

Victim's Testimony in Rape Trials: Corroboration Vs Sole Reliance

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Abstract

Crimes against women, particularly those violating their bodily autonomy and sense of safety, have long plagued societies worldwide. While the specific forms and impacts of these crimes have shifted over time, their devastating consequences remain. This paper delves into the complex phenomenon of Victim's testimony in rape trials across India. It is well known that, the evidentiary value of a victim's testimony in rape trials remains a contentious issue within criminal jurisprudence. Traditionally, courts have approached such testimony with caution, often demanding corroborative evidence to substantiate the victim's claims. However, this requirement has faced criticism for imposing an undue burden on survivors and potentially hindering access to justice. On the other hand, sole reliance on the testimony of the victim raises concerns regarding the rights of the accused and the risk of wrongful convictions. This research critically explores the legal and ethical dimensions of relying on victim testimony in rape cases, analysing how different jurisdictions address the tension between corroboration and sole reliance. It investigates judicial trends, legislative frameworks, and societal perceptions that influence the treatment of victim statements. The study further examines the impact of these evidentiary standards on the delivery of justice, the protection of due process, and the broader implications for sexual violence jurisprudence.

Keywords: Victim's testimony, Rape trials, Corroboration, Sexual violence law.

Chapter- 1

General introduction

1.1 Introduction to Project Topic:

Rape is not just an attack on the body but an attack on the soul of the victim. It is a horrible crime that violates a person's bodily autonomy, dignity and plagues society all over the world. According to the 2021 annual report of the National Crime Records Bureau (NCRB), 31,677 rape cases were registered across the country, and it is the fourth most common crime against women in India.

The crime of rape is usually committed in an isolated place and thus, it raises peculiar evidentiary problems. Rarely do rapists leave behind anything which would substantiate the testimony of the women they attack. The nature of the crime is such that eyewitnesses are seldom available. Consequently, the prosecution of the crime often results in a deadlock between the uncorroborated accusation of the female complainant and the insistent denial of the alleged ravisher. When such a deadlock occurs in other criminal prosecutions, the presumption of the defendant's innocence assures acquittal. But in rape cases, normal operation of that presumption is seriously impaired. The victim's statement is hence significant, and considerable weight is placed on it. But many a times, the victim finds it difficult to prove herself

and establish the credibility of her statement in a court of law. One of the reasons behind the difficulty is the increasing number of fake rape cases across the nation.¹

Hon'ble Supreme Court has also different opinions on this matter. There have been certain instances where it has been stated that the victim's testimony in rape trials is enough to convict the accused. In some instances, it has been stated that the victim's account can only be used for corroborating evidence necessary for a conviction. The pertinent question here is whether a rape accused can be convicted solely, based on the statement of the victim, recorded under section 183 of Bharatiya Nyaya Suraksha Sanhita {BNSS} (previously dealt under Section 164 of Code of Criminal Procedure {Cr.P.C} or corroboration of other relevant evidence is required.

¹ Victim's testimony in rape trials, available at: <https://articles.manupatra.com/article-details/Conviction-in-Rape-Cases-The-Significance-of-Victims-Statements-recorded-under-Section-164-CrPC>, accessed on 10th March, 2025,

Prosecutions for rape require a critical evaluation of the complaining witness's credibility. The accusation is "easily to be made and hard to be proved, and harder to be defended" the penalties are severe and judge and jury are often sympathetic towards the prosecutrix and prejudiced against the defendant. To avoid unjust convictions, many states have adopted a rule that a rape conviction cannot be sustained solely upon the testimony of the complaining witness without some extrinsic corroborating evidence. Whether the corroboration requirement applies to a prosecutrix's allegation of other offenses committed by the rapist in the process of his attack has presented the courts with serious conceptual problems.

Medical evidence is the most commonly sought mode of corroboration and can be used to contradict the complainant's own testimony. The corresponding rule of resistance in turn guides how the rule of corroboration takes on a scientific character, whereby injuries in specific parts of the complainant's body are sought by doctors and judges as corroborative "signs of rape". If no "signs of rape" are found, this observation is then noted in the medical report and used to discredit the testimony of a rape complainant, by indicating that either the sexual intercourse was consensual or the rape accusation is false.²

1.2 Statement of Problem:

Rape is a deeply traumatic crime that not only affects victims physically and emotionally, but also subjects them to rigorous scrutiny within the legal system. One of the most debated issues in rape trials is the evidentiary value of the victim's testimony—should it be sufficient on its own to secure a conviction, or must it be corroborated with additional evidence? While some legal systems accept a victim's testimony as sufficient if it is credible and consistent, others require independent corroboration, reflecting concerns over potential misuse, false accusations, or the high burden of proof in criminal trials.

² Medical evidences in rape cases, available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC9341365/>, accessed on 10th March, 2025.

his divergence raises critical legal and ethical questions: Does requiring corroboration unjustly burden the victim and hinder justice? Or does sole reliance on testimony risk wrongful convictions? Moreover,

inconsistencies in judicial interpretations, societal biases, and the treatment of victims in court further complicate the issue. This research seeks to explore the balance between protecting the rights of the accused and ensuring justice for the victim, examining whether the current legal standards effectively serve this balance.

1.3 Research Methodology:

The research methodology used in this study is the doctrinal approach, relying primarily on the analysis of statutes, judicial decisions, academic commentaries, and legal doctrines relevant to the admissibility and evaluation of victim testimony in rape trials. Secondary sources such as law review articles, books, commission reports, and scholarly opinions have been extensively consulted to gain insights into theoretical and practical debates. Case law analysis forms a central component of this research, focusing on landmark judgments and precedent-setting decisions that have shaped the evidentiary standards in rape trials.

Where applicable, international human rights instruments and guidelines from organizations such as the United Nations and the World Health Organization have been referred to for a broader understanding of victim-centric justice and fair trial rights.

While the research incorporates a wide range of scholarly views and legal materials, effort has been made to synthesize and evaluate them critically to arrive at balanced conclusions. The methodology aims to provide a comprehensive and well-reasoned examination of the issue rather than claim originality of all arguments presented.

Chapter- 2

Evolution of Rape Laws in India

2.1 A timeline of rape laws:

Rape is recognized as one of the most atrocious crimes, yet defining it as an infringement of women's bodily integrity and sexual autonomy has been a prolonged battle. Historically, women were devoid of rights and considered property, thus rape was only seen as a violation of a man's property. As times changed, so did cultural beliefs, leading to a pivotal shift in the definition of rape. Indian rape legislation has its roots in English common law, with the first anti-rape statutes appearing in the IPC in 1860. However, the 17th-century jurist "**Sir Matthew Hale's remarks about rape being a charge —easily to be made and hard to be proved**" reflect the biased stance of colonial courts against victims. This bias led trial courts to focus more on the victim's credibility, often influenced by her past sexual history or virginity, rather than the accused's guilt. Over time, anti-rape laws have been fortified due to several heinous incidents, prompting major legal reforms. The Women's Movement played a crucial role in driving this change, leading to heightened societal awareness and a shift in attitudes. This paper examines landmark cases such as the Mathura, Delhi, Unnao, and Kathua rape cases, which resulted in significant amendments to criminal laws in 1983, 2013, and 2018. It also reviews the Justice Verma Committee's recommendations for anti-rape law reforms, post the Delhi rape case.³

JUSTICE VERMA COMMITTEE REPORT was a response to the widespread protests and public outcry following the Nirbhaya incident, prompting the government to form a committee led by Justice J.S. Verma to propose changes to criminal law, particularly concerning sexual offenses. The committee's key recommendations included abolishing the marital rape exemption, emphasizing that the relationship between the accused and the complainant should not influence the consent inquiry. It also critiqued the Sexual Harassment of Women at Workplace Bill's Internal Complaints Committees and

proposed an employment tribunal instead. Regarding punishment for rape, the committee suggested a graded approach, recognizing that some survivors, with societal support, could recover and lead normal lives, thus not all cases warrant the death penalty.

³ Rape laws in India, available at: <https://articles.manupatra.com/article-details/An-Extensive-study-of-Rape-Laws-in-India>, accessed on 11th March, 2025.

It cited the Working Group on Human Rights findings that the murder rate in India has fallen despite fewer executions, arguing that the death penalty might not deter rape. The committee recommended life imprisonment instead. Additionally, the committee proposed adding offenses like Voyeurism, Stalking, and Intentional Touching to the Penal Code which is still embedded in the BNS.

It condemned the —two-finger test used in medical examinations of rape victims, stating it has no relevance to sexual assault cases and forbade making character judgments based on it. The committee also underscored the importance of gender equality and drafted a separate Bill of Rights for women, affirming their right to respect, integrity, and security, and prohibiting all forms of violence and degrading treatment against women.

THE CRIMINAL LAW AMENDMENT ACT OF 2013 was enacted following the Justice Verma Committee's recommendations, bringing significant revisions to the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC), and the Indian Evidence Act. Key changes included a broader definition of rape beyond penal-vaginal intercourse, recognizing any form of non-consensual bodily penetration as rape under Section 375 of the IPC. Consent was clearly defined as an unequivocal voluntary agreement, and the age of consent was increased to 18 years. The Act also expanded the scope of aggravated rape under Section 376(2) and introduced new provisions for cases resulting in the victim's death or a vegetative state, with punishments ranging from twenty years to life imprisonment or the death penalty. It criminalized sexual intercourse by a husband with his wife during separation and addressed sexual abuse by persons in positions of authority. While the amendment marked a historic move to combat violence against women, it faced criticism for not adopting all the Justice Verma Committee's suggestions, such as gender-neutral rape laws, barring politicians charged with sexual offenses from elections, and recognizing marital rape as a crime.

The CRIMINAL AMENDMENT ACT OF 2018 introduced several key revisions to the laws related to sexual offenses in India. It amended the Indian Penal Code, the Indian Evidence Act, the Code of Criminal Procedure, and the Protection of Children from Sexual Offences Act. The amendments included changes to IPC sections 166A, 228A, and 376, and added new sections 376AB, 376DA, and 376DB. The revised Section 376 increased the minimum punishment for rape to ten years, potentially extending to life imprisonment, along with fines.

A new subsection was created to specifically address the rape of girls under sixteen, mandating a minimum of twenty years rigorous imprisonment, extendable to life imprisonment, with fines. Section 376AB was introduced to deal with cases involving girls under twelve, prescribing a minimum of twenty years rigorous imprisonment or the death penalty.

For gang rape, Section 376DA was added, stipulating life imprisonment and fines for each perpetrator if the victim is under sixteen. Similarly, Section 376DB addresses gang rape of girls under twelve, with the same punishments. These amendments aimed to strengthen the legal framework against sexual violence,

reflecting a more stringent stance on such crimes.⁴

2.2 Rights of Rape Victims:

Rape survivors have specific rights designed to provide protection and support. These include:

1. Right to Zero FIR: Survivors of rape have the right to lodge a Zero FIR, which permits them to file a police report at any station, regardless of the location or jurisdiction of the incident. Once the FIR is filed, it is transferred to the jurisdiction where the incident took place. The provision of Zero FIR is designed to expedite the delivery of justice for victims and prevent the dismissal or postponement of their complaints due to jurisdictional boundaries. This ensures that survivors can initiate the legal proceedings swiftly and seek redress. The Zero FIR provision is particularly vital in cases of sexual assault and other offenses against women. It addresses the reluctance of victims to approach the local police station for fear of backlash or societal judgment. With the ability to file a complaint at any station, survivors are reassured that their cases will be taken seriously and that the legal process will commence without delay. This measure is crucial in providing prompt justice to crime victims, especially those affected by sexual violence or related offenses against women. This was established following the Nirbhaya case.⁵

⁴ Criminal Law Amendment Bill, available at: [https://prsindia.org/billtrack/the-criminal-law-amendment-bill-](https://prsindia.org/billtrack/the-criminal-law-amendment-bill-2018#:~:text=The%20Bill%20amends%20the%20IPC,to%20life%20imprisonment%20or%20death,)

[2018#:~:text=The%20Bill%20amends%20the%20IPC,to%20life%20imprisonment%20or%20death,](https://prsindia.org/billtrack/the-criminal-law-amendment-bill-2018#:~:text=The%20Bill%20amends%20the%20IPC,to%20life%20imprisonment%20or%20death,) accessed on 11th March, 2025.

⁵ Rights of rape victims, available at: <https://lawbhoomi.com/important-rights-of-the-rape-victims/>, accessed on 11th March, 2025.

2. Right to Free Medical Treatment: As per Section 397 of the Bharatiya Nagarik Suraksha Sanhita, 2023, hospitals cannot charge for treating rape survivors. Immediate and free first aid must be provided, and failure to do so can result in punishment under Section 200 of the Bharatiya Nyaya Sanhita, 2023. The National Legal Services Authority (NALSA) provides free legal services to rape victims who cannot pay for their private legal defence. NALSA provides legal advice and assistance during the investigation, trial, and appeals process. Rape victims also have access to specially trained women police officers, an independent judiciary, and protection from social stigmatization, all of which can provide invaluable support during and after the legal process.

3. Prohibition of the Two-Finger Test: The two-finger test during medical examinations is illegal, as it violates the survivor's right to privacy and dignity. Doctors are to check for injuries and signs of sexual assault but cannot inquire about the survivor's sexual history.

4. Forensic Medical Examination: Health guidelines mandate the use of a medico-legal kit for DNA collection. The examination report should include the survivor's name, address, age, description of collected material, injury marks, mental condition, and other relevant details. Consent is required for all examinations, and the two-finger test is prohibited.

5. Harassment-Free Police Investigation: Statements should be recorded by a female police officer at a time and place convenient for the survivor. If the survivor is unable to communicate verbally, assistance is provided to understand their signs.

6. Dignified and Speedy Trial: Trials should be conducted by courts with female judges when possible, and the survivor's character cannot be questioned. Questions about the survivor's sexual

history are deemed irrelevant, and trials are conducted in-camera to protect privacy.

7. Right to privacy: The right to privacy is crucial for rape survivors as it safeguards their dignity and self-determination. The trauma of rape can lead to feelings of shame, guilt, or fear of societal judgment and retribution, which may discourage survivors from reporting the offense or pursuing justice. Privacy rights are essential in creating a safe environment for survivors to come forward. Privacy for rape survivors encompasses the ability to manage the release of their identity and personal details, as well as the control over the spread of information regarding the incident.

Media disclosures of survivor identities or sensationalizing crime specifics can exacerbate the survivor's trauma and hinder others from reporting. Upholding privacy rights ensures the protection of personal details and crime-related information. Furthermore, privacy rights include the survivor's control over the release of medical records, examination details, and other sensitive data linked to the incident. Survivors often undergo medical and forensic examinations and counselling, which can be intrusive. Ensuring privacy rights means these processes are carried out with the survivor's agreement and in a respectful manner, honouring their dignity and independence.⁶

2.3 Special legislation regarding sexual offences against children:

The Protection of Children from Sexual Offences (POCSO) Act:

It was established in 2012 by the Ministry of Women & Child Development, as a legal framework aimed at safeguarding children from sexual abuse, exploitation, and exposure to pornography. Enhanced in 2019, the Act's amendments increased penalties for offenses to bolster the safety and dignity of children.

Key aspects of the POCSO Act include:

- **Gender Neutrality:** The Act applies equally to all children below the age of 18 years, prioritizing their best interests and welfare to foster their holistic development.
- **Comprehensive Definitions:** It categorizes sexual abuse to include both penetrative and non-penetrative acts, as well as sexual harassment and the production and distribution of child pornography.
- **Aggravated Circumstances:** The Act specifies that sexual assault is considered aggravated when the child is mentally ill or when the perpetrator is in a position of trust or authority, such as a family member, police officer, teacher, or doctor.
- **Punishment for Trafficking:** Individuals trafficking children for sexual purposes face severe penalties under the Act's abetment provisions.
- **Child Pornography:** The Act defines child pornography as any visual representation of a child engaged in explicit sexual conduct, including photos, videos, and digital or computer-generated imagery that resembles a real child. This legislation is a critical component of India's commitment to protecting the rights and well-being of children.

⁶ Rights available to victims of rape, available at: <https://www.drishtijudiciary.com/blog/empowering-justice-legal-right-and-protection-for-rape-survivors>, accessed on 11th March, 2025.

Chapter- 3

The legal anatomy of Rape

3.1 Definition of Rape:⁷

Chapter V of the Bharatiya Nyaya Sanhita {BNS} deals with “Offences against woman and child” and under section 63 it states what constitutes Rape. A brief reading of Section 63 of the BNS reveals that it is a gender-specific provision for the protection of women, as it is believed that rape can only be committed against a woman. The Section is split into two parts. Clauses (a) to (d) in the first part of the Section merely state what acts undertaken by a man with a woman would constitute rape if they were committed in any of the seven situations specified in the second part of the provision.

Under Section 63, a man is said to commit “rape” if he:

- Penetrates his penis into a woman’s vagina, mouth, urethra, or anus to any amount, or makes her to do so with him or any other person; or
- Inserts any object or portion of the body, other than the penis, into the vagina, urethra, anus, or any other part of her body, or makes her to do so with him or another person; or
- Manipulates any part of a woman’s body to produce penetration into the vagina, urethra, anus, or any other part of her body, or makes her to do so with him or anybody else; or
- Applies his mouth to the vagina, anus, or urethra, or makes her to do so with him or another person, or
- Any of the seven clauses laid down under the said section. The provision is embraced with seven clauses that majorly lays down circumstances that if takes place, can be quoted to be amounting to the offence of rape. The same has been discussed hereunder.

First clause: AGAINST HER WILL

If a male has sexual intercourse with a woman against her will, it is rape according to the first clause, unless it falls under one of the exceptions listed in the section.

⁷ Section 63 of the Bharatiya Nyaya Sanhita, 2023.

In Deelip Singh vs. State of Bihar,⁸

According to the prosecutrix, the initial illegal conduct was carried out despite her opposition, but she later became a consenting participant as a result of frequent promises of marriage. She revealed in the FIR that she succumbed to him even before the first act because of the marriage promises. The Apex Court decided that her version was untrustworthy and that the charge against the accused was unfounded.

Second clause: WITHOUT HER CONSENT

If a male engages in sexual activity with a woman without her consent, it constitutes rape under the second clause if it does not fall within the exceptions set out in the Section. It should be noted that if the girl claims she did not consent to the rape while in custody, the court will assume she did not consent, as has been held in the case of **Sohan Singh vs. State of Rajasthan.**⁹

Third and fourth clauses: PASSIVE NON-RESISTANCE OR CONSENT OBTAINED BY FRAUD

As per the third clause, when a woman’s assent is secured by putting her or anybody she cares about in fear of death or harm, although the act is done with her permission, the same amounts to rape. If a girl does not object to intercourse because she is misled, this does not constitute consent on her part. In one the case, it was held that a medical man who was sent for professional guidance of a fourteen-year-old girl had a criminal relationship with her, and she made no resistance because she believed he was treating her medically, was guilty of rape. The prosecutrix’s submitting her body out of dread or anxiety

cannot be considered a consenting sexual act. In the case of,

⁸ AIR 2005 SC 203

⁹ 1998 CRILJ 2618

State of Himachal Pradesh vs. Mange Ram¹⁰

The Supreme Court stated that the fact of consent may only be determined after a thorough examination of all relevant circumstances.

Clause 4 concerns a rapist who is aware that he is not his victim's spouse, and that her consent is granted because she believes he is another man to whom she is or believes she is lawfully married.

In the case of, **Reg vs. R,¹¹**

A wife left the matrimonial house and returned to live with her parents due to marital issues, advising the husband of her intention to file for divorce. While the wife was staying with her parents, the husband forced his way in and attempted to have sexual relations with her, during which he assaulted her. His attempted rape and assault causing actual bodily injury and his conviction were upheld.

Fifth clause: SEXUAL INTERCOURSE WITH INSANE OR DRUNKEN PERSON

As per the fifth clause of Section 63, the acts done with the victim's consent when she is unable to appreciate the nature and consequences of that to which she consents due to unsoundness of mind or intoxication, or the administration by the accused directly or through another of any stupefying or unwholesome substance, will amount to rape.

In **Regina v. William Camplin,¹²**

It was held that rape occurred when a man had carnal knowledge of a girl of imbecile mind and the jury found that it occurred without her consent, she being unable of giving consent due to a defect of comprehension. This act was committed when the perpetrator made a woman very inebriated and then violated her person while she was unconscious.

¹⁰ AIR 2000 SUPREME COURT 2798

¹¹ [1991] 4 All ER 481

¹² 169 E.R. 163 England & Wales

Sixth and seventh clause: SEXUAL INTERCOURSE WITH A MINOR AND WHEN THE WOMAN IS UNABLE TO COMMUNICATE CONSENT

As per the sixth clause, if the offensive act is done with or without the consent of the girl and the girl is under the age of eighteen, it is termed rape. The seventh clause states that if the offensive act is performed on a woman who was not in a position to consent at the time of the intercourse, the same will also be considered to be rape.

3.2 Elements to construct crime of Rape:

The following are the essential ingredients of the offence of rape:

- Act of penetration or sexual act;
- Against the will or without the consent:

State of Himachal Pradesh v. Mango Ram¹³

In this case, Prosecutrix was the eldest daughter Jagia Ram. The accused who was aged 17 years accompanied the prosecutrix. The accused caught her from behind and was forced to lie on the cowshed and committed a sexual act. The Supreme Court held that the girl tried resistance to stop the accused from committing the act but the accused overpowered her and the act was committed against the will of the victim and was held liable for the offence of rape.

- Lack of free and informed consent:

If the consent is not obtained freely then the other person can impose criminal liability. In the recent amendment in 2013 changes were made that if women claim that while having sexual intercourse there was no consent then the court shall presume the same.

Queen vs Flattery¹⁴

In this case, the girl was in ill health and had gone to the accused's clinic and she was advised to undergo a surgical operation to which she agreed while operating the accused had sexual intercourse with the girl. The court held that consent was not a valid one and was obtained through misconception. Thus, accused liable for the offence of rape.

¹³ AIR 2000 SUPREME COURT 2798

¹⁴ (1877) 2 QBD 410

- Consent obtained under fear of death or hurt:

If an interested person of a woman like children, parents, husband, etc is under fear of death and in that situation consent of a woman is obtained then it cannot be termed as valid consent.

State of Maharashtra vs Prakash¹⁵

In this case, the police officer and a businessman put the husband of the victim under remand where her consent was obtained to have sexual intercourse. The court held that consent given by the women is not a valid one where a person of her interest is put under fear of hurt or death. Therefore, they were liable for the offence of rape.

- With consent given under misconception of the fact that the man is her husband but the man knows that he is not her husband;
- Consent obtained under misrepresentation, fraud, or mistake:

During the time of having sexual activity with a woman if consent is obtained misrepresentation, fraud, or mistake such consent won't be held valid and the accused can be still held liable for the offence of rape.

Bhupender Singh v. Union Territory of Chandigarh¹⁶

In this case, the accused had sexual intercourse with the prosecutrix through which she became pregnant and she had undergone an abortion. They again had sexual intercourse. The accused promised her that he would marry her again and she again became pregnant. Later, she got to know that the accused was already married and had children and in confrontation, the accused failed to perform his promise. She filed a suit against the accused. The court held that the accused had sexual intercourse with the victim in a state of fraud and thus the consent of the victim is not a valid one and the accused was held liable under Section 63.

¹⁵ AIR 1992 SC 1275

¹⁶ 2008 AIR SCW 4850

3.3 Legal framework for Sexual Violence and Underlying Consent:

The only time a person's consent matters is when something is clearly incorrect in their eyes. Since you are not harming them in any way, you can pass someone on the street without getting their permission. Indeed, it would seem strange to request permission for an action that doesn't need a reason. For instance, asking, "Would you mind if I looked at you?" would get an incomprehensible answer. Consent is necessary in the case of rape since sexual penetration is inherently wrong. It includes hazards to the other person and the use of force against a body. The sexual penetration must have been motivated by a valid purpose for the defendant.

Compared to a doctor, who must also obtain the patient's permission before performing an operation, this places the defendant in a distinct situation. The doctor is in a better position since she already has a solid reason to perform the surgery—that being the patient's benefit, we assume—while the defendant has no justification for believing that having sex will benefit the woman. Consent is required from the defendant as well as the doctor, but in the defendant's case, consent must do more moral work. The legal framework surrounding consent in India is complex and covers various aspects of civil and criminal law. Consent is defined as the expression of autonomy and free will by competent and rational individuals who are free from coercion and pressure. Consent is essential for the validity of contracts, partnerships, medical treatments, sexual activities, and other transactions involving personal rights and interests. Consent is also a defence against certain offences such as assault, battery, and rape. Some of the key laws and regulations that deal with consent in India are:

The Indian Contract Act, 1872: This act lays down the principles and rules for the formation, performance, and enforcement of contracts in India. It also specifies the conditions for valid consent, such as free consent, capacity to contract, lawful object, and consideration. It also provides remedies for breach of contract and situations where consent is vitiated by fraud, coercion, mistake, or undue influence.

The Bharatiya Nyaya Sanhita: This code defines and prescribes punishments for various offences against the state, property, and persons. It also specifies the circumstances where consent can be a valid defence or a mitigating factor for certain offences. For example, section 25 of the BNS states that a person is not liable for any harm caused by an act done with the consent of the person harmed.

Section 63 of the BNS defines rape as sexual intercourse or any sexual act with a woman without her consent or with her consent obtained by force, fraud, fear, or intoxication. It also prescribes the minimum age of consent as 18 years for both men and women.¹⁷

The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002: These regulations set out the duties, responsibilities, and the general standard of conduct of medical practitioners. They also regulate doctor-patient confidentiality and establish rules about the consent of patients. According to these regulations, a doctor must obtain the informed consent of the patient or his/her guardian before performing any procedure or treatment. The doctor must also respect the patient's right to refuse or withdraw consent at any time.

The Charter of Patient Rights, 2018: This charter, adopted by the Ministry of Health and Family Welfare and the National Human Rights Commission, consolidates the rights of patients into a single document. It draws upon the provisions of the Constitution of India, international charters, and national

level laws. It recognizes the right to privacy, the right to receive medical information, and the right to informed consent as the most fundamental rights of patients. It also provides guidelines for the implementation and enforcement of these rights.

Role of Consent:

Consent refers to an activity done by a person under a free state of mind. According to Merriam Webster, consent refers to an act committed by a person by giving assent and approval. According to Section 63, consent can be referred to as an unequivocal voluntary agreement when a woman by communication, verbal, or non-verbal, shows her willingness to commit a specific act. The core concept under consent is choice, and not will. To interpret consent, it is necessary to prove:

- The person can give consent; and
- The person, with his free choice, has accepted the act.

¹⁷ Adv Hemant More, Defence of Consent (Ss. 87 to 92 IPC), THE LEGAL QUOTIENT.

Consent might be expressed or implied, compelled or misled, freely given or obtained via deception. Consent is a rational act followed by contemplation, with the intellect weighing the good and evil on each side like a balance. There is a substantial difference between rape and consensual sex, and the court must carefully consider whether the accused had a genuine desire to marry the victim, or had made a false promise to that effect solely to fulfil his libido, as the latter falls under the category of cheating or deception. There is a difference between just breaking a commitment and not keeping a false promise. As a result, the court must determine whether the accused made a false promise of marriage at an early stage, and whether the consent was obtained after fully comprehending the nature and implications of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse with the accused because of her love and passion for him, rather than solely because of the accused's misrepresentation, or where an accused was unable to marry her despite having every intention to do so due to circumstances, he could not have foreseen or were beyond his control.

These situations must be handled differently. Only if the Court finds that the accused's aim was malicious and that he had hidden motives can the accused be found guilty of rape, as has been the case in

Dhruvaram Murlidhar Sonar vs. State of Maharashtra¹⁸

When a man and woman were living together, sometimes at her home and sometimes at the man and the evidence indicated that it was not a case of passive submission in the face of psychological pressure, and there was tacit consent that was not based on any misconception created in her mind, a complaint under Section 63 would be unworkable.

As has been observed by the Apex Court in the landmark case of

Uday vs. State of Karnataka,¹⁹

If the accused's promise is not false and was not made with the express goal of seducing the prosecutrix into engaging in sexual actions, the act(s) would not be considered rape. Thus, if the prosecutrix submits to the accused's passion because she believes the accused is going to marry her, such a false act cannot be deemed to be consensual in terms of the accused's offence.

¹⁸ AIR 2019 SUPREME COURT 327

¹⁹ AIR 2003 SUPREME COURT 1639

Role of Will:

The word refers to the reasoning power of the mind to determine whether to do an act or not. According to Merriam Webster, ‘Will is defined as a thing that is done with desire or choice’. In other words, an act of will refers to a desire to participate by a person without being under pressure or under the influence of any other person. E.g. A instigated B to shoot C to which B willingly agreed and shot C. In this scenario, there was a clear will of B to shoot C though instigated by A he had a clear choice to say no. Act committed against the will is a significant concept to prove the offence of rape. According to Section 63(i), where sexual intercourse is done against the will of the woman, amounts to the offence of rape.

In the State of Uttar Pradesh vs. Chhotey Lal²⁰

The Supreme Court explained the concept stating that an act done by a man against women despite her resistance or opposition. Law against the will and without consent Section 63 of the BNS includes both the components it is an act that is committed against the will and an act committed against the consent of the women.

3.4 Understanding the nuances: Will vs Consent in Rape Jurisprudence

Although the expressions against her will and without her consent may occasionally overlap, the two expressions in Clauses(i) and (ii) of Section 63 have distinct connotations and dimensions. The phrase —against her will means that the perpetrator forces or imposes the act of sexual intercourse with a woman despite her active protests and refusal. On the other hand, when the victim does not give explicit permission or agreement to have a sexual intercourse, or that the consent has been obtained through misrepresentation, fraud or lack of understanding, then it is said that rape has been committed without the consent of the woman. It should be emphasised that the courts have applied the tests for establishing consent set forth in Section 28 of the BNS. As per Section 28, a consent is not such as is intended by any section of this Code if it is given out of fear of injury or a misunderstanding of facts, and the person doing the act knows, or has reason to believe, that the consent was given as a result of such fear or misunderstanding; or if it is given out of unsoundness of mind or intoxication, and the person doing the act knows, or has reason to believe, that the consent was given as a

²⁰ AIR 2011 SUPREME COURT 697

result of such fear or misunderstanding; or if the consent is given by a person who is under twelve years of age.

In Holman vs. Queen²¹

It was stated that it must not be necessary for willingness to constitute consent. If a woman giving the consent is reluctant, hesitant, and grudging but she consciously permits the same, then such consent would be considered to be valid. A consent given under protest and tears would still be consent. For example, if a prostitute gives her consent for having sexual intercourse not because of her will but because of her constraint, her consent cannot be turned as invalid. Consent is therefore valid even if it is against the will.

In the State of Uttar Pradesh vs. Chottey Lal²²

The Apex Court stated that the expression against her will and without her consent may overlap but they have different connotations and dimensions, the expression against her will would mean that that act is done by man despite her resistance and opposition. The other without her consent would mean an act

done with deliberation.

²¹ SC No. 183/1/09 Delhi High Court refers to the matter of Holman vs. Queen

²² AIR 2011 SUPREME COURT 697

Exceptions to Section 63:

Section 63 of the BNS, 2023 is furnished with two exception clauses:

Exception 1: medical procedure or intervention shall not constitute rape A medical procedure or intervention shall not constitute the offence of rape. This exception clause states that any medical intervention against women cannot be termed as an offence of rape under the court of law.

Exception 2: sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape

The Supreme Court ruled in

Independent Thought vs. Union of India,²³

That sexual intercourse with a girl under the age of 18 is rape, regardless of whether she is married or not. Exception 2 makes an unnecessary and artificial distinction between married and unmarried girl child, according to the Court, and has no rational nexus with any specific goal attempted to be reached. This artificial distinction is in violation of Article 15(3) of the Constitution's spirit and ethos, as well as Article 21 of the Constitution. It also goes against the idea behind some statutes, such as the girl child's bodily integrity and reproductive choice.

²³ AIR 2017 SUPREME COURT 4904

Chapter- 4

Victim's Testimony in Rape Trials

4.1 The Corroboration Rule:

In India, the corroboration rule in rape trials has evolved significantly to reflect a more victim-centric approach. Traditionally, courts were cautious and often insisted on corroborative evidence to support the victim's testimony due to concerns about false allegations and the seriousness of the charge. However, the current legal position, as consistently upheld by the Supreme Court, is that the sole testimony of the prosecutrix (rape victim) can be sufficient to convict the accused if it is found to be credible, reliable, and trustworthy. The rationale behind this shift is the recognition that sexual offences are often committed in private, with no eyewitnesses, and requiring corroboration in every case would amount to unjustly disbelieving a victim merely because she is alone in her suffering.

Landmark judgments such as **State of Punjab v. Gurmit Singh**²⁴ and **Rai Sandeep v. State (NCT of Delhi)**²⁵ have reiterated that a "sterling witness"—whose version is natural, consistent, and free from material contradictions—needs no further corroboration.

Furthermore, Section 120 of the Bharatiya Sakshya Adhiniyam, 2023 creates a presumption of absence of consent in certain rape cases when the victim states that she did not consent.

While courts may still seek corroboration in cases where the testimony appears doubtful or inconsistent, it is no longer a mandatory legal requirement. This approach aims to uphold the dignity of the victim and prevent secondary victimization during trial.²⁶

Additionally, the Hon'ble Supreme Court have always considered rape survivor's testimony sacrosanct. Exactly 65 years ago, the Supreme Court took a serious view of sexual assault cases. It boldly altered the general rule in a criminal trial to hold that in such cases, a rape survivor's sole testimony, if found credible, would be enough to record conviction of the accused. No corroborative evidence would be required, it said.

⁴ AIR 1393 1996 SCC

²⁵ 2012 6 SCR 1153

²⁶ The corroboration rule, available at; chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=5867&context=penn_law_review

Pronouncing the judgment in,

Rameshwar vs State of Rajasthan,²⁷

Justice Vivian Bose had said the minor rape survivor's narration of the sexual assault to her mother, her testimony to the court and the evidence given by her mother based on the daughter's narration taken together was good enough to record conviction of the accused.

"I am satisfied that in this case, considering the conduct of the girl and her mother from start to finish, no corroboration beyond the statement of the child to her mother is necessary," Justice Bose had said while upholding the conviction.

Since then, this principle has remained the foundation of rape case trials in India. Last week, the SC reiterated it, "Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. Deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does."

But in the '**Mathura rape case**' of 1972, the golden scale to weigh evidence had slipped from the SC's hands. The brother of a minor girl (Mathura) lodged a complaint with Maharashtra police about her alleged abduction. She was brought to the police station. After asking the relatives to sit outside, two policemen sexually assaulted the girl.

The trial court took a tangential route to acquit the policemen, as the girl was habituated to sexual intercourse and did not raise an alarm when raped. The Bombay HC followed Justice Bose's guidelines and convicted the accused. But the SC, in

Tuka Ram and Another vs Maharashtra,²⁸ agreed with the trial court and acquitted the policemen.

Course correction was done by Justice Krishna Iyer on August 14, 1980 in **Rafiq vs State of UP²⁹**. Since then, barring a few exceptions, the judiciary has been stringent in its approach towards those facing rape charges.

²⁷ AIR 1952 SCR 37

²⁸ 1979 SCR (1) 810

²⁹ 1981 (1) SCR 402

Defence lawyers' age-old weapon to demolish a rape survivor's evidence has been to seek corroborating

evidence. They know that rapes are committed in seclusion. It is hard to find independent witnesses. Justice Iyer had said, "Corroboration as a condition for judicial reliance on the testimony of a prosecutrix is not a matter of law, but a guidance of prudence under given circumstances."

In the 1990s, the SC displayed more sensitivity towards rape survivors. In **Bodhisattwa Gautam case**³⁰, It said, "Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is only by her sheer willpower that she rehabilitates herself in society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the fundamental rights, namely, the right to life contained in Article 21.

"To many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects."

Given the sanctity attached to a rape survivor's evidence, there has also been a spurt in incidents in the last decade where the court's sympathy had been misused to implicate innocent persons in rape cases.

In **Raju vs State of Madhya Pradesh**,³¹

The SC said, "It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but, at the same time, a false allegation of rape can cause equal distress, humiliation and damage to the accused as well."

³⁰ 1996 SCC (1) 490

³¹ 2008 (15) SCC 133

In **Abbas Ahmed Choudhary vs Assam**,³²

The SC had said, "We are conscious of the fact that in a matter of rape, statement of the prosecutrix must be given primary consideration but, at the same time, the broad principle that prosecution has to prove its case beyond reasonable doubt applies equally to a case of rape and there can be no presumption that a prosecutrix would always tell the entire story truthfully."

As times have changed, trial judges face the unenviable task of shifting through a rape survivor's evidence to do justice by punishing the rapists and also those who level false rape allegations. Recently, a Thane court set a trend by initiating perjury proceedings against a minor whose false sexual assault charges had landed her own father in jail for nearly three years.

In **Karnel Singh v. State of Madhya Pradesh**,³³

The Supreme Court upheld the conviction of Karnel Singh under Section 376 IPC (now Section 64 of BNS) for raping the prosecutrix, Panchbai. Despite acknowledging the deficiencies in the investigation, such as the failure to record statements of potential corroborative witnesses and the mishandling of physical evidence, the Court found the prosecutrix's testimony to be credible and substantiated by the existence of semen stains on her garments and in her vaginal swabs. The Court emphasized that while the investigation was indeed defective, the overall evidence presented was sufficient to establish Singh's guilt beyond a reasonable doubt. Consequently, the appeal was dismissed, and the conviction was affirmed.

³² 2010 (12) SCC 115

³³ 1995 INSC 452

4.2 Recording of Confessions:

Section 183 of BNSS:

The section talks about the recording of confessions and statements by any of the District Magistrate, irrespective of whether or not he has jurisdiction in the case. In case the confession or the statement is recorded by a magistrate who does not have jurisdiction in the case, he must forward the record to the magistrate by whom the case is to be inquired or to be tried.

Additionally, the section also says that the magistrate, before recording the confession, should warn the person about the consequences of such a confession that it can be used against him and that he is not bound to make confession. He should thoroughly inquire that the person making the confession is doing so under no coercion, undue influence, or any other external force, and it must be his voluntary act.

In 2013, an amendment was made to this section when CrPC was applicable, after the horrific incident of the Nirbhaya Case and the recommendations of the Justice J.S. Verma committee. The amendment added sub-section 5A to section 164 CrPC and made it compulsory that the statement of a rape victim or any other sexual offense be recorded by the judicial magistrate (which has been now provided under sub-section 6(a) of Section 183.

Interestingly, till that point, the victim's statement was recorded under section 161 CrPC (Section 180 of BNSS) by an investigating officer, and the victim had to step into the witness box for examination-in-chief and cross-examination, causing herself to relive the horror of the crime again since the statement under 161 CrPC has "no value in the eyes of law and can be used only for contradiction and checking the veracity of the witness."³⁴

The section also gives power to the magistrate to administer the oath to the person whose statement is recorded. Therefore, the statement recorded under this section has evidentiary value in the eyes of the law.

Evidentiary Value of Statement Under Section 183 of BNSS:

Statements recorded under Section 183 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) hold evidentiary value, but their weight and credibility depend on the specific circumstances of each case. The importance of Section 183 statements as evidence is illustrated by the following prominent case laws:

The Hon'ble apex court in the

State of Rajasthan v. Kartar Singh³⁵

Held that the "statement recorded under this section is not a substantive piece of evidence". It is, however, a formal statement made before an authority competent to investigate a fact. It may be used for contradiction under section 145 of the Indian Evidence Act or for corroboration of the witness who made such a statement.

³⁴ Confessions, available at; <https://articles.manupatra.com/article-details/Conviction-in-Rape-Cases-The-Significance-of-Victims-Statements-recorded-under-Section-164-CrPC>

³⁵ MANU/SC/0198/1970

Further, in **Budai v. State of Orissa**,³⁶

The high court held that "the statement recorded under section 164 CrPC (now Section 183) can be used to cross-examine the person who made it and may be used to show that the evidence of the person is false". Also, the statement under section 164 of CrPC can be admitted in the court in the form of evidence without the need for the examination of the magistrate who recorded it.

In **Ramesh Singh v. State of A.P.**,³⁷

The apex court stated that "a witness cannot be treated with suspicion or discredited merely because he gave a statement under section 164 CrPC. The evidence of witnesses whose statements are recorded under section 164 of the CrPC by Magistrate, by itself, would not discredit the said evidence. It is only that the evidence of such witnesses must be considered with caution, and if there are other circumstances on record that might support the truth of evidence of such witnesses, it can be acted upon."

Additionally, in **Ramanand Pandey v. State**,³⁸

The Bombay High Court held that "where a witness subsequently resiles from his statement recorded under section 164 CrPC, such an earlier statement cannot be used for the purpose of convicting him".

³⁶ MANU/OR/0337/2009

³⁷ MANU/SC/0278/2004

³⁸ MANU/MH/0376/2007

Recording the Statement of the Victim of Rape:

As soon as the police officer acquires knowledge about the incident, it is his responsibility to bring the victim to the closest judicial magistrate so that she may give a statement. The prosecutrix's statement must be recorded by the Magistrate in accordance with Section 164(5A) of the CrPC.

Additionally, this section allows for the recording of statements from individuals who are temporarily or permanently mentally or physically impaired at a places chosen by the victim. A special educator or an interpreter must be present when the magistrate is recording the statement in such circumstances, and this provision additionally mandates that the statement shall be filmed.

According to S.137 of the Indian Evidence Act, 1872, this statement shall be regarded as a statement in place of examination in chief for all purposes. The witness may be directly cross-examined on this statement. The victim's mother may be permitted to be present when the victim's S.164 statement is being recorded if the victim is a minor.

Judicial Perspectives on the Role of Section 164 in Rape Cases:

In rape cases, Section 164(5A) of the CrPC assumes particular significance. This section allows for recording statements of the victim and other witnesses by a Judicial Magistrate or a metropolitan magistrate and therefore plays an important role in the conviction of an accused. However, a conviction generally cannot solely rely on a single piece of evidence because the prosecution needs to establish the accused's guilt beyond a reasonable doubt. So, the question which arises here is whether an accused can be prosecuted solely on the basis of the victim's statement recorded under section 164(5A) CrPC. In order to find the answer to the above question, let us have a look at the below case laws:

Case Laws in Favor of Accused

1. Several lacunae in the victim's statement is not sterling quality evidence.

In the case of **Krishan Kumar Malik v State of Haryana**³⁹ and **Rai Sandeep v. State (NCT of Delhi)**⁴⁰, the hon'ble apex court acquitted the accused and held,

"No, doubt it is true that to hold an accused guilty for the commission of an offense of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears trustworthy, unblemished, and should be of sterling quality. But in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offense."

2. Insufficient Corroboration and benefit of the doubt: Resulting in the unreliable nature of the prosecutrix's testimony and the acquittal of the accused.

In 2020, the supreme court in **Santosh Prasad v State of Bihar**⁴¹ talked about the corroboration of the victim's statement and gave the benefit of the doubt to the accused. The hon'ble court relied upon a judgment in which it was stated that it is important to remember that while rape is the crime that results in the most suffering and humiliation for the victim, a false rape accusation can also result in suffering and harm for the accused. Additionally, the accused must be safeguarded from potential false accusations, especially when there are many other accused parties.

³⁹ MANU/SC/0718/2011

⁴⁰ MANU/SC/0623/2012

⁴¹ MANU/SC/0192/2020

It is also important to keep in mind that while the general rule is that witnesses who have been injured were present when the incident occurred and are typically honest about the assailants, there is no guarantee that their accounts are accurate or free of embellishment or exaggeration.

3. Balancing Belief in Prosecutrix Testimony and Accused's Rights in Rape Cases.

The honorable supreme court in **Rajoo and others v state of Madhya Pradesh**⁴² held that-

"Ordinarily, the evidence of a prosecutrix should not be suspected. It should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the observations must carry the most significant weight. We respectfully agree with them, but at the same time, they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court."

Court further said that rape causes the victim the most significant distress and humiliation. Still, at the same, a false allegation of rape can cause equal distress, humiliation, and damage to the accused as well.

⁴² MANU/SC/8353/2008

Case Laws in Favor of the Victim

1. Victim's testimony in Sexual Assault cases is not comparable to accomplice.

The 3 Judges' division bench of the hon'ble apex court, in the case of **Karnel Singh v. State of M.P**⁴³, relied upon the statement that "a woman who is a victim of sexual assault is not an accomplice to the crime but is a victim of another person's lust and therefore her evidence need not be tested with the same amount of suspicion as that of an accomplice. She is not in the category of a child witness or an accomplice and therefore the rule of prudence that her evidence must be corroborated in material

particulars has no application; at the most the court may look for some evidence which lends assurance". Further, the hon'ble court upheld the conviction of the accused person after placing reliance on the testimony of the victim.

2. Corroboration requirement in Sexual Assault cases deemed Insulting to Womanhood.

In **State of Maharashtra v. Chandraprakash Kewalchand Jain**⁴⁴, the Hon'ble Supreme Court held that "to insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime."

⁴³ MANU/SC/0497/1995

⁴⁴ MANU/SC/0122/1990

According to the hon'ble court, the level of proof that the court should look for in these situations must account for the fact that such crimes are typically done covertly and that direct evidence of a person other than the prosecutrix is extremely seldom available. The courts must also understand that typically a woman, particularly a young girl, won't risk her reputation by making false allegations about her virginity.

3. Evidence of the prosecutrix should be relied on if confident, and supplementary assurance sought if needed.

In **Moti Lal v. State of M.P**⁴⁵, the single judge bench of the hon'ble apex court held that "if evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice."

The court stated that the prosecutrix's testimony must be taken into account in light of the overall case, and the trial court has to be conscious of its responsibilities and be cautious when handling situations involving sexual molestation.

⁴⁵ MANU/SC/7825/2008

4. Evidence Act, 1872 doesn't mandate corroboration; Victim's testimony is akin to injured witness credibility.

The Hon'ble Supreme Court in **Mohd. Imran Khan v. State Government (NCT of Delhi)**⁴⁶ ruled that "the Evidence Act, 1872 nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 of the Evidence Act, and her evidence must receive the same weight as is attached to an injured in cases of physical violence".

The court also said that the resulting legal principle dictates that if the statement of the prosecutrix is deemed trustworthy and dependable, it does not necessitate corroboration. The court has the authority to pronounce the accused guilty based solely on the testimony provided by the prosecutrix.

4.3 Victim's testimony as sole evidence:

Her word is enough

On 7 March 2025, a bench comprising Justices Sandeep Mehta and P.B. Varale dismissed an appeal against a rape conviction decided in 2010. Justice Varale, who authored the judgement, reaffirmed a well-established legal principle in rape cases: the statement of the prosecutrix, if it inspires confidence, is sufficient on its own to sustain a conviction.

The judgement emphasised that the "lack of injury to private parts" cannot be grounds to discard a prosecutrix's testimony if her statement is found to be "wholly trustworthy, unshaken, and inspiring confidence."⁴⁷

⁴⁶ MANU/SC/1224/2011

⁴⁷ Sole testimony of rape victims, available at: <https://www.scobserver.in/journal/her-word-is-enough/>, accessed on 12th March, 2025.

The accused's counsel had claimed that the victim's mother had a "doubtful character" and argued that the absence of injuries on the victim discredited her statement. The bench observed that casting aspersions on the victim's mother added no value in determining the convict's guilt its concern lay strictly with whether the crime had been committed. The bench concluded that the victim's testimony stood firm even after detailed cross-examination and left "no shadow of doubt to discredit her case."

In reaching this conclusion, the bench relied on the Supreme Court's 1996 ruling in **State of Punjab v Gurmit Singh**.⁴⁸ In that case, the Trial Court had doubted the victim's account, a Class 10 student who was abducted a day before her exams. The Trial Court had noted that the prosecutrix could not recall whether the car used in the abduction was a Fiat or an Ambassador. Worse, it cast aspersions on her character, describing her as a girl with "loose morals". The Supreme Court strongly criticised this approach, noting that the Trial Court had wrongly fixated on minor inconsistencies instead of focusing on the victim's clear and credible account.

The Gurmit Singh ruling embedded a crucial observation: repeatedly subjecting a victim to different stages of intense scrutiny in search of minor discrepancies only adds "insult to injury". That bench also referred to **State of Maharashtra v Chandraprakash Kewalchand Jain (1990)**, where the Court had observed that the Indian Evidence Act, 1872, does not require a prosecutrix's testimony to be supported by other material evidence.

Seeking a similar standard of corroborative evidence from the prosecutrix as the accused would be putting her "on par with an accomplice", the Court observed in *Chandraprakash*. However, if for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix, it may look for evidence that lends assurance to her testimony, though not to the extent of the corroboration required in the case of an accomplice. Therefore, her evidence or statement need not be viewed through the same lens as that of the accused.

Similarly, in **Bharwada Bhoginbhai Hirjibhai v State of Gujarat (1983)**, the Court warned against viewing a victim's testimony with unwarranted "doubt, disbelief, or suspicion" as it would justify "male chauvinism in a male dominated society."

⁴⁸ AIR 1393 1996 SCC

In Santosh Prasad v. State of Bihar⁴⁹

The Supreme Court overturned a rape conviction, highlighting that the prosecutrix testimony was inconsistent and lacked corroboration. The court emphasized that while a sole testimony can suffice, it must be of sterling quality to warrant conviction.

Phool Singh v. State of Madhya Pradesh(2020)

The court reaffirmed that a conviction can be based on the sole testimony of the prosecutrix if it is of sterling quality, meaning thereby, it is credible, unblemished and inspires confidence.

All this sounds straightforward, but evidence gathering and appreciation is rarely neat and clean in practice. Take the instance of a case from as recently as January this year. In

State (GNCT of Delhi) v Vipin @ Lalla, (2025)

The top court underscores the principle that “a rape conviction can be based solely on the victim’s testimony, provided it is credible and inspires confidence” and upheld a High Court judgement which acquitted a rape accused due to inconsistencies in the prosecutrix’s statement. The prosecutrix, 16 years old at the time of the alleged incident, claimed that she had hit the accused on the head with a stick but later said she had hit him on his foot. No injuries were found on the body of the accused when he surrendered. The prosecutrix’s own medical examination report showed no injuries, but it did say that her hymen was torn.

The Court also said it was “not believable” that the prosecutrix wouldn’t have raised an alarm while walking with the accused, who was known to her, in a busy bazaar and then going with him to the grocery shop where the alleged incident occurred. The Court noted this in the same breath that it mentioned the prosecutrix’s explanation for not raising an alarm was that the accused had a knife with him and had threatened to kill her father and brother.

In this case, the testimony of the prosecutrix had “failed to inspire absolute confidence” in three courts. But, if this January decision is seen in the light of this week’s decision, it raises the question: when is an inconsistency in a prosecutrix’s testimony to be considered “minor”? In future matters, perhaps, the principle that the Court has laid down in cases going back to the 1980s could do with some clarity and explication.

⁴⁹ 2020 INSC 192

Lok Mal @ Loku v. State of Uttar Pradesh(2021)

The Supreme Court upheld the conviction of the accused solely on the prosecutrix testimony, emphasizing that if her evidence is trustworthy and unshaken, corroboration is not mandatory. The court reiterated that the testimony of a prosecutrix is equivalent to that of an injured witness and can form the basis for conviction.

Rape is a grave offense that demands a balance between securing justice for victims and safeguarding the rights of the accused. The question whether an accused can be convicted solely based on the victim's statement recorded under Section 183 depends upon the facts and circumstances of each case. While some judgments highlight the need for corroborative evidence and give the benefit of doubt to the accused, others emphasize the importance of believing victim testimony and reject excessive corroboration requirements. These differing viewpoints underline the complexity of achieving justice in rape cases.

It is evident that no uniform approach can be applied to all cases. Each situation demands a careful

evaluation of the evidence, considering the credibility of the victim's statement, any corroborative evidence, and the circumstances surrounding the case. Therefore, striking a balance between the victim's rights and the accused's presumption of innocence is challenging but essential. The legal system must continue to evolve, ensuring that the rights of both parties are upheld, and justice is served without compromising the fundamental principles of fairness and due process.

5.1 Conclusion:

Chapter- 5 Conclusion and Way Forward

In the Indian legal framework, the role of a victim's testimony in rape trials occupies a critical and evolving space, reflecting both the constitutional mandate to protect individual dignity and the need to ensure fairness in criminal adjudication. The tension between the traditional requirement for corroboration and the modern acceptance of sole reliance on the victim's testimony illustrates the judiciary's nuanced balancing act between upholding the rights of survivors and safeguarding the rights of the accused.

Historically, rape jurisprudence in India was mired in a patriarchal understanding of sexual violence, often demanding corroboration of the prosecutrix's statement through medical evidence, eyewitness accounts, or immediate reporting to law enforcement. This approach inadvertently cast suspicion on the victim's narrative, reinforcing harmful stereotypes that women may fabricate such allegations. However, over time, this judicial mindset has shifted considerably, informed by a deeper understanding of the trauma experienced by survivors of sexual violence and the social stigma attached to reporting such crimes.

This shift recognizes the unique nature of sexual violence, which frequently occurs in private, leaving little opportunity for external corroboration. The demand for independent verification in every case can operate unjustly against survivors, reinforcing silence and discouraging reporting. The courts' acknowledgment that trauma affects memory, behaviour, and disclosure patterns is a progressive and necessary alignment with contemporary psychological understandings of sexual assault.

An interesting development in this space is the judiciary's emphasis on the "sterling quality" of testimony. This concept doesn't demand perfection in the survivor's recollection but asks whether the testimony, when read as a whole, is coherent, trustworthy, and free of material contradictions. It allows space for emotional trauma, delayed reporting, and memory lapses—common psychological consequences of sexual assault.

Another compelling aspect is the increased judicial awareness of secondary victimization. Survivors often undergo intense emotional scrutiny in court, with defence strategies focusing on character assassination or moral judgments. Courts have increasingly condemned this practice, asserting that cross-examination should not become a tool of humiliation. This shift protects the dignity of survivors and signals a maturing legal culture that places compassion alongside evidence.

In addition, the evolution of this doctrine aligns with international human rights commitments, such as those under CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women), to which India is a signatory. The move toward sole reliance on credible victim testimony reflects a legal system inching toward global best practices that centre survivor narratives without diluting due process.

Contemporary Indian jurisprudence, as articulated in several landmark rulings—including *Phool Singh v. State of Madhya Pradesh* (2021), *Lok Mal @ Loku v. State of U.P.* (2025), and *Ganesan v. State* (2020)—has embraced the principle that the sole testimony of the victim, if found credible and of

“sterling quality,” is sufficient to sustain a conviction. The Supreme Court has consistently reiterated that the victim’s statement should be treated at par with that of an injured witness and should not be discarded merely for lack of corroboration. This position aligns with global human rights standards and underscores the judiciary’s recognition of the lived realities of victims.

Furthermore, technological advancements—like the use of digital forensics, call records, GPS data, and CCTV—have opened new avenues for both corroboration and contradiction, allowing courts to assess the veracity of victim testimony even in the absence of traditional forms of evidence.

However, this trend is not without critique. Some scholars argue that over-reliance on a testimony without robust cross-examination or corroboration risks undermining the accused’s right to a fair trial. But Indian courts have been cautious, drawing a clear line between blind acceptance and credible reliance. The credibility of testimony is always subjected to judicial scrutiny, and convictions are not granted unless the court is satisfied that the testimony withstands legal and moral scrutiny.

And the reliance on sole testimony is not absolute. The courts have laid down that the testimony must inspire confidence and be free of inconsistencies, exaggerations, or inherent improbabilities. In cases like *State (GNCT of Delhi) v. Vipin @ Lalla (2025)*, the Court emphasized that while corroboration is not a legal necessity, it becomes a matter of prudence where the prosecutrix’s statement is riddled with contradictions or appears unreliable. Thus, the judiciary has retained a contextual, fact-sensitive approach rather than a rigid rule.

This calibrated position preserves the presumption of innocence, a cornerstone of criminal justice, while also ensuring that justice is not denied to victims on archaic or patriarchal grounds. It reflects a legal philosophy that acknowledges the deep psychological and societal hurdles faced by victims and provides them a fair chance at justice, without unduly compromising the procedural safeguards owed to the accused.

In sum, Indian courts have transitioned from a culture of corroboration to one of cautious credibility. The modern approach does not demand additional evidence merely because the complainant is a woman or the crime is sexual in nature. Instead, it assesses whether her testimony stands on its own merit. This evolution represents a progressive stride toward gender-sensitive adjudication, while still upholding the essential due process guarantees. As India continues to combat gender-based violence, the approach toward victim testimony in rape trials will remain a cornerstone of its legal and moral resolve to deliver justice with dignity and fairness.

5.2 Way Forward and Reforms:

As India’s legal landscape continues to evolve in the realm of sexual offences, the treatment of a victim’s testimony stands at a pivotal juncture. While courts have gradually moved away from archaic demands of corroboration, there remains a need to formalize and refine this transition. The absence of clear statutory recognition of sole testimony as sufficient for conviction often leads to inconsistencies in trial court decisions. Therefore, a formal amendment to the Bharatiya Sakshya Adhinyam could be considered, specifically clarifying that in cases of rape and sexual assault, the uncorroborated testimony of the prosecutrix if credible may be relied upon to convict the accused. Such statutory recognition would offer clarity and consistency across courts and align with progressive judicial pronouncements.

Another important legislative reform would involve expanding the scope of Section 120 of the BSA, which currently creates a presumption of non-consent in limited contexts such as custodial rape. This provision could be extended to include other aggravated situations involving unequal power dynamics, such as employer-employee or teacher-student relationships. Similarly, guidelines could be laid down by

the Law Commission or judiciary to better define the “sterling witness” doctrine, providing trial courts with clearer parameters for assessing the credibility of victim testimony without resorting to stereotypes or subjective biases.

In addition to legal reforms, procedural improvements are equally vital. Amendments to the Code of Criminal Procedure can empower judges to proactively prevent intrusive cross-examinations that focus on the victim’s past sexual behaviour or moral character practices that are already prohibited under Section 48 of the BSA, but remain insufficiently enforced. Strengthening in-camera trial procedures, allowing for support persons or psychological counsellors during testimony, and providing alternatives such as video conferencing can significantly reduce the trauma of testifying in open court.

Judicial training also plays a critical informal role in shaping the way testimony is interpreted. A structured and uniform national curriculum should be introduced for judges and prosecutors, focusing on the psychological impact of sexual violence, trauma-informed responses, and gender sensitivity. Such training can help eliminate the unconscious biases that often colour judicial interpretations of victim behaviour, such as assumptions around delayed reporting or emotional inconsistencies in testimony. Additionally, courts should begin incorporating expert psychological assessments into evidentiary analysis, helping judges contextualize seemingly inconsistent or fragmented narratives.

Societal education is another crucial piece of the puzzle. Legal reforms must be accompanied by broader public awareness initiatives that challenge rape myths and promote a nuanced understanding of consent and survivor behaviour. Only when society at large understands that delayed reporting, silence, or fragmented memory can be hallmarks of trauma—not falsehood—can a legal system truly function without bias. Law schools must also revise their curricula to include mandatory gender justice training, and bar associations should require continuing education on gender-sensitive legal practice for advocates appearing in rape trials.

Ultimately, to ensure that reliance on victim testimony is fair, credible, and just, a multifaceted reform agenda is needed one that combines statutory clarity, judicial training, procedural safeguards, and social reconditioning. The future of rape trial jurisprudence in India lies in recognizing the prosecutrix not merely as a witness but as a participant in justice—whose voice, if found credible, can stand on its own, without being weighed down by outdated demands for corroboration. This approach upholds the principle of fairness for both survivor and accused and marks a meaningful step toward a truly just and equitable legal system.

REFORMS

1. The Criminal Law (Amendment) Act of 2018 and the changes it brought to Section 376 IPC:

After the horrifying incident of the Kathua rape case in the year 2018 (U.T of J&K vs. Shubham Sangra), in which an 8-year-old girl was kidnapped and gang raped, it became the need of the hour to make the laws surrounding punishment for this devilish crime more stringent. As a result, the Criminal Law (Amendment) Act was enacted in 2018. The following changes were incorporated in Section 376:

- Rape against a woman under the age of 12 is now punishable by a minimum sentence of 20 years in jail, with the possibility of life imprisonment, as well as a fine or death.
- The punishment for gang rape of a lady under the age of 12 is now life imprisonment, a fine, or death.
- Females under the age of 16 might face up to 20 years in prison or life in prison if they are raped. A person who is sentenced to life imprisonment will be held in jail for the rest of his or her natural life.

For rape of a female over the age of 16, the minimum sentence is ten years in jail.

2. Assistance to rape victims: Supreme Court guidelines The Supreme Court found in Delhi Domestic Working Women's Forum vs. Union of India (1994) that in rape cases, the investigating agency, as well as the subordinate courts, sometimes adopt a completely indifferent attitude toward the prosecutrix, and as a result, the Supreme Court issued the following directions in order to assist rape victims:

- Legal representation should be offered to complainants in sexual assault cases. It's critical to have someone who knows how the criminal justice system works. The victim's advocate's role would include not only explaining the nature of the proceedings to the victim, preparing her for the case, and assisting her in the police station and in court, but also directing her to other agencies for help of a different nature, such as mental health counselling or medical assistance. It is critical to ensure continuity of support by ensuring that the same individual who represented the complainant's interests at the police station continues to represent her throughout the case.
- As the victim of sexual assault may be distressed when she arrives at the police station, legal assistance may be required. The direction and support of a lawyer at this time, as well as while she is being questioned, would be extremely beneficial to her.
- Before any questions were made to the victim, the police should tell her of her right to representation, and the police record should state that she was so told.
- For victims who do not have a lawyer in mind or whose own counsel is unavailable, a list of advocates prepared to act in these circumstances should be kept at the police station.
- The advocate will be appointed by the court at the earliest possible time, upon application by the police, however advocates will be authorized to function at the police station before seeking or obtaining leave from the court, in order to ensure that victims are questioned without excessive delay.
- In all rape trials, the victim's confidentiality must be preserved to the extent possible.
- The establishment of a Criminal Injuries Compensation Board is required in light of the Directive Principles established in Article 38(1) of the Indian Constitution. Victims of rape frequently suffer significant financial losses. Some people, for example, are too traumatized to return to work.
- The court will provide compensation to victims if the criminal is convicted, and the Criminal Injuries Compensation Board will award compensation whether or not the offender is convicted. The Board will consider pain, suffering, and shock, as well as lost wages owing to pregnancy and childbirth expenditures if the rape resulted in these events. Furthermore, the state authorities, particularly the Director General of Police and the State's Home Ministry, have an obligation to issue proper guidelines and instructions to other authorities on how to deal with such cases and what kind of treatment the prosecutrix should receive, as a victim of sexual assault requires a completely different kind of treatment not only from society but also from the state authorities. The doctor who examines the rape victim must exercise caution. In most cases, a female doctor should evaluate the rape victim.

3. Medical examination of accused and victim in cases of rape:

Medical examinations of the victim and the accused shortly after the incident often produce a plethora of corroborative evidence in cases of rape or attempted rape. As a result, such an opportunity should not be overlooked. Though the prosecutrix can only be questioned with her assent, the accused can be questioned under Section 51 of the Bharatiya Nagarik Suraksha Sanhita, 2023. It should also be remembered that the accused, under Section 53 of the 2023 Code has the right to request such an examination if he believes it will disprove the charge levelled against him. Because smegma (thick, white, cheesy substance that collects under the foreskin of the penis) is wiped off during intercourse, the

presence of smegma on the accused's corona glandis (glans penis) soon after the incident is proof against complete penetration. Smegma must, however, be examined within 24 hours to be of any use.

4. The two fingers test concept:

- Rape survivors right to privacy, physical and mental integrity, and dignity are all violated by the two-finger test and its interpretation. As a result, even if the report is positive, this test cannot ipso facto lead to a presumption of consent.
- Rape survivors are entitled to legal recourse that does not re-traumatize them or violate their physical or mental integrity and dignity, as stated in the International Covenant on Economic, Social, and Cultural Rights of 1966 and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 1985. They also have the right to have medical procedures carried out in a way that respects their right to consent.
- Medical operations should not be carried out in a way that is cruel, inhumane, or demeaning, and health should always take precedence when dealing with genderbased violence. The state has a legal obligation to provide such services to sexual abuse survivors. There should be no arbitrary or unlawful interference with his privacy, and proper precautions should be made to safeguard their safety.

5. What needs to be done when the defence that the girl was of easy virtue is taken: The fact that the rape victim was previously accustomed to sexual intercourse cannot be the deciding factor. On the contrary, the question of whether the accused raped the victim on the occasion in question remains unanswered. Even if the victim has previously lost her virginity, this does not give anyone permission to rape her. It was the accused, not the victim, who was on trial. In a rape case, whether the victim is a promiscuous individual is irrelevant. Even a lady of easy virtue has the right to decline to engage in sexual activity with anybody and everyone because she is not a vulnerable object or prey for sexual attack by anyone. A prosecutrix has a greater status than an injured witness since the latter suffers psychologically and emotionally, while the former suffers physically. In **Narender Kumar vs. State (NCT of Delhi) (2012)** the Supreme Court considered a case in which the rape victim was accused of being an unchaste woman with an easy virtue. The Court discussed **Rajoo vs. State of MP (2008)** and decided that where the prosecutrix's evidence is read in its entirety and judged to be worthy of reliance, the prosecutrix's statement alone is sufficient to record a conviction. The occurrence gives the victim enormous distress and embarrassment, but a false claim of rape can surely inflict the accused the same distress, humiliation, and damage. The Court went on to say that while some information exists indicating the victim's proclivity for sexual intercourse, this cannot be used to infer that she was of — loose moral character. This cannot be used as justification for her being raped; she also has the right to maintain her dignity by refusing to engage in sexual activity with anyone. A woman's evidence cannot be dismissed just on the basis of her simple virtue; rather, it must be cautiously appraised.

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