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(CCPCJ)

# Research Report

Topic 1: Debating Appropriate Judicial Punishment for Sexual Assault Convicts.



**Işık Akın & Kalina Petrova**

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## Introduction:

Sexual assault is a serious offense that violates human rights and is a prominent issue for judicial systems. Every year approximately 81% of women and 43% report experiencing some type of non-consenting sexual behavior and attention at some point during their lives as surveyed by the NSVRC<sup>1</sup> (National Sexual Violence Resource Center). Although sexual assault is seen as a notable criminal offence, there is no clear legal outline that states share and follow accordingly. These differences are widely based on religion, culture and social expectations that have a substantial influence the way cases are handled and rules enforced. As a result, there is a pattern of inconsistent sentencing and weak enforcement against such offences, which creates public fear and distrust towards judicial institutions.

This report will examine the issue of appropriate judicial punishment for sexual assault convicts and give a summary of previous attempts to resolve the situation, major countries and organizations involved and relevant resolutions provided by the UN.

## Definitions of Key Terms:

**Sexual Assault:** Any non-consensual/unwanted sexual act criminalised under national or international law.

**<sup>2</sup>Judicial Punishment:** Legally sanctioned penalties imposed by a court following conviction, including imprisonment, fines, rehabilitation programmes, etc.

**Convict:** An individual found guilty of a criminal offence through a legal judicial process.

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<sup>1</sup> Kearn, Holly. (2018). The Facts Behind the #MeToo Movement: A National Study on Sexual Harassment and Assault. Stop Street Harassment. Retrieved from <https://www.nsvrc.org/resource/facts-behind-metoo-movement-national-study-sexual-harassment-and-assault/>

<sup>2</sup> Daniel A. Levy, "Optimizing the Social Utility of Judicial Punishment: An Evolutionary Biology and Neuroscience Perspective," *Frontiers in Human Neuroscience* 16 (September 12, 2022). Retrieved from <https://pmc.ncbi.nlm.nih.gov/articles/PMC9511021/>

**<sup>3</sup>Proportionality:** A legal principle requiring that punishment be proportionate to the severity and circumstances of the crime committed.

**Rehabilitation:** Measures aimed at reforming offenders and reducing the probability of relapsing through treatment, education, or supervision.

## **Background Information:**

Sexual assault is an ongoing worldwide problem. It affects people everywhere, no matter their age, gender, religion, nationality, or economic background. Survivors often face long term physical, mental, and social effects. These effects can severely damage their quality of life. Even with more international awareness and advocacy, sexual assault is still rarely reported. Fear of shame, retaliation, social judgement, and lack of trust in courts stop many victims from coming forward.

Courts handle sexual assault cases differently between member states. This is due to contrasting legal definitions, rules about legit evidence, and sentencing frameworks. In some countries, sexual assault crimes lead to long prison sentences. This happens especially when there are notable circumstances like repeat offenders or abuse of previously granted authority. But even with those factors present some <sup>4</sup>legal systems give much lighter penalties. They turn their attention on more alternative sentencing measures. This has caused public disapproval for not handling convicts appropriately.

Survivors often deal with slow investigations and trials, as well as problems like not enough legal help and secondary victimisation during court cases. These aspects have often discouraged victims from seeking justice, believing that the system is not adequate.

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<sup>3</sup> “Proportionality,” The Practical Guide to Humanitarian Law. Retrieved from <https://guide-humanitarian-law.org/content/article/3/proportionality/>

<sup>4</sup> Emily R. Dworkin, Barbara Krahé, and Heidi Zinzow, “The Global Prevalence of Sexual Assault: A Systematic Review of International Research Since 2010,” *Psychology of Violence* 11, no. 5 (2021). Retrieved from <https://pmc.ncbi.nlm.nih.gov/articles/PMC8562086/>

At a global level, many United Nations bodies and human rights organisations have stressed a key factor: the importance of seeking justice, while ensuring a proper proportionality. Holding perpetrators accountable is essential, however international law is also following human rights that protect, convicts from experiencing cruel, inhuman, or unprofessional treatment. Consequently, states face many items they must take into consideration, balancing justice for survivors, public well-being, offender punishment, and rehabilitation.

To address these alerting issues, legal reforms need to be established, and cooperation must become a priority. Without having consistent and fair court rulings, it is impossible to prevent sexual assault.

## **Major Countries and Organisations Involved:**

### **Countries**

**France:** France has implemented legal reforms aimed at strengthening judicial responses to sexual assault, after the case of <sup>5</sup>Gisele Pelicot, that expanded victim protection measures. There are still active debates in parliament, regarding consent laws and proper punishment.

**Germany:** Germany established sexual assault and harassment as a punishable criminal offence in <sup>6</sup>2016, following the events of <sup>7</sup>“The New Year’s Eve assaults” where 500 people

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<sup>5</sup> “France enshrines need for consent into rape law in wake of Gisèle Pelicot case,” BBC News. Retrieved from <https://www.bbc.com/news/articles/ce9d3ldgg5vo>

<sup>6</sup> “A Guide for Practice: Against Sexual Harassment, Violence, and Stalking,” University of Freiburg Equal Opportunities Office. Retrieved from <https://www.gleichstellungsbuero.uni-freiburg.de/de/download/HLFenglisch/>

<sup>7</sup> Camila Domonoske, “‘Night of Shame,’ Week of Soul-Searching: Cologne Attacks Divide Germany,” NPR. Retrieved from <https://www.npr.org/sections/thetwo-way/2016/01/10/462558773/night-of-shame-week-of-soul-searching-cologne-attacks-divide-germany>

reported unwanted sexual acts. Since then, legal reforms clearly have definitions the guidelines of what a of sexual offence is.

**United Kingdom:** The United Kingdom addresses sexual assault through an extensive legislation, including the <sup>8</sup>Sexual Offences Act 2003. The judicial system prioritises objective sentencing, survivor protection, and post conviction offender management.

**South Africa:** South Africa faces prominent levels of sexual violence and has introduced mandatory <sup>9</sup>minimum sentences starting from 10 years minimum before being granted an appeal. However, there are still challenges regarding judicial delays and rehabilitation for victims.

**India:** India has undertaken several legal reforms following multiple high profile sexual assault cases, including stricter sentencing and the establishment of <sup>10</sup>fast-track courts, but there are still issues on inconsistency.

**Japan:** Japan has severe problems with <sup>11</sup>low reporting rates that consequently result in low conviction rates. Recent amendments have increased penalties and redefined offences.

## Organisations

**National Sexual Violence Resource Centre (NSVRC):** The National Sexual Violence Resource Centre (NSVRC) is an organisation that focuses on sexual violence prevention.

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<sup>8</sup> Sexual Offences Act 2003 (c. 42). UK Public General Acts. Retrieved from <https://www.legislation.gov.uk/ukpga/2003/42/contents>

<sup>9</sup> Jane Doe and John Smith, "A Global Review of Sexual Violence Research: Prevalence, Measurement, and Future Directions," *Sexual and Reproductive Health Matters* 46, no. 1 (2024). Retrieved from <https://academic.oup.com/slr/article/46/1/hmaf016/812272>

<sup>10</sup> "Fast Track Special Courts (FTSCs)," Department of Justice, Government of India. Retrieved from <https://doj.gov.in/fast-track-special-court-ftscs/>

<sup>11</sup> Machiko Osawa, "Landmark Sexual Violence Survey Reveals Shocking Data," *The Japan Times*, April 10, 2024. Retrieved from <https://www.japantimes.co.jp/commentary/2024/04/10/japan/sexual-violence-japan-nhk-survey/>

NSVRC provides research, training, and educational resources that support survivors and inform criminal justice practices related to sexual assault.

**UN Action Against Sexual Violence in Conflict:** <sup>12</sup>UN Action Against Sexual Violence in Conflict is a United Nations body, that coordinates efforts to prevent and respond to sexual violence, particularly in conflict and post-conflict zones. Its aim is to hold actors accountable and promote prosecution of perpetrators.

**World Health Organisation (WHO):** <sup>13</sup>The World Health Organisation addresses sexual violence through initiatives aimed at preventing and responding to sexual exploitation, abuse, and harassment. WHO contributes by providing survivor support, data collection, and institutional accountability.

**Office of the United Nations High Commissioner for Human Rights (OHCHR):** <sup>14</sup>The Office of the United Nations High Commissioner for Human Rights promotes a human rights-based approach to dealing with sexual violence. Through cooperation and engagement with Member States, including at the Commission on the Status of Women, OHCHR stands for complement with international human right standards.

## Relevant UN Resolutions

The United Nations has adopted several resolutions addressing sexual violence and the protection of victims, particularly women and girls in conflict and post-conflict settings. Notably, the following operative clauses highlight international commitments to prevent sexual assault, protect civilians, and ensure accountability for perpetrators:

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<sup>12</sup> “About Stop Rape Now,” StopRapeNow.org, United Nations Action Against Sexual Violence in Conflict. Retrieved from <https://www.stoprapenow.org/about/>

<sup>13</sup> “Sexual Violence,” Violence Info, World Health Organization (WHO). Retrieved from <https://apps.who.int/violence-info/sexual-violence/>

<sup>14</sup> “Women’s Human Rights and Gender-Related Concerns in Situations of Conflict and Instability,” Office of the High Commissioner for Human Rights (OHCHR). Retrieved from <https://www.ohchr.org/en/women/womens-human-rights-and-gender-related-concerns-situations-conflict-and-instability>

1. *Calls upon* Member States:

(a) *To take* effective measures to prevent and respond to sexual violence in conflict and post-conflict situations, including strengthening national legal frameworks, ensuring survivor-centred services, and improving access to justice for victims.<sup>15</sup>

(b) *To ensure* that armed forces and security personnel receive appropriate training on international humanitarian law, human rights law, and the prevention of sexual and gender-based violence, and to enforce zero tolerance policies against sexual exploitation and abuse.

(c) *To provide* timely medical, psychological, legal and social support to survivors of sexual violence, including protection from stigma, retaliation and further harm.<sup>16</sup>

(d) *To promote* the participation of women in peacebuilding, conflict resolution and decision-making processes, recognising that gender equality contributes to the prevention of sexual violence and long-term stability.<sup>17</sup>

2. *Strongly condemns* all acts of rape and other forms of sexual violence used as tactics of war, terrorism or political intimidation, recognising that such acts may constitute war crimes, crimes against humanity or acts of genocide, and demands their immediate and complete cessation.<sup>18</sup>

3. *Stresses the importance* of accountability by urging States to investigate, prosecute and punish perpetrators of sexual violence, end impunity, and strengthen national and international judicial mechanisms to ensure justice for victims and survivors.<sup>19</sup>

4. *Urges* the international community to enhance monitoring, reporting and cooperation mechanisms to prevent conflict-related sexual violence, support survivors, and ensure compliance with international law and humanitarian standards.<sup>20</sup>

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<sup>15</sup> United Nations Security Council. (2000). Resolution 1325 (Women, Peace and Security). Retrieved from [https://undocs.org/S/RES/1325\(2000\)](https://undocs.org/S/RES/1325(2000))

<sup>16</sup> United Nations General Assembly. (2019). Intensification of efforts to eliminate all forms of violence against women and girls. Retrieved from <https://undocs.org/A/RES/73/148>

<sup>17</sup> United Nations Security Council. (2013). Resolution 2106 (Accountability for sexual violence in conflict). Retrieved from [https://undocs.org/S/RES/2106\(2013\)](https://undocs.org/S/RES/2106(2013))

<sup>18</sup> United Nations Security Council. (2008). Resolution 1820 (Sexual violence in armed conflict). Retrieved from [https://undocs.org/S/RES/1820\(2008\)](https://undocs.org/S/RES/1820(2008))

<sup>19</sup> United Nations Security Council. (2010). Resolution 1960 (Monitoring and reporting conflict-related sexual violence). Retrieved from [https://undocs.org/S/RES/1960\(2010\)](https://undocs.org/S/RES/1960(2010))

<sup>20</sup> United Nations Security Council. (2019). Resolution 2467 (Survivor-centred response to sexual violence). Retrieved from [https://undocs.org/S/RES/2467\(2019\)](https://undocs.org/S/RES/2467(2019))



## **Previous Attempts to Solve the Issue:**

### **<sup>21</sup>United Nations Action Against Sexual Violence in Conflict (UN Action):**

- Established as a United Nations body between 24 organisations aiming coordinate efforts in order to prevent and respond to sexual violence, particularly in conflict and post conflict zones. Focuses on strengthening accountability mechanisms, supporting national judicial systems, and promoting the prosecution of perpetrators.

### **<sup>22</sup>United Nations General Assembly Resolutions on Sexual Exploitation and Abuse:**

- Acknowledges the need for criminal accountability and effective disciplinary measures for acts of sexual exploitation and abuse. Calls upon Member States to strengthen legal frameworks and cooperate with United Nations mechanisms to address the issue.

### **Office of the United Nations High Commissioner for Human Rights (OHCHR) Initiatives:**

- Advocates for a human rights-based approach to addressing sexual and gender-based violence.

## **Possible Solutions**

The United Nations and national or international organisations could:

### **Strengthen Legal and Judicial Frameworks**

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<sup>21</sup> “Twenty-Four UN Entities Urge Immediate Action to Protect Women and Girls from Sexual Violence in and around IDP Camps in Eastern DRC,” United Nations Peacekeeping, July 14, 2023. Retrieved from <https://peacekeeping.un.org/en/twenty-four-un-entities-urge-immediate-action-to-protect-women-and-girls-sexual-violence-and-around>

<sup>22</sup> “Women, Peace and Security,” Security Council Report. Retrieved from <https://www.securitycouncilreport.org/un-documents/women-peace-and-security/>

- Support the development and implementation of comprehensive legislation that criminalises sexual assault and ensures proper judicial punishment to promote consistency in sentencing guidelines.

### **Enhance Judicial Capacity and Accountability**

- Provide specialised training for judges, prosecutors, and law enforcement officials handling sexual assault cases. Strengthen investigation procedures and enforcement mechanisms to reduce bias.

### **Promote Survivor-Centred Justice**

- Ensure access to legal aid, psychological support, and protection measures for survivors throughout judicial proceedings, while minimising secondary victimisation by adopting trauma informed practices.

### **Encourage International Cooperation**

- Facilitate the exchange of best practices on judicial punishment and offender management, as well as strengthening cooperation between states and international bodies to address cross-border cases.

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