

**SHADOWS BEHIND THE STATUTES: AN EMPIRICAL AND DOCTRINAL STUDY OF
RAPE LAWS IN INDIA (IPC-POCSO-BNS)**

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ABSTRACT

This paper provides a critical analysis of the history of rape laws, their reforms, and issues in India particularly focusing on its historical and social legal aspects. It follows the history of sexual violence laws back to the Indian Penal Code of 1860, which was informed by colonial and Victorian moralities and ingrained patriarchal beliefs about female chastity. The paper further compares current legal provisions, such as the Protection of Children from Sexual Offences (POCSO) Act, 2012, which introduces a gender-neutral and child-centred system of sexual crimes against minors, and the Bharatiya Nyaya Sanhita (BNS), 2023, which proposes modernization of the criminal code in India and preserves the post-Nirbhaya reforms. Besides legal analysis, the paper will review statistics on rape cases from 2019 to 2024 and critically analyse problems that exist within the system that led to the low conviction rate, such as a delay in trial, a weak police investigation, corruption, and a lack of forensic infrastructure.

The authors say that amendments to legislation cannot solve the problem, but they need to be complemented with the sensitivity of judges, accountability of policing, awareness by citizens, sex education, and rehabilitation of victims, as well as accelerated processes of trials. The work results in the evaluation of interactions between law and social change and feminist activism, which identifies the importance of the holistic approach to providing justice, safety, and dignity to survivors. The study concludes that although India has achieved a significant milestone towards appreciating bodily autonomy, consent, and gender justice, total protection and equality of women and children is a continuous process.

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HYPOTHESIS

One of the issues that is prevalent in India about rape is the very poor conviction rate. This leads to the majority of the accused being found not guilty, thus ruining the confidence of a victim in the justice system. The investigations are not always sufficient, and in most scenarios, the accused can evade the course of justice through bribery or other means. As a result, the victims are reluctant to report such crimes.

Moreover, social attitudes contribute to the issue. Being in a male-dominated society, men are sometimes perceived to be able to do anything and get away with it, creating a culture of entitlement and violence against women. Absence of appropriate support mechanisms to victims, case delays, and failure to handle cases sensitively encourage even more people to keep silent and sustain the cycle of sexual violence. Gender equality has not been widely implemented through public awareness and education, and thus, patriarchal attitudes still prevail and hamper the fight to safeguard women.

INTRODUCTION

“The degree of civilization in a society can be judged by the way it treats its women.”

- Fyodor Dostoevsky

Rape is not merely a bodily crime but a serious encroachment on identity, dignity and humanity of a human being. It portrays the blacker side of the societal attitudes, where women and girls are still fighting to be equal, safe, and respected. Even after the changes in the law and the constitutional guarantees, rape is one of the worst crimes in India that breaks souls and reveals the gender bias that is still embedded in our society. As the maternizers and progenitors of life, women are likely to be exploited, objectified, and made silent by the fear and stigma of victimhood.

In India, rape is not a simple legal issue, but it is a social, psychological, and moral crisis. Every case that is reported does not only doubt the effectiveness of our laws but also our general conscience as a society. Since the notorious Nirbhaya case of 2012 to the numerous unreported cases, all the forms of sexual violence remind of the necessity to implement stricter enforcement, support victims and social reforms. As we practice justice and equality in all other areas, we should consider the protection and dignity of women to be our primary moral obligation. In the case of our society wanting to achieve genuine development and human society, we ought to

make sure that no voice is suppressed, no survivor is disgraced, and no perpetrator is not punished.

HISTORY OF RAPE LAWS

The rape laws in India indicate alteration in gender, justice and body autonomy.³ The law of sexual violence has developed over time and has turned out to be more on human dignity rather than on moral principles. The first instance of rape being referred to under Indian Penal Code (IPC)1860 was rape which was characterized as penile-vaginal intercourse against her will informed by Victorian ethics that viewed rape as an affront to the dignity of a woman and not her health.⁴ Sexual violence (rape in marriage) was not addressed, which showed patriarchal prejudices.⁵ The law proved to be ineffective as cases such as the Mathura custodial rape (1979) brought the issue to the limelight and the Criminal Law (Amendment) Act, 1983 was enacted to address the issue of custodial rape and protection of the victim although the definitions of consent remained ambiguous.⁶

The Justice J.S. Verma Committee (2013) and the Criminal Law (Amendment) Act, 2013, which was led by the Nirbhaya gang-rape, redefined rape, described the meaning of consent and introduced new offences such as stalking and voyeurism.⁷ The amendment of 2018 strengthened sentencing, especially the crimes committed against children.⁸ The 2023 edition of the Bharatiya Nyaya Sanhita (BNS) brings in prior reforms, yet is still criticized on marital rape provisions.⁹ On the whole, the history of rape laws is indicative of the moral and constitutional growth in India, where the conception of purity developed in the colonial times has been replaced by the concept of dignity, equality, and human rights of women.

1. Colonial Origins: The Indian Penal Code, 1860

The initial laws governing rape in India were expressed in the Indian penal code (IPC), 1860 that was drafted under the guidance of Lord Macaulay. Section 375 had a very restricted definition of rape and that was the sexual intercourse between a man and a woman, not with her consent or

³ *Criminal Law (Amendment) Act, No. 13 of 2013, India Code.*

⁴ *Indian Penal Code, No. 45 of 1860, India Code.*

⁵ A Critique of Rape Laws in India, *iPleaders Blog*, <https://blog.ipleaders.in/critique-rape-laws-india/> (last visited Nov. 14, 2025).

⁶ Rachit Garg, *id*, <https://blog.ipleaders.in/critique-rape-laws-india/>

⁷ *Criminal Law (Amendment) Act, No. 13 of 2013, India Code.*

⁸ Law on Rape, *Drishti Judiciary* (June 13, 2024) <https://www.drishtijudiciary.com/current-affairs/law-on-rape>.

⁹ *Id.*, <https://www.drishtijudiciary.com/current-affairs/law-on-rape>

against her will.¹⁰ The law only defined rape as penile and vaginal penetration and other forms of sexual behaviours were not included in the definition. There was also one exception in the criminal law; a man raping his own wife would not be considered rape provided that the woman was not under a particular age.¹¹ The presence of the marital rape exception was an indication of a colonial and patriarchal perception of the world, which believed that men had ownership rights over women, and women had no right to their bodies. Even colonial days, and decades after independence, did not envisage rape as a crime of body dignity - rape was a crime against honour. The law was not only infrequently amended, but also slightly. In 1925, 1940, the age of consent was increased to 12 years and then to 14 and 16 respectively.¹² The laws were still socially and morally conservative with chastity and morality being the primary focus over women autonomy.

1. The Mathura Case and the 1983 Criminal Law Amendment

Mathura custodial rape case (Tukaram vs the case of State of Maharashtra, 1979)¹³ was a milestone in the Indian legal history. The accused police officers in the crime were acquitted by the Supreme Court who claimed that there were no injuries that suggested that there was no consent. The ruling resulted in a series of protests across the country and a women rights movement advocating a shift in sexual assault legislation. Due to these demonstrations, the Criminal Law (Amendment) Act, 1983 was adopted and introduced radical amendments:

- Section 376A-D was introduced in the penal code, and it recognized aggravated forms of the crime of rape: custodial rape, rape by those presented with authority, and gang rapes. Evidence Act: Amendments were made and in particular, Section 114A was added that contained the requirement that there should be a presumption of not having the consent where the custodial rape was proved to have taken place.¹⁴
- The Crime Act also introduced protection concerning the disclosure of the name or identity of the victim in any publication or legal reports to the name or identity of the victim.¹⁵ The amendments in 1983 marked the first time the legislature recognized the crimes of rape, that rape damages the person and dignity of a woman and not her chastity in the former case.

¹⁰ *Indian Penal Code*, supra note 4, § 375.

¹¹ *Id.* § 375 Exception 2.

¹² *Id.* (as amended 1925, 1940).

¹³ *Tukaram v. State of Maharashtra*, (1979) 2 SCC 143 (India).

¹⁴ *Criminal Law (Amendment) Act*, No. 43 of 1983, § 3, India Code.

¹⁵ *Indian Evidence Act*, No. 1 of 1872, § 114A, India Code.

3. Pre-Nirbhaya Era

The laws also made slow but consistent progress between 1983 and 2012. The courts started to be more subtle in the interpretation of rape, yet old existent evidentiary traditions, like the two-finger test and character questions remained.¹⁶ The Law Commission Reports (172nd Report, 2000) had several times proposed the broadening of the definition of the crime of rape to cover non-penile penetration, as well as to gender-neutralise the law.¹⁷ Parliament was not interested or taking any action.

Cases of continued social stigma, inadequate investigations and time lag during the trials continued to deter reporting. Even ten years following the year 1983, it was only less than thirty percent of the reported rape cases that ended up being convicted as evidence of the wide discrepancy between the intentions of the law and actual implementation and enforcement.¹⁸

4. Nirbhaya case and the 2013 criminal law

The Nirbhaya gang rape which happened on the 16th of December, 2012, in Delhi was a turning point that shook the moral conscience of the nation. The government has responded to the general public anger by creating the Justice J.S. Verma Committee Report (2013)¹⁹, which released an elaborate report that included suggestions of reforms that would enhance the safety and sexual assault legislation that women face. The Parliament approved the suggested reforms in the shape of the Criminal Law (Amendment) Act, 2013.²⁰

The 2013 amendment altered the Indian law on rape by:

1. The broadening of the definition of rape: Section 375 was changed with the introduction of the definition of rape as any form of non-consensual penetration of vagina, mouth, urethra, or anus with a body part or object. This broadened definition erased the exclusive definition of only penile-vaginal penetration.

¹⁶ Nat'l Human Rights Comm'n India, *Interrogating Violence Against Women From the Other Side*, tbl. 3 (2020), https://nhrc.nic.in/assets/uploads/training_projects/InterrogatingViolenceAgainstWomenharboundreport2020.pdf.

¹⁷ Cabinet Approves Bill to Amend Law on Rape, *PRS India Blog*, <https://prsinia.org/theprsblog/cabinet-approves-bill-to-amend-law-on-rape>.

¹⁸ 32 Per Cent Conviction Rate in Rape Cases: NCRB, *Indian Express* (Dec. 4, 2019), <https://indianexpress.com/article/india/32-per-cent-conviction-rate-in-rape-cases-ncrb-6149331/>.

¹⁹ Justice J.S. Verma Comm., *Report of the Committee on Amendments to Criminal Law* (2013), <https://www.prssindia.org/report-summaries/justice-verma-committee-report-summary>.

²⁰ *Criminal Law (Amendment) Act*, supra note 3, § 9.

2. Redefining consent: This was explained by the law in Explanation 2 of Section 375 in which consent was explained as unequivocal voluntary agreement expressed either by a word, gesture or any communication.
3. Introduction of new sexual offences: New paragraphs were introduced that included the IPC-sexual harassment UID 354A, assault with intent to disrobe UID 354B, voyeurism UID 354C, stalking UID 354D.
4. Increased punishment: the amendment enlarged the minimum imprisonment of 7 years of rape to at least 10 years imprisonment, and sentence to life imprisonment or death in cases resulting in death or vegetative state of a victim.²¹
5. Dignity of the victims: Indian Evidence Act has been revised to prohibit the inquiry of a woman regarding the history of her previous sexual relations (Section 53A)²² and creating a presumption of not needing verification of certain types of evidentiary analysis.

5. The 2018 Criminal Law (Amendment) Act:

In 2018, the heinous Kathua and Unnao child rape cases led to protests all over the country against sexual violence against children, as well as the enactment of the Criminal Law (Amendment) Act, 2018. In reaction to the said incidences, the Amendment was formulated to enhance the Indian legal system in safeguarding children against sexual violence, and in raising the deterrent power that those who perpetrate sexual crimes. The act added more strict non-bailable acts in the Indian Penal Code. Specifically, Section 376AB offers a minimum sentence of 20 years of imprisonment, life imprisonment or death for rape of girl under 12 years²³. Section 376DA and 376DB were introduced in court containing gang rape of a girl below 16 years of age and a girl below 12 years of age, respectively, and stipulated that in both cases a mandatory life and death sentence would be given. To make sure that justice was meted out, the amendment had a two-month period of police investigation and six months of any form of appeal both of which hastened the court proceedings. Also, the amendment raised the age of consent in sex activity, and it is as in line with the earlier legislation of the Protection of Children from Sexual Offences ("POCSO") Act, 2012 that offered that a child is anybody below 18 years. The union between these two laws served to seal any loopholes that may have been present in addition to

²¹ *Mukesh & Anr. v. State (NCT of Delhi)*, (2017) 6 SCC 1 (India).

²² *Indian Evidence Act*, supra note 15, § 53A.

²³ *Criminal Law (Amendment) Act*, No. 22 of 2018, §§ 5–8, India Code.

showing the state interest in ensuring protection of children against sexual abuse and exploitation.

6. The POCSO Act, 2012:

Child-Centric Protection -The POCSO Act, 2012 addressed the dire need by offering a well-rounded, gender-neutral and child-friendly model of conducting such an inquiry and prosecuting sexual crimes committed against children²⁴. It brought about certain offences that included penetrative sexual assault, sexual harassment, child pornography, aggravated sexual assault by persons in authority²⁵. The POCSO Act mandates in-camera trials, special courts and compulsory reporting, emphasizing rehabilitation alongside punishment²⁶.

7. The Bharatiya Nyaya Sanhita, 2023/2024:

The Bharatiya Nyaya Sanhita (BNS), 2023, which replaced the IPC effective July 2024, aims to modernize criminal law with a focus on victim-centric justice and simplification. Section 64 of the BNS now governs rape offences, largely retaining the post-2013 framework while reorganizing language and penalties. The key characteristics are:

- Section 63 defines rape as any non-consensual sexual penetration of a woman, including oral, anal, and object penetration²⁷.
- Exceptions cover medical procedures and marital intercourse with wives over eighteen.²⁸
- Punishments under Sections 64–70 mirror prior law, providing life imprisonment or death for aggravated cases such as gang rape or assault on minors.²⁹

Therefore, although BNS puts together current reforms, it does not go further to criminalize marital rape that remains controversial.

PRESENT SCENARIO OF RAPE LAWS IN INDIA

The current criminal law of rape in India is the Bharatiya Nyaya Sanhita, 2023 (BNS) which came into effect in July 2024 and which replaced the colonial Indian Penal Code (IPC). The current situation indicates the extension of the changes introduced by the Criminal Law (Amendment) Act, 2013, adopted following the Nirbhaya case, and is one of the most liberal stages in the history of the Indian criminal law.

²⁴ *Protection of Children from Sexual Offences Act*, No. 32 of 2012, §§ 3–6, India Code.

²⁵ *Id.* § 3.

²⁶ *Id.* §§ 24–33.

²⁷ *Bharatiya Nyaya Sanhita*, No. 45 of 2023, § 63, India Code.

²⁸ *Id.* § 63 Exceptions 1–2.

²⁹ *Id.* §§ 64–70.

1) Section 63 – Definition of Rape:

Section 63 defines “rape” as sexual intercourse or penetration by a man with a woman against her will or without her consent including penetration of the vagina, anus, urethra or mouth with any body part or object.³⁰ The main gist of this provision is that there was no free and valid consent. The law enumerates seven conditions under which the consent is invalid and they include; consent obtained by fear, coercion, intoxication, misconception, or consent obtained by a woman under eighteen years or incapable of expressing consent. Exception 1 excludes the legitimate medical procedures, whereas, Exception 2 does not exclude the marital rape exception of wives who are over the age of eighteen years³¹. In this part, a strong focus on the autonomy of a woman is made where it is declared that the consent should be free, deliberate, and not forced.

Amendments made to the IPC (Post-Nirbhaya Amendment):

This is in line with Section 375 of the IPC that was vastly modified in 2013 following the Nirbhaya gang rape case to expand the definition of rape to further include penile-vaginal penetration³². The BNS still keeps these post-Nirbhaya changes but puts them in simpler and clearer words. It eliminates the archaic nature of the IPC and makes it clear that the emphasis is made on the validity of consent³³ and not on the physical character of the act. Non-consensual sex within marriage is, however, not considered an exception to the marital rape³⁴, and the matter is still faced with criticism.

2) Section 64 – Punishment for Rape:

The punishment of rape is a stricter imprisonment not less than ten years including life imprisonment in case of rape, but in addition to fine which is prescribed in Section 64.³⁵ It also offers more severe punishment in serious instances i.e. rape committed by law enforcement officers, government officials, military officers, custodial or medical staffs or anyone in a

³⁰ *Bharatiya Nyaya Sanhita*, supra note 27, § 63, <https://legislative.gov.in/>.

³¹ *Id.* § 63 Exception 2 (“Sexual intercourse by a man with his own wife, the wife not being under eighteen years of age, is not rape”).

³² *Criminal Law (Amendment) Act*, supra note 3, § 9; *Mukesh & Anr.*, supra note 21; see also Justice J.S. Verma Comm., supra note 19.

³³ *Id.* 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”).

³⁴ *Id.* § 63 Exception 2; see also Law Comm’n of India, *172nd Report on Review of Rape Laws* (2000),

<https://lawcommissionofindia.nic.in/172nd-report-on-review-of-rape-laws/>.

³⁵ *Bharatiya Nyaya Sanhita*, supra note 27, § 64(1) (India), <https://legislative.gov.in/>.

position of authority such as a teacher or a guardian.³⁶ In cases where the victim is pregnant, physically or mentally impaired and when he or she is helpless, the penalty is greater.³⁷ In cases where the crime has resulted in serious harm, mutilation of the person or recurring victimization of the same female, the sentence can be as long as the rest of the natural life of the criminal.³⁸ The fine imposed should be equivalent to the damage caused and help in restoring the victim.³⁹

Changes from the IPC (Post-Nirbhaya Amendment):

This part corresponds to Section 376(1) and (2) of the IPC that were introduced in the aftermath of the Criminal Law (Amendment) Act, 2013 and which increased the minimum punishment and inserted new forms of aggravated rape. The BNS makes these provisions simpler in format and combines them together to enhance readability. Previously, in the IPC, life imprisonment may imply imprisonment of 14 years or till the end of the natural term of life- this was made clear in the BNS, such that life imprisonment can only mean imprisonment till the end of the natural life of the convict.⁴⁰

3) Section 65 – Child Sexual Assault:

Section 65 offers an increase in punishment when it comes to rape of a child who is under the age of sixteen.⁴¹ The criminal will be sentenced to a strict imprisonment term of not less than twenty years that can be reduced to the whole life imprisonment, and will also pay a fine that will pay the medical and rehabilitation costs of the victim.⁴² In the case of a victim under the age of twelve years, the sentence can be prolonged up to death.⁴³ The section mirrors the zero-tolerance of the legislature to child sexual abuse.⁴⁴

Changes from the IPC (Post-Nirbhaya Amendment):

It is based on Section 376AB, 376DA, and 376DB of the IPC that was introduced following the Criminal Law (Amendment) Act, 2018, in relation to increasing instances of child rape. These provisions are brought together under the BNS and they become one and offer a simplified and

³⁶ *Id.* § 65(1) – (2).

³⁷ *Id.* § 65(3) – (4).

³⁸ *Id.* § 65(5) – (6).

³⁹ *Id.* § 64(2).

⁴⁰ *Bharatiya Nyaya Sanhita*, supra note 27, § 63(2); *Criminal Law (Amendment) Act*, supra note 3, §§ 9–10; see also *Indian Penal Code*, supra note 4, § 376(1)– (2) (as amended 2013).

⁴¹ *Bharatiya Nyaya Sanhita*, supra note 27, § 65, <https://legislative.gov.in/>

⁴² *Id.* § 65(1).

⁴³ *Id.* § 65(2).

⁴⁴ *Mukesh & Anr.*, supra note 21.

standardized legal framework. It makes sure that child victims are compensated and given medical care, which were not mentioned clearly in the previous provisions of IPC.⁴⁵

4) Section 66 - Death or Vegetative State as a result of rape:

Section 66 addresses the issues concerning the instances of rape that result in the death of the victim or renders her in an irreversible vegetative condition.⁴⁶ The offender will be sentenced to a strict imprisonment of at least two decades which could carry a lifetime imprisonment period to the rest of the natural life of the offender, or death. This part is the principle of proportionality and the act of destroying the body or the mind of the victim is the most severe offence that needs to be punished with a corresponding penalty.

Changes from the IPC (Post-Nirbhaya Amendment):

This part is similar to the Section 376A of the IPC which was added following the Nirbhaya case to provide the death penalty in case of rape resulting in death or vegetative state. The BNS, in its turn, is written in more explicit terms, which makes it consistent with the principles of human rights, although in the case of a victim-centred approach. The system of punishment has not changed, it has only been reformulated in more concrete terms, eliminating the areas of interpretation.⁴⁷

5) Section 67 -Marital Separation Rape:

Section 67 will prosecute the act of sexual intercourse when a husband is living with his wife separately by force, under a court order, or otherwise. The sentence includes two to seven years in prison with a fine. This part recognizes that, in case of separation between spouses, conjugal rights remain suspended and thus, any sexual intercourse without consent will be considered rape.⁴⁸

Changes from the IPC (Post-Nirbhaya Amendment):

⁴⁵ *Criminal Law (Amendment) Act*, No. 22 of 2018, §§ 5–8, India Code (2018); see also *Bharatiya Nyaya Sanhita*, No. 45 of 2023, §§ 64–70 (India), <https://legislative.gov.in/> (consolidating prior IPC §§ 376AB, 376DA, 376DB into a unified scheme addressing aggravated sexual assault against minors and mandating victim compensation and medical assistance).

⁴⁶ *Bharatiya Nyaya Sanhita*, No. 45 of 2023, § 66 (India), <https://legislative.gov.in/>.

⁴⁷ *Indian Penal Code*, No. 45 of 1860, § 376A (India), as amended by *Criminal Law (Amendment) Act*, No. 13 of 2013 (India) (introducing enhanced punishment including death penalty for rape resulting in death or vegetative state, following the Nirbhaya case); *Mukesh & Anr. v. State (NCT of Delhi)*, (2017) 6 SCC 1 (India) (upholding death sentences in the Nirbhaya gang rape case); *Bharatiya Nyaya Sanhita*, No. 45 of 2023, §§ 63–70 (India) (retaining equivalent punishment for aggravated rape in more explicit statutory language); see also Justice J.S. Verma Comm., *Report of the Committee on Amendments to Criminal Law* (2013), <https://www.prssindia.org/report-summaries/justice-verma-committee-report-summary>.

⁴⁸ *Bharatiya Nyaya Sanhita*, No. 45 of 2023, § 67 (India), <https://legislative.gov.in/>.

This is a new provision that has been introduced in the BNS.⁴⁹ In the IPC, Section 376B was dealing with sexual intercourse between a husband and his wife when they were separated but their language was old.⁵⁰ The BNS translates it using more modern and gender-sensitive words, focusing on autonomy and dignity.⁵¹ Even with this achievement, the principal exception of marital rape in Section 63 still exists, i.e. non-consensual intercourse in marriage (when they cohabit) is not a crime.⁵²

6) Section 68 – Sexual Intercourse by Persons in Authority:

Section 68 criminalizes sexual exploitation by people in authority, trust, or fiduciary positions.⁵³ This statute is limited to public officials, custodians, and other employees in institutional settings who exploit their position and obtain sexual favours from women in their custody. The penalty is five to ten years of rigorous imprisonment together with a fine. The rationale behind this provision is to hold people with power over others accountable as well as to take preventative measures to address abuses of power through hierarchical relationships.

Changes from the IPC (Post-Nirbhaya Amendment):

This paragraph corresponds with the Section 376C of the IPC that addressed sexual intercourse between people in authority. The BNS cleanses the language so it becomes more comprehensible and coercion in power relations is felt even in the absence of physical force. It emphasizes institutional responsibility, as well as has medical and custodial contexts explicitly.⁵⁴

7) Section 69 – Sexual Activity through Deceptive Means:

Section 69 proclaims sexually acquired deceptively by way of a false promise of marriage or misunderstanding of trust in order to obtain consent. The offender can also be imprisoned to a maximum of ten years and given a fine. The clause is meant to deal with instances where consent has been obtained fraudulently with the understanding that a false consent is void.⁵⁵

Changes from the IPC (Post-Nirbhaya Amendment):

⁴⁹ *Id.* § 63.

⁵⁰ *Indian Penal Code*, supra note 3, § 376B (prior to repeal by *Bharatiya Nyaya Sanhita*, 2023).

⁵¹ Ministry of Law & Justice, *Press Note on the Introduction of Bharatiya Nyaya Sanhita*, 2023 (July 2023), <https://pib.gov.in/PressReleasePage.aspx?PRID=1949690>.

⁵² *Bharatiya Nyaya Sanhita*, supra note 4, § 63 Exception 2 (retaining the marital-rape exception for wives above 18 years of age).

⁵³ *Id.* § 68, <https://legislative.gov.in/>.

⁵⁴ *Id.* § 67; *Indian Penal Code*, supra note 3, § 376C; see also Justice J.S. Verma Comm., supra note 3.

⁵⁵ *Id.* § 69, <https://legislative.gov.in/>.

Although the IPC lacked a direct section regarding this, such cases were tried in Sections 376 and 417 (cheating).⁵⁶ The BNS has become specific to sexual intercourse by fraudulent means and provides a more definite legal foundation and interpretation ambiguity.⁵⁷ This reform will guarantee the women who are fooled into sexual affairs are better protected by the law.⁵⁸

8) Section 70 – Gang Rape:

Section 70 describes that a case of gang rape occurs when a woman is raped by two or more individuals who have a common intent. Everyone involved is equally culpable regardless of his or her defined roles. The penalty is severe imprisonment of at least twenty years and that may be life imprisonment till the end of natural life and a fine to the rehabilitation of the victim. In case of any person who is less than eighteen years old the penalty could be a life imprisonment or a death sentence.⁵⁹

Changes from the IPC (Post-Nirbhaya Amendment):

This is based on Section 376D of the IPC that came into place in the aftermath of the Nirbhaya case in an attempt to mete out harsh measures on gang rape.⁶⁰ This is what the BNS has, albeit in more direct and simplified language. It also puts more focus on victim compensation and rehabilitation which is more human and victimistic unlike the IPC.⁶¹

9) Section 71 – Habitual Offenders:

Section 71 offers severe treatment as a repeat offender to those that violate Sections 64 to 66 or 70. The second conviction may mean life imprisonment of the rest of the natural life of an offender or death penalty. It is aimed at ensuring that repeat sexual offenders are removed by incapacitative deterrence to ensure that society is not subjected to habitual criminals.⁶²

Amendments under the IPC (Post-Nirbhaya Amendment):

This provision is in line with Section 376E of the IPC, which was introduced in the wake of the Nirbhaya incident to seek justice against the recurrent criminals. The BNS still keeps this

⁵⁶ *Indian Penal Code*, supra note 3, §§ 376, 417.

⁵⁷ *Bharatiya Nyaya Sanhita*, supra note 4, § 69.

⁵⁸ Justice J.S. Verma Comm., *Report of the Committee on Amendments to Criminal Law* 146–49 (2013), <https://www.prsindia.org/report-summaries/justice-verma-committee-report-summary>.

⁵⁹ *Bharatiya Nyaya Sanhita*, supra note 4, § 70, <https://legislative.gov.in/>.

⁶⁰ *Criminal Law (Amendment) Act*, No. 13 of 2013, § 9, inserting *Indian Penal Code* § 376D (India); see *Mukesh & Anr.*, supra note 3.

⁶¹ Justice J.S. Verma Comm., *Report of the Committee on Amendments to Criminal Law* 239–41 (2013) <https://www.prsindia.org/report-summaries/justice-verma-committee-report-summary> (recommending victim-centric reforms, including compensation and rehabilitation measures)

⁶² *Bharatiya Nyaya Sanhita*, supra note 4, § 71 <https://legislative.gov.in/>

provision intact but puts it in a different wording to make certain that it is construed literally and without ambiguity. The punishment regime is also the same, reinstating the desire of the legislature to discourage repetitive sexual offenses with the greatest punishments.⁶³

COMPARATIVE ANALYSIS OF RAPE LAWS: IPC, POST-NIRBHAYA

AMENDMENTS, AND BHARATIYA NYAYA SANHITA (BNS), 2023

The definition and the scope of rape under law in India has changed radically over the decades, especially following the Nirbhaya gang rape case in 2012, which sparked one of the greatest revisions in the Indian Penal Code (IPC) that was first enacted in 1860.⁶⁴ The pre-2013 IPC limited the definition of rape to penile-vaginal penetration excluding all other types of sexual violence such as oral or anal penetration. This narrow definition did not support the diverse and brutal facts of sexual assault. Age of consent was established at sixteen years and the law did not have clear and consistent understanding of what consent meant that tended to give conflicting judicial meaning. Additionally, marital rape was not subject to prosecution when the wife was over fifteen years of age which was also a patriarchal decision that marriage meant that the wife was to give consent forever. Punishment was also not very harsh at seven years to life imprisonment and there were little protection measures on victims given that it afforded limited respect to the privacy of the survivor as well as his dignity in the trial process.

Following the Nirbhaya incident, the outcry of the people and suggestions of the Justice J.S Verma Committee resulted in the Criminal Law (Amendment) Act, 2013 that was a historic change in the way sexual offences were addressed in India.⁶⁵ The definition of rape was also broadened greatly to incorporate all penetrations that occurred regardless of whether those were vaginal, oral, anal and object penetration, in recognition of various forms of sexual violence. The age of consent was also increased to eighteen years, which stands with the international child protection standards. Explanation 2 to Section 375 IPC also gave a definite understanding of consent as an unambiguous voluntary act with the emphasis on the autonomy of the woman. Marital rape was still exempted but the condition was amended to exclude husbands under the circumstance that the wife was aged above eighteen and so the rule was slightly more safeguarding to minors. Sentences were increased with an increase to a minimum of ten years to

⁶³ *Indian Penal Code*, supra note 3, § 376E (inserted by *Criminal Law (Amendment) Act*, No. 13 of 2013, § 9); *Mukesh & Anr.*, supra note 3; *Bharatiya Nyaya Sanhita*, supra note 4, §§ 70–71 (reenacting the provision against repeat sexual offenders)

⁶⁴ *Mukesh & Anr.*, supra note 3.

⁶⁵ Justice J.S. Verma Comm., supra note 3.

life imprisonment and in instances of aggravated rape then the death sentence might be handed over. New crimes were introduced, including stalking, voyeurism, sexual harassment, which was a product of a better comprehension of gendered violence. There were also more robust victim protection measures that were included such as privacy, no disclosure of identity of a victim and no disclosure of the sexual history of the victim.⁶⁶

PROVISIONS UNDER THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT

Section 3 – Penetrative Sexual Assault:

The POCSO Act of 2018 defines penetrative sexual assault as any penetration, however minor, by the penis, any body part, or object into the vagina, mouth, urethra or rectum, or resulting in a child committing such acts with another individual.⁶⁷ The scope of this section also captures the oral sexual acts in this section such that any kind of sexual penetration would not be left out. Notably, the word child is employed in the law rather than gender hence making the provision gender-neutral and granting equal protection to both the male and female victims below the age of eighteen.⁶⁸ The wide phrasing of the section can be explained by a comprehensive attitude towards securing children against all possible sexually violating acts and the focus on the fact that the attitude of a minor to a sexual act does not matter in the eyes of the law.⁶⁹

Dissimilarity to IPC and BNS Rape Laws:

Rape is defined as any sexual activity performed by a man on a woman without her consent according to the Indian Penal Code (Section 375)⁷⁰ and its amendment Bharatiya Nyaya Sanhita (Section 63).⁷¹ Both of these laws are gender based, i.e. only women are victims and only males are perpetrators. Conversely, the Section 3 of POCSO is gender-neutral, in that both boys and girls can be sexually assaulted.⁷² Furthermore, where IPC and BNS assume evidence that the consent was not available, POCSO assumes that any sexual intercourse between a minor and the

⁶⁶ *Indian Evidence Act*, No. 1 of 1872, § 53A (India).

⁶⁷ *Protection of Children from Sexual Offences Act*, No. 32 of 2012, § 3(a)–(d), India Code.

⁶⁸ *Id.* § 2(1)(d) (defining “child” as any person below the age of eighteen years).

⁶⁹ *Id.* §§ 3–4 & 7; see also *POCSO Act is Gender Neutral*, 2025 Karn. H.C. (holding that “child” means any person below the age of 18, and “a person” includes both male and female).

⁷⁰ *Indian Penal Code*, supra note 3, § 375,

https://www.indiacode.nic.in/showdata?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=424

⁷¹ *Bharatiya Nyaya Sanhita*, supra note 4, § 63

https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf

⁷² *Protection of Children from Sexual Offences Act*, supra note 23, § 3

<https://www.indiacode.nic.in/bitstream/123456789/2079/1/AA2012-32.pdf>

perpetrator is an offence and eliminates the defence of consent. Hence, POCSO sets a more protectionist bar against the sexual penetration of minors since it makes the assumption that they lack the capacity to provide consent and punishes all sexual penetration of minors with no consideration of intent or consent.

Section 4 – Punishment for Penetrative Sexual Assault:

Penetrative sexual assault is punishable in section 4 of the POCSO Act according to which the offender will face a strict sentence of at least ten years of imprisonment, with the possibility of life imprisonment, and a fine.⁷³ In cases where the victim is under the age of sixteen years, the minimum term swells to twenty years that could rise up to imprisonment throughout the entire natural life of the offender.⁷⁴ The part also requires that fines applied must be just and reasonable and paid to the medical and rehabilitation costs of the victim and is thus a victim perspective of restorative justice in the punitive model.⁷⁵

Difference from IPC and BNS Rape Laws:

The penalty of rape according to the Section 376 of the IPC and the Section 64 of the BNS is also subject to minimum of ten years imprisonment, which may be further increased to life imprisonment as well as a fine. Even so, POCSO transcends these directives on the explicit provision of a compulsory rehabilitative fine- making sure that the compensation is a benefit to the child survivor.⁷⁶ Besides, age-related increase in POCSO (with more severe punishment to victims under sixteen) is not found in the IPC and BNS, which only offer aggravated punishment in special situations, including rape by a public servant or a policeman. Consequently, POCSO is more child-oriented and welfare-focused whereas IPC and BNS are more deterrent-oriented and accountable to the population.

Section 5 – Aggravated Penetrative Sexual Assault:

Section 5 of POCSO Act enumerates those situations that aggravate penetrative sexual assault. These are those that result in grievous bodily or psychological harm, conception, HIV, or those done in opposition to children under that age of twelve or those who are handicapped.⁷⁷ When it is perpetrated by a person in power or authority, i.e. a parent, teacher, police officer, or

⁷³ *Id.* § 4(1), <https://www.indiacode.nic.in/bitstream/123456789/2079/1/AA2012-32.pdf>

⁷⁴ *Id.* § 4(2).

⁷⁵ *Id.* § 4(3).

⁷⁶ *Id.* § 33(8).

⁷⁷ *Id.* § 5(j)(ii)–(iii).

institutional staff⁷⁸ or at the time of communal violence, disaster, or social unrest⁷⁹ it is also aggravated. Recurrent attacks⁸⁰, past sexual offence and offence committed to kill or humiliate the child in public also qualify under this classification. This is an exhaustive list of exasperating conditions that demonstrate how sensitive the legislature can be with regard to betrayal of trust and increased trauma on top of trauma due to abuse or other distressing situations.

Difference from IPC and BNS Rape Laws:

The aggravating circumstances are also stated in the IPC (Section 376(2)) and BNS (Section 64(2)- the rape by police officers, public servants or custodial authorities, etc.), but these are discussed in terms of the social or official status of the rapist rather than the vulnerability of the child.⁸¹ In Section 5, POCSO, on the other hand, broadens the definition of aggravated to cover both situational and relational factors, including age, disability of the victim or the betrayal of trust by a person who took care of them.⁸² Moreover, POCSO incorporates psychological damage and risk of infection (i.e. HIV) as aggravating factors, which are not so clearly stated in both the IPC and BNS. This renders POCSO much more thorough and aware of the peculiarities of child exploitation.

Section 6 – Punishment for Aggravated Penetrative Sexual Assault:

Aggravated penetrative sexual assault is very severely punished in section 6.⁸³ The offender is mercilessly incarcerated of at least twenty years that may be life imprisonment as long as they live and in extreme instances, they can be sentenced to death.⁸⁴ Besides, a fine should also be paid to help the child to be treated and rehabilitated.⁸⁵ The provision is that the legislature is guaranteed to give the most severe possible punishment on the crimes that ruin the body and mind of a child, and it is also aimed at restorative justice by paying damages.⁸⁶

Difference from IPC and BNS Rape Laws:

Section 376AB, 376DA, and 376DB of the IPC and Section 65 and 70 of the BNS of the rape of minor under some circumstances, such as gang rape or causing death, are comparable to this

⁷⁸ *Id.* § 5(n), (p).

⁷⁹ *Id.* § 5(s).

⁸⁰ *Id.* § 5(l)–(m).

⁸¹ *Indian Penal Code*, supra note 3, § 376(2).

⁸² *Protection of Children from Sexual Offences Act*, supra note 23, § 5.

⁸³ *Protection of Children from Sexual Offences Act, 2012*, § 6 (1).

⁸⁴ *Id.* § 6(1).

⁸⁵ *Id.* § 6(2)

⁸⁶ *Id.* § 33(8).

section.⁸⁷ Section 6 of POCSO is however different in that it incorporates an element of restoration as it requires fines to be used to recover and support the child. Although the IPC and BNS mainly emphasize on deterrence and retribution, POCSO considers a balanced punishment and rehabilitation option because it appreciates that child-victim healing is just as important as punishing the offender. Further, the gender-neutral nature of POCSO provides that both the child-victims of rape, males and females, are given equal protection under the law, a fact that has yet to be realized when the general rape legislation is applied.

COMPARATIVE ANALYSIS OF BNS AND POCSO IN RELATION TO AGGRAVATED PENETRATIVE SEXUAL ASSAULT

Section 64 of Bharatiya Nyaya Sanhita (BNS) and Section 3-6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO) address serious sexual violence against minors, although they differ in context, the victim they cover and the punishments imposed.⁸⁸ In BNS Section 64, crimes committed by a police officer, public servant, armed forces member, or a person in management or staff of an educational or religious institution are considered aggravated.⁸⁹ POCSO extends to any institution providing child services, including care homes and shelters,⁹⁰ and recognizes situational aggravations such as communal or sectarian violence.⁹¹ POCSO also explicitly addresses cases where the child is pregnant, has sustained grievous injury, has HIV, or dies from the assault.⁹² Regarding punishment, BNS Section 64 prescribes imprisonment of not less than ten years and up to life, plus a fine,⁹³ whereas POCSO Section 6 prescribes not less than twenty years, life imprisonment, or death in extreme cases.⁹⁴ Therefore, POCSO is more child-oriented, broad, and punitive, reflecting its victim-centric approach.

RELEVANCE OF RAPE LAWS

1. Security of Female Fundamental Rights:

The laws of rape have a direct relation with the provisions of the basic rights as set out under Articles 14, 15 and 21 of the Constitution that is, the right to equality, non-discrimination and life

⁸⁷ *Indian Penal Code*, supra note 3, §§ 376AB, 376DA, 376DB (as amended by *Criminal Law (Amendment) Act*, 2018).

⁸⁸ *Bharatiya Nyaya Sanhita*, supra note 4, § 64; *Protection of Children from Sexual Offences Act*, supra note 23, §§ 3, 6.

⁸⁹ *Bharatiya Nyaya Sanhita*, No. 45 of 2023, § 64(2)(f), India Code.

⁹⁰ *Protection of Children from Sexual Offences Act*, No. 32 of 2012, § 5(o), India Code.

⁹¹ *Id.* § 5(s).

⁹² *Id.* § 5(j)(ii)–(iv).

⁹³ *Bharatiya Nyaya Sanhita*, supra note 1, § 64(1).

⁹⁴ *Protection of Children from Sexual Offences Act*, supra note 2, § 6(1).

with dignity. These clauses guarantee protection of women against sexual violence and the culprits are convicted hence strengthening gender justice and the rule of law.

2. Deterrence Against Sexual Offences:

Following the Nirbhaya case, stricter penalties were added in the Criminal Law (Amendment) Act, 2013 such as life imprisonment and death penalty in aggravated rape. This was to bring out the deterrent effect, that is, discourage would-be criminals by imposing the cost of crime very high. The definition of rape was also broadened by the law to cover additional acts of sexual assault since no rapist can evade the law because of limited definitions.

3. Identification of New Forms of Sexual Violence:

Previously, the definition of rape in Section 375 IPC was narrow and it was not applicable to sexual acts. The law introduced after 2013 acknowledged the digital penetration, oral sex, and object insertion as a form of rape. This was a big step towards identifying the realities of sexual violence whereby the law will cover any act of sexual conduct lacking consent not only penile-vaginal intercourse.

4. Gender Sensitivity and Victim-Centric Approach:

The amendment had made the justice system more victim-sensitive, especially for women who are humiliated while being probed and tried. The law now mandates:

- Statements of victims to be recorded by female police officers
- Videoing statements to avoid distortion.
- Medical examination without delay.
- Privacy and anonymity of the victim as per Section 228A IPC.

These are all undertaking to make the quest for justice more humanizing and show respect for victims rather than disrespecting them.

5. Accountability of Law Enforcement:

The post-Nirbhaya reforms put in place onerous obligations on police officers. In the event of non-registration or delay in registering of rape complaint, the police officer concerned can be punished under Section 166A IPC. This will ensure that the police acts, responsibly and in a time bound manner for sexual offence acts thereby lessening the possibility of neglect or discrimination.

6. Special Provisions for Minors under POCSO Act:

The sexual assault laws are complemented by the POCSO Act, 2012 and together they try to provide more protection to minors who are currently below 18 years of age. It has codified penetrative and non-penetrative sexual assault and prescribes child friendly procedures for reporting, recording of evidence investigation and trial of offenses involving child victims.

7. Current Legal Status under BNS, 2023:

The new Bharatiya Nyaya Sanhita (BNS) 2023 has defined rape in Section 63, primarily on the basis of post-Nirbhaya definition with a few explanations. It retains tough penalties including the death penalty in cases of gang rape or if the victim dies, but has clearer provisions for marital rape and separated spouses. The BNS reforms the criminal laws and other related provisions in relation to overtly punitive approach towards sex crimes.

8. Promoting Social Awareness and Empowerment:

These laws have not just changed the legal landscape, but also incited social transformation — raising awareness of women's rights, consent and bodily autonomy. They've made it easier for women to report crimes and seek justice, without the shame or reprisals that might otherwise hang overhead.

LEX MENTE
JUDICIAL DECISION: (BNS)

— WHERE MINDS MEET LAW —

1) Rafiq vs. State of UP⁹⁵

In the words of Justice Krishna Iyer in this case, "The assassin kills the body but the rapist kills the soul". Thus, rape can be seen as being a worse offence to mankind than murder. Section 375 is very important as it can give justice to these women whose soul is being robbed by such perpetrators.

2) Mukesh & Anr. vs Sate for NCT of Delhi & Ors. (Nirbhaya Rape case)⁹⁶

The case is commonly referred to as the Nirbhaya case. In the present case it was 23-year-old medical student returning back from a movie in bus, accompanied by her friend. While in the bus, she was gang-raped by six monsters who beat her up viciously. Post the rape, she and her friend were thrown out of the bus nude. The girl died while treated in a hospital in Singapore. The Supreme Court gave death sentences to four out of six suspects. While one was found guilty by the Juvenile Justice Panel because he was underage and placed in a reform facility, another took his life prior to the court's decision.

⁹⁵ *Rafiq v. State of U.P.*, (1980) SCC (India) (Krishna Iyer, J.).

⁹⁶ *Mukesh & Anr. v. State for NCT of Delhi & Ors.*, (2017) 6 SCC 1 (India).

3) Harpal Singh & others vs State of Himachal Pradesh⁹⁷

In this case, the prosecutrix who was a girl under 16 years was sent by her mother to visit her ailing aunt in the village. While she was going the accused came to her and told her that her brother was lying sick in the dispensary. She rushed with him, there he along with two others locked her in a room. After that, they committed sexual intercourse with her against her will. She was later rescued by her family who decided to keep quiet. The matter was later on published in a newspaper and the police started the enquiry. The accused held that the girl was used to sexual intercourse and gave consent for the same. The SC found enough evidence which proved that she was under 15 years old during the sexual intercourse and as such her consent was no consent at all. The accused were held liable for rape under section 376 of the IPC.

4) Tulsidas Kanolkar vs The State of Goa⁹⁸

In this case, the victim was mentally impaired. The accused took advantage of her mental situation and had sexual intercourse with her. No one was aware of it until the family of the victim found out that she was pregnant. When asked who took advantage of her, she pointed fingers towards the accused. The case was filed against him where he took the plea of consent in the form of submission to the act. It was held that the accused took advantage of the mental retardation and helplessness of the patient. In such a scenario no question of consent arises because a mentally challenged girl cannot give consent. And submission does not imply consent which can also be due to fear or vitiated by duress or impaired due to mental retardation.

5) Bhupinder Singh vs Union Territory of Chandigarh⁹⁹

In this case, the accused and the victim worked in the same bank. After some time, they married and started cohabiting in 1990. The victim was pregnant in 1991 and was asked to abort her child. She again became pregnant and during that time she learned from one of her husband's friends that he was already married before marrying her. She tried to contact the accused after this but he was nowhere to be found. She filed a complaint against him. The Punjab & Haryana High Court held the accused liable under various sections of IPC including Section 376 of rape. The women had sexual intercourse with him only due to the reason that she considered him as her husband but in reality, he was not her legal husband.

6) Priya Patel vs. State of MP (2006)¹⁰⁰

⁹⁷ *Harpal Singh & Anr. v. State of Himachal Pradesh*, (1981) 1 SCC 560 (India).

⁹⁸ *Tulsidas Kanolkar v. State of Goa*, (1991) 2 SCC 561 (India).

⁹⁹ *Bhupinder Singh v. Union Territory of Chandigarh*, (1994) 1 P&H CR 512 (India).

In this case, the appellant was the wife of the accused, who had kidnapped and raped a minor girl. When the appellant entered the room, the prosecutrix asked her but she slapped the girl and walked out of the room. The wife was then charged for gang rape along with her husband under section 376 (2) (g). The SC of India ruled that according to the definition of rape set under section 375 of the IPC, a woman cannot commit rape. Also, while committing gang rape, the accused should share a common intention to rape the victim, and since the wife only slapped the girl and the statute renders a woman incapable of committing rape, she cannot be convicted under section 376.

JUDICIAL DECISIONS (POCSO)

1) **State of Mizoram vs Lalramliana and Anr (2024)¹⁰¹**

The Gauhati High Court dealt with a crucial issue regarding proof of penetrative sexual assault under the POCSO Act. A 13-year-old girl accused a man of inserting his finger into her vagina while in his custody. The Special Court had acquitted the accused, stating that the medical examination showed no hymenal tear or genital injuries, and thus, penetrative sexual assault under Section 4 of the POCSO Act was not proved. On appeal, Justice Kaushik Goswami set aside the acquittal, observing that Section 3 of the POCSO Act defines penetrative sexual assault in broad terms, and even the slightest penetration “to any extent” is sufficient to constitute the offence.¹⁰² The Court clarified that the rupture of hymen or visible injuries is not a necessary condition for proving penetration.¹⁰³ It further held that medical evidence is only corroborative, and the victim’s consistent, credible testimony can alone establish guilt. Since the victim’s version was reliable and promptly disclosed to her family and teacher, the Court convicted the accused.

2) **Ram Dass v State (Delhi High Court, 2024)¹⁰⁴**

¹⁰⁰ *Priya Patel v. State of M.P.*, (2006) 7 SCC 123 (India).

¹⁰¹ *State of Mizoram v. Lalramliana & Anr.*, Crl. A. No. 9/2020 (Gauhati H.C. Feb. 29, 2024) (Goswami, J.), https://images.assettype.com/barandbench-hindi/2024-04/f53b9e70-17c4-47e0-89f0-5b3f1d63fd06/State_of_Mizoram_v__Lalramliana_and_Anr.pdf

¹⁰² Charge of Penetrative Sexual Assault Can Be Made on Some Degree of Insertion, *SCC Online Blog* (Apr. 17, 2024), <https://blog.scconline.gen.in/post/2024/04/17/charge-of-penetrative-sexual-assault-can-be-made-on-some-degree-of-insertion-non-tear-of-hymen-of-no-consequence-gauhc-legal-news/>

¹⁰³ Gauhati HC: Penetrative Sexual Assault Determined by Insertion, Not Hymen Tear, *LawBeat* (Apr. 2024), <https://lawbeat.in/news-updates/gauhati-hc-penetrative-sexual-assault-be-determined-insertion-not-hymen-tear-gauhati-hc>

¹⁰⁴ *Ram Dass v. State*, Crl.A. 572/2018 & Crl.M.(Bail) 827/2018 (Del. H.C. Aug. 2, 2018) (Muralidhar & Goel, JJ.), <https://www.casemine.com/judgement/in/5b93c47c9eff430e1392228d>

In this case, Ram Dass got convicted under Section 6 along with Sections 5(m) and 5(n) of the POCSO Act, 2012 after being found guilty of serious sexual abuse against his five-year-old daughter. During the appeal, he argued the girl's statement wasn't trustworthy because someone had coached her to blame him wrongly. Besides that, he challenged if what happened actually matched the law's meaning of "penetrative sexual assault."

The Delhi High Court backed the guilty verdict, showing real awareness through its explanation - since a five-year-old can't remember events exactly like an adult would, small gaps in what she said don't make her account unreliable. Because kids face tough emotional and social challenges when abused at home, the judges stressed that trustworthy child testimony stands strong even without loads of extra proof.

Highlighting how the POCSO Act aims to shield kids, judges decided that just a small degree of penetration counts as serious abuse - narrow legal loopholes letting accused persons slip free were tossed out. The kid's account came across clear, steady, without contradictions, standing strong even when challenged during questioning. Lawyers trying to argue the child was coached failed - the story held up because no proof backed their suspicion, plus the way it was told felt genuine and unforced. After weighing everything, officials confirmed guilt past any real uncertainty, so Ram Dass' sentencing stood unchanged by the higher court.

3) Manikanta @ Puli vs State upheld of Karnataka (2024)

In this case the person charged got found guilty of serious sexual harm against a 12-year-old girl under the POCSO law. Evidence showed clear physical abuse fitting the legal definition of penetration; because of this, the lower court handed down punishment as required by law. When appealing, the defence didn't deny everything - instead, they tried weakening the verdict by suggesting some kind of quiet agreement or unspoken openness from the child. The High Court shot down that claim without hesitation. Because of how POCSO works, anyone younger than 18 can't legally agree to sex - full stop. So, pointing to consent, eagerness, knowing each other, or having feelings doesn't matter when deciding guilt. What counts is just the survivor's age; if she's underage, then any hint of agreement gets wiped out by law.

4) Jitendra Jatav vs State of Madhya Pradesh (2023)¹⁰⁵

¹⁰⁵ *Jitendra Jatav v. State of Madhya Pradesh*, Crl. A. No. 11320/2022 (Madhya Pradesh H.C. Jan. 13, 2023), https://www.verdictum.in/pdf_upload/case-110-jitendra-jatav-vs-state-of-madhya-pradeshwatermark-1466171.pdf

In this case, the man faced charges under the POCSO Act along with certain sections of the Indian Penal Code after being linked to a sexual connection with a girl younger than 18. Although his side claimed it was mutual involvement, saying she had been romantically tied to him, the court in Madhya Pradesh shot down that reasoning - pointing out that when someone's underage, agreement doesn't count in law. The court pointed out kids can't legally or mentally agree to sex, so any such act with someone under 18 is illegal no matter what kind of bond exists between them. Since proof showed the survivor was underage, judges stressed that child safety laws like POCSO should override stories about being in love. Because of this, the higher court kept the guilty verdict, sticking to the rule where guilt doesn't depend on intent when minors are involved. The ruling shows courts won't let feelings or romance weaken legal shields meant for young people, making it plain that protecting children matters more than personal excuses in these crimes.

DATA STATICS OF RAPE

1) Rape cases in 2019:

In 2019, India saw 32,032 reported rape incidents¹⁰⁶ - that's about 88 every day.¹⁰⁷ Rajasthan logged 5,997 such reports, putting it near the top across the country.¹⁰⁸ Of these, 9% involved Dalit women from the state, highlighting how certain communities face greater risks.¹⁰⁹ When looking at age, 18 victims were younger than 6, while 64 were between 6 and 12; besides them, 442 survivors were aged 12 to 16. On top of that, 767 incidents involved girls from 16 to 18, whereas 3,263 victims were between 18 and 30. Those women aged 30 to 45 made up 1,272 reports.¹¹⁰ Then again, there were 1,019 attempts recorded too across the region.¹¹¹ Out of all

¹⁰⁶ Nat'l Crime Recs. Bureau (India), *Crime in India 2021: Registered Rape Cases = 31,677* (2022), <https://www.ndtv.com/india-news/rajasthan-reported-highest-number-of-rape-cases-in-india-in-2021-3299927>.

¹⁰⁷ No Country for Women: India Reported 88 Rape Cases Every Day in 2019, *India Today* (Sept. 30, 2020), <https://www.indiatoday.in/diu/story/no-country-for-women-india-reported-88-rape-cases-every-day-in-2019-1727078-2020-09-30>

¹⁰⁸ Under 30% Conviction Rate in Rape Cases in India, Says NCRB Data, *New Indian Express* (Oct. 3, 2020) <https://www.newindianexpress.com/nation/2020/Oct/03/under-30-per-centconviction-rate-in-rape-cases-in-india-says-ncrb-data-2205090.html>

¹⁰⁹ 88 Rapes Every Day in 2019: NCRB Report, *NewsClick* (Oct. 2020), <https://www.indiatoday.in/diu/story/no-country-for-women-india-reported-88-rape-cases-every-day-in-2019-1727078-2020-09-30>

¹¹⁰ NCRB Report for 2019: 88 Rapes and 126 Cases of Crime Against Dalits a Day, *Janata Weekly* (Oct. 2020), <https://www.newsclick.in/88-rapes-every-day-2019-NCRB-report-conviction-rate-alarmingly-low>

¹¹¹ <https://janataweekly.org/ncrb-report-for-2019-88-rapes-and-126-cases-of-crime-against-dalits-a-day/>

Rajasthan's cases, 554 survivors belonged to the Scheduled Caste group - showing how social ranking mixes with abuse against women.¹¹²

2) Rape cases in 2020:

According to the NCRB, in 2020, India registered 28,046 cases of rape, that is, there were 77 cases on average daily.¹¹³ The report also noted that 80 murders and 77 rapes were experienced in the country on a daily basis thus showing the severity impregnating violent crimes against women.¹¹⁴ Rajasthan recorded the highest number in the list again with 5,310 rape cases, and it was the best compared with all the Indian states that recorded the rape cases that year. Among them, 1279 victims were under 18 years of age, suggesting that there were a lot of victims who were children, and 4031 cases had adult women aged over 18 years.¹¹⁵ These statistics highlight that with the history of the highest rape cases reported in the state, Rajasthan is at the forefront of both the increasing crime rates, as well as the potential of increased reporting measures.

3) Rape cases in 2021:

According to the official reports presented in 2021, there were 31,677 rape cases in India and the average number of rape cases was 87 cases per day, as reported in 2021.¹¹⁶ The state of Rajasthan was once again first in the number of cases reporting 6,337 rapes in the year.¹¹⁷ The analysis of the numbers reveals that the victim was familiar with the accused in 6,074 cases, which means the alarming prevalence of sexual crimes among people who are familiar to the victim in their circle of friends. Among them, 582 belonged to the family, 1,701 friends or live-in partners or online acquaintances, and only 263 included absolutely loyal offenders.¹¹⁸ This implies that majority of sexual violence is carried out by individuals that the victim has known, individuals

¹¹² NCRB Data: 7% Rise in Crimes Against Women, *Indian Express* (Oct. 2020),

<https://indianexpress.com/article/india/ncrb-data-7-rise-in-crimes-against-women-6636529/lite/>

¹¹³ Average 77 Rape Cases Daily in 2020, *Times of India* (Sept. 2021),

<https://timesofindia.indiatimes.com/india/average-77-rape-cases-daily-in-2020-crimes-against-women-down-from-2019-ncrb-data/articleshow/86228139.cms>

¹¹⁴ India Records 80 Murders, 77 Rape Cases Daily in 2020, *NDTV* (Sept. 2021),

<https://www.ndtv.com/india-news/india-records-80-murders-77-rape-cases-daily-in-2020-ncrb-report-2542736>

¹¹⁵ Rajasthan Registered Highest Number of Rape Cases: NCRB, *Hindustan Times* (Oct. 2021),

<https://www.hindustantimes.com/cities/jaipur-news/rajasthan-registered-highest-number-of-rape-casesncrb-101631697476575.html>

¹¹⁶ National Crime Records Bureau (India), Crime in India 2021: Registered Rape Cases = 31,677 (2022) (via NDTV), <https://www.ndtv.com/india-news/rajasthan-reported-highest-number-of-rape-cases-in-india-in-2021-3299927>

¹¹⁷ Press Trust of India, "Rajasthan reported highest number of rape cases in India in 2021", NDTV (Aug. 30, 2022) (6,337 cases in Rajasthan). <https://www.ndtv.com/india-news/rajasthan-reported-highest-number-of-rape-cases-in-india-in-2021-3299927>

¹¹⁸ [Rajasthan reported highest number of rape cases in 2021: NCRB - The Economic Times](#)

she relies on. Regarding age, the number of victims was 4,885 adults and 1,452 minors, which means that both women and children are vulnerable at all ages.

4) Rape cases in 2022:

In 2022, India had 31,516 rape cases, 5,399 cases in Rajasthan and ranked in the top-ranking state by the number of reported rape cases. Bhilwara district of Rajasthan recorded highest cases of 301 and Bharatpur of the state recorded a count of 288 then Udaipur and Alwar recorded 253 and 206 cases respectively.¹¹⁹ The majority of those charged were individuals the victims knew 576 of them were their family members while 1,493 were their friends, online friends, live-in boyfriends or girlfriends or estranged husbands. The number of cases in which the offender was unknown completely was only 268,¹²⁰ which proves the long-standing trend according to which the majority of sexual crimes are perpetrated by people who are a part of the circle of people that the victim trusts. The victims were of the age group 1830 years (3,615 victims), 3045 years (1,506 victims), and 4560 years (287 victims) age respectively.¹²¹ Moreover, 1,053 attempted rape cases were also reported in the state,¹²² which again stated the constant risks of women of all ages and social relations.

5) Rape cases in 2023:

Rajasthan reported 5,194 cases of rape in 2023,¹²³ continuing its record of reporting high numbers of sexual offences. A closer look at the victim-accused relationship confirms that 2,152 cases were of friends, live-in partners, or estranged husbands, and 2,444 were by family members or employers, which shows that a vast majority of assaults were at the hands of people in positions of authority or trust. Just 120 cases had entirely unknown perpetrators,¹²⁴ confirming the trend that stranger attacks represent an extremely low percentage of overall cases. Distribution by age indicates that 15 victims were below 6 years old, 70 ranged from 6–12 years, 462 were between 12 and 16 years, and 767 were in the 16–18 years category, making the total

¹¹⁹ Rajasthan Tops in Rape Cases, Sees Rise in Atrocities Against Women, *Economic Times* (2022).

¹²⁰ Rape Cases in Rajasthan: Known Offenders Involved in Majority of Incidents, *Times of India* (2022).

¹²¹ State-wise and Age-wise Distribution of Rape Victims for 2022, *Ministry of Statistics and Programme Implementation*, Govt. of India (2023).

¹²² Rajasthan Logs Most Rape Cases in Country 4th Year in a Row, *Times of India* (Nov. 2023), https://timesofindia.indiatimes.com/city/jaipur/raj-logs-most-rape-cases-in-country-4th-year-in-a-row/amp_articleshow/105739214

¹²³ Rajasthan Reports Highest Number of Rape and Economic Offence Cases in 2023: NCRB, *Times of India* (Dec. 2023).

¹²⁴ Rajasthan Reports Highest Number of Rape and Economic Offence Cases in 2023: NCRB, *Times of India* (Dec. 2023).

number of minor victims 1,314. Among adults, there were 3,263 victims who were aged 18–30 years, 1,272 victims in the 30–45 years range, 200 victims who were 45–60 years, and 2 cases among women who were over 60 years,¹²⁵ indicating that sexual violence transcends all ages, from infancy to old age.

6) Rape cases in 2024:

In 2024, Rajasthan saw a total of 6,504 rape cases,¹²⁶ a notable increase over earlier years. Among them, 4,894 were adult women, and 1,610 were minors, which means that approximately one-fourth of the cases involved children under the age of 18.¹²⁷ The consistent rise in numbers reflects the persistent problem of sexual violence in the state, with adult women and young girls both being severely exposed to vulnerability across various social and age groups.

TRENDS AND ANALYSIS OF RAPE CASES IN INDIA (2019–2024)

The 2019-2024 data, demonstrates the gradual yet alarming increase in the number of rape cases in India, particularly in Rajasthan, which is among the states with the highest amounts of the data. Rape cases were approximately 32,000 in 2019 with 88 cases on average per day and almost 6,000 rape cases in Rajasthan alone.¹²⁸ By 2024, this figure had increased to 6,504 cases in Rajasthan indicating that sexual violence is still a challenge in the state.¹²⁹ A closer examination of these statistics reveals that both adult women and minors are affected, as children under eighteen constitute a considerable proportion of victims each year.¹³⁰ The worst part is that, in most instances, the victims do not encounter strangers as accused persons but rather a family member, relative, friend, or partner. This trend brings out the extent to which sexual violence is entrenched in trust and acquaintance relations and this makes it even more difficult to allow victims to speak out.

Simultaneously, the number of FIRs (First Information Reports) is also growing steadily over the past years, and this issue can be traced to a favourable development, namely, the extension of the legal concept of rape and making victims aware of their rights.¹³¹ Due to this widened protective system, a large number of survivors who previously did not have the opportunity to pursue

¹²⁵ NCRB Report: 1314 Minor Girls Raped in Rajasthan, *Dainik Bhaskar* (Dec. 2023).

¹²⁶ Crimes Against Women Down, But Rape and POCSO Cases Up, *Indian Express* (Dec. 2023).

¹²⁷ POCSO Cases Up 7.12% in 2 Years in State: Report, *Hindustan Times Rajasthan* (Dec. 2023), via *Magzter.com*.

¹²⁸ Government of India, Ministry of Home Affairs, Lok Sabha Q. No. 2412, *Preamble & Annexures* (Aug. 6, 2024).

¹²⁹ Raj Logs Most Rape Cases, *Times of India* (Dec. 5, 2023).

¹³⁰ Crimes Against Women Down but Rape, POCSO Cases Up, *Indian Express* (Aug. 24, 2024).

¹³¹ Government of India, Ministry of Women and Child Development, *Reply to Parliamentary Query* (2024).

justice in non-penetrative or object-based attacks are now able to file rape charges. This legal status, coupled with media attention, awareness, and agitation have helped more victims to come out. Thus, the general spread in the number of reported rape cases is, on the one hand, very alarming; on the other hand, it is an indicator of the enhanced legal consciousness, trust in the victims and the willingness to respond to their complaints.

REASONS AND BACKLOGS OF RAPE CASES

Delay in Justice:

1) Unavailability of witness:

Rape cases take a long time to be tried due to the unavailability or unwillingness of key witness in the case. The witnesses can be afraid of being retaliated against by the accused, they can also be socially pressurized, stigmatized, or they may have moved or even died with time. Slowness of issuing summons or non-cooperation of officials further slows down the process. Witness lessness results in adjournments, poor evidence and increases the trauma of the survivor. To curb this, witness protection, in-camera testimony and strict implementation of court summons should be practiced to get justice in time.

2) Hostile Witness:

There are numerous rape cases in India that have not been completed within the allotted time due to the victim, or even family members of the rape victim becoming hostile during the court hearings. A hostile witness is that witness who contradicts or reneges on the previous statements that he/she made to the police or in the FIR. This causes the prosecution to re-evaluate the evidence, blind cross the witness or find other evidence, which stretches the trial. Causes such as fears of the accused, social pressure, stigma, or threats are some of the factors that lead to hostile witnesses.

3) Delays in Forensic and Medical Reports:

This is essential to timely medical evidence. Nevertheless, it may take months or years to prepare a report because of poor infrastructure and personnel in state-operated forensic laboratories, and this significantly dilutes the prosecution.

4) Investigative Delays:

Police investigations are not always urgent and competent. The Hindu (2023) analysis shows that more than 60 percent of the rape FIRs are lodged weeks following the offence due to societal

stigma and lack of concern by police. Moreover, there are high workloads in forensic laboratories that delay the submission of necessary medical and DNA evidence.

False Cases:

1) Extortion by victim:

False rape cases are registered in other instances because the victim has been extorted into registering false rape where the complainant manipulates the threat of rape to coerce the accused to give money, property and other favours. The complaint in such cases is not founded on the actual sexual assault but on the basis of coercion or revenge which in most cases can be due to personal differences, relationship or even monetary influence. These cases have been observed by courts to be normally discovered when evidence is found to oppose the allegations made by the complainant, witnesses make conflicting statements, or investigations show that there is a premeditated motive to defraud.

2) Unsuccessful consensual relationship:

When a consensual relationship is broken, this is one of the usual causes of falsely reported rape. A romantic or sexual relationship might terminate or experience conflicts, which leads one of the parties to complain to support revenge, anger, or pressure on the other. Most of the times, they are caused by confusion, disagreements based on commitment or denial of marriage or financial assistance following a relationship.

Under-reporting:

1) Literacy:

One of the causes of underreporting rape in India is low literacy. Women who are less educated are not usually enlightened about the law and the legal process, and as a result, they are reluctant to take an action against the police or through the official platform. Literacy also promotes reliance on the elders in the family who discourage reporting to safeguard social honour. Conversely, women who have access to a computer and can use help lines like 181 and 1091 are more educated and therefore have a higher chance of seeking justice. UN Women India and National Commission for Women reports indicate that in the states where the literacy rate of women is high such as Kerala and Tamil Nadu there are higher rates of reporting, which means that literacy is enabling women to have a voice and seek legal advice.

2) Family Suppression:

Family suppression and social stigma are overwhelming factors that lead to underreporting of rape cases in India. Most of the families do not encourage victims to file complaints in order to save their so-called family honour and prevent embarrassment. In chauvinistic or patriarchal societies, the sexuality is associated with the family fame hence raising a voice over sexual violence is usually perceived as a way of causing shame. Families can be afraid of gossiping about it by society, being socially excluded, or even retaliated against by the accused.

3) Fear of Retaliation:

It is one of the problems that cause underreporting of rape in India. The victims fear that the accused might threaten, violence, or even harass them especially when it is someone in power or someone familiar. Most are afraid of being outcast, deprived of security or they can be socially humiliated in case they do. Local communities or panchayats can pressurize victims of rape to remain silent in the villages and the fear of job loss or loss of education becomes contributing factors in urban areas. Such fear along with poor witness protection and slow justice delivery causes the survivors to be reluctant to file assaults and as a result numerous crimes are concealed and go unprosecuted.

4) Fear of political smearing: LEX MENTE

The fear of character assassination is one of the major causes of underreporting rape cases in India. The victim is the one who is always afraid to report as the society has a tendency of condemning and criticising their actions, attire or even relationship with their partners rather than concentrating on the offence. Most of them are afraid of being branded as immoral or being scrutinized in the publicity in the course of inquiries or trials. This culture of victim-blaming which is supported by the media and social stigma discourages the survivors to seek justice. Fear of losing dignity, marriage opportunities or even social acceptance is a major factor that makes many keep silent hence the underreporting of sexual violence is an issue that is vastly underreported.

5) Trauma:

The leading causes of the underreporting of rape cases are trauma and psychological barriers. The survivors are usually deeply shocked, scared, guilty, shameful and feel helpless and it is hard emotionally to discuss the assault. They are also many who acquire post-traumatic stress, depression, or anxiety thus avoiding anything that reminds them about the incident including legal proceedings. Victims can be retraumatized by thinking about telling the response teams

many times about the assault, whether to the police or the courts. Their silence is further aggravated by the lack of empathetic support by the authorities and the society. Consequently, psychological distress will become a strong element that will not allow survivors to report rape and obtain justice.

CRITICISM

1) Low rate of conviction:

The high conviction rate in rape is one of the greatest criticisms of the criminal justice system in India. The conviction rate is terribly low despite most of the reported cases and is usually below 30 percent, a figure that is not touching the hearts of the citizens who have no trust in the system that enforces the law and administers justice to offenders. Some of the reasons that lead to this are investigations that are delayed, lack of forensic evidence, uncooperative or missing witnesses, and procedural failures at the trials. It also deters any victim to seek justice due to the long-time taken to conclude cases, and the offenders tend to take advantage of vulnerabilities in the legal system. This conviction rate is extremely low demonstrating that judicial reforms, improved police training, and quicker and more efficient trial procedures are extremely necessary in order to make sure that the victims of such a crime get their justice within a reasonable timeframe, and more importantly it must be just.

2) Corrupt justice system:

The significant complaint about the Indian justice system when it comes to rape is seen as corrupt and ineffective and this fact does not help the victims in the country to have trust in the justice system. Lack of speed in the investigations, evidence distortions and unwarranted influence of influential people tend to enable offenders to evade due with ease. Police and prosecutor activity that is influenced by bribery, political interference, and bias are causes of wrongful dismissals or lighter sentences. Such vices within the system deter victims to report the crime, delay trials, and in some other cases, allow the accused to be acquitted despite very good evidence against them. The outcome is the feeling that justice is discriminatory, slow, and inaccessible, which strengthens the notion held by the people of an ineffective and corrupt legal mechanism when dealing with sexual violence.

3) Inefficient working of police:

The biggest criticism raised against the police in rape cases is the fact that they do not operate efficiently and hence this greatly interferes with justice to the victims. Failure to file FIRs

promptly, lack of prompt investigation, and poor handling of evidence are some of the usual problems. In many cases, police demonstrate prejudice or the lack of sensitivity towards the survivor and intimidate or harass the victim. In others, the key witnesses are not captured in time and medical examination takes long which undermines the case of the prosecution.

4) Insufficient victim rehabilitation:

Lack of adequate victim rehabilitation Another major criticism of Indian rape laws. Legal reform often tends to concentrate on the punishment of offenders, without sufficient attention to survivor's psychological and economic wellbeing. Most victims see little or no assistance with counselling, medical care and financial support and are forced to cope with trauma and stigma by themselves. Government relief schemes are too slow, insufficient or poorly executed to help survivors rebuild their lives. The absence of long-term rehabilitation, safe shelter and help in getting a job makes their case only worse. For its survivors, the trauma persists long after the conviction, revealing that justice on rape cannot be pegged solely on putting convicts behind bars but must also mean rehabilitation and re-integration to society.

5) Lack of comprehensive sex education:

A lack of sex education is a major criticism, despite the continued occurrence of rape and sexual violence in India. Lack of adequate education on consent, respect for one's own and others' gender, and healthy relationships is leading to gross misinformation and backward attitudes toward sex. Many young people are raised not knowing where their boundaries begin and end, that their bodies are theirs alone, or the difference between consent and mutual agreement. To be this ignorant is common, it standardizes harassment and victim-blaming. Moreover, schools and families are reluctant to address sex education due to societal stigma and cultural conservatism, which leaves young people exposed to misinformation from friends or online. Preventing sexual violence is unfinished work without a systemized, age-appropriate sex education.

CONCLUSION

The rape legislation in India is no longer the colonial definition but rather more focused on the victim and inclusive in contemporary legal frameworks namely IPC, POCSO and BNS. However, the longstanding challenges such as the low rates of conviction, investigative failure, sluggish trials, stigma, and poor rehabilitation still hinder justice. To change, it is necessary not only to be stricter in its implementation but also to be empathetic in policing, judicial

LEX MENTE

sensitivity, forensic fortification, extensive sex education, and social consciousness. Women and children need full protection and dignity that will require a comprehensive change in which the law is equal in its advancement with social responsibility and overall accountability.

