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FROM LEGISLATION TO JUSTICE: UNVEILING THE LEGAL PROTECTION OF RAPE VICTIMS BEHIND THE STATISTICS.

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ABSTRACT

This Article critically examines the issue of rape in India, focusing on the extent to which existing legal frameworks protect and empower victims. While India has witnessed numerous legislative reforms in response to public outrage over brutal sexual assault cases, the article questions the practical effectiveness of these laws in ensuring justice and dignity for survivors. Drawing from crime data, judicial trends, and social narratives, it outlines how the issue of rape remains deeply rooted in societal attitudes, systemic weaknesses, and inadequate enforcement mechanisms.

The article explores the disconnect between progressive legal provisions and the ground reality, where rape victims often face secondary victimization, including police apathy and public stigmatization. It also addresses the complexities surrounding unreported cases, the treatment of child and marital rape, and the barriers faced by minority and LGBTQ communities in accessing justice. By analyzing both historic and recent legislative developments, including the Criminal Law Amendment Acts and the Protection of Children from Sexual Offences Act, the article evaluates whether these changes have translated into effective protection for victims.

In addition to legal analysis, the article reflects on the social issues that compound these challenges, such as victim blaming and moral judgment, which reflect broader cultural prejudices and obstruct the path to justice. Through this multifaceted examination, the article emphasizes the need for a comprehensive response involving legal reform, gender sensitization, institutional accountability, and early education.

Ultimately, the article argues that addressing rape in India requires more than the presence of stringent laws. It demands a transformation in how society and institutions perceive and treat victims. Without structural and cultural change, justice for survivors will remain an aspiration rather than a reality.

I. 'RAPE' IN INDIA

Rape is among the most serious crimes against women in India. According to the National Crime Records Bureau (NCRB), 32,033 cases of rape were registered in 2019, averaging 88 cases per day.¹ In 2020, the figure declined to 28,046 cases, averaging about 77 per day.² Of the cases reported in 2019, 94.2% involved perpetrators known to the victim.³ The share of victims below 18 years of age stood at 15.4% in 2019, compared to higher figures in earlier years.⁴

India has often been described as having one of the lowest per-capita rates of rape worldwide, despite the large number of cases in absolute terms.⁵ Indian courts have also held that sexual intercourse on a false promise of marriage can amount to rape where consent was obtained by deception.⁶ Willingness to report rapes has increased in recent years, following nationwide protests after high-profile cases such as the 2012 Delhi gang rape, which also triggered significant criminal law reforms.⁷

According to NCRB data, Rajasthan reported the highest number of rapes among the Indian states in both 2019 and 2020.⁸ Other states in the Hindi heartland similarly account for high incidences of sexual assault against women. Among metropolitan cities, the national capital of Delhi reported the highest incidence of rape at 1,253 cases in 2019, while Jaipur recorded the highest rape rate per 100,000 population.⁹

Even after the 2013 reform of the definition of 'rape' in the Indian Penal Code, marital rape,

¹ National Crime Records Bureau, Crime in India 2019: Statistics (Sept. 2020).

² National Crime Records Bureau, Crime in India 2020: Statistics (Sept. 2021), summarized in Nearly 77 Rape Cases Reported in India on Average in 2020: NCRB Report, NDTV (Sept. 15, 2021).

³ Accused Known to Survivor in 94% Cases of Rape in 2019: Government Data, NDTV (Sept. 15, 2020).

⁴ 7% Increase in Crimes Against Women in 2019, NCRB Report Reveals, IPD Online (Sept. 30, 2020).

⁵ Rape in India, Wikipedia.

⁶ Sex on False Promise of Marriage is Rape: Supreme Court, The Hindu (Apr. 15, 2019).

⁷ Justice J.S. Verma Committee Report on Amendments to Criminal Law (2013).

⁸ National Crime Records Bureau, Crime in India 2020: Statistics (Sept. 2021), summarized in Average 77 Rape Cases Daily Recorded in 2020, Crimes Against Women Decline from 2019: NCRB, ABP Live (Sept. 15, 2021).

⁹ National Crime Records Bureau, Crime in India 2019: Statistics (Sept. 2020).

when the wife and husband live together, continues not to be a crime in India.¹⁰ Section 376B of the IPC criminalizes forced sexual intercourse by a man with his wife if she is living separately, whether under a decree of separation or otherwise, punishable with a minimum of two years' imprisonment.¹¹ Forced sex by a husband may also be prosecutable as domestic violence under other provisions of the Penal Code.¹²

The crime of sexual assault on a child (below 18 years) is further elaborated in the Protection of Children from Sexual Offences Act, 2012 (POCSO), which prescribes mandatory punishment.¹³ Until 2018, all sexual acts between members of the same sex, whether consensual or forced, were criminalized under Section 377 of the IPC and carried punishments equivalent to rape.¹⁴ However, in a landmark judgment on Sept. 6, 2018, the Supreme Court in *Navtej Singh Johar v. Union of India* (2018)¹⁵ held that consensual sexual acts between adults do not fall within Section 377, thereby decriminalizing homosexuality in India.

II. STATISTICAL OVERVIEW OF RAPE CASES IN INDIA

The statistical analysis of rape cases in India provides a crucial lens for understanding the prevalence, patterns, and systemic challenges surrounding sexual violence. While individual cases often dominate headlines, it is the broader data that reflects the structural failures in reporting, investigation, and conviction. Statistics also highlight regional variations, age distribution of victims, and the extent of crimes against marginalized communities, thereby shaping discourse on legal reforms and state accountability.

In 2019, almost 32,033 incidents of rape were officially reported in India, averaging about 88 cases per day.¹⁶ The number of victims was slightly higher, with 32,260 victims recorded.¹⁷ Despite the volume of cases, the conviction rate remained dismally low at 27.8%, meaning fewer than three in ten accused were found guilty.¹⁸

¹⁰ The Criminal Law (Amendment) Act, 2013, No. 13, Acts of Parliament, 2013 (India).

¹¹ Indian Penal Code, No. 45 of 1860, Section 376B (India).

¹² Section 498A, 354; Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).

¹³ Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India).

¹⁴ Indian Penal Code, No. 45 of 1860, Section 377 (India).

¹⁵ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

¹⁶ Rape in India, Wikipedia.

¹⁷ *Id.*

¹⁸ Under 30 per cent conviction rate in rape cases in India, says NCRB data, *The New Indian Express*, Oct. 3, 2020.

At the state level, Rajasthan topped the list with 5,997 cases, followed by Uttar Pradesh (3,065), Madhya Pradesh (2,485), Maharashtra (2,299), and Kerala (2,023).¹⁹ In terms of rate of rape per 100,000 women population, Rajasthan again recorded the highest at 15.9, followed by Kerala (11.1) and Haryana (10.9).²⁰

A significant share of victims were minors: 15.43% of rape victims in 2019 were below 18 years of age.²¹ Attempted rape cases were also substantial, with 3,944 incidents involving 4,038 victims, of whom 8.6% were minors.²² Similarly, rape-cum-murder cases numbered 283, with 286 victims in 2019.²³

Crimes against children rose by 4.5% in 2019 compared to 2018, totaling 1,48,185 cases.²⁴ Within this, 47,335 cases were registered under the Protection of Children from Sexual Offences Act (POCSO), accounting for nearly one-third of all crimes against children. Of these, 26,192 cases involved rape charges. Alarming, in 94.2% of such cases, the accused was known to the victim, and in 2,153 cases, the perpetrator was a family member.²⁵

Caste-based vulnerabilities further underscore the layered nature of sexual violence in India. In 2019, ten Dalit women were raped every day on average. Rajasthan reported the highest number (554 cases), followed by Uttar Pradesh (537) and Madhya Pradesh (510). Kerala recorded the highest rate per lakh Dalit women (4.6).²⁶

Despite the alarming figures, pendency rates in rape cases remain extremely high. Delays in investigation, trial, and conviction contribute to a climate of impunity, where victims frequently express disillusionment with the justice delivery system. More recent data reflects continuity of the crisis. In 2021, India lodged an average of 86 rapes daily, with 31,677 rape cases reported nationwide. Once again, Rajasthan topped the list with 6,337 cases, followed by Uttar Pradesh and Maharashtra. These statistics indicate that despite reforms and heightened public

¹⁹ 87 Rape Cases Daily, Over 7% Rise in Crimes Against Women in 2019: NCRB Data, News18, Sept. 29, 2020.

²⁰ Id.

²¹ Id.

²² 88 Rapes Every Day in 2019, Says NCRB Report; Conviction Rate Alarming Low, NEWSCLICK, Oct. 1, 2020.

²³ UP records highest atrocities against SC/STs and crimes against women, THE ECONOMIC TIMES, Oct. 1, 2020.

²⁴ Crimes against children up 4.5% in 2019; 18.9% rise in POCSO cases, TIMES OF INDIA, Oct. 3, 2020.

²⁵ Accused Known to Survivors in 94% of Rape Cases in 2019: Government Data, NDTV, Oct. 2, 2020.

²⁶ On an Average, India Reported 10 Cases of Rape of Dalit Women Daily in 2019, NCRB Data Shows, NEWS18, Oct. 3, 2020.

awareness, sexual violence remains entrenched within Indian society.

III. RAPE OF MINORS

According to estimates drawn from a small-scale survey conducted by Human Rights Watch, more than 7,200 cases of rape of minors occur each year in India, reflecting a ratio of approximately 1.6 incidents per 100,000 minors.²⁷ This figure is widely considered to be an underrepresentation of the true incidence, given the prevailing underreporting of sexual offences in the country.

A central factor contributing to this phenomenon is the secondary victimization survivors often experience when approaching law enforcement authorities. Victims of sexual violence, particularly minors, are frequently subjected to mistreatment, humiliation, or intimidation by the police, thereby deterring the lodging of First Information Reports (FIRs) under Section 154 of the Code of Criminal Procedure, 1973.²⁸ This systemic failure compounds the trauma of the initial assault and effectively denies victims their constitutional right to dignity under Article 21 of the Constitution of India.²⁹

Further aggravating the situation is the prevalence of trafficking of minor girls into prostitution, where cases of sexual assault merge into a lifelong cycle of exploitation. Trafficking networks often operate with impunity, perpetuating structural violence and leaving victims without adequate recourse to justice. Exploitation of minors falls within the definition of aggravated penetrative sexual assault under Sections 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO), warranting stringent penal consequences.³⁰

International comparisons highlight the gravity of the issue. A global study by Maplecroft, examining sex trafficking and crimes against minors, ranked India as the 7th worst country in handling such offences.³¹ This corresponds to structural deficiencies in protection frameworks, law enforcement, and rehabilitation for victims of minor sexual assault in India.

The cumulative impact demonstrates that rape of minors in India is not only an individual

²⁷ Human Rights Watch, *Rape and Sexual Violence Against Minors in India: A Survey*, 2020.

²⁸ Code of Criminal Procedure, 1973, Section 154 (India).

²⁹ Article 21, Constitution of India.

³⁰ Protection of Children from Sexual Offences Act, No. 32, Acts of Parliament, 2012, Sections 5 to 6 (India).

³¹ Maplecroft, *Global Child Sex Trafficking Index*, 2020.

violation but a systemic challenge involving failures in prevention, protection, law enforcement, and rehabilitation. It requires urgent legislative and criminal justice interventions, alongside compliance with international human rights obligations under the United Nations Convention on the Rights of the Child (UNCRC), ratified by India.³²

IV. ESTIMATES OF UNREPORTED RAPE CASES

A significant proportion of sexual offences in India remain unreported, a phenomenon that severely undermines the reliability of official crime statistics and obstructs the administration of justice. Victims frequently refrain from reporting due to fear of reprisal, social stigma, and humiliation, reflecting both societal and systemic barriers to justice. Indian legislators have consistently observed that the magnitude of the rape problem in India is substantially underestimated, given the widespread underreporting of offences.³³

Attempts to quantify unreported rape cases in India have been limited and fragmented, with few states undertaking surveys or empirical studies. According to the National Crime Records Bureau (NCRB) report of 2006, approximately 71% of rapes remain unreported, highlighting the considerable gap between recorded offences and the actual incidence of sexual violence.³⁴

The legal framework itself contributes to this underreporting. Notably, marital rape remains largely outside the ambit of criminal liability in India, except in circumstances where the wife is aged 15 to 18 years, in which case sexual intercourse constitutes rape under the IPC.³⁵ This legislative lacuna often discourages reporting by married women and perpetuates cycles of abuse within domestic settings.

Empirical studies further corroborate the scale of underreporting. Madiha Kark estimates that 54% of rape crimes in India are never reported, underscoring the disparity between statutory provisions and effective enforcement.³⁶ From an international perspective, a United Nations study across 57 countries indicates that only 11% of rape and sexual assault incidents are formally reported, highlighting a pervasive global challenge in ensuring access to justice for

³² United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (ratified by India 1992).

³³ Indian Parliament, Debates on Sexual Violence and Reporting in India, 2019.

³⁴ National Crime Records Bureau, Crime in India 2006, Ministry of Home Affairs, Government of India.

³⁵ Indian Penal Code, Sections 375 to 376 (India).

³⁶ Madiha Kark, Underreporting of Sexual Violence in India, 2020.

survivors.³⁷

The cumulative evidence demonstrates that official crime data significantly underrepresents the prevalence of sexual violence, both nationally and globally. Addressing this challenge necessitates comprehensive legislative reforms, strengthened law enforcement protocols, and institutionalized victim support mechanisms. Such measures are indispensable to ensure that survivors can seek redress without fear of stigma, reprisal, or systemic neglect, thereby fulfilling the constitutional guarantee of Article 21 protecting the right to life and dignity.

V. NOTABLE CASES

The Delhi Gang Rape (2012), commonly known as the Nirbhaya case³⁸, changed Indian criminal law significantly. On 16 December 2012, a 23-year-old paramedical student was brutally assaulted by six men on a moving bus in Delhi; the severity of the assault, including use of an iron rod to penetrate her so violently that she suffered intestinal damage, led to her death thirteen days later. Prosecutors charged six people; of them, four adult perpetrators, Mukesh, Vinay, Pawan, and Akshay, were ultimately sentenced to death. The other two included a juvenile, tried separately and given the maximum allowed under the Juvenile Justice Act, and one who died in custody. The four death sentences were carried out on 20 March 2020.³⁹ Legally, the case spurred the Criminal Law (Amendment) Act, 2013, which expanded the definition of rape, introduced new offences such as voyeurism and stalking, and enabled fast-track courts with stricter punishments.⁴⁰

The Unnao rape case (2017)⁴¹ exposed the intersection of political power and systemic impunity. Kuldeep Singh Sengar, then a sitting MLA, was convicted in December 2019 under Section 376(2) of the Indian Penal Code and the POCSO Act for raping a 17 year old girl. He was sentenced to life imprisonment for the remainder of his natural life and fined ₹25 lakh, with compensation to the survivor's family. Sengar was separately convicted for the custodial death of the victim's father, receiving a ten-year sentence.⁴² The case also involved intimidation of witnesses, suspicious deaths, and a directed reassessment of threat perception every three

³⁷ United Nations Office on Drugs and Crime, *Global Study on Violence Against Women: Rape and Sexual Assault Reporting*, 2018.

³⁸ *Mukesh & Anr. v. State (NCT of Delhi)*, (2017) 6 SCC 1 (India).

³⁹ "Nirbhaya Case: Four Convicts Hanged at Tihar Jail," *The Hindu* (Mar. 20, 2020).

⁴⁰ The Criminal Law (Amendment) Act, No. 13 of 2013, India Code (2013).

⁴¹ *State v. Kuldeep Singh Sengar*, Sessions Case No. 118/2017, CBI Court, Delhi (Dec. 16, 2019).

⁴² *CBI v. Kuldeep Singh Sengar*, Sessions Case No. 130/2018, CBI Court, Delhi (Mar. 4, 2020).

months, underscoring systemic failures in protecting victims of powerful perpetrators.⁴³

The Kathua rape-murder (2018)⁴⁴ involved the abduction, confinement, rape, and murder of an eight year old Muslim girl in Kathua, Jammu & Kashmir. The prosecution established that the victim was drugged, held captive in a temple, repeatedly raped, and then killed. In June 2019, six accused were convicted: three received life imprisonment until the end of their natural lives, while three police personnel were convicted for destruction of evidence and sentenced to five years' imprisonment. The case became emblematic not only of sexual violence but also of communal polarization, as protests emerged in support of the accused.

More recent developments illustrate ongoing challenges: In 2024, a Kolkata rape-murder case under the Bharatiya Nyaya Sanhita (BNS) led to swift arrests, with courts emphasizing the protection of victim identity on digital platforms.⁴⁵ The long running Ajmer rape case (1992 scandal) culminated in recent convictions under the POCSO framework, with life sentences delivered decades after the offences, reaffirming that the passage of time does not necessarily mean impunity.⁴⁶

According to the NCRB, India records over 31,000 rape cases annually.⁴⁷ Yet, conviction rates remain below 30%, and pendency of trials exceeds 90-98% in several jurisdictions.⁴⁸ These figures demonstrate that while stronger laws exist, the justice delivery system remains slow, uneven, and heavily dependent on quality of investigation, forensic support, and survivor resilience.

VI. VICTIM BLAMING AND SLUT SHAMING

A. Victim Blaming

Victim blaming continues to undermine justice in India. Survivors of sexual violence often face hostile questions about clothing, behavior, and prior relationships. The legacy of the Mathura rape case (1979)⁴⁹ persists, where the Supreme Court implied consent because the victim showed no signs of resistance. This flawed reasoning provoked nationwide protests by

⁴³ "Unnao Rape Case: Timeline of Proceedings," Indian Express (Dec. 20, 2019).

⁴⁴ State of J&K v. Sanji Ram & Ors., Pathankot District & Sessions Court, Judgment (June 10, 2019).

⁴⁵ "Kolkata Rape-Murder Case: Court Orders Strict Victim Identity Protection," Hindustan Times (Apr. 18, 2024).

⁴⁶ "Ajmer Sex Scandal: Court Sentences Accused to Life," Times of India (Feb. 2, 2023).

⁴⁷ National Crime Records Bureau, Crime in India Report (2022).

⁴⁸ Commonwealth Human Rights Initiative, "Analysis of NCRB Rape Data" (2024).

⁴⁹ Tukaram v. State of Maharashtra, (1979) 2 SCC 143 (India).

women's rights groups and ultimately contributed to the Criminal Law (Amendment) Act, 1983⁵⁰, which introduced Section 114A of the Indian Evidence Act, creating a presumption of no consent where sexual intercourse is alleged under custodial circumstances. Yet, despite these statutory reforms, similar logic survives in cross-examinations, where defense lawyers probe survivors on past sexual history, violating both statutory and constitutional protections.

Under the BNS, Section 74 (equivalent to IPC Section 228A), disclosure of victim identity remains a criminal offence. The Supreme Court has reinforced this in multiple rulings, including *Nipun Saxena v. Union of India*⁵¹, directing media and digital platforms to strictly anonymize survivors.⁵² However, violations persist in vernacular reporting, social media circulation, and even in charge sheets filed by investigating authorities, reflecting a gap between law and enforcement.

International comparisons highlight similar struggles. In the UK, the "rape myth" jurisprudence recognizes that stereotypical assumptions, such as resistance equaling lack of consent distort judicial outcomes.⁵³ In the U.S., Rape Shield Laws restrict questioning on past sexual behavior, a concept partly mirrored in India's Section 53A of the Indian Evidence Act⁵⁴. However, Indian courts have inconsistently applied these protections, allowing subtle forms of victim blaming to persist.

Statistically, NCRB reports show conviction rates in rape cases remain approximately at 27-28%, largely due to retractions, intimidation, or hostile witnesses. A 2022 study by the Centre for Policy Research found that over 74% of acquittals in rape trials were linked to adverse in-court testimony by the victim or key witnesses, often attributed to coercion and stigma.⁵⁵ Scholars argue that this demonstrates the persistence of cultural victim blaming that law alone cannot correct, calling for gender sensitivity training for police, prosecutors, and judges to dismantle such biases.

⁵⁰ The Criminal Law (Amendment) Act, No. 43 of 1983, Section 7, India Code (1983).

⁵¹ *Nipun Saxena v. Union of India*, (2019) 2 SCC 703 (India).

⁵² India's struggles with high rape cases, low conviction rates, Reuters (Aug. 15, 2024).

⁵³ Temkin, Jennifer, "Rape and the Legal Process," Oxford University Press (2d ed. 2002).

⁵⁴ Indian Evidence Act, No. 1 of 1872, Section 53A (India).

⁵⁵ Centre for Policy Research, *Acquittals in Rape Trials: A Judicial Data Analysis* (2022).

B. Slut shaming

Slut-shaming, though not codified as a legal concept, remains a pervasive barrier to justice in rape adjudication. Survivors are discredited on the basis of perceived sexuality, whether through clothing, social behavior, or premarital relationships, casting doubt on their credibility in court.⁵⁶ This practice undermines the protective intent of successive criminal law amendments and continues to entrench patriarchal notions of “ideal victims.”

Legislatively, safeguards exist. Section 146 of the Indian Evidence Act, as amended in 2002, explicitly prohibits questioning a prosecutrix regarding her “general immoral character” or prior sexual experience to prove consent.⁵⁷ Similarly, Section 53A⁵⁸ prevents reliance on a survivor’s past sexual history in prosecutions under rape laws. Despite these protections, courts have at times permitted intrusive cross examination, reflecting a gap between statutory design and courtroom practice.

Judicial pronouncements have pushed back against this trend. In *State of Punjab v. Gurmit Singh* (1996)⁵⁹, the Supreme Court held that a rape survivor’s testimony does not require corroboration simply because of her sexual history. Later, in *Raja v. State of Karnataka* (2016)⁶⁰, the Court reaffirmed that past sexual conduct of the victim is irrelevant to determining consent. The Bombay High Court in *X v. State of Maharashtra*⁶¹ went further, rejecting arguments that lifestyle choices or autonomy diminish credibility, underscoring that “consent cannot be inferred from character.”

The stigma of slut-shaming is not confined to women. Studies indicate LGBTQ+ persons, particularly gay and bisexual men, are disproportionately labeled as “promiscuous,” facing harassment and bias in both police and judicial narratives.⁶² This intersectional form of discrimination compounds barriers to reporting and trial participation.

Comparative jurisdictions provide valuable lessons. In the UK, the Youth Justice and Criminal Evidence Act 1999 restricts admissibility of sexual history evidence,⁶³ while the U.S. Rape

⁵⁶ Kavita Krishnan, *Fearless Freedom* (Penguin 2020).

⁵⁷ Indian Evidence Act, No. 1 of 1872, Section 146 (India).

⁵⁸ Id. Section 53A.

⁵⁹ *State of Punjab v. Gurmit Singh*, (1996) 2 S.C.C. 384.

⁶⁰ *Raja v. State of Karnataka*, (2016) 10 S.C.C. 506.

⁶¹ *X v. State of Maharashtra*, 2021 SCC OnLine Bom 1178.

⁶² GLSEN, “LGBTQ+ Students and School Climate” (2022).

⁶³ Youth Justice and Criminal Evidence Act 1999, c. 23, Section 41 (U.K.).

Shield Laws similarly bar such questioning.⁶⁴ These frameworks reflect a broader recognition that sexual history has no probative value in determining consent and that its introduction serves only to humiliate and discredit complainants.

Empirical studies reinforce the persistence of the problem in India. A 2021 survey by the Centre for Social Research found that nearly 68% of survivors were questioned about clothing, friendships, or prior relationships during trial, despite clear statutory prohibitions.⁶⁵ Feminist scholars argue this not only retraumatizes survivors but also sustains a judicial culture where women's sexuality is put on trial rather than the accused's conduct.⁶⁶

Slut-shaming thus remains a critical obstacle to the realization of rape law reforms. For statutory protections to be effective, they must be coupled with gender sensitization training for trial judges and lawyers, strict enforcement of evidentiary bars, and stronger accountability mechanisms against counsel who weaponize stereotypes. Without these measures, the transformative promise of reforms risks being undermined by deep rooted cultural biases.

VII. EVOLUTION OF ANTI-RAPE LEGISLATIONS IN INDIA

The codification of rape law in India began with the Indian Penal Code (IPC), 1860, under Sections 375 to 376, prescribing a minimum of two years' imprisonment.⁶⁷ At the time, the law reflected colonial attitudes that trivialized sexual violence and reinforced patriarchal notions of chastity and honor. The failure to recognize rape as a crime against bodily autonomy left survivors with little redress.

Judicial complacency in cases such as the Mathura rape case (1979)⁶⁸ exposed the inadequacy of these provisions. The Supreme Court's acquittal of police officers on the grounds that the absence of resistance implied consent triggered nationwide protests. Women's rights activists launched the first organized anti-rape movement in India, demanding reforms that would place survivor testimony at the center of adjudication. In response, Parliament enacted the Criminal Law (Amendment) Act, 1983, which introduced Section 114A into the Indian Evidence Act, creating a presumption of no consent where the survivor alleged rape in custodial

⁶⁴ Fed. R. Evid. 412 (U.S.).

⁶⁵ Centre for Social Research, *Courtroom Practices in Sexual Assault Trials* (2021).

⁶⁶ Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India* (Oxford Univ. Press 2014).

⁶⁷ Indian Penal Code, No. 45 of 1860, Sections 375 to 376 (India).

⁶⁸ *Tukaram v. State of Maharashtra*, (1979) 2 S.C.C. 143 (India).

circumstances.⁶⁹ This marked the first legislative acknowledgment of power imbalances in determining consent.

The next watershed reform was the Protection of Children from Sexual Offences Act (POCSO), 2012, which established a specialized framework for addressing child sexual abuse. POCSO broadened the definition of sexual offences, distinguishing between penetrative and non-penetrative assault, mandating child-friendly trial procedures, and requiring compulsory reporting.⁷⁰ It remains one of the most comprehensive child protection laws in the world, though gaps in implementation, such as inadequate training of special courts persist.

The horrific Delhi gang rape (Nirbhaya case, 2012)⁷¹ led to unprecedented public outrage and catalyzed sweeping reforms through the Criminal Law (Amendment) Act, 2013. The Act expanded the definition of rape to include oral and digital penetration, criminalized stalking, voyeurism, and acid attacks, and raised the age of consent to 18 years. It also strengthened punishments, including life imprisonment and the death penalty for repeat offenders.⁷² Importantly, the 2013 reforms symbolized a shift toward recognizing sexual violence as an assault on personal dignity rather than honor.

Subsequent cases, such as the Kathua rape-murder (2018)⁷³ and the Unnao rape case (2017)⁷⁴, intensified demands for harsher deterrents. Responding to public pressure, the Criminal Law (Amendment) Act, 2018 substantially enhanced sentencing. Punishments now mandated a minimum of 10 years for rape of an adult woman, 20 years for rape of a girl under 16, and life imprisonment or the death penalty for rape of a girl under 12.⁷⁵ These provisions reflected a clear legislative intent to strengthen deterrence, though critics argue that higher punishments alone cannot compensate for weak investigations and delayed trials.

Most recently, the Bharatiya Nyaya Sanhita (BNS), 2023, effective July 1, 2024, consolidated existing provisions while retaining stringent penalties for gang rape and child rape.⁷⁶ However,

⁶⁹ The Criminal Law (Amendment) Act, No. 43 of 1983, Section 7 (India).

⁷⁰ The Protection of Children from Sexual Offences Act, No. 32 of 2012, Sections 3 to 7 (India).

⁷¹ *Mukesh & Anr. v. State (NCT of Delhi)*, (2017) 6 SCC 1 (India).

⁷² The Criminal Law (Amendment) Act, No. 13 of 2013, Sections 9 to 12 (India).

⁷³ *State of J&K v. Sanji Ram & Ors.*, Pathankot District & Sessions Court, Judgment (June 10, 2019)..

⁷⁴ *State v. Kuldeep Singh Sengar*, Sessions Case No. 118/2017, CBI Court, Delhi (Dec. 16, 2019).

⁷⁵ The Criminal Law (Amendment) Act, No. 22 of 2018, Section 3 (India).

⁷⁶ Bharatiya Nyaya Sanhita, No. 45 of 2023, Sections 63 to 70 (India).

the statute controversially retains the marital rape exception, exempting husbands from prosecution for non-consensual intercourse with wives over the age of 18.⁷⁷ This omission, despite growing domestic and international criticism, underscores the gap between progressive reforms and entrenched social norms. The BNS also emphasizes fast-track adjudication of sexual offence cases, but states have struggled to establish sufficient special courts to meet the demand.⁷⁸

Despite these successive reforms, the efficacy of anti-rape legislation remains questionable when measured against ground realities. NCRB data reveals that more than 200,000 rape trials remain pending nationwide, with conviction rates stagnating at approximately 27%.⁷⁹ Forensic infrastructure is inadequate, with only a fraction of districts having functional forensic labs, and survivors frequently face hostile cross-examination despite statutory protections.⁸⁰ Scholars argue that without parallel investment in investigative capacity, survivor support services, and judicial accountability, legislative progress risks being more symbolic than transformative.

VIII. PERSISTENT CHALLENGES AND WAY FORWARD

A. Persistent Challenges

The trajectory of rape law in India, from the colonial IPC to the Bharatiya Nyaya Sanhita, reflects a pattern: law has consistently evolved in response to public outrage after egregious cases. Each legislative milestone, from Mathura in the 1970s to Nirbhaya in 2012 and Kathua/Unnao in 2018, has produced stricter statutes, broader definitions, and harsher punishments. Yet, despite the existence of some of the strictest rape laws in the world, the statistics reveal that stringent provisions alone cannot ensure justice. Conviction rates remain below 30%, and pendency of rape trials continues to exceed 90% in many courts.⁸¹

Rape persists as the fourth-most common crime against women in India, according to government data.⁸² This highlights the persistence of structural flaws: weak policing, inadequate investigation, prosecutorial delays, and systemic apathy. The criminal process

⁷⁷ Id. Section 63, Exception 2.

⁷⁸ "India Cuts Target for Fast-Track Sex Crime Courts as States Fall Short," Reuters (Sept. 27, 2024).

⁷⁹ National Crime Records Bureau, Crime in India 2022 (Ministry of Home Affairs, 2023).

⁸⁰ Commonwealth Human Rights Initiative, Rape Statistics and NCRB Analysis (2024).

⁸¹ "India's struggles with high rape cases, low conviction rates," Reuters (Aug. 15, 2024).

⁸² National Crime Records Bureau, Crime in India Report (2022).

remains survivor-unfriendly, marked by intimidation, secondary victimization, and procedural bottlenecks.⁸³ In effect, the law has failed to attain its primary objective of deterrence and justice.

B. Way Forward

The need of the hour is to revamp existing laws from the grassroots level, with focus on effective implementation rather than repeated criminalization. Political and judicial sensitivity must be complemented by special courts, training programs for police and judges, and improved forensic capacity.⁸⁴ Beyond the courtroom, comprehensive sex education and gender sensitization from the elementary stage would equip students with respect for bodily autonomy, consent, and gender equality.

As the maxim '*Justice delayed is justice denied*' warns, appropriate punishment must be inflicted in a time-bound manner, for delay not only denies closure to survivors but emboldens offenders.⁸⁵ Strict enforcement of existing laws, coupled with survivor-centric reforms, is necessary to instill genuine fear in the minds of potential offenders and restore public confidence in the justice system.

Ultimately, justice is not measured merely by the severity of punishment, but by its certainty, speed, and the dignity afforded to survivors. Unless systemic reforms, from policing to prosecution, from education to societal attitudes are addressed, the promise of India's anti-rape legislation will remain only partially fulfilled.⁸⁶

⁸³ Commonwealth Human Rights Initiative, "Rape Statistics and NCRB Analysis" (2024).

⁸⁴ Justice Verma Committee Report, 2013 (recommendations on systemic reforms).

⁸⁵ Hussainara Khatoon v. Home Secretary, State of Bihar, (1980) 1 SCC 81.

⁸⁶ The Guardian, "India Supreme Court: New Penal Code still permits marital rape" (June 27, 2024).