual orientation as integral to privacy.

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

The Criminal Procedure Code introduces a caveat to the prosecution of a judge, magistrate, public servant or any member of the armed forces with respect to any offence related to rape.[[34]](#footnote-34) The caveat herein being that a sanction is required (from?)the Central Government prior to the prosecution of aforementioned office holders. This provision of the substance criminal law code in India is to be read with corresponding provisions in the Armed Forces Special Powers Act[[35]](#footnote-35) that grant the central government and by extent the armed forces deeply pervasive powers and impunity from prosecution.[[36]](#footnote-36) Indian statutes are silent with regard to length/duration of such sanctions.

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?**

Compensation or monetary relief to a victim of rape and/or sexual violence after conviction of the perpetrator is recognised as a step towards rehabilitation and restitution of the victim. As per the National legal Services victim compensation scheme, a minimum of Rs 4 lakh (approximately $5,400 USD) is to be paid in case of rape or unnatural sexual assault.[[37]](#footnote-37) If a victim of gang rape dies her family members will be entitled to a minimum Rs 10 lakh (approximately $13,500 USD)— Rs 5 lakh (approximately $6000 USD) for loss of life and Rs. 5. lakh ($6000 USD) for gang rape. A certain amount is to be disbursed to the victim on registration of first information report so as to pave way for immediate rehabilitation to the victims. The code of criminal procedure imposes liability on the State to compensate the victim or his/her dependents who have suffered as a result of the crime. Courts are of the belief that relief can be granted to the victim on the ground of domestic jurisprudence based on the constitutional provisions in India but far more importantly on the ground of human rights jurisprudence emanating from the Universal Declaration of Human Rights[[38]](#footnote-38). Post the highly publicised rape, murder and brutal torture of a 23-year-old physiotherapy intern (also known as the 2012 Delhi gang rape), the criminal law was significantly amended. One such amendment was in the form of central government allocating Rs. 200 crores (approximately $2,71,71,290 USD) to Central Victim Compensation Fund Scheme. However, there seems to exist a discrepancy in legislation and its execution. In the year 2017, out of the 21,590 FIR on rapes, only 1448 rape victims received compensation.[[39]](#footnote-39)

**Aggravating and mitigating circumstances:**

**NOTE:** For the purpose of this sub-section, the following are highlighted as the underpinning to all responses hereinafter:

* The Indian law *does* foresee aggravating and mitigating circumstances however India does not have specific sentencing policy. Sentencing is inherently discretionary[[40]](#footnote-40), and that discretion leads to disparity.[[41]](#footnote-41) For example, two set of cases with identical facts and offences may be decided differently depending on the Judge. It is recapitulated that since India lacks a structured sentencing policy issued either by the legislature[[42]](#footnote-42), courts have stepped in to fill the loopholes caused by this vacuum in practice.
* For most offences, the statute only prescribes the maximum and minimum period of imprisonment allowing the Judge a wide leeway when awarding the sentence in line with the merits of each case. However, this causes a textbook case of incongruity. Some of the commonly cited aggravating circumstances are “conduct and state of mind of the accused and age of the sexually assaulted victim and the gravity of the criminal act”[[43]](#footnote-43).
1. **Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they? YES.**

**NOTE:** Aggravating circumstance herein refer to factors that increase the severity of the crime.

* **Is rape by more than one perpetrator an aggravating circumstance?  YES/NO -** Yes, gang-rape (i.e., rape committed by more than one person in furtherance of a malevolent intention) is an aggravating factor in the sense that the offence carries an imprisonment of 20 years[[44]](#footnote-44) that may extended to the remainder of the accused person’s life.[[45]](#footnote-45)
* **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, the law recognises the exceedingly detrimental dynamic caused by an imbalance of power between a particularly vulnerable individual and a person occupying an inherent position of authority. The criminal code makes two special mentions of such scenarios that are as follows:
1. Rape of a woman in ‘persistent vegetative state’ - The law admits the abomination that is gang-rape and dictates a punishment of 20 years or more.
2. Rape of a woman by a person in authority - The law criminalises the abuse of position by a person in authority, if he “induces or seduces” any woman to have sexual intercourse with him. In purely legal terms it pigeonholes the accused with “strict liability” so as to build a relatively watertight case and dictates a punishment of 20 years or more. This provision was originally incorporated to shed light on the monstrosity of custodial rape . Developing case law underscore the legislative intention to includes keywords such as trust, dominance, authority, fiduciary relationship[[46]](#footnote-46)that may be tailored to fit the multifarious circumstances.
3. Aggravated penetrative sexual assault of a minor - One of India’s most enabling provisions enacted as part of child protection policies, the Protection of Children Against Sexual Offences Act orders a stringent punishment for perpetrators of child abuse. The law takes into account the vulnerability and age of a minor[[47]](#footnote-47) in sentencing.
* **Is rape by spouse or intimate partner an aggravating circumstance? -** NO**.** As mentioned previously, the law recognises marital rape (rape by spouse) an exception to rape. Therefore, it is excluded from the purview of an aggravating circumstance in toto. Although the legal age of marriage is 18 for girls, India has the highest number of married adolescents[[48]](#footnote-48) in the world. Provided they are over 15 years old, it is legal for their husbands to have sex with them—with or without their consent.[[49]](#footnote-49) As recently as of 2019, a public interest litigation was filed before the Delhi high court to make guidelines and laws on marital rape. The court, however, replied that drafting of the laws was the work of the legislature and not the judiciary as it is only concerned with the interpretation of the law rather than the drafting of laws.[[50]](#footnote-50) In another study by [National](https://www.business-standard.com/category/current-affairs-news-national-1150106.htm) Health and Family Survey (NFHS-4) for the year 2015-16, 5.6% women have been reported as victims under the category of “physically forced her to have sexual intercourse with him even when she did not want to”[[51]](#footnote-51). It is pertinent to mention at this juncture that these statistics are far from accurate, not just due to under-reporting but also because they do not give a holistic picture of the extent of marital rape. It is likely that these women have experienced marital rape multiple times over. This is because such crimes occur in intimate spaces and by the same person.[[52]](#footnote-52)

In the aftermath of the Delhi gang-rape of 2012 that shook the world, an independent committee was constituted to suggest amendments to the criminal law. The Committee recommended that the exception for marital rape be removed and opined that merely because the accused and victim are married or in another intimate relationship may not be regarded as a mitigating factor justifying lower sentences for rape.[[53]](#footnote-53) The Committee also highlighted the recommendations made by the CEDAW Committee in respect of India in 2007 which asked for “wide[ning] the definition of rape to reflect the realities of sexual abuse experienced by women and to remove the exception of marital rape from the definition of rape”.

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

Yes, courts mandate that a balance sheet of aggravating and mitigating circumstances be drawn up prior to sentencing. The apex court of India has reinforced its opinion that mitigating circumstances must be accorded full weightage and an equilibrium be arrived at between the aggravating and the mitigating circumstances before the option is exercised.[[54]](#footnote-54)

1. **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, reconciliation between the victim and the perpetrator is impermissible as per legal process.

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

No, reconciliation is neither permitted in practice nor as per the statute. Rape is classified as a non-compoundable offence. This signifies that parties to a rape prosecution are disallowed to enter into a compromise. Courts have emphasised that reconciliation between the victim and the perpetrator “is not a matter to be left for the parties to compromise and settle”[[55]](#footnote-55). The operating principle herein being that exists no accurate way of discerning whether consent granted by the victim in compromising a rape case is genuine and voluntary consent. Studies show that there is a high probability she might have been pressurised by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise.

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

Yes. A process also termed as protective discrimination, the criminal law code carves out a special section that bars the prosecution of judges, magistrates, public servants and members of the armed forces of India for a host of offences. one. such offence mentioned in that list is being charged with rape or sexual assault. It is this juncture that emphasis is drawn to the fact that while reporting/registering a case is not barred, only prosecution is disallowed for without a prior sanction from the central government. While data on this aspect is classified and remains hard to gather, the Central Information Commission (CIC) has directed the (Ministry of Defence) Defence Ministry to make public rejection notes of the 47 cases in which the Centre had denied sanction to prosecute armed forces personnel for alleged human rights violations in Jammu and Kashmir.[[56]](#footnote-56) According to the Defence ministry’s reply in Parliament, of these 47 cases, 16 are for “murder or killing of civilians”, two are rapes, 10 deaths in security operations, three cases of custodial deaths, two cases of beating or torture, three cases of abduction and death of the abducted person, seven cases of disappearance, two cases of theft and molestation and one case each of illegal detention and fake encounter.[[57]](#footnote-57) With read in tandem with the armed forces special powers act which grants sweeping powers and immunity from prosecution, crimes committed against women by members of the armed forces takes a new perspective in light of the situation prevailing in war torn border state[[58]](#footnote-58) of Jammu and Kashmir (hereinafter referred to as J&K). The highest number of cases sent for the prosecution sanction by the State government of J&K was between 2006 and 2007.[[59]](#footnote-59)

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

NO. There exists no provision allowing for prosecution of the perpetrator should he marry the victim. [[60]](#footnote-60)Through multiple judgments the supreme court has held that in a case of rape or attempt to rape, the conception of compromise under no circumstances can really be thought of.[[61]](#footnote-61) The law in practice now explicitly reiterates that an “offer of the rapist to marry the victim” is not a relevant mitigating circumstance.[[62]](#footnote-62) [National Crime Records Bureau](https://ncrb.gov.in/) (NCRB) [data](https://ncrb.gov.in/sites/default/files/Crime%25252520in%25252520India%252525202018%25252520-%25252520Volume%252525201.pdf) from 2018 records 12,568 such reported rape cases. In 2017, it registered 10,553 cases under the ‘known persons on promise to marry the victim’ rape cases.[[63]](#footnote-63)

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

No.No provision in the criminal law code provides for non-prosecution of the perpetrator on the premise of him losing his “socially dangerous” character or reconciling with the victim**.** On the contrary one of India’s former Chief Justice of India is quoted to have publicly urged all courts in the country to remain steer clear from subterfuge, compromise or reconciliation, in a rape case, so as to concede to a soft or liberal approach thereby inviting a compartment of spectacular error. [[64]](#footnote-64)

**Prosecution**

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

Yes. Consistent with common law principles, Indian law recognises certain crimes so heinous in nature that they are deemed a “crime against the society” as opposed to crime against the individual alone[[65]](#footnote-65). Rape is one such crime that fits the bill and therefore is a matter of public prosecution taken up by public prosecutors who act on behalf of the State.

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

No, the public prosecution system in India carves out a crevasse *“to prosecute offenders who violate societal norms”*[[66]](#footnote-66) and *“shock the collective conscience of the society”*[[67]](#footnote-67). Thus, rape is not prosecuted privately in a civil court.

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

No. Indian criminal laws declare rape a crime extremely serious in nature and heinous in gravity which is why it disallows compound ability and courts are the only institutions that retain the power of quash to such cases. For the purpose of brevity, it is mentioned that compoundable offences are those offences wherein the victim/complainant may enter into a compromise, thereby agreeing to withdraw charges against the accused.[[68]](#footnote-68) Various judgments by the Supreme Court of India have emphasised the fact that certain offences such as rape cannot be fittingly quashed even though the victim or victim’s family and the offender have settled the dispute. The operating principle herein being that rape as a crime is not private in nature and has a tremendous impact on the society[[69]](#footnote-69). The Supreme Court of India, in line with views held by human rights advocates and gender activists, has time and again reiterated the need of practicing refrain when exercising legislative powers to quash a criminal proceeding in cases as reprehensible as rape.[[70]](#footnote-70)

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

No. Cases involving reprehensible offences of mental depravity such as rape of a child cannot be compromised even if the victim and the offender have settled the dispute.

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

The Indian Criminal Code stipulates a period of limitation for offences that carry a punishment of less than 3 years. As previously, the offence of rape in India mandates a minimum punishment of 7 years. As a result of this, there exists no statute of limitation or simply put, no bar on courts to take cognizance of rape.

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

Yes. The Ministry of Law and Justice after examining the provisions of Protection of Children from Sexual Offences (POCSO) Act has advised that there appears no period of limitation mentioned in statute with regard to reporting of the offences under the POCSO Act.[[71]](#footnote-71)

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

Yes, there exist legal requirements for medical examination of a victim of rape. A detailed medical examination (also known as a Medico-legal certificate) is to be carried out by a registered medical practitioner employed in a hospital run by government or local authority. By this it is clear that the law recognises the need for an immediate medical examination of the person accused of rape. The medical examination of the victim must be done with her express consent or of a person competent to give consent on her behalf. With that said, it imperative to also point out that the law allows a victim to exercise her right to refuse to undergo a medical examination. If the victim is under 12 years of age, her parents / guardians will consent to the medical examination on her behalf. The medical examination should be carried out without any delay and a "reasoned" report be prepared recording the name and address of the victim.[[72]](#footnote-72)

**NOTE**: Testimony of a victim is the only thing of vital importance. Scientific evidence is of corroborative value and a rule of prudence.

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. As mentioned previously, the repertoire of law in India consists of statutes passed by the legislature and judicial precedent or cases decided by courts in India. With an attention to detail, this sub-section is divided into the following categories to answer the aforementioned question with precision and lucidity:

a. Statutory provisions - The Indian evidence act specifically carves out space for a provision that deems previous sexual character of a victim in cases of sexual assault as irrelevant. Acknowledging the social stigma of victimisation the legislature formulated provisions prohibiting anyone from making identity of victim of such offence known to reduce the possibility of the victim's sexual history being used as a rhetoric common in rape trials.

b. Judicial Precedents - Courts have highlighted that the right of the defence to cross-examine the prosecutrix should be done with a certain level of decency and respect to women at large[[73]](#footnote-73)*.*The Supreme Court has held that the unchastity of a woman does not make her open to any and every person to violate her person as and when he wishes[[74]](#footnote-74). Further shielding women from unnecessary trauma in courtrooms, the law hold that she is entitled to protect her person if there is an attempt to violate her person against her wish and therefore merely because of her personal sexual history, her evidence cannot be thrown overboard.

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

Yes. The following provisions are aimed at avoiding re-victimization during prosecution and court hearings:

* The law mandates in-camera proceedings (for rape trials) as opposed to open court trials to mitigate re-victimisation. These are in camera proceedings expressly and unambiguously allow only the presiding officer, the court staff, the accused, his counsel, the public prosecutor, the victim, if at all she wants to be present or the witness shall be there. The law imposes an obligation on the presiding judge to ensure cross-examination is not turned into an instrument of harassment or humiliation to the victim of crime. Courts have chosen to describe her as “victim” or “prosecutrix” during the trial.[[75]](#footnote-75)Provisions exist in the criminal code which prohibits disclosure of name, address, photographs, family details, school, neighborhood or any other particulars which may lead to disclosure of identity of a victim of sexual offences; The apex court has categorically stated that the aforementioned prohibition operates on the principle of preventing social victimisation or ostracism of a victim of sexual offence[[76]](#footnote-76).
* Additionally similar finding was made by the Apex court wherein the court emphasised on the rule of caution and not disclosing the identity of victim in judgments.[[77]](#footnote-77) The intention of the law makers was that the victim of rape should not be identifiable so that they do not face any hostile discrimination or harassment in the future.

**War and/or conflict**

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

No such provision under the law

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

No such specific statute exists. However, as mentioned previously the Armed Forces (Special Powers) Act (AFSPA) allows the central government to term any area as a ‘conflict area’. Right to life is violated by the AFSPA, which grants the armed forces power to use lethal force. Equipped with these special powers, soldiers have raped, tortured, “disappeared,” and killed Indian citizens for five decades without fear of being held accountable.[[78]](#footnote-78) The Act also denies the victims of the abuses the right to a remedy thereby shielding members of the armed forces from legal accountability. Essentially, AFSPA prohibits state governments from initiating legal proceedings against the armed forces on behalf of their population without central government approval. Since such a sanction is seldom granted, it has in effect provided a shield of immunity for armed forces personnel implicated in serious abuses.[[79]](#footnote-79)

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

No, there is no such provision.

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

No, India is a non-party and non-signatory to the Rome Statute of the International Criminal Court (hereinafter referred to as ICC Statute).[[80]](#footnote-80) As lawyer and scholar Usha Ramanathan puts it *“India's resistance to accepting the inherent jurisdiction of the ICC is explained, in part, by anxieties about how investigation, prosecution and criminal proceedings in the Indian system may be judged by an international court. The inclusion of ‘armed conflict not of an international character’ in defining ‘war crimes’ in Article 8 ICCSt. constitutes another reason for India's concern (that the conflicts that persist in Kashmir, the North-East and as was experienced in Punjab, as well as the violence of more recent vintage in Gujarat, could be referred to the ICC). Further elements giving rise to India's misgivings are the fear that the Court might be used with political motives, the power conferred on the Prosecutor to initiate investigations proprio motu and the role allotted to the Security Council.”*[[81]](#footnote-81)

 **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.**

To prepare a comprehensive answer on number of cases of rape that were reported, prosecuted and sanctioned, data is sourced from the National Crime Record Bureau (NCRB) of India that serves the annual crime report released by the Ministry of Home Affairs. It is pertinent to mention that government statistics understate the number of rapes as it is still considered a taboo to report rape in some parts of India, and because rapes that end in murder are counted purely as murders. Furthermore, this data is derived from police station through FIRs (first information reports to be filed after any crime occurs) filed across the country and says nothing more than the nature of the assault. However, due to lack of disaggregated data, support is relied on from anecdotal evidence such as scholarly journals, NGOs, academic papers, think tank policy reports among others.

* NCRB data shows that the rate of crimes against women has risen by 7.3% in 2019, as compared to 2018; 4,05,861 number of crimes against women were reported in India in 2019; an average of 87 rape cases was recorded every single day in India, in 2019.[[82]](#footnote-82)
* State wise break down on reporting: Uttar Pradesh topped the list of states with highest number of crimes against women with 59,853 such incidents; Assam, on the other other, reported the highest rate of crimes against women at 117.8 per lakh population. The crime rate registered per lakh women population also rose to 62.4 in 2019 as compared to 58.8 in 2018. Rajasthan reported the highest number of rapes with 5,997 cases, followed by UP with 3,065 cases. Madhya Pradesh was listed as the third state with most number of rapes with 2,485 cases.[[83]](#footnote-83)
* Majority of cases reported under the sub-head crime against women were registered under ‘cruelty by husband or his relatives’ (30.9%), followed by ‘assault on women with intent to outrage her modesty’ (21.8%), ‘kidnapping & abduction of women’ (17.9%) and ‘rape’ (7.9%),
* NCRB data 2018: 1 rape reported every 15 minutes in India. Women reported almost 34,000 rapes in 2018, barely changed from the year before. Just over 85 per cent led to charges, and 27 per cent to convictions, according to National Crime Record Bureau (NCRB) -- the annual crime report released by the Ministry of Home Affairs.[[84]](#footnote-84)
* Under 30 per cent conviction rate in rape cases in India, says NCRB data Expressing concern over the low conviction rate, the apex court of India has observed that 90% of rape cases end in acquittal.[[85]](#footnote-85)
* Moving further back in time, 2016recorded a 12.4% increase in rape cases from 34,651 in 2015 to 38,947 in 2016. The number of cases of sexual assault is on the rise, due to improved reporting and possibly due to an actual increase in these crimes.
* When we look at the quantum of punishments for crimes against trans people, the penalty for rape is a mere six months to two years. This might go up to life imprisonment if we consider the rules for binary gender. Even endangering lives of the trans people is punishable by a limit of only two years of imprisonment. It gives the impression that crimes against the community are considered frivolous wrongdoings.[[86]](#footnote-86)
* A 2015 analysis of Mumbai session courts for the year revealed: false cases foisted by parents, wide variation in the sentences, societal prejudices and vulnerabilities at play, and a tendency for investigating high-profile cases with greater rigour.[[87]](#footnote-87)
* More than 30% women in five out of 22 states and Union Territories (UTs), including Karnataka, Assam, Mizoram, Telangana and Bihar, said they have suffered spousal violence, according to the fifth round of National Family Health Survey (NHFS-5).
* Karnataka has seen a drastic increase in the percentage of women experiencing ‘spousal violence’, doubling from 20.6% five years ago to 44.4% in 2019-20. In Bihar, at least 40% women said they experienced spousal violence, compared with 43.7% in 2015-16, data showed.
* About 39% women in Manipur, 36.9% in Telangana, 32% in Assam and 30% in Andhra Pradesh suffered spousal physical and sexual violence, data showed.
* Considering that the survey was conducted before the COVID-19 pandemic, NGOs and activists have raised concerns over a further rise in the numbers during the lockdown period
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.**

1. Social stigma attached to rape and its consequent prosecution remains by far the biggest hindrance to justice for rape victims in India:
* Women and girl survivors of rape suffer humiliation at hospitals and police stations. There is unwillingness to register complaints at the Police stations and little protection to the victims and witnesses. The situation aggravates with the unavailability of adequate counselling, health care and legal support to victims during criminal trials of the accused.
* Even though the laws and policies have become stronger, a lot remains to ensure the survivor’s dignity by the first responders: police, doctors and courts.
* Instead of feeling safe after filing a complaint with the authorities, families fear for their daughter’s or family member’s safety as the accused gets a bail and is in a position to make threats.
* Unavailability or lack of witness protection laws in the country pressurises the witnesses and survivors, undermining prosecutions. For example: The unofficial village caste councils called Khap panchayats, often pressure the so called “low castes” and Dalit families to change their testimony or drop the case, if the accused if from a dominant caste.
* The Ministry of Health and Family Welfare in 2014 issued medico-legal care for survivors of sexual violence guidelines to regulate the treatment of sexual assault survivors and examinations by healthcare professionals. This provided for information and processes based on scientific and medical methods, aiding to correcting pervasive myths like the “two-finger” test which was rejected.
* However, under the federal structure of the country, health care is a state issues and hence, they are not legally bound to follow or adopt the 2014 guidelines. This has resulted in following guidelines or rules which are outdated which lack the detail and sensitivity. They have also been unsuccessful in providing therapeutic care and counselling to rape survivors.
* There is vacuum where provisions of legal assistance, particularly to families of poor and marginalized communities should ideally have existed.
* The initiatives by national and state governments in support of survivors lack a monitoring and evaluation framework, making it inadequate or ineffective.
* The compensation received by victims is not standardized and varies from one state jurisdiction to the other. There have been cases where victims have not received the mandated compensation.
* 90% perpetrators are known to victims and this itself is a deterrent to reporting. Plus the tendency to bring more rapes under the death penalty also works as a deterrent to reporting the crimes
* The one stop centres which provide integrated services to women such a legal aid, counselling and medical services- remain ineffective in practice.[[88]](#footnote-88)
1. Prejudiced and unhelpful police officers creating an impediment to prosecuting perpetrators:
* In accordance to the Indian legal procedures, police officers failing to register a complaint of sexual assault faces up to two years of prison sentence. The findings have revealed that in several cases the FIR is not filed and instead the victims or their families are pressurised to “settle” or “compromise” especially if the accused was from a family with a position of power in the community.
* The use of derogatory and biased language towards the victims by defence lawyers and judges is still prevalent in courts. [[89]](#footnote-89)
1. Witnesses turning hostile midway through trials thereby discrediting past testimony leading to a weak case susceptible to acquittals:
* There are various factors where witnesses turn hostile, this could be due to the fear of deposing an accused/delinquent who has strong affiliations in the community or political space. Also, could be due to pressure from family members and other such sociological factors. There is also a possibility of bribery/corruption with monetary considerations.
* The victim or witness may face extreme fear on the sight of the accused, putting them in a state of shock. This may lead to inability to express the incident or give out details leading to miscarriage of justice. Hence, a screen or similar arrangement is made to avoid facing the accused during trial.
* There are quite some reasons of the witness turning hostile which is common in high profile cases. This could be due to tempting offers including monetary which undermine the criminal justice system. This carries an impression that the powerful and rich can get away from the law, eroding faith in the system.[[90]](#footnote-90)
1. A Forensic Science Laboratory (FSL) report is of corroborative value in rape cases and the fact that is rarely expedited causes one of the most significant barriers to justice. Courts have reiterated that FSL overburdening cannot be used an excuse to prolong trial and that it is the duty of the state to establish necessary infrastructure for the same.[[91]](#footnote-91) In 2012, a FSL based in Delhi was pulled up by the court due to “unusual delay” in the DNA Test reports. The lab responded saying that this it was due to shortage of chemicals.[[92]](#footnote-92) In a 2015 case, lackadaisical approach was observed among senior police officers in South, south-west Delhi as charge sheets (in sexual assault cases) were filed without obtaining forensic reports. Doing so creates hurdles for the prosecution as they will be unable to examine the witness in absence of forensic reports or case property.[[93]](#footnote-93) May wish to inclue Hathras case here..and the media coverage, administration role, etc. and then the CBI…case, as also the suo moto by Allahabad court…
1. Lectures on Criminal Procedure, R.V. Kelkar, 1980, Eastern Book Company [↑](#footnote-ref-1)
2. Sakshi vs Union Of India, Crl) No33, 1997, with SLP (Crl) Nos 1672-1673, 2000; ILDC 868 (IN2004). [↑](#footnote-ref-2)
3. the punishment for the physical and sexual abuse of transgender people is a minimum of six months and a maximum of two years in prison with a fine, Transgender Persons (Protection of Rights) Act, 2019 [↑](#footnote-ref-3)
4. Transgenders and Rape Law: Is equal protection of law still a pipe dream?, [https://www.theleaflet.in/transgenders-and-rape-law-is-equal-protection-of-law-still-a-pipe-dream/#](https://www.theleaflet.in/transgenders-and-rape-law-is-equal-protection-of-law-still-a-pipe-dream/) ; India's rape laws don't cover transgender people. They say it's putting them at risk, <https://edition.cnn.com/2020/12/08/india/india-transgender-rape-laws-intl-hnk-dst/index.html> [↑](#footnote-ref-4)
5. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 [↑](#footnote-ref-5)
6. Explained: The laws on rape and sexual crimes, https://www.thehindu.com/news/national/what-are-the-laws-on-rape-and-sexual-crimes/article30233033.ece [↑](#footnote-ref-6)
7. Referred to as “non-compoundable offences” [↑](#footnote-ref-7)
8. depending on the facts and merits presented each case [↑](#footnote-ref-8)
9. WHAT IS SECTION 375; https://www.business-standard.com/about/what-is-section-375 [↑](#footnote-ref-9)
10. Explained: The laws on rape and sexual crimes; https://www.thehindu.com/news/national/what-are-the-laws-on-rape-and-sexual-crimes/article30233033.ece [↑](#footnote-ref-10)
11. ‘Rape’ replaces ‘sexual assault’ in Criminal Law Ordinance, 2013; https://economictimes.indiatimes.com/news/politics-and-nation/rape-replaces-sexual-assault-in-criminal-law-ordinance-2013/articleshow/18822838.cms?from=mdr [↑](#footnote-ref-11)
12. Pertinent to mention that the aforementioned clauses of consent are not conjunctive and instead must be read disjunctively. [↑](#footnote-ref-12)
13. *X v. Mahmood Farooqui*, 2018 SCC OnLine SC 3353 [↑](#footnote-ref-13)
14. *Mahmood Farooqui v. State (Govt. of NCT of Delhi),* 2017 SCC OnLine Del 6378 ;*“Instances of woman behavior are not unknown that a feeble ‘no’ may mean a ‘yes’.”* [↑](#footnote-ref-14)
15. A troubling precedent for rape cases, https://www.livemint.com/Opinion/aUWJYk8psY6PwbzWdrsKsI/A-troubling-precedent-for-rape-cases.html [↑](#footnote-ref-15)
16. Section 375, Indian Penal Code 2020; *“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.”* [↑](#footnote-ref-16)
17. Forget the Chatter to the Contrary, the 2013 Rape Law Amendments Are a Step Forward; https://thewire.in/gender/rape-law-amendments-2013 [↑](#footnote-ref-17)
18. Only 36 Countries Have Not Criminalised Marital Rape, India Is One of Them; https://www.theleaflet.in/only-36-countries-have-not-criminalised-marital-rape-india-is-one-of-them/# [↑](#footnote-ref-18)
19. Exemption to Marital Rape retained - https://www.lawyerscollective.org/wp-content/uploads/2014/01/Changes-between-IPC-Law-Commission-Reports-JVC-and-2013-Act.pdf [↑](#footnote-ref-19)
20. S.357, IPC, 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.”* [↑](#footnote-ref-20)
21. In India, a Man Can Still Legally Rape His Wife; https://thediplomat.com/2020/08/in-india-a-man-can-still-legally-rape-his-wife/ [↑](#footnote-ref-21)
22. Marital rape in India; https://www.asianmedia.org/acj/marital-rape-in-india/ [↑](#footnote-ref-22)
23. Why India sees sex on false promise of marriage as rape, https://www.bbc.com/news/world-asia-india-47959684 [↑](#footnote-ref-23)
24. *Revanasiddappa v. Mallikarjun,* [(2011) 11 SCC 1](http://scconline.com/DocumentLink/Sv6a3d8I) [↑](#footnote-ref-24)
25. Live-In Relationship And Indian Judiciary, https://www.scconline.com/blog/post/2019/01/23/live-in-relationship-and-indian-judiciary/#\_ftn6 [↑](#footnote-ref-25)
26. Study moots lowering the age of consent; https://www.thehindu.com/news/national/study-moots-lowering-the-age-of-consent/article29938622.ece [↑](#footnote-ref-26)
27. (BSS 2006) [↑](#footnote-ref-27)
28. Does India Need a New Law That Revises the Age at Which Women Are Married?; https://thewire.in/women/india-new-law-age-at-marriage-women [↑](#footnote-ref-28)
29. Section 4, sub-clause (c) of the Special Marriage Act; [↑](#footnote-ref-29)
30. For example, the Dissolution of Muslim Marriage Act of 1939 is the national/ central legislation that deals with divorce while The Muslim Personal Law (Shariat) Application Act of 1937 deals with marriage, succession, inheritance among Muslims in India. [↑](#footnote-ref-30)
31. Shafin Jahan vs Asokan K.M., 2018 SCC OnLine SC 343 [↑](#footnote-ref-31)
32. However the Prevention of Children from Sexual Violence Act does not recognise any exception as per personal laws and this has brought under cloud the status of consent within such marriages. It has also created barriers to access to sexual and reproductive health services [↑](#footnote-ref-32)
33. *Navtej Singh Johar & Ors. v. Union of India,* W. P. (Crl.) No. 76 of 2016 [↑](#footnote-ref-33)
34. Is prior sanction always required to prosecute army officers under AFSPA? https://www.prsindia.org/theprsblog/prior-sanction-always-required-prosecute-army-officers-under-afspa *“Cognizance is the stage when the prosecution begins.Sanction is therefore not required during investigation.”*  [↑](#footnote-ref-34)
35. section 7, AFSPA *“No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.”* [↑](#footnote-ref-35)
36. Reference is drawn to the 2004 brutal murder, rape and torture of a woman called Manorama Thangjam. 16 years later, prosecution against the Assam rifles (paramilitary regiment accused of killing Thangjam) is still awaited while compensation was awarded to her family as recently as in 2014; The Killing of Thangjam Manorama Devi, https://www.hrw.org/reports/2008/india0908/3.htm [↑](#footnote-ref-36)
37. Minimum compensation for rape Rs 4 lakh, rules SC, https://timesofindia.indiatimes.com/india/minimum-compensation-for-rape-4-lakh-rules-sc/articleshow/65694248.cms [↑](#footnote-ref-37)
38. *Chairman, Railway Board vs. Chandrima Das*, AIR 2000 SC 988 [↑](#footnote-ref-38)
39. Compensation to Rape Victims- A Critical Analysis, https://criminallawstudiesnluj.wordpress.com/2019/08/30/compensation-to-rape-victims-a-critical-analysis/ [↑](#footnote-ref-39)
40. the lower limit for sentencing a rape convict is 7 years while the upper limit is where the discretionary power of the court begins [↑](#footnote-ref-40)
41. Aggravating Factor in Sentencing Policy, http://www.legalserviceindia.com/legal/article-3063-aggravating-factor-in-sentencing-policy.html [↑](#footnote-ref-41)
42. Absence of Structured Sentencing Guidelines, https://www.loc.gov/law/help/sentencing-guidelines/india.php#Absence [↑](#footnote-ref-42)
43. *State of Rajasthan v. Vinod Kumar,* (2012) 6 SCC 770 at page 780 [↑](#footnote-ref-43)
44. it is an aggravating factor since a case of rape with a single perpetrator carries an imprisonment of seven years of more. [↑](#footnote-ref-44)
45. Note: this is not to say that while sentencing an aggravating circumstance can outweigh the statutory period of imprisonment. [↑](#footnote-ref-45)
46. Chinmayanand Booked Under Section 376C of IPC – Why This is Wrong, https://www.thequint.com/news/india/chinmayanand-booked-section-376c-ipc-why-this-is-wrong#read-more [↑](#footnote-ref-46)
47. *Fazal Mehmud Jilani Dafedar v. State of Maharashtra* [2020 SCC OnLine Bom 3380](http://www.scconline.com/DocumentLink/4h18ku6u) [↑](#footnote-ref-47)
48. reference is drawn to the term early marriage as opposed to child marriage since the term child marriage invokes images of very young children while the majority of early marriages in India take place in the age group of 15 to 18 years. [↑](#footnote-ref-48)
49. Behind closed doors: Marital rape in India, https://www.livemint.com/Politics/b6HcnmMqYadNzWAP05FbEO/Behind-closed-doors-Marital-rape-in-India.html [↑](#footnote-ref-49)
50. Marital rape in India, https://www.asianmedia.org/acj/marital-rape-in-india/ [↑](#footnote-ref-50)
51. Why criminalisation of marital rape is still a distant dream in India, https://www.business-standard.com/article/current-affairs/why-criminalisation-of-marital-rape-is-still-a-distant-dream-in-india-118102900084\_1.html [↑](#footnote-ref-51)
52. Government Denies Marital Rape Occurs, National Survey Shows 5.4% of Married Women Are Victims, https://thewire.in/gender/indian-law-denies-marital-rape-exists-5-4-married-indians-claim-victims [↑](#footnote-ref-52)
53. ibid. [↑](#footnote-ref-53)
54. *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470 : 1983 SCC (Cri) 681 at page 489 [↑](#footnote-ref-54)
55. *Shimbhu v. State of Haryana*, (2014) 13 SCC 318 at page 328 [↑](#footnote-ref-55)
56. Reveal reason for not allowing prosecution of personnel in human rights cases in J&K: CIC to defence ministry, https://economictimes.indiatimes.com/news/defence/reveal-reason-for-not-allowing-prosecution-of-personnel-in-human-rights-cases-in-jk-cic-to-defence-ministry/articleshow/76314702.cms?from=mdr [↑](#footnote-ref-56)
57. ibid. [↑](#footnote-ref-57)
58. Jammu and Kashmir is no longer a state and instead is divided into two union territories under the direct control and administration of the central government; J&K loses its special status, divided into two UTs, https://www.thehindu.com/news/national/jk-loses-its-special-status-divided-into-two-uts/article28827159.ece [↑](#footnote-ref-58)
59. In 20 Years, Centre Denied Prosecution Sanction Under AFSPA In All Cases Recommended By J&K Govt Against Armymen, https://www.outlookindia.com/website/story/in-20-years-centre-denied-prosecution-sanction-under-afspa-in-all-cases-recommen/307132 [↑](#footnote-ref-59)
60. it is pertinent to mention at this juncture that this change is recent as of 2017. all exceptions to underage brides for marital rape, “Promise of marriage’ cases was routinely used to waive conviction. In cases of child marriage or marriage between peers of 15-18 age, cases of consensual sex filed by the police as rape cases often in collusion with disapproving parents. The girl claimed that she had marriage-like rituals with the boy and the court deferring to her testimony did not convict the boy/man. In those cases the woman accuses the man with whom she had a sexual relationship of rape because he failed to marry her as promised. [↑](#footnote-ref-60)
61. *State of M.P. v. Madanlal*, (2015) 7 SCC 681 at page 688 [↑](#footnote-ref-61)
62. *State of M.P. v. Bala*, (2005) 8 SCC 1 at page 6 [↑](#footnote-ref-62)
63. In 2013, data journalist Rukmini Shrinivasan [examined](https://www.bbc.com/news/magazine-38796457) 460 cases under trial in New Delhi’s district courts. Of these, 109 cases were filed under ‘false promise to marry’ and only 12 cases resulted in conviction out of all the 460 cases; How India’s Rape-Survivors End Up Marrying Their Rapists, https://www.article-14.com/post/how-india-s-rape-survivors-end-up-marrying-their-rapists [↑](#footnote-ref-63)
64. Must Stop Courts From Asking for 'Compromise Between Parties' in Sexual Assault Cases, https://thewire.in/law/sc-courts-bail-compromise-cases-sexual-assault-rape [↑](#footnote-ref-64)
65. Delhi: Rape is a crime against society, survivor can’t condone it, says court; https://timesofindia.indiatimes.com/city/delhi/rape-is-a-crime-against-society-survivor-cant-condone-it-court/articleshow/77338272.cms [↑](#footnote-ref-65)
66. K. N. Chandrasekharan Pillai, *Public Prosecution India*, Journal of the Indian Law Institute [Vol. 50, No. 4 (OCTOBER-DECEMBER 2008)](https://www.jstor.org/stable/i40163291), pp. 629-639 [↑](#footnote-ref-66)
67. Delhi gang rape verdict: By invoking ‘collective conscience’, the Supreme Court sidestepped justice; https://scroll.in/article/837215/delhi-gang-rape-verdict-by-invoking-collective-conscience-the-supreme-court-sidestepped-justice [↑](#footnote-ref-67)
68. Compounding of Offences; http://lawtimesjournal.in/compounding-of-offences/ [↑](#footnote-ref-68)
69. *Gian Singh vs State Of Punjab & Anr, (*2012) 10 SCC 303 [↑](#footnote-ref-69)
70. *Narinder Singh v State of Punjab, (*2014) 6 SCC 466 [↑](#footnote-ref-70)
71. Law ministry lifts time limit for child abuse victims to file case, https://www.hindustantimes.com/india-news/law-ministry-endorses-removal-of-time-limit-to-report-child-sexual-abuse-maneka-gandhi/story-fxbf78duXiv3d0qQI5OIRJ.html [↑](#footnote-ref-71)
72. N Jagadeesh, *Legal changes towards justice for sexual assault victims,* Indian Journal of Medical Ethics, [S.l.], v. 7, n. 2, p. 108, nov. 2016. ISSN 0975-5691l [↑](#footnote-ref-72)
73. *Nipun Saxena v. Union of India*, (2019) 2 SCC 703 at page 713 [↑](#footnote-ref-73)
74. *State of Maharashtra Vs. Madhukar N. Mardikar,* (1991) 1 SCC 57, [↑](#footnote-ref-74)
75. *Bhupinder Sharma v. State of H.P.*, (2003) 8 SCC 551 at page 554 [↑](#footnote-ref-75)
76. *R. Lakshmipahri v. Ramalingam*, 1998 CrLJ 3683 (Mad) [↑](#footnote-ref-76)
77. *Оm Prakash v. State of UP,* 2006 CrLJ 2913 [↑](#footnote-ref-77)
78. Getting Away With Murder - 50 Years of the Armed Forces (Special Powers) Act, https://www.hrw.org/legacy/backgrounder/2008/india0808/#\_ftn9 [↑](#footnote-ref-78)
79. UN Human Rights Committee, “Concluding Observations of the Human Rights Committee: India,” CCPR/C/79/Add.81, August 4, 1997, http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/85e8bbf07b5dbdc88025652b005538bd?, para. 21. [↑](#footnote-ref-79)
80. The States Parties to the Rome Statute, [https://asp.icc-cpi.int/en\_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx](https://asp.icc-cpi.int/en_menus/asp/states%25252520parties/pages/the%25252520states%25252520parties%25252520to%25252520the%25252520rome%25252520statute.aspx) [↑](#footnote-ref-80)
81. Usha Ramanathan, India and the ICC, *Journal of International Criminal Justice*, Volume 3, Issue 3, July 2005, Pages 627–634, [↑](#footnote-ref-81)
82. revealed by the Crime Record Bureau’s “Crime in India” data on 29 September 2019,[https://www.thequint.com/neon/gender/hathras-rape-crimes-against-women-ncrb-data#read-more](https://www.thequint.com/neon/gender/hathras-rape-crimes-against-women-ncrb-data%25252523read-more) [↑](#footnote-ref-82)
83. ibid. [↑](#footnote-ref-83)
84. <https://www.indiatoday.in/india/story/ncrb-2018-woman-reports-rape-every-15-minutes-in-india-1635924-2020-01-11> [↑](#footnote-ref-84)
85. <https://www.newindianexpress.com/nation/2020/oct/03/under-30-per-centconviction-rate-in-rape-cases-in-india-says-ncrb-data-2205090.html> [↑](#footnote-ref-85)
86. <https://www.counterview.net/2020/12/extreme-discrimination-harassment.html> [↑](#footnote-ref-86)
87. <https://www.thehindu.com/opinion/op-ed/rukmini-s-writes-about-the-mumbai-sessions-court-rulings-on-sexual-assault-during-2015-why-the-fir-doesnt-tell-you-the-whole-story/article8014815.ece> [↑](#footnote-ref-87)
88. India: Rape Victims Face Barriers to Justice, <https://www.hrw.org/news/2017/11/08/india-rape-victims-face-barriers-justice> [↑](#footnote-ref-88)
89. ibid. [↑](#footnote-ref-89)
90. *Anek Singh v. State of UP,* 2019 SCC OnLine All 3885 [↑](#footnote-ref-90)
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92. Delhi rape: FSL pulled up for delay in delivering DNA reports, <https://economictimes.indiatimes.com/news/politics-and-nation/delhi-rape-fsl-pulled-up-for-delay-in-delivering-dna-reports/articleshow/17756207.cms?from=mdr> [↑](#footnote-ref-92)
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