

## POSITION OF RAPE VICTIM UNDER THE CRIMINAL JUSTICE SYSTEM OF INDIA

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Nandu Dangi\*

### ABSTRACT

*Rape of any woman is the biggest sin in history, society, and religion, it is spread all over the world. Rape is the most heinous crime committed against a woman. Rape has become a common crime in India. It is not only limited to women but even small girls and old women have not been spared by this crime of society. Today in this article we will discuss the victims suffering from this curse of society and their legal status. No one wants to talk openly about rape, no one wants to discuss its reality. In this article, not only we will discuss the rape victim but her legal authority and the circumstances after the rape. Despite the strictness of the law related to rape, why rape cases are increasing, and how we can help the rape victim in all this, we will also discuss in this article. The condition that is happening in society today, seeing the incidents that are happening, it seems as if there is only one Ravana, Ravana is standing everywhere. Now rape has started going beyond the abduction of women. The rapist is caught and handed over to the law, but our law requires a witness on the spot. When eye witness is not found at the time of the rape, then our law-guarding lawyers are successful in saving such criminals. The other side of this is also that no Indian would dare to go to the court and say in front of the judge that she was raped in this way because the lawyer who saved the criminal, had many such questions about the subject of rape on that poor girl. They will ask questions that it is a matter of diving into the ocean of shame to answer those questions in a meeting full of women of any good and decent family. As a result, the offender is released.*

### INTRODUCTION

Rape means against the will of any woman to forcefully have physical relations with her. If a woman has sex of her own free will, it is not said to be rape. Generally, women are raped by intimidation and taking advantage of their weaknesses. If a person makes a physical relationship with a woman on the pretext of marriage, then he goes for rape. According to Section 375 of the IPC, if a person has a relationship with a woman against her will or without

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\*BA LLB, SECOND YEAR, NRI VIDYADAYANI INSTITUTE OF SCIENCE, MANAGEMENT AND TECHNOLOGY BHOPAL.

her consent, then she is deemed to be a woman. In view of the increasing cases of rape, various types of legal provisions are often made, but still, there is no reduction in its cases. Rape is such an incident that is considered very condemnable in any society. In such a situation, our mother and sisters are not considered safe anywhere. Friends, you will be surprised to know that there are many types of rape. Let's know the types of rape.

### **GANG RAPE**

We often hear the news of gang rapes with women in the newspapers. A strict law has been made in India regarding this. You probably remember the Nirbhaya case in India, in which some accused gang-raped a girl together. In gang rape, some accused make physical relations with a woman in turn.

### **MARITAL RAPE**

This is the subject of much discussion. Marital rape means married rape. Talking about this, if a man forcibly makes physical relations against the will of his wife, then it is called marital rape. However, little is known about this type of rape as women often do not take any legal action against their husbands because of their fear. Marital rape is a more widely experienced behavior by women in India. It has been considered a form of domestic violence and physical abuse against women. The main reason for this is the patriarchy system of society. According to the NHFS-5 round of the National Family Health Survey, 35% of women have admitted to physical, mental, and emotional violence against themselves by their husbands.

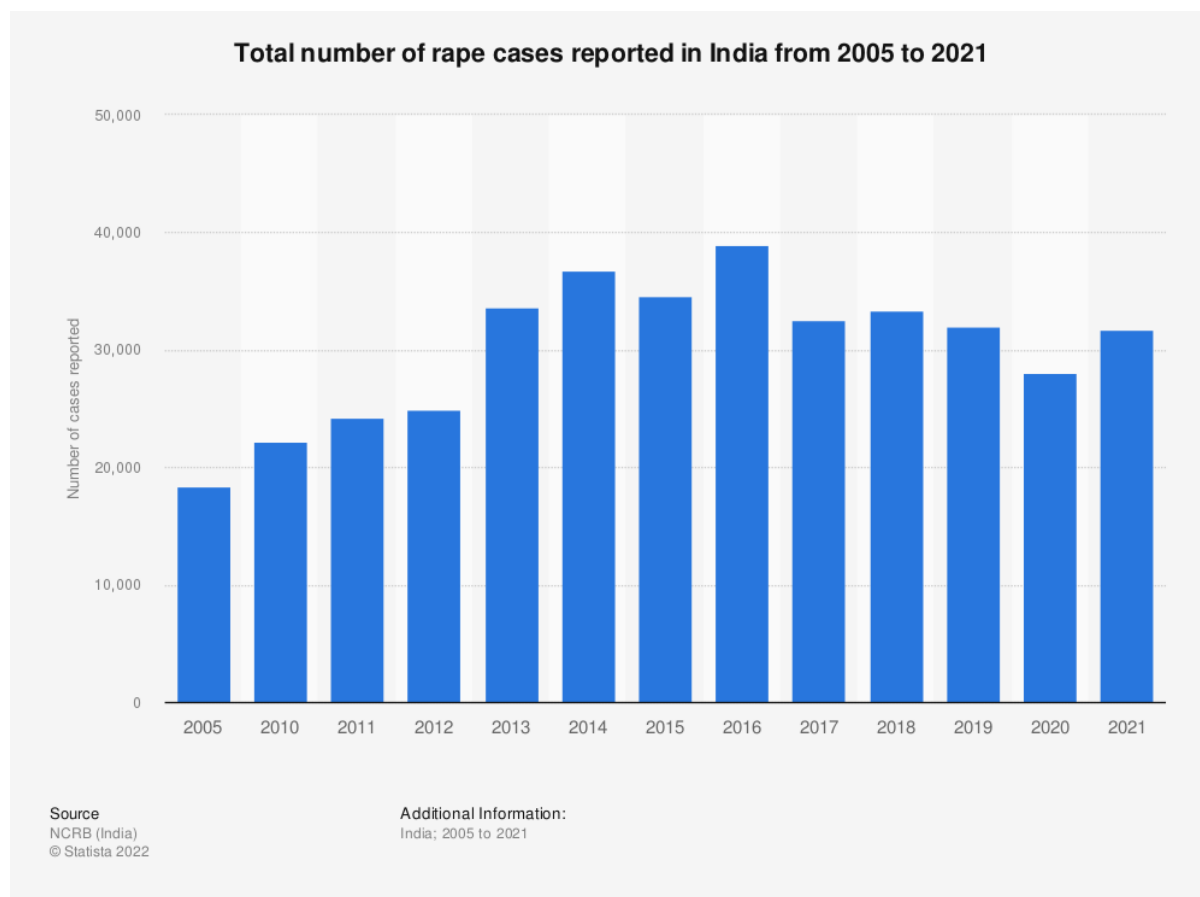
### **EXCHANGE RAPE**

Exchange rape means when a man gives his wife to other people or it can also be called exchange of wife, it is called exchange rape.

### **LITERATURE REVIEW**

A new report from the National Crime Records Bureau (NCRB) states that 86 rape cases on average were reported per day in India in 2021, totaling 31,677 incidents. 49 incidences of crime against women were reported each hour at the same time that year. Who works for the Ministry of Home Affairs and who published the "Crime in India 2021" study by NCRB in 2020, roughly? In 2019, there were approximately 28,046 rape cases reported. There were 32,033 instances reported. Rajasthan had the most rape cases, with 6,337, in 2021, followed by

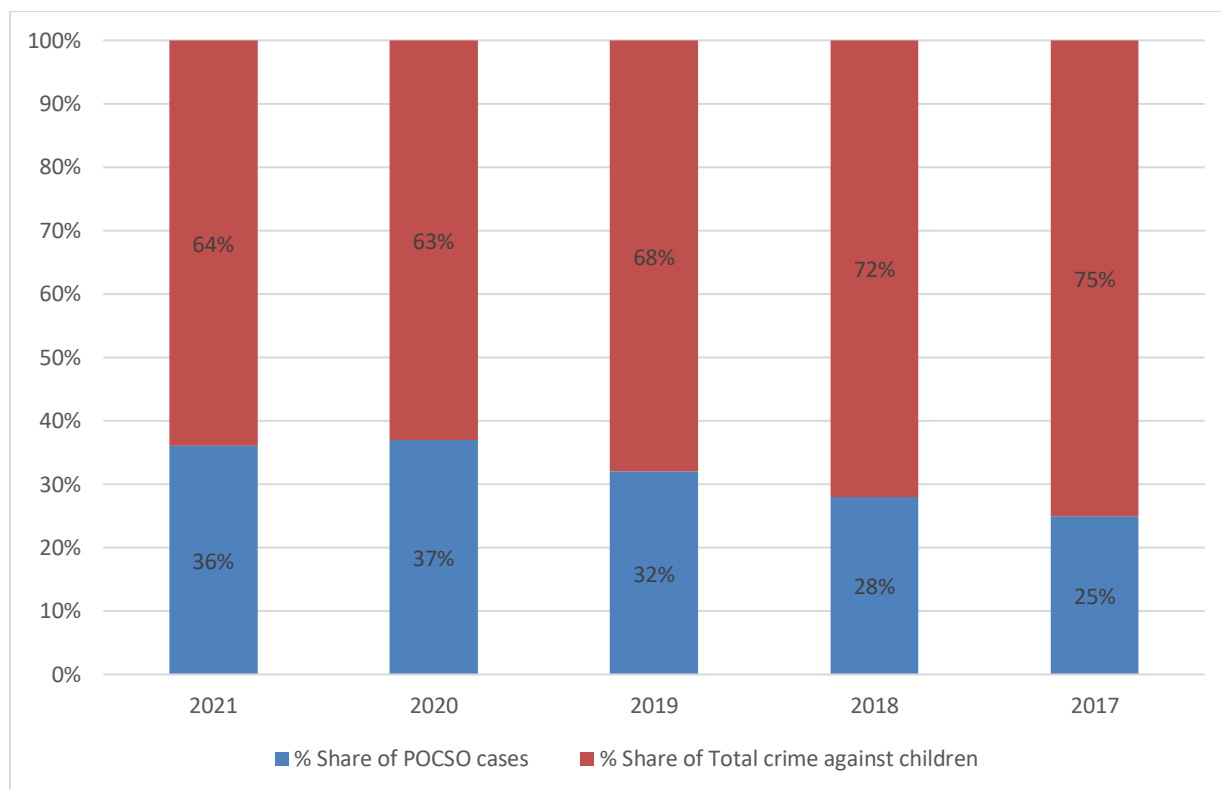
Madhya Pradesh with 2,947, Maharashtra with 2,496, Uttar Pradesh with 2,845, and Delhi with 1,250. According to the report, there were a total of 4,28,278 "crimes against women" instances reported nationwide in 2021, representing a crime rate of 64.5% (per lakh people). Charge sheets were filed in 77.1% of the cases involving these offenses.



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The results show that 3, 71,503 cases of "crimes against women" were reported nationwide in 2020, and 4, 05, 326 cases were reported in 2019.

**Figure: - Cases of POCSO to total cases of crime against children, 2017-2019**



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According to the statistics, adolescents were also affected by rape in addition to adults. After being raped, a victim's life is completely changed, and they are negatively impacted socially, intellectually, and physically. A total of 1,49,404 cases of crime against children were reported in 2021, according to a study from the National Crime Records Bureau (NCRB), of which 36.05 percent (53,874) fell under the purview of the Protection of Children from Sexual Offenses Act (POCSO). In addition, there were 1,28,531 occurrences of child abuse reported in 2020, of which 47,221 (or 36.73 percent) fell under the purview of the Protection of Children from Sexual Offenses Act (POCSO). Of the 1, 48,185 similar incidents that were reported in 2019, a total of 47,335 (31.94%) were registered in POCSO in 2020. Cases were reported to POCSO in 2018 (39,827 out of 1, 41,764) and 2017 (32,608 out of 1, 29032).

### **RAPE VICTIMS FACE BARRIERS TO JUSTICE**

The Criminal Law (Amendment) Act, 2013, the Protection of Children from Sexual Offenses Act, and Scheduled Castes and Scheduled Castes if the victims are from Dalit (formerly "untouchables") or tribal communities are only a few of the laws that deal with gender violence

<sup>1</sup> <https://indianexpress.com/article/india/crime-against-kids-a-third-still-under-pocso-8119689/>

<sup>2</sup> <https://satyarthi.org.in/wp-content/uploads/2021/04/Status-of-POCSO-Cases-2017-2019.pdf>

in India today. Act for the Prevention of Atrocities Against Scheduled Tribes. The number of rape complaints reported to the police increased by 39% at the end of 2015 (the most recent year for which data is available), as a result of gradual legal improvements. Compared to 24,923 instances in 2012, 34,651 cases were registered in 2015. This most likely reflects the survivors' growing willingness to present their claims in court.

### **A HUMAN RIGHTS WATCH**

Research, however, identifies ongoing shortcomings in the application of laws, pertinent policies, and directives meant to provide victims of sexual violence with justice. The report covers 21 incidents, 10 of which were girls who were under 18 at the time of the incident, and was compiled after extensive research by Indian groups and Human Rights Watch, as well as interviews with victims, their family members, advocates, civil society activists, and advocates. Using 65 interviews with medical professionals, forensic experts, and governmental and law enforcement officials, the scope of the issue is depicted. The study also contains more than 65 interviews conducted by Human Rights Watch with victims, their relatives, attorneys, members of civil society, campaigners, doctors, forensic specialists, and government and law enforcement officials. The paper makes specific recommendations on how authorities can guarantee that victims and their families get sensitive, dignified, and nondiscriminatory treatment in the criminal justice system using these cases as examples.

### **INADEQUATE POLICE ACTION**

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According to Indian law, a trained female police officer must videotape the victim's testimony and record it in front of a judicial magistrate as soon as possible after a sexual assault or attempted sexual assault. The Criminal Penal Code was amended in 2013, making it mandatory for police officers to report sexual harassment or risk up to two years in prison. According to Human Rights Watch, the police don't always abide by these guidelines. They prevent the filing of a First Information Report (FIR), which is required to start a police investigation, particularly if the victim is a member of a community that is economically or socially disadvantaged. Even more so if the offender is a member of a powerful community, the police have been known to put pressure on the victim's family to "fix the case" or "compromise."

The definition of sexual offenses was increased by the Criminal Law (Amendment) Act of 2013 to include additional charges such as stalking and stalking. A 2014 study by the Commonwealth Human Rights Initiative in Delhi and Mumbai, however, reveals that such

crimes are infrequently reported to the police, and even when they are, the police are frequently implicated in such cases and fail to properly file an FIR or investigate these acts. Following a police complaint, several parents informed Human Rights Watch that they were worried for the safety of their children since the suspect had been granted free and had subsequently threatened the girls. Girls frequently place limitations on their outside activities voluntarily or have additional restrictions placed on them by their parents.

### **EFFECTS OF RAPE ON VICTIMS<sup>3</sup>**

#### **Physical effects**

Pre-eclampsia, a disorder in which high blood pressure in pregnancy comes with considerable levels of protein in the urine, can happen from rape and is more likely to occur in any pregnancy that arises from a chance meeting with a stranger. Women who experience both physical and sexual violence from intimate partners are much more likely to have sexually transmitted illnesses, according to research on women in shelters.

#### **Psychological effects**

However, many survivors may suffer from long-lasting psychological injury. The majority of rape survivors feel a strong psychological impact in the immediate aftermath of their assault. Immediately following their attack, victims of rape frequently experience panic and worry. Rape victims endure intense fear and anxiety following an assault. Some rape survivors make a lot of attempts to engage in sexual activity, sometimes even when they hadn't done so before the rape. Post-traumatic stress disorder affects a lot of rape survivors. According to one study, raped women had higher rates of depression than unraped women. The Beck Depression Inventory Test was used in the study to gauge participants' levels of depression, and it was found that 45% of the women evaluated were either moderately or seriously depressed. Rape survivors are more likely to commit or attempt suicide.

#### **Victims of social impact and abuse**

Following a sexual attack, victims are vetted and occasionally mistreated. The police check and interrogate the victims medically. Victims lose their right to privacy during a criminal prosecution, and their veracity could be questioned. Secondary harassment and victim blaming,

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<sup>3</sup> <https://www.joyfulheartfoundation.org/learn/sexual-assault-rape/effects-sexual-assault-and-rape>

such as slut-shaming and cyberbullying, are possible for sexual harassment victims. Rape is stigmatized more severely in societies with strict sexual and sex-related taboos and traditions. Someone who has been raped, particularly if they were virgins before, may be perceived as "damaged" by society. In these societies, victims could experience isolation, rejection from friends and family, refusal to get married, divorce, or even death. . The term "secondary hunting" refers to this behavior.

Pressure to marry early and prepare for marriage in some cultures results in secondary maltreatment. According to this division, a woman must prepare for marriage during her entire life and has failed as a woman if she is not married. Although society focuses on secondary harassment mostly towards women, male victims may also feel embarrassed or lose their sense of reason. The re-traumatization of a victim of sexual assault, abuse, or rape by people and institutions is known as secondary abuse. Secondary harassment can take different forms, such as victim blaming by professionals in the medical field or by other organizations, as well as inappropriate post-assault behavior or language that the victim interacts with.

## **SUGGESTION**

Justice for a rape victim is still a far cry as the victim has to face hardships. In 2014, the Ministry of Health and Family Welfare issued guidelines for medico-legal care for survivors of sexual violence, to standardize the screening of health professionals and the treatment of survivors of sexual assault. The guidelines explicitly rejected the use of serious "two-finger tests" as well as medical findings to further tarnish the victim's character to test whether the accuser had a sexual habit. However, since healthcare is a state affair under India's federal framework, state governments are not legally bound to adopt the 2014 guidelines. Human Rights Watch found that medical officials do not follow the guidelines even in the states where the guidelines are adopted.

- Firstly, there should be a proper check on whether the guidelines are being followed or not. Medical examination should be free of cost as it is not only medical for the victim but also for solid trial evidence.
- Secondly, it is often the case that the victim is excluded by those close to her and struggles through guilt, self-deprecation, and self-doubt. Rape survivors should be assisted by psychologists for treatment. A National Crime Records Bureau (NCRB) report shows that the overall rate of suicide deaths rose to 11.4 per 100,000 population



in 2010; The number of suicides has increased by 5.9% as compared to the previous year. One study shows that most suicides are committed by victims of sexual violence and assault.

- Third, effective legal aid will be provided to victims from poor and marginalized communities. Most of the cases go unreported due to the negligence of the police officers and the harshest punishment will be given to such police officers.
- Fourth, there should be periodic checks on the functioning of fast-track courts, aimed at ensuring speedy trial of rape cases, but they have no effect.
- Fifth, in most cases, family members, friends, and victims face retaliation for registering and reporting the crime of rape. A proper witness protection law should be enacted to protect the witnesses.
- Last but most importantly, priority should be given to 'sex education in schools. It plays an important role in shaping the psyche of a person.

These all things can help rape victims and decrease rape cases in India. It cannot be done by only a single person, we must start to help others to achieve this. We can make a rape-free India. Women can change the country and also change the world so protect women to protect India's future as well as your future because without women a man is nothing.

## CONCLUSION

Sohela Abdulla, a rape warrior, in her book, "What do we talk about when we talk about rape" effectively depicts the trauma and suffering faced by rape victims. This well-articulated book is a boon to society in helping them understand what it takes to be a woman dealing with the immense trauma offered by the crime of rape. Despite cases like the brutal Nirbhaya rape case (Delhi), Kathua rape case (J&K), Unnao rape case (Uttar Pradesh), etc. making headlines in our country, the decline in rape cases has been negligible. Sadly, even in times of pandemic, female patients are not safe even in hospitals, which are under the care of professionals as there have been several cases of rape against these caregivers. There are still many obstacles and challenges in the way of creating a safe place for the women of our country.

The courts and the legislature have to make many changes if it is about rape laws. There's no stopping. The courts need to understand the fact that this is an unreasonable Perpetrator - who sometimes harasses and abuses their victims - in small Children are also included, such short time imprisonment should not hurt or disturb anyone are going to do. Therefore, in the best



interest of justice and justice, these criminals should be punished for life. Should be punished with imprisonment. The law remains in place, but the number of victims (minor including) continues to destroy the souls of helpless women. Thus, the modification some important changes have been made in the existing rape laws in 1983, which are increasing as a response to the decision, there are demands for more stringent anti-rape laws.

