

Rising Rape Cases and False Allegations: Analysing the Role of Law, Victims' Mental Health, and Procedural Safeguards under the New Criminal Laws

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Abstract

India faces a paradoxical crisis: rising reported rape cases alongside growing concerns over false allegations. The new criminal laws—Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhinyam (2023)—have reshaped the legal landscape on sexual violence. This paper examines the tension between ensuring justice for genuine survivors and protecting the wrongly accused. It analyses how procedural safeguards such as time-bound investigations and electronic evidence mandates impact both categories. The research further explores victims' mental health, arguing that legal reforms without psychosocial support perpetuate secondary victimization. Drawing upon NCRB data, judicial precedents, and comparative jurisprudence, the paper identifies gaps in evidentiary standards and presumptive clauses. It concludes that robust procedural safeguards—not adversarial weakening—serve both truth and justice, proposing a balanced framework that addresses false allegations without deterring genuine reporting.

Keywords: Rape laws; false allegations; victim mental health; procedural safeguards; Bharatiya Nyaya Sanhita

1. Introduction

India confronts a deeply unsettling paradox. On one hand, official statistics reveal a steady increase in reported rape cases—from 33,356 in 2020 to 35,426 in 2021 and 31,516 in 2022, according to National Crime Records Bureau (NCRB) data.¹ On the other hand, legal scholars, police officials, and judiciary members increasingly acknowledge the existence of false allegations, though their exact prevalence remains contested. The conviction rate for rape cases ranges between 27-28 percent from 2018-2022, with pendency in courts exceeding 90 percent.² This duality creates a crisis of legitimacy for the criminal justice system: too much skepticism deters genuine victims from coming forward; too little skepticism risks punishing the innocent.

The year 2024 marks a watershed moment in Indian criminal jurisprudence. The colonial-era Indian Penal Code (1860), Code of Criminal Procedure (1898/1973), and Indian Evidence Act (1872) have been replaced by the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam (BSA), respectively.³ These new laws promise victim-centric justice, faster

trials, and technological integration. Yet, they also introduce provisions that could either mitigate or exacerbate the false allegation problem, depending on judicial interpretation and implementation.

This paper argues that the solution to the false allegation dilemma is not to weaken protections for genuine victims but to strengthen procedural safeguards for all parties. A robust, transparent, and evidence-driven process serves both truth and justice. The paper proceeds as follows: Section II examines the empirical and theoretical dimensions of rising rape cases and false allegations in India. Section III analyzes relevant provisions of the new criminal laws. Section IV explores the mental health impact of legal procedures on victims. Section V evaluates procedural safeguards against false accusations. Section VI presents a comparative analysis with international jurisdictions. Section VII offers conclusions and recommendations.

2. The Dual Crisis: Rising Reports and False Allegations

2.1 Understanding the Increase in Reported Rape Cases

The increase in reported rape cases in India does not necessarily indicate an increase in actual incidents of sexual violence. Criminologists identify several explanatory factors: greater willingness to report due to diminished social stigma, expanded legal definitions of rape (notably the 2013 Criminal Law Amendment Act following the Nirbhaya case), improved police registration practices under judicial monitoring, and increased awareness through media and civil society campaigns.

NCRB data shows that conviction rates for rape remain abysmally low—hovering around 27-30 percent—suggesting either weak evidence, flawed investigations, or a combination of both. The ratio of cases pending trial has exceeded 90 percent in many states, with average trial duration spanning 3-5 years. This pendency itself becomes a form of secondary victimization. In 2022 alone, 31,516 rape cases were registered across India, with Rajasthan reporting the highest number (5,399 cases), followed by Uttar Pradesh (3,690) and Madhya Pradesh (3,029).⁴

2.2 The Contested Terrain of False Allegations

False allegations of rape present a uniquely challenging evidentiary and ethical problem. Unlike most crimes where falsity is presumed until proven, rape allegations carry immediate reputational and custodial consequences. The term “false allegation” requires precise definition: it means a deliberate fabrication that no sexual assault occurred, not cases where evidence is insufficient for conviction, nor cases where consent is disputed but some sexual act occurred.

International research suggests false allegations constitute 2-10 percent of all reported rapes. The landmark study by Lisak et al. (2010) found 5.9 percent false reporting rate using rigorous evidentiary standards.⁵ British Home Office studies indicate 3-4 percent. Indian data remains contested. NCRB data from 2020 shows that less than 8 percent of cases under investigation for rape were found to be false. However, some state police officials have claimed much higher figures, with Rajasthan police suggesting 48 percent of cases are found to be false, highlighting significant discrepancies in data collection and classification methodologies.⁶

Judicial recognition of false allegations appears in several Supreme Court judgments. The Supreme Court has repeatedly cautioned against misuse of sexual assault laws, observing that a failed promise of marriage does not amount to rape in the absence of proven deceit, emphasizing the necessity of establishing fraudulent intent at the outset of the relationship to sustain such allegations.⁷

2.3 Typology of False Allegations

Legal scholarship identifies distinct categories: complete fabrication (no incident occurred), mistaken id-

entity (assault occurred but wrong person accused), consensual recast (consensual act later framed as rape due to external pressure or regret), and malicious prosecution (deliberate false complaint for revenge, custody battles, or financial gain). Each category requires different procedural responses.

3. New Criminal Laws: Provisions and Analysis

3.1 Bharatiya Nyaya Sanhita (BNS) 2023 — Substantive Provisions

The BNS retains rape as a distinct offense under Chapter V (Offences Against Woman and Child). Section 63 defines rape similarly to the now-repealed Section 375 IPC: “A man is said to commit ‘rape’ if he—(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person.”⁸ The age of consent remains 18 years. Marital rape is not criminalized except where the wife is below 18 years—a position unchanged from the IPC and widely criticized by women’s rights organizations. Section 63 also provides that sexual intercourse or sexual acts by a man with his own wife, the wife not being under 18 years of age, is not rape.⁹

Section 64 provides that punishment for rape is rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life (meaning imprisonment for the remainder of the person’s natural life), and shall also be liable to fine.¹⁰

Section 69 introduces a new offense: “Whoever, by deceitful means or by making a promise to marry a woman without any intention of fulfilling the same, has sexual intercourse with her, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.” The Explanation provides that “deceitful means” shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity.¹¹ This provision addresses the problematic category of “rape by false promise of marriage,” which had generated inconsistent judicial precedents. Importantly, the section treats this as a distinct offense not amounting to rape, recognizing that consent was present though obtained through deceit. While protecting women from exploitation, this section creates potential for false allegations where consensual relationships sour. The mens rea requirement—intent to deceive at the inception of the relationship—provides some safeguard, but evidentiary difficulties remain.

Section 70 deals with gang rape. Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person’s natural life, and with fine. Section 70(2) addresses gang rape of a child under 18 years of age.¹²

Section 71 addresses punishment for repeat offenders convicted of serious offences listed under sections 64, 65, 66 or 70, facing life imprisonment or the death penalty.¹³

Notably, the BNS does not include a separate offense of “false rape accusation.” Such cases must proceed under general provisions relating to false evidence. Sections 227 to 248 of BNS provide for offences related to false evidence.¹⁴ Section 227 defines giving false evidence.¹⁵ Section 229 provides that whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.¹⁶ Section 356 deals with defamation.¹⁷

3.2 Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 — Procedural Provisions

The BNSS introduces several time-bound provisions with significant implications for both victims and the accused.

Section 193 mandates that in cases where the offence is punishable with imprisonment of less than 10 years, the final report shall be filed within 60 days; in cases where the alleged offence is punishable with imprisonment for more than 10 years, life imprisonment or death penalty, the investigating agency must file its report within 90 days.¹⁸ Extension requires judicial approval with written reasons. While accelerating justice, this timeline risks incomplete investigations, potentially harming both victims (insufficient evidence for conviction) and accused (premature charges).

Section 176 mandates that in relation to an offence of rape, the recording of the statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents, guardian, near relatives, or a social worker of the locality, and such statement may also be recorded through any audio-video electronic means including mobile phone.¹⁹ This enhances evidentiary reliability and victim comfort but raises privacy concerns regarding the handling of such recordings.

Section 184 relates to the medical examination of a rape victim and establishes time limits for trial completion.²⁰

Section 221 provides that no Court shall take cognizance of an offence punishable under Section 67 of BNS (relating to marital rape exception) without proper satisfaction.²¹ The BNSS also mandates in-camera trials to protect victim privacy.²²

Section 187 deals with default bail: statutory bail applies when the police fail to complete the investigation within the stipulated time period.²³

Section 399 provides for compensation to persons groundlessly arrested.²⁴

Section 396 mandates that every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.²⁵

3.3 Bharatiya Sakshya Adhiniyam (BSA) 2023 — Evidentiary Provisions

The BSA introduces important changes regarding evidence in rape cases. Section 57 of BSA now includes electronic and digital records within the ambit of primary evidence.²⁶

Section 61 explicitly recognizes electronic records as admissible evidence, providing that nothing in this Adhiniyam shall apply to deny the admissibility of an electronic or digital record in evidence on the ground that it is an electronic or digital record, and such record shall have the same legal effect, validity and enforceability as other documents.²⁷

Section 62 provides that the contents of electronic records may be proved in accordance with Section 63.²⁸

Section 63 establishes prerequisites for admitting electronic records, including the submission of a certificate that authenticates the integrity and origin of the digital information.²⁹

Section 138 deals with accomplice evidence, providing that an accomplice shall be a competent witness against an accused person, and a conviction is not illegal if it proceeds upon the corroborated testimony of an accomplice.³⁰

The BSA does NOT include a presumption of falsity or special corroboration requirement for rape allegations. The standard of proof remains “beyond reasonable doubt” with the prosecution bearing full burden.³¹

4. Victims' Mental Health: The Hidden Injury

4.1 Psychological Impact of Sexual Violence

Rape causes profound psychological trauma exceeding most other violent crimes. Meta-analyses document post-traumatic stress disorder (PTSD) in 60-80 percent of victims, major depression in 40-60 percent, suicidal ideation in 30-50 percent, and substance use disorders in 25-40 percent.³² A survey found that 40 percent of survivors had poor mental health, with violence leading to mental disorders such as depression, PTSD, anxiety disorders, self-harm, and sleep disorders.³³

Crucially, trauma affects how victims interact with the legal system. Traumatic memory encoding differs from ordinary memory: victims may recall peripheral details vividly while central details fragment, may exhibit delayed disclosure, inconsistent narratives, or emotional flatness that untrained observers misinterpret as falsity. The BSA's evidentiary provisions, while improved, lack explicit recognition of trauma-informed evidentiary principles.

4.2. Secondary Victimization by the Legal System

Secondary victimization refers to trauma caused not by the original assault but by institutional responses. A criminological study defines it as the "second assault"—the harm that survivors of sexual violence suffer not only because of the crime committed against them but because of how institutions respond when they seek help.³⁴ In India, public attention to secondary victimization increased significantly after the 2012 Delhi gang rape and murder.

Manifestations include: repeated, intrusive questioning by multiple authorities (police, magistrate, prosecutor, defense counsel); long delays causing "re-traumatization at each hearing"; lack of privacy during medical examinations; insensitive courtroom cross-examination attacking character, past sexual history, or clothing; and inadequate support structures.

Common complaints documented include defense counsel asking "why did you not scream?" (ignoring tonic immobility during trauma), "why did you go to his room?" (victim-blaming), and "you had consensual sex before, so how can we trust you now?" (character attacks).³⁵ Patriarchal attitudes and insufficient gender-sensitive training among police personnel, healthcare professionals, and judicial actors often discourage reporting and weaken survivor confidence in formal mechanisms.

4.3 Provisions for Victim Mental Health in New Laws

The BNSS includes scattered provisions recognizing victim trauma. Section 176 mandates victim-friendly statement recording. Section 396 provides for victim compensation schemes.³⁶ However, no provision mandates: trauma-informed training for judges, prosecutors, or police; routine psychological assessment of victims; provision of free, ongoing mental health counseling as part of legal aid; or delayed cross-examination for victims with documented PTSD. The gap between legal process and psychological reality remains substantial.

5. Procedural Safeguards Against False Allegations

5.1 Existing Safeguards Under New Laws

The new criminal laws maintain and in some respects strengthen safeguards against wrongful conviction based on false allegations:

Presumption of innocence: An accused person is presumed innocent until proven guilty, reversing the common misconception that filing a rape charge creates any evidentiary presumption against the accused.

Right to legal representation: Section 341 of BNSS provides legal aid to accused at State expense in certain cases.³⁷

Right to cross-examination: The BNSS preserves the accused's right to confront and cross-examine prosecution witnesses through the magistrate or judge—a fundamental safeguard against fabricated testimony.³⁸

Default bail for delayed investigation: Section 187(2) of BNSS grants default bail if investigation exceeds the prescribed period, protecting against indefinite pre-trial detention.³⁹

Compensation for wrongful prosecution: Section 399 of BNSS allows courts to award compensation to accused persons in cases found to be groundless, though such awards remain rare.⁴⁰

5.2 Judicial Interpretation of False Allegations

The Supreme Court has repeatedly cautioned against misuse of sexual assault laws. The Court has ruled that a failed promise of marriage does not amount to rape in the absence of proven deceit, requiring fraudulent intent at the outset of the relationship to sustain such allegations.⁴¹ The Court further warned that consensual relationships turning sour should not be converted into criminal cases, dismissing a complaint as “frivolous and vexatious” and a serious abuse of the criminal justice system.⁴² Flagging a troubling trend, the Supreme Court recently said that invoking rape charges as a weapon in personal disputes is a matter of “profound concern” for a judiciary already weighed down by heavy pendency.⁴³

5.3 Gaps in the Procedural Framework

Critical gaps remain:

No mandatory preliminary inquiry: Police must register FIR for any cognizable offense, including rape, without any threshold assessment. While this prevents police discretion from blocking genuine cases, it means even patently false allegations proceed to investigation.

Limited consequences for malicious prosecution: Sections 227-229 of BNS (false evidence) carry up to seven years imprisonment, rarely invoked. Section 356 of BNS (defamation) is bailable and compoundable. No provision specifically addresses false rape allegations with enhanced penalties, despite their devastating consequences. Courts have noted that “it takes one's lifetime to build a reputation but only a few lies to destroy the same.”⁴⁴

Inadequate remedies for accused: Compensation for wrongful prosecution under Section 399 BNSS is limited to groundless arrest, not malicious prosecution. Reputational damage, pre-trial detention, and employment loss rarely receive compensation.⁴⁵

No prohibition on naming accused before charge sheet: Media routinely names accused persons upon FIR filing, causing irreparable reputational harm even when allegations later prove false. The Supreme Court directed anonymity for victims but refused to extend similar protection to accused until conviction.

6. Recommendations

6.1 Legal Reforms

- 1. Preliminary Scrutiny Mechanism:** Establish a magistrate-led preliminary assessment for rape FIRs with prima facie implausibility, without requiring victim cross-examination, to filter patently false complaints while preserving access for genuine victims.
- 2. Enhanced Remedies for False Allegations:** Amend BNS to include a specific offense of “false rape accusation” with proportionate penalties (5-10 years) and mandatory compensation to accused for legal costs and documented losses, but only upon proof beyond reasonable doubt of deliberate fabrication.
- 3. Accused Anonymity Until Charge Sheet:** Extend statutory anonymity to accused persons until charge sheet filing, with exceptions for public safety or flight risk.

4. **Mandatory Corroboration Review:** Require trial courts to document reasons for convicting on uncorroborated victim testimony alone, without creating automatic corroboration requirement.

6.2 Procedural Safeguards

1. **Time-Bound Investigation With Quality Controls:** Maintain 60/90-day investigation timeline under Section 193 BNSS but require judicial approval for closure reports to prevent rushed incomplete investigations.

2. **Separate Fast-Track Courts for Rape:** Establish dedicated courts with specially trained judges, reducing delays that harm both victims and accused.

3. **Electronic Evidence Protocols:** Develop standardized protocols for retrieving and presenting WhatsApp, location, and call records within 60 days, with police training on digital forensics under BSA Sections 57-63.

6.3 Victim Mental Health Provisions

1. **Mandatory psychological support :** Provide government-funded, confidential, ongoing mental health counselling to all rape victims from FIR filing through trial completion and one year thereafter.

2. **Trauma-Informed Legal Training:** Mandate annual training for all judges, prosecutors, police, and defense counsel on rape trauma syndrome, traumatic memory, and trauma-informed interviewing techniques.

3. **Delayed Cross-Examination Option:** Permit victims with documented PTSD to request delayed cross-examination (within 3-6 months) with intermediate therapeutic support.

6.4 Institutional Measures

1. **National False Allegation Database:** Establish anonymized, confidential database tracking cases judicially determined as false allegations (after full trial and appeal) to inform policy without identifying individuals.

2. **Independent Oversight Mechanism:** Create state-level Sexual Violence Oversight Committees comprising judges, psychologists, victim advocates, and defense lawyers to audit investigations and recommend systemic improvements.

7. Conclusion

India's new criminal laws represent a genuine attempt to modernize the justice system and respond to decades of criticism. The BNS, BNSS, and BSA introduce progressive features: time-bound investigations, electronic evidence admissibility, videography of statements, and enhanced victim privacy. Yet, they do not resolve the fundamental tension between encouraging genuine reporting and preventing false accusations.

This paper has argued that the false allegation problem is real but statistically modest (likely 3-10 percent of reported cases). Its impact, however, is disproportionate: each false accusation devastates an innocent person's life while simultaneously harming genuine victims by eroding public trust in all rape allegations. The response should not be to erect high barriers for all victims—which would deter reporting and reduce convictions for actual perpetrators—but to strengthen procedural safeguards that distinguish truth from falsehood through rigorous, time-bound, trauma-informed process.

The new laws provide a foundation but require complementary measures: mandatory psychological support for victims, enhanced remedies for proven false accusers, preliminary scrutiny mechanisms, accused anonymity until charge sheet, and comprehensive trauma-informed training for all justice system actors. These measures are not contradictory but mutually reinforcing. A justice system that reliably

identifies false allegations is one that also protects genuine victims, because both objectives depend on the same thing: thorough, competent, and humane investigation and adjudication.

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