

Policy Report

No. 15

Enabling Reporting of Rape in India: An Exploratory Study

Nithya Nagarathinam



THE HINDU CENTRE

for

Politics and Public Policy

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ABSTRACT

This Report is an exploratory work seeking to answer the question ‘What enables reporting of rape in India?’ Under-reporting of rape is often attributed to social norms that stigmatise female sexuality, to the point that there is a guarded silence and secrecy around it even when subjected to violence. This view on under-reporting places the blame on the victim, as if she makes a choice in not reporting rape, constrained by the influence of an abstract force of patriarchy. What I found was that social stigma becomes irrelevant the moment the incident of rape becomes public knowledge and hence cannot dis-incentivise the victim for reporting. In fact, the victim is motivated to prosecute and seek justice, if only for her own vindication.

What come into play then are institutional barriers arising out of the extrapolation of social norms into the State. This Report examines these institutional factors located and operating within socio-cultural constructs of rape and female sexuality to identify enabling forces that can overcome barriers to

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reporting of rape. The first part of the Report analyses rape statistics in India to identify regional patterns at the State and district levels. The second part was conducted through interviews of victims, police officers, advocates, women's organisations, activists and State officials.

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I. Introduction

That rape is a severely under-reported crime is by now well established. Recorded data indicate that the incidence of rape in India is among the lowest in the world.¹ We also know, however, that rape is a grossly underreported crime in India. Therefore, India's recorded number of rapes is so low that even if we take 10 times that figure, the corrected number of rapes would still be lower in India than in the US, the UK, Sweden or South Africa (even with the assumption that there is no underreporting in these other countries).²

Though the majority of the women suffer in silence, a few choose to approach the official justice system. What makes these women victims of rape break their silence? What I have attempted in this Report is a careful examination of socio-cultural constructs within which is set the legal, judicial efforts to comprehend and deliver justice to victims of a highly

¹ United Nations Office on Crime and Drugs. 2013. [*Rape at the National Level: Number of Police-Reported Offences*](#). Spreadsheet, available at www.unodc.org

² Dreze, J., and Sen, A. 2013. [*An Uncertain Glory: India and its Contradictions*](#). Allen Lane.

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gendered crime of the most intimate and private nature. In doing so, I seek to understand the complex interplay of sociocultural and institutional factors that influence and control a victim's decision to report rape.

Rape as a crime, challenges the rationality and comprehension of the Indian criminal justice system founded on law of evidence (due procedure laid down by law) and not the law of truth (due process of law). The non-materialistic nature of loss incurred by a rape victim, unlike in other heinous crimes such as murder, subjects her to a certain amount of institutional apathy arising out of the inability to comprehend and quantify the loss. Women's loss through rape is not only less tangible, but is seen as unreal (MacKinnon, 1989). While her loss, even if less tangible, is absolute, it is quantified and graded in proportion to physical manifestations of the violence such as death or external injuries. The intensity of physical injuries is viewed as an index of a woman's reluctance and thus lack of her consent to intercourse. This means that a rape where a woman does not have substantial physical injury could run the risk of being downplayed by the legal system to the extent that it may not even be recognised as such. Thus, institutional apathy creates a *de facto* threshold on reporting of rape. A rape

can be indexed only when a quantifiable loss is suffered by its victim and there is physical evidence to establish that a woman did not consent.

Operating in this space is a set of determining factors guiding a victim's decision to seek justice from the state and thereby exposing herself/himself to the public gaze of law and society. When does a victim decide to report an incident of rape? To whom does s/he report? Why does s/he report? Answering these questions is fundamental to any policy seeking to increase reporting of rape and making adequate policy recommendations to provide disincentives to the crime. Though this Report recognises the need to establish that victims of rape can also include men and young boys, it remains focused on female victims of the crime. As MacKinnon observes, 'rape is a sex-specific violence and victims of rape are overwhelmingly women and perpetrators of rape are overwhelmingly men' (MacKinnon, 1989). Moreover, there is paucity of data with respect to male rape victims, with data under the Prevention of Child Sexual Offences (2012) being the only other source of data.

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Enabling reporting of rape is important to address gender inequality and women's empowerment. Interestingly, the UN indices for gender development (GDI) and empowerment (GEM) do not take into account the costs of gendered crimes such as rape, despite rape being pandemic in many parts of the world including advanced industrial countries. A victim of rape incurs heavy psychological, social and economic costs in rebuilding her life. Every incident of rape that is not reported increases the exposure of every other woman to the crime. This increase in risk exposure due to under-reporting and recidivism in unreported offenders is largely unexplored in research.

I began my research at the doors of the National Crime Records Bureau (NCRB), with an objective view of rape statistics, hoping to identify regional variations and patterns in occurrences of rape across States in India. For State-level occurrences of rape, I used NCRB's annual publication *Crime in India* for the period 2001- 2013. I obtained data on police-district level occurrences of rape for the same period from the NCRB. The findings of the analysis are discussed in Section 2 of this Report.

During an interview with the author, the Head of the Tamil Nadu State Crime Records Bureau said, “Statistics can fool you sometimes. They don’t tell you what lies between the lines.” Crime data, especially on women, can be misleading, if not understood with reference to context, in a country as diverse as India. For instance, under-reporting can be assumed universal, in a culturally contiguous geographical region. However, in India, factors causing rape and those factors motivating reporting of rape in say a State like Tamil Nadu may be very different from those in a State with a history of terrorism and religious conflicts such as Jammu and Kashmir or Arunachal Pradesh. The link between gendered crimes and caste also affects both the incidence and reporting of rape differently in different States as a victim’s caste status may allow/disallow her from reporting the crime at a local precinct, especially if the perpetrator is from a more dominant caste. The same caste status may also expose a woman to a higher risk of rape, especially if the woman is from the lower castes. Hence, any analysis of data on crimes against women requires caution. In Section -3, I discuss some of the methodological problems I faced in attempting to make sense of the rape scenario in India. I also explain the methodology used in this Report.

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The second part of my investigation took me to the doors of police stations. As I went over First Information Reports (FIRs), I found that in 17 out of the 23 cases I looked at on the first day, the victims were minors (below 18 years of age). In eight of these 17 cases, the victims were children below 12 years of age. In cases where the victims were over 16 years of age, most were coerced rape, wherein consent was ‘*exacted*’ based on promises of marriage³. There were also love affairs gone wrong where jilted women had filed rape charges against men. These cases clearly constituted a grey area. If, it is normally argued, consent is given to a sexual act then the act cannot be construed as rape. However, my research found that often women would not give consent to intercourse unless the man could promise them a married future. The men, who in many cases clearly led the women on, could have had intercourse on a false promise. I have since begun seeing this as “*exacted*” consent, where under normal circumstances the woman in question would not give consent. However, a promise of marriage is a powerful incentive for a woman to say “yes” to intercourse in many parts of India. An affiliated

³ Based on the Researcher’s examination of 120 FIRs filed at 28 police stations in Coimbatore rural district (police district)

question that arises out of such cases is whether they construe rape in the legal sense of the term. Such cases, I must add, also give much fodder to men's rights organisations that have been arguing that many women file fake cases against men. While men construe these cases as fake, for many women, sex after a fake promise of marriage, is tantamount to losing their honour, or rape, as they understand it.

The factors influencing a victim's decision to report a rape incident are different in each of these categories. However, a common thread running through each and all of these cases is the victim's perception of herself as damaged goods, stained and unworthy of courtship with another human. This *devaluation of self* is one of the non-materialistic losses of a rape victim, one that is not addressed through legal remedy. It has important consequences for both her motive and determination to press rape charges. A psychological change of self-identity has further long-term consequences for the victim's future. Similarly, parents' perception of a child victim of rape as 'tainted' affects the future decisions they make for the child and his/her wellbeing including reporting the incident to the police.

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It is against this canvas that the state constructs a case for rape and stages a trial, in which the victim is the centrepiece. In this process, the state informs the much larger public, of its role as the guardian of justice, or otherwise. The law itself, and its actors – the police, the Public Prosecutor, the judge, and the judgement, are all important contributors to the construction of the image of justice. This image of justice constructed in minds of the public is a crucial variable affecting reporting of other incidents of the crime.

In Section 4, I examine a number of hypotheses on the reporting of rape. I look at the role of the institution of police and the courts in informing the decisions of present and future victims of rape to report the crime and to whom they would and would not report it.

Sections 5 and 6, contain concluding remarks and policy measures that are likely to enable reporting of rape, based on my findings.

Based on preliminary data analysis, I chose Tamil Nadu for my field study. I selected Tamil Nadu for a variety of reasons. I was able to interview 10 victims in Madurai, Dindigul and Virudhunagar districts. On an average, every year, about 1-3

cases of rape are reported for every 100,000 women in these districts. Though the sample size of the victims, who volunteered to be interviewed is not statistically significant for drawing any sweeping conclusions, I sought to get a preliminary understanding of why women do or do not report rape and provide a basis for further research in this area.

My interviews with victims of rape support the claim that presence of active NGOs is critical to the reporting of rape and that despite notions of honour associated with women's sexuality, the stigma of victimisation is not the overriding barrier to the reporting of rape. Systemic attitude and institutional responses both directly and subtly inform the victim's and the larger society's perception of rape and the rape victim. The proportion of women benefitting from Family Counselling Centres established by the Ministry of Women and Child Development is too small to assess the impact of such centres on reporting of violence. This is a potential area for policy research.

II. Rape in India Understood Through Data

Are there any discernible regional patterns that emerge from rape statistics? What are the correlates? These are some of the questions I seek to answer in this section in order to find where reporting of rape is high and if there are any specific reasons for higher rate of reporting. I have graded the reporting rate on a scale of four, using simple statistical categorisation of the dataset into four quartiles. The top quartile districts have higher rate of reported rape than the districts falling in the other three quartiles in order. For this purpose, I have used the dataset on rape, compiled from the NCRB reports and female population at State and district level⁴, derived from census data using the methodology described in Section-3 of this Report.

According to the annual publication of the NCRB, *Crime in India* one in six women in India complained of having been raped every year, on an average, during the period 2001- 2013. For the said period, India reported 20,988 cases of rape every year, on an average. Madhya Pradesh consistently reported the

⁴ All district-level data in this Report pertain to police districts.

highest number of rape cases. Mizoram and Tripura had the highest average rate of reported rape for 2001-2013. Outside the northeastern region, Madhya Pradesh had the highest rate of rape, closely followed by Chhattisgarh, for the same period (2001-2013)

To analyse trend in rate of rape during 2001 and 2013, I used three-year moving averages for each district for the said period. An increasing trend in the reporting of rape during 2001 – 2003 was evident in 74 per cent of the districts analysed. At the top of the list are Karnataka, Kerala, Meghalaya and Goa, showing an increasing trend in all the districts analysed.

Table 1: District level trends in rape reporting for Top 10 States for 2001-2013: three-year moving average

State	Total no. of districts analysed	No. of districts showing increasing trend in rate of rape	Percentage of districts showing increasing trend in rate of rape
Karnataka	27	27	100.00
Kerala	14	14	100.00
Meghalaya	5	5	100.00
Goa	2	2	100.00
Haryana	18	17	94.44
Punjab	15	14	93.33
Assam	22	20	90.91
Gujarat	21	19	90.48
Rajasthan	29	26	89.66
Manipur	9	8	88.89

Data Source: National Crime Records Bureau

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Table 2: District level trend in rape reporting for Bottom 10 States for 2001-2013: three-year moving average

State	Total no. of districts analysed	No. of districts showing increasing trend in rate of rape	Percentage of districts showing increasing trend in rate of rape
Tamil Nadu	28	19	67.86
Himachal Pradesh	12	8	66.67
Arunachal Pradesh	13	8	61.54
Uttarakhand	12	7	58.33
Jammu & Kashmir	14	8	57.14
Jharkhand	16	9	56.25
Madhya Pradesh	43	24	55.81
Tripura	4	2	50.00
Chhattisgarh	13	4	30.77
Bihar	34	10	29.41

Data Source: National Crime Records Bureau

At the other end of the spectrum are Bihar, Chhattisgarh, Tripura and Madhya Pradesh with most of the districts analysed showing a decreasing trend or hovering around the same rate of reported rape during 2001-2013. Considering that Bihar has low rates of reporting and high incidence of violence against women,⁵ it is worrying that more than 70 per cent of the districts analysed showed a decreasing trend in rate of reported rape (Figure 1).

⁵ Aashish Gupta in '[Reporting and incidence of violence against women in India](#)', 2014, shows that Bihar has low reporting and high incidence for all three types of violence: (a) sexual violence by husbands, (b) physical violence by others and (c) physical violence by husbands

Figure 1: District-level rate of reported rape for Bihar during 2001-2013: three-year moving average

District	Moving average for rate of reported rape 2002	Moving average for rate of reported rape 2003	Moving average for rate of reported rape 2004	Moving average for rate of reported rape 2005	Moving average for rate of reported rape 2006	Moving average for rate of reported rape 2007	Moving average for rate of reported rape 2008	Moving average for rate of reported rape 2009	Moving average for rate of reported rape 2010	Moving average for rate of reported rape 2011	Moving average for rate of reported rape 2012	Moving average for rate of reported rape 2013	Trendline for three-year moving average
ARARIA	7.34	5.33	3.00	3.02	3.30	3.44	2.99	2.77	3.50	4.05	4.21	3.76	
AURANGABAD	1.54	1.56	1.69	1.65	1.97	2.31	2.30	1.75	1.37	1.41	1.58	1.63	
BANKA	3.41	3.71	4.25	6.16	7.17	7.28	5.70	3.37	2.47	1.93	2.56	2.50	
BEGUSARAI	1.51	1.75	1.71	1.78	1.79	1.89	1.58	1.41	1.19	1.15	1.21	1.21	
BHAGALPUR	3.44	4.13	4.99	4.85	3.76	2.63	2.20	2.08	1.75	1.78	2.40	2.79	
BHOJPUR	1.57	1.15	1.03	1.15	2.02	2.10	1.92	1.17	1.10	1.03	1.21	1.20	
BUXAR	1.81	2.02	1.46	1.34	1.30	1.50	1.64	1.57	1.62	1.87	2.00	2.20	
DARBHANGA	3.05	3.83	4.03	3.89	3.60	3.57	2.64	2.07	1.42	1.70	2.03	2.13	
GAYA	1.60	1.46	1.25	1.18	1.31	1.79	1.68	1.55	1.04	1.25	1.58	1.82	
GOPALGANJ	1.24	1.98	2.18	2.47	1.58	1.52	1.86	2.08	1.90	1.42	1.22	1.17	
JAMUI	2.36	3.29	4.05	4.20	4.74	3.97	3.31	2.14	2.33	2.76	2.86	2.93	
JEHANABAD	1.04	1.06	1.55	1.64	1.72	1.24	1.18	1.27	1.56	1.61	2.06	2.16	
KATIHAR	6.19	6.83	6.95	6.51	8.09	8.71	9.46	7.03	6.46	5.23	5.82	5.23	
KHAGARIA	1.92	2.56	2.44	2.67	2.74	2.78	2.07	1.31	1.17	1.56	1.67	1.61	
KISHANGANJ	3.05	3.44	5.29	8.16	8.98	7.40	5.08	3.71	3.61	3.47	4.49	4.91	
LAKHISARAI	1.62	1.80	1.87	2.22	3.53	5.89	6.06	4.42	2.16	1.96	1.86	2.26	
MADHEPURA	1.29	1.25	1.41	1.47	2.24	2.23	2.24	1.40	1.08	1.73	1.80	2.29	
MADHUBANI	1.53	2.37	2.52	2.82	2.52	2.18	1.49	1.17	1.46	1.62	1.70	1.53	
MUNGER	1.79	1.75	2.12	2.44	3.19	3.24	3.15	2.33	1.60	1.41	1.18	1.22	
MUZAFFARPUR	3.48	4.98	5.24	4.98	3.36	2.46	2.51	2.06	2.44	2.09	1.91	1.64	
NALANDA	2.69	2.70	2.46	2.69	1.86	1.77	1.78	2.05	1.83	1.26	0.88	0.78	
NAWADAH	2.30	3.05	2.59	2.80	2.75	2.87	2.64	1.72	1.17	1.27	1.52	1.72	
PATNA	1.45	1.69	1.92	2.16	2.48	2.43	2.29	1.93	1.69	1.69	1.96	2.19	
PURNEA	3.59	4.09	3.82	3.51	7.06	10.33	10.44	6.19	3.28	3.00	3.27	2.93	
ROHTAS	1.54	1.15	1.21	1.23	1.49	1.54	1.54	1.61	1.56	1.72	2.44	2.95	
SAHARSA	1.54	1.89	1.85	2.72	2.50	2.90	2.62	2.21	1.64	1.14	1.37	1.61	
SAMASTIPUR	1.21	1.36	1.44	2.02	2.45	2.48	1.96	1.60	1.70	1.65	1.60	1.41	
SARAN	1.30	1.22	1.59	1.86	2.58	2.59	1.87	1.22	0.77	0.97	0.83	0.99	
SHEIKHPURA	1.81	1.79	1.13	1.09	1.19	2.10	2.18	1.93	1.22	1.62	2.44	3.18	
SHEOHAR	4.43	4.57	3.81	3.01	2.89	2.58	2.79	1.59	1.21	0.97	0.95	0.78	
SITAMARHI	2.32	3.42	3.38	3.08	1.65	1.16	0.71	0.63	0.53	0.76	1.08	1.37	
SIWAN	0.59	0.65	1.07	1.16	1.37	1.27	1.17	1.19	1.00	1.11	1.09	1.15	
SUPAUL	2.90	2.61	3.19	3.20	3.75	4.07	4.08	3.21	2.16	1.92	2.33	2.43	
VAISHALI	1.61	2.10	2.00	1.61	1.12	1.60	2.23	2.34	1.93	1.38	1.22	1.29	

Data sources: National Crime Records Bureau, and Office of the Registrar General and Census Commissioner, India.

III. Research Methodology

The National Crime Records Bureau (NCRB) publishes the only official data on rape statistics in India in its annual publication *Crime in India*. Though under-reporting of rape is a widely believed phenomenon, there is no mechanism to ascertain or properly estimate its magnitude. There are no victimisation surveys available, leaving the official data published by the NCRB as the only source of data for research on rape. The National Family Health Survey asks a few questions about violence experienced by women, but the data thus collected are not as extensive as the NCRB data. For this report, I used State-level and police-district level total number of occurrences of rape registered by the police in the form of First Information Reports (FIRs), and collected at the district level by the NCRB, during 2001 to 2013.

A First Information Report (FIR) is a written document prepared by police organisations on receiving a complaint about the commission of a cognisable offence. After an FIR is filed, the contents of the FIR cannot be changed; except

by a ruling from the High Court or the Supreme Court of India. This is followed by a police investigation and the filing of a charge sheet in the format specified in the Criminal Procedure Code (CrPC) section 173(2). In the investigation stage, cases may be closed because of mistakes of law, fact etc. The investigating police officer can refer a case to be closed because of mistake of fact or law, if she concludes from her investigation that the complaint was falsely made. This vests the investigating officer with the power that can be abused to exact bribes and mediate compromises. Women's Rights Lawyer Ms. Nirmala Rani said,

The Police officer is required to inform the complainant when she refers the case as mistake of fact or law. But very often, they [police] do not [inform]. The complainant waits for years believing her case is still pending trial at court.⁶

The submission of a charge sheet to the courts is followed by a trial. On approval of the charge sheet by the Public Prosecutor, the case goes to trial at the Fast Track Mahila

⁶ As told to the author in an interview

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Court, or in the absence of such a court, at the jurisdiction court.

The National Crime Records Bureau collects crime details from the FIRs filed at various police stations at the district level. The number of reported incidents of crime therefore equals the number of FIRs filed at the police stations on receipt of a complaint. As the number of incidents itself cannot be used for comparative analysis over space and time, due to variation in population density among States, and due to intra and inter-State migration, I used the crime rate, defined as incidents of the crime per 100,000 women in the region for analysis.

$$\text{rate of rape} = \frac{\text{total number of registred cases of rape}}{\text{female population}} \times 100000$$

For calculating rate of rape at the State and district level, I have used the female population of States and districts from the Census conducted in 2001, 2011, and extrapolated to 2013 using the annual decadal growth rate for 2001-2011.

Problems with data

Can the crime rate be used as a standardised variable to identify regional patterns in crime? In attempting to calculate the rate of rape, I faced several problems. First, the number of police districts increased from 681 in 2001 to 823 in 2013. However, the crime data published by the NCRB is not adjusted for changes in the number of districts.

Second, while the number of incidents of rape is collected for police districts, the population data is collected for census districts.

Third, population data is not available for all districts in all years, as new districts have been added over the years.

These limitations affect the accuracy with which the rate of rape can be calculated and analysed across districts over time. Therefore, for simplicity, my dataset includes only those values for which rape data is available for at least 10 out of 13 consecutive years from 2001 to 2013 and for which the police district matches the census district. After this filtering my dataset consisted of 550 districts for which

number of cases of rape and female population was available for at least 10 out of 13 consecutive years from 2001 to 2013.

Is the actual number of incidents of rape greater than the number of reported incidents?

Given that sexual crimes are widely under-reported crimes globally,⁷ the number of FIRs registered on rape in India only indicates a lower limit on the incidence of the crime. Without any information on the extent of under-reporting, it is impossible to calculate an upper limit or an approximation close enough to the actual incidence of rape.

Even using registered rape to estimate the floor limit on actual occurrence of rape, has several caveats.

First, errors induced in data by institutional inefficiency could be substantial. For example, as per the District Crime Records Bureau's online database, in Coimbatore district (rural) in Tamil Nadu, there were 120 cases of rape in the district during 2001-2013, whereas NCRB reported 208.

⁷ For the year 2005, only about 5.8 per cent of the incidents of sexual violence against women which were committed by men other than the survivors' husbands were reported to the police (Gupta, 2014)

When I visited the police stations, I found that there were many omissions in the online database.

Second, due to large number of acquittals⁸ in rape trials the total number of registered incidents of rape cannot be taken as the minimum number of actual incidents of reported rape. Data on disposal of rape cases reveal that on an average, every year during 2001-2013, Around 7.16 per cent of the registered cases were declared false because of mistakes of fact or of law, after a police investigation.⁹

Is the actual number of incidents of rape greater than the number of convictions?

Another variable that could be considered as a potential indicator of the incidence of rape is the number of convictions. However, this requires the assumption that erroneous convictions are negligible. Only then would it be possible to obtain the floor limit on the incidence of rape based on the number of rape trials that end in conviction. The caveat here is the extraordinarily high quantum of pendency

⁸ As per NCRB data for 2001-2013, on an average, every year, 73.8% of rape cases that make it to trial end in acquittal.

⁹ Data source: National Crime Records Bureau (www.ncrb.gov.in)

and low conviction rate. During 2001-2013, on an average, 82.19 per cent of rape cases were pending trial annually.¹⁰ The average annual conviction rate for trials in child rape during this period was 33.42 per cent. Such a low conviction rate frustrates efforts at estimating number of actual rape incidents reported, even in cases of statutory rape.

It is not known if the low conviction rate is due to the large number of cases of statutory rape, involving love affairs. (Rukmini, S. 2015). No data are available on the reasons for acquittals in trials of statutory rape cases. Therefore, the number of convictions cannot be used as a variable to index the real occurrence of rape.

Qualitative issues

A significant challenge that I faced in estimating the incidence of rape in India was with rape cases involving consent. Does consent automatically preclude rape? Often, cases of consensual sex are viewed with suspicion and the victim with contempt, in some circles, including the police. The reason for this perception could be due to the frequent

¹⁰ Data source: [National Crime Records Bureau](#)

use of FIRs, particularly with IPC section 376, as an instrument of coercion, to mediate settlement between consenting adults, where there has been a breach of promise of marriage.

Sometimes cases of consensual sex are passed off as rape by the victim's relatives or parents. In my examination of 120 FIRs registered during 2001-2015 in 28 police stations in Coimbatore rural district, I found that nearly 45 per cent of the cases were "grey", i.e. they involved consensual sex. These "grey cases" fall into two broad categories. In the first category of cases, sexual relationships of young couples, wherein the girl is a minor, is criminalised as rape by parents.

The second category included consensual sex and breach of promise of marriage by the accused male. The former category of cases was filed under IPC section 376 (rape) along with IPC section 366 (kidnapping, abducting or inducing a woman to compel her marriage). In the latter category, charges are filed under section 376 (rape) and section 417 (cheating).

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A similar analysis of 583 judgements on rape trials in the State of Delhi revealed that the largest part of what is classified as rape turned out to be parental criminalisation of consensual sexual relationships, often when it came to inter-caste and inter-religious couples (Rukmini, S, 2014).

IPC section 375 identifies six circumstances in which sexual intercourse between a man and a woman can be considered as rape. Of these, three deal with consensual sex.

- a. With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
- b. With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
- c. With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

The “grey cases”, which are a close approximation of (b) above, often end in acquittals mostly because of the victim turning hostile in trial. According to legal experts and advocates dealing with rape cases, victims turning hostile from their statements given to the police, accounts for over 80 per cent of the total acquittals (Sareen, 2015). While it is difficult to define and confirm consent in an accusation of rape, consent itself does not preclude rape since in a male-oriented society, a woman’s consent is often exacted and not voluntary.¹¹ My dataset includes all cases of rape, including the grey cases.

The statutory age limit of 18 years for minors distorts data on child rape by declaring consensual sex between young couples under the age of 18 as statutory rape. As per IPC section 375 and the Protection of Children from Sexual Offences Act 2012 (POCSO), sexual intercourse with a minor child with or without her/his consent, falls under statutory rape. During 2001-2013, there were 75,372 registered cases of statutory rape. Out of these, in 47,350

¹¹Nagarathinam, N. 2015. [*Rape, Compromise, and the Problematic Idea of Consent*](#). [The Hindu Centre for Politics and Public Policy](#)

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cases (62.82 per cent), victims were between 14-18 years of age. What proportion of these cases are love affairs filed as rape by parents cannot be estimated except by going through each individual FIR and classifying each one as consensual or otherwise.

Hence, existing data on rape of women and children is quantitatively and qualitatively inadequate to be indicative of the reality and extent of the problem of sexual violence in Indian society. This poses a serious methodological problem for researchers seeking to investigate rape in India, as it is hard to get a real bearing on the scope of the problem and this difficulty, in turn, affects policy decisions that may be taken to address the problem.

Due to the various limitations described in this section, rape data by itself does not say much about incidence or reporting patterns in rape. However, together with certain other indicators, it can be a useful tool to identify regional patterns.

I interviewed 10 victims in the districts of Madurai, Virudhunagar, and Dindigul. My sample of interviewees, who were victims of rape, was determined by their

willingness to talk and their availability. Women, who were once victims of rape and were now married, were unwilling to speak about it, fearing that it would come to the attention of the husband or the in-laws. Most of those, who had reported the incident earlier had dropped the case, settled the case through mediation, married their perpetrator, or turned hostile in court on account of being married. The remaining did not report the incident at all. Many victims relocated after reporting an incident of rape, unable to cope with neighbourhood gossip or after the completion of the trial. When they relocated, they tried to lead inconspicuous lives and became inaccessible.

The incident became a secret buried in the past and they started a new life in a new place. Conviction of the accused offered a victim little more than a certificate of victimhood. In the victims' eyes, a conviction did not reclaim their lost honour or social status. This behaviour that was observed and documented by me during the interviews was perfectly aligned with what most victims of rape across India do.

Victims of rape are likely to deny the occurrence of the incident and refuse to speak about it. Anyone that does not

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do so is an exception and often, a victim's voice on the subject of rape opens her up to further scrutiny and attack. These behaviours severely limited the size and quality of the sample for a survey. However, I decided to use a snowball sample and talk to women that were contacted through organisations¹² that work with victims of violence. All the women I interviewed belonged to the Other Backward Castes or Scheduled Castes / Scheduled Tribes and lived in rural areas. Table 3 describes the rate of rape for 2001-2013 for the three districts where field interviews with victims were conducted.

¹² I would like to thank AIDWA (All India Democratic Women's Association), Chennai, and Evidence, Madurai for their support in contacting and setting up meetings with victims in the various districts.

Table 3: District-wise rate of reported rape for 2001-2013

District	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Avg 2001- 2013
Dindigul	1.47	1.45	1.84	1.81	1.71	1.08	1.17	1.25	0.95	0.84	1.67	1.47	1.18	1.38
Madurai	1.18	1.69	2.19	2.75	2.12	2.66	0.92	1.53	1.43	1.34	1.85	2.67	3.14	1.96
Virudhunagar	1.93	1.46	3.00	1.98	2.09	0.75	0.85	1.80	1.67	2.07	1.95	2.34	3.32	1.94

Data source: National Crime Records Bureau, *Crime in India*, 2001-2013

IV. Who Reports Rape and Why?

People asked us why we went to the police. They said it [rape] was a shameful thing and going to police would only make [the situation] worse. We were hesitant too.

— Kannamma
**mother of a 14-year old rape victim.*

I want to see him punished. This incident has changed our entire lives. We were a respectable family in our village. Now, my neighbours don't talk much to me. We had to send my daughter to a school in another town. When she comes home for holidays, it pains me to see her play all alone.

— Mutbulakshmi
**mother of a 12-year old rape victim*

Malar (name changed) was in a relationship with her employer's son. One evening, at their usual secret meeting place, on the outskirts of the village, he asked her to have sex with him. "I'm going to marry you, then what is the problem?" he said to her. Malar, the 17-year old, refused, so he tied her up, slapped her across her face and forced himself on her several times. Afterwards, he called his friends on the phone and invited them to rape her. They did. Then they threw her in a garbage heap. A passer-by found her and informed her parents. Malar went into a coma. She was severely injured and even had head injuries. She was taken to

*names changed to protect identity

government hospitals in two districts before they admitted her and filed a medico-legal case.

Fifteen months later, Malar was still severely traumatised. She had not received any psychological counselling. The case had not come to trial at the time of our interview and she had not met the Public Prosecutor. After she was discharged from the hospital, her family relocated and worked in a brick kiln for 10 months to repay the debt incurred for her medical expenses. They had no idea if there were legal provisions for compensation. They were uninformed. When the family moved back into the village after repaying the debts, Malar went into depression. Her father took to drinking and shouted at her every night when he came home, blaming her for the mishap that she had brought upon the family. Her family began feeling ostracised. People accused her mother of using her daughter to seduce the upper caste employer's son, for money and social status. Her mother broke into violent sobs as she spoke about her loneliness. She felt ashamed for her daughter.

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She said,

I try to be nice to her, she is my daughter. I try to tell myself that it is not her fault. She is only a child. But a stain is a stain, and she brought it on this family. That can't be changed. It is shameful enough that she was having a relationship, and now this [rape]. What is the future for her? Who will marry a girl raped by five men?

Malar currently stays at home and does not leave the house all day. That means she lives tied down to the memories. She has no guidance, no counselling and no idea what to do next. Their lives are on hold, awaiting the trial. Malar did not describe her experience with the police as pleasant. Instead, this is what she said,

I was still in the hospital when they [police] came to talk to me. I couldn't recollect everything, so they scolded [me]... [they] acted very rough... [They] asked my parents if they did this for money. I was scared. I didn't want to file a complaint. I didn't want to go to court. I just wanted to die... and go back to sleep.

Why did Malar and her family decide to prosecute? There are several reasons why women do not report an incident of rape, such as social stigma, secondary victimisation by the police and the criminal justice system. Reporting to police is often realistically viewed by victims as ineffective and potentially costly (Kidd & Chayet, 1984). Often protracted prosecution

prevents the victim from obtaining closure and from moving on. The high pendency of cases in the courts and low conviction rates further discourage reporting of rape.

Why then does a victim report a rape? When does she report a rape? Finding answers to these questions is crucial to understand how to enable reporting. It is here that this study offers the following hypotheses:

H1. Victims are more likely to report when the offender is a stranger than when the offender is known to the victim.

Williams (1984) suggests that victims of the “classic rape” situation, involving violent attack by a stranger are more likely to report, than victims who are raped by acquaintances.¹³ However, NCRB statistics show that in 91 of all cases registered between 2001 and 2013, the offender was known to the victim, thus rendering this hypothesis null.

H2. Victims of forcible rape who sustained physical injuries are more likely to report.

¹³ Williams, L.S. 1984. [The Classic Rape: When Do Victims Report?](#), *Social Problems* Vol. 31, No. 4 (April), p. 459-467. Oxford University Press.

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One variable that majorly influenced a victim's decision to report was presence of physical injuries. Victims are significantly more likely to report a rape if the offender had used physical force and if the victim had received medical attention for injuries sustained during the commission of the crime. Physical injuries offer physical proof of both the occurrence of the crime and the victim's struggle and hence the lack of her consent. The criminal justice system is more sympathetic towards victims that bear visible signs of violence inflicted upon her and more suspicious towards victims that do not bear such signs. In an interview with me, the Head of Department of the forensics department at a government hospital that examines rape victims said,

Why would she [the victim] go with him, unless she wanted it [to have sex]? Why didn't she fight, if she didn't want it [sex]? I say, attack the rapist. Get your nails into his skin, grab his hair. That is how you can have evidence of rape. Otherwise, how can we say there has been rape? Girls have illegal relationships [i.e. sexual intercourse] with their boyfriends, and then they are afraid [of what people would say of her character]. So they say he [partner] raped...

The unfortunate remark of the forensic functionary is indicative of the systemic attitude towards rape and the extent to which patriarchal notions of a woman's sexuality remain

ingrained. Secondary victimisation arises from such misconstrued stereotyping of rape and rape victims. Even in cases of a stereotypical rape involving an assault by a stranger, every victim reacts differently to the attack.

Kalai (name changed), a 13-year old victim, sat across from me, with her eyes squeezed tightly shut, as she recollected the incident from about a year ago. She was angry with her parents for forbidding her to watch TV. She, therefore, walked out of her home, and ran to the bus stop to run away from home. As she sat down at the bus stop and tried to gather herself, her anger and rage of a child wore off. That is when the man walked up to her and inquired what she was doing alone in a bus stop. Child, as she was, she told him, a perfect stranger, that she ran away from her home because she had a fight with her parents over her desire to watch TV. He offered to buy her food and she went with him. When, after food, he asked her to climb into his lorry, she felt scared but she climbed into it anyway. On their way, when he stopped to buy a pack of cigarettes, she jumped out of the vehicle and tried to run. However, he caught up with her, trapped her by force and raped her.

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It was 3 a.m. when the police called on her parents to inform them that their daughter had been found with a 20-year-old man, a few kilometres away from home. When I asked Kalai why she did not cry out for help she said,

I don't know *akka* [sister]. I was scared and I did not know what to do. I knew something bad was happening but I was afraid [to do anything]

After raping her, the man told her that now that she had been “spoilt” by him, she should go with him and he would marry her. When I asked Kalai what she would have done had the police patrol not caught them, she said,

I was going to go with him because he said that now he would marry me and I had no option. *Yennaa, naan kettu poyitten* [because I was polluted]. I was afraid to go home to my parents; they would scold me for this.

She thought she had no option but to go with her attacker. She thought that was the end of her life. What happened to Kalai is known as *freezing*, a brain-based response to detecting danger.

In the midst of a sexual assault, the brain's fear circuitry dominates. The prefrontal cortex can be severely impaired and all that is left may be reflexes and habits, says Dr. James W.

Hopper (Hopper, 2015)¹⁴. If Kalai was trained to be docile and subdued, her brain might have no cues to fight back. This is an important factor to be considered in a patriarchal society, which makes submissiveness a feminine virtue. Even as she admitted to me that she did not like talking about it, it was only very shyly and only after I told her several times that she did not have to talk if she did not want to. In India, children like Kalai are not taught to say ‘no’, even to a stranger. Girls are taught to be polite to the point of not recognising their own likes and dislikes. Mistaking habitual submission for consent to intercourse and medicalisation of consent would severely undermine reporting of rape.

H3. A victim that has been forcibly raped for a period of time is less likely to report to the police, unless she sustained physical injuries or is pregnant.

That woman who came in yesterday for examination, everyone knows she was sleeping with her employer. Now she must want money and he must have refused, so she is saying he raped her. How can someone be raped for months?

¹⁴ Hopper, J. W. 2015. [Why many rape victims don't fight or yell](#). *The Washington Post*.

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A chief surgeon at a district hospital

In reality, a rape victim is assumed to be lying, unless otherwise proven.¹⁵ The first question that arises when the victim goes to the police station is that of her motive and her character. One of the most common defence strategies in courts is bringing up the past sexual history of the victim.¹⁶ Therefore, when a woman has been abused repeatedly, she becomes a likely target of secondary victimisation at the hands of both police and the defence lawyers. Repeated intercourse means that a medico-legal certificate would declare her a *habitué*. When a prosecutor or defence lawyer reads a medico-legal certificate that declares a woman to be a *habitué*, more often than not, they conclude that she has lied about being raped (Baxi, 2014).

In the Mathura rape case of 1972, the two accused policemen were acquitted on grounds that the victim was a *habitué* and hence “might have incited the cops (they were drunk on duty) to have intercourse with her” (*Tuka Ram and Anr vs. State of Maharashtra, 1979*). The case led to the Criminal Law Amendment 1983, after much public outcry. The amendment

¹⁵ In ‘Public Secrets of Law’, Pratiksha Baxi narrates how a rape victim is viewed with suspicion by courts, and how medical jurisprudence is used as a tool to identify false cases of rape.

¹⁶ *ibid*

made a statutory provision, which states that if the victim says that she did not consent to the sexual intercourse, the Court shall presume that she did not consent as a rebuttable presumption. Yet, 30 years later, a *habitué* victim continues to be viewed with suspicion by the Indian Criminal justice system.

Two-finger test is useless, obsolete. It cannot be used to find out if a woman is used to sex or not. If you insert one finger, it [vagina] will admit one finger. If you insert two fingers, it will admit two fingers. You can even insert a fist, do you know that? But doctors stop with one finger and write 'one finger admissible'. That does not mean she [victim] was not habituated to sex.

Head of Department, Forensics Department,
District General Hospital [Name of district withheld]

Often, in incestuous rape or in cases involving partners or employers, the victim is forced into intercourse repeatedly for a long period by means other than physical force, before she reports it to the police. Victim blaming in such cases prevents the victim from making formal complaints. Pregnancy complicates the situation, since it is difficult to hide a pregnancy. In such a situation, rape offers the victim a refuge in hapless victimhood as opposed to silence that denotes depravity. She may choose the lesser of the two evils and

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decide to report. This was also evident in the FIRs I examined in Coimbatore district. The motive for reporting in pregnant victims is mostly to seek compromise or settlement with the accused. Many of these cases are settled at the police station and dropped before the case goes to trial. Both the victims and the police to rationalise compromise, cite practicality.

If you go to court, the trial will go on for 10 years. Your daughter will be 23 by then. What will you get? How will you get her married, with an on-going case in court? Take the amount [settlement offered], think of it as an accident and move on.

Police officer to child victim's mother¹⁷

The narrative of reporting highlights the crucial role of the police in the reporting of rape. Sarojini Rajappan, the Public Prosecutor at a Mahila Court in Coimbatore District says,

The police, PP [Public Prosecutor] and the judge constitute a team. The team's chemistry is crucial to disposal of cases. It is the PP that approves the charge sheet. It is up to the PP and the investigating police officer to make a strong case.

¹⁷ In a case of child sexual abuse involving two school children and the school Head Master at Virudhunagar Government middle school, the police is said to have worked out a settlement for Rs.10,000. Cited by Suganti, State Secretary, Tamil Nadu AIDWA in an interview with the author.

It is evident that social norms and concerns of practicality and the future dictate a victim's decision to report cases where the incident itself can be hidden from public knowledge. However, once the rape is made public, social factors such as stigma become less dominant and rape reporting as a dependent variable is then primarily a function of institutional response. In the next section, I propose a hypothesis that enabling external forces such as NGOs can increase reporting of rape and discuss the ways in which that can happen.

V. Conclusion

Based on interviews with victims, state officials, medical examiners, and the arguments presented in the previous section, it becomes apparent that societal stigmatisation of rape is only partly responsible for under-reporting and is not the overriding barrier to rape reporting. Nonetheless, patriarchal notions of honour, shame and morality associated with female sexuality are well entrenched in the state's institutions. Such notions operate and manifest at every stage of the victim-state interface starting at the police station right up to the courtroom. These notions lead to prejudiced stereotyping of rape and consent, and condemnation of exercising female sexual freedom, by the state's implementing agencies at all levels, resulting in refusals to file proper FIRs that can hold up to scrutiny in court, failures to conduct rigorous investigations and medical examinations, encouragement of compromise and settlement. This in turn causes systematic serial victimisation of the rape victim and creates conditions under which dropping the case or resorting to compromises and settlements are more attractive to a victim than pursuing the legal course to obtain a conviction and sentence. It will not

be an exaggeration to say that reporting of rape happens despite the state, rather than because of it.

Those who come to us do want to file a case. They come to us when the police respond badly. Often an FIR is not filed as soon as the complaint is received, even though legally they are required to file an FIR immediately on receipt of a rape complaint.

- Suganti, State Secretary, AIDWA, Tamil Nadu.

A critical factor in a victim's decision to report rape is the nature of her interaction with the system. This system is comprised of the police, medical experts and the public prosecutor and society. The first point of the victim's interface is with the police. The receptivity and sensitivity of the police therefore are determinative in rape reporting. Rape trials rely heavily on police investigation reports and "acquittals due to poor investigation reports are common", said a sitting judge of a Mahila Court.¹⁸ Therefore, police attitudes and diligence in filing cases and investigating have a direct bearing on the conviction rate as well. An experimental study by Banerjee *et al* in Rajasthan found that field surveyors posing as regular citizens trying to report

¹⁸ As told to the author during an interview.

incidents were sent away without being able to file a report 52 per cent of the time. Such instances of alienation of the public spread through hearsay and influence public willingness to report a crime, which in turn goes on to incentivise under-reporting.¹⁹

The greatest correlate of gender crimes is the overall crime rate in a State, suggesting that the reported gender crime rate reflects to an extent the willingness of the police to register crimes (Bhattacharya, 2013). Failure to report is not limited to the police. There were cases where staff at the government hospitals failed to report rape, even in severe cases²⁰ (*Aruna Ramchandra Shanbaug vs Union of India & Ors, 2011*).

H4. Presence of NGOs that provide comprehensive assistance to rape victims, increases reporting or rape.

At first we went to the police because we didn't know what else to do. But later, we wanted to withdraw. Evidence people came and spoke to us. They said

¹⁹ Banerjee et al, in a seminal Household survey in Rajasthan found that only 29% of crime victims had bothered trying to register the crime, often because they felt that the police would not make an effort to assist them. 53% of baseline survey respondents claimed that law-abiding citizens fear the police

²⁰ Also see [gang rape of a speech and hearing impaired 16 year old in Anjetti, Krishnagiri](#).

they will give us support and forced us into staying. We received compensation... that was consoling. I don't know what compensation, Kathir* Sir says that it is because we are SC/ST.

- Mother of 14-year old rape victim

Another child victim of rape, 12-year-old Rani was assaulted by two boys when her mother was away at work. She was screaming for help when her mother returned and the boys fled. She is 15 now. She said that the women police “refused to file the case”. She also said that the police accused her mother of extorting money from the accused and “slapped my mother.”

She had trouble recollecting the order of the events. They reported the event to the local police station and the police went to her school with photos of boys in the locality and asked her to identify the assaulters. She did. However, when the boys were brought to the police station, she failed to identify them. She said,

They [police officers] brought five men. I saw him [the offender], but I was scared, he had threatened to kill my family and me. He was looking at me and I was scared. So I didn't tell them [police officers].

* Mr. Kathir is the Founder of Evidence. www.evidence.org.in

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Then I told my father when we were standing outside [the police station]. My father scolded me so I went back inside [the police station] and told them that he was there. But they didn't believe me. They thought my father asked me to say so. They shouted at us and sent us away.

Enablers of reporting at the police station

Amudha, an inspector at an all women police station in Coimbatore district was already at the police station when I arrived at 9.00 a.m. She has a team of three constables for a jurisdiction with a population of 14 lakh. On a typical day, she spends four to five hours at the court before she returns to the police station at 4.00 p.m. for lunch. At 5.00 p.m., the “petition time” starts and people start trickling in with complaints, mostly of a domestic nature. She has to deal with teenagers that elope and are caught and beaten up by parents. Some of her other cases include a husband, who brought home another woman because his wife left the house for 10 days after a fight, without sparing a thought for ‘my unwashed clothes or my food’. She also sees many cases of drunk men and their bleeding wives.

Not all of these women wanted to prosecute their partners. To them, the police station is the new-age legal substitute for

community arbitration. They wanted Amudha to file an FIR under the most threatening IPC section possible, even rape, to save their marriages to drunken men, to 'protect' their children from love affairs, or to protect the 'honour' of their daughters. It falls upon Amudha and her constables, to explain if they do or do not have a case. In doing so, they walk a very fine line between explaining legal implications and mediating a compromise. Many of the victims were illiterate. One of the constables was continuously occupied in drafting FIRs and then reading them out to the complainants. In one case, a complainant wanted to file rape charges against her entire family and the extended family. Amudha, who knew that such a case would not hold in court, had to choose between filing a false case and refusing to file a case of rape. The former would mean committing scarce resources to the investigation of a case that is likely to end in acquittal, or more likely to be dropped when the family dispute is settled. These are not easy decisions to make.

Victims accompanied by NGO workers come with a complaint that is well written, with necessary details of the case, making it easier for the police to verify critical points and lodge an FIR. This may partly be the reason for

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increased registering of crimes by the police when an NGO worker accompanies the victim.

In the course of my interviews, I found that many rape victims did see themselves as victims and wanted to see their perpetrators punished. Other than in cases of marital rape, the victims were willing to talk to someone in their innermost circle of family and friends or to seek help from organisations. The reluctance to report arises when the state is involved. This draws attention to two important points.

First, presence of women's organisations working extensively on providing assistance to rape victims, particularly by accompanying the victim to the police station and by providing legal services, could go a long way in persuading rape victims to lodge a formal complaint. It was also evident that the police was more responsive when a member of an NGO accompanied the victim. At least in five cases, the victims I interviewed said that they felt differences in police response after members of AIDWA or Evidence accompanied them.

Second, it is imperative that police investigation and trial processes be made victim friendly. The presence of an NGO

member also exercises some oversight on the medical examiners and ensures that they follow protocols.

Enablers in Prosecution

Law requires discussion of things in great detail. Not everyone can articulate well, especially in a courtroom atmosphere. Nervous testimonies often become inconsistent testimonies, providing ground for acquittal.

Geetha Ramasheshan, Senior Lawyer,
Madras High Court²¹

To the prosecutrix and her family members struggling with trauma, legal processes can be very baffling, intimidating and exhausting, particularly if they are poor and illiterate. The victims I interviewed generally had no idea about IPC sections, entitlements or compensation.

During our interview, Ponnuthayi, the former AIDWA District Secretary for Madurai said that in a case involving child sexual abuse, the public prosecutor met the victim for the first time an hour before their case was due for trial. Evidence²² and AIDWA²³ had in-house legal counsellors,

²¹ Interview with the author.

²² www.evidence.org.in

²³ www.aidwaonline.org

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who prepared the victims for testimony in court, ensured all the necessary documents were in place and assisted the Public Prosecutor with arguments. Free legal aid is of little meaning if the victims do not know of its existence.

In addition to directly influencing the outcome variable, women's organisations provide great support systems through psychological counselling to and rehabilitation for the victims of rape. Larger studies are needed to assess the impact of women's organisations on rape reporting, victim rehabilitation and conviction rates.

VI. Policy Recommendations

Based on the analysis of the dataset derived from the NCRB and findings from the interviews conducted in five districts with victims, and State officials at various levels, this Report suggests the following policy recommendations that can enable more women to report rape. First, it is of utmost importance to carry out a national victimisation survey to arrive at an estimate of the extent of under-reporting of rape in India. The lack of such an estimate could severely downplay the seriousness and extent of the crime. Further, when FIRs invoke multiple Indian Penal Code (IPC) sections, only the most serious charge/s mentioned in an FIR is/are taken into account by the NCRB. By this logic, an incident of rape and murder is recorded as murder, because murder is a more serious offence in law than rape, resulting in an underestimation of even reported rape.

The National Family Health Survey 2005 (NFHS-3) posed a few questions to women aged between years 15 and 49 on whether they experienced sexual violence in their lifetime. The response indicated that just 5.8 per cent of rapes by men other than the women's husbands were reported to the police, and

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just 0.6 per cent of rapes by the husband were reported. (Gupta, 2014). A national victimisation survey could generate reliable dataset that would in turn make it possible to devise a credible index of crime and violence against women, as a component of women empowerment.

Second, involving non-governmental organisations in setting up the proposed rape crisis centres would enable reporting. NGOs actively seek out and encourage victims of rape to report an incident of rape. Currently, the percentage of women benefitting from family counselling centres is less than 0.2 per cent. It is too low to draw any statistically significant conclusions about the FCC's influence on the reporting of rape. However, increasing the presence of such organisations would result in an overall positive impact on reporting, as in Delhi in 2013, post the social movement around the gang rape incident. It installs an automatic check on police behaviour towards rape victims and increases their willingness to register a rape. Increased willingness by and better attitude of police is likely to enable reporting of rape. Until the mid-1990s, most districts of Bihar did not report any crime against women at all (Bhattacharya, 2013). Bihar has seen a dramatic improvement in its law enforcement machinery while UP has languished. Yet, it is Bihar rather than UP that has seen an increase in both

overall crime rate and in the gender crime rate. Greater reporting in Bihar because of better policing standards appears to be the most likely answer to this paradox (Bhattacharya, 2013).

Third, replacing free legal aid with financing of legal assistance to the victim would allow the victim to hire a lawyer of her choice and thus increase access to quality legal resources.

Since only PPs are allowed to represent victims in lower courts, which represent the state to the public, a large majority of lawyers are forced to argue for the accused, rather than the victim. Thus most of the lawyers in our country are attuned to defending the accused and are at best apathetic towards victims.

-Nirmala Rani, Women's Rights Advocate, Trichy²⁴

Often, NGOs working on rape victims have an in-house lawyer but are unable to assist the victim in the legal proceedings actively, as the state only allows public prosecutors to represent the victim. In doing so, the state appropriates the victim's case and relegates her role to that of a mere witness to her own trial. Moreover, public prosecutors are mostly seen as politically appointed with a tenure of five

²⁴ As told to the author in an interview

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years. This severely restricts the victim's access to legal resources. The public prosecutor is not held accountable for following the due procedure of inquiry of the victim and has little incentive to empathise with the victim. All the victims I interviewed said that they had not met the public prosecutor until the day of the trial. Further, with the high number of cases pending trial, the public prosecutor is overburdened and finds it difficult to devote reasonable time to each victim.

Fourth, I suggest that specialised certification course in gender sensitivity be mandated for all appointments to Women Police Stations and Fastrack Mahila Courts, before appointment and during the course of the career of police personnel, both male and female. Institution of All Women Police Stations and Mahila Courts do not imply an automatic increase in police sensitivity towards rape victims. During my research, I found that women police shared similar views on righteousness and morality of women, as their male counterparts. Many of the victims I interviewed shared the sentiment that women police were not more sensitive than male police officers were. Women police might be as much as or more unwilling than their male counterparts to register a rape case.

Some gender-friendly interventions can also help. Iyer *et al* show that a rise in the proportion of elected women representatives at the local level can lead to greater reporting and higher conviction rates for gender crimes (Iyer, Mani, Mishra, & Topalova, 2012). This may be one reason why States such as Tripura, West Bengal and Kerala, where Panchayati Raj institutions have been stronger, also have higher reporting of gender crimes²⁵

Reporting of rape by a victim can be analysed at multiple stages. In the first stage, she confides in her closest circle of family and/or friends. In the second stage, she seeks the help of an external agency - community arbitration such as village elders, an NGO or the police. The factors motivating reporting at the second stage include seeking justice, settlement or emotional closure. A system that does not provide the victim any of these is less likely to enable reporting of rape. The current criminal justice system does not provide for automatic monetary compensation, even if there is *prima facie* evidence of rape. The victims belonging to SC or ST, as defined under Schedule 5 and Schedule 6 respectively, of the Constitution,

²⁵ 'Gender crimes' refers to crimes listed under "[Crime Against Women](#)" by the National Crime Records Bureau

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get monetary compensation under the SC/ST Prevention of Atrocities Act. The effect of such compensation on reporting of rape is an area that could be studied further. Awarding mandatory monetary compensation to victims that could be deposited with the court, until the completion of trial, in case *prima facie* evidence of rape is established could be considered.

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