



## PATRIARCHY AND LEGAL LOOPHOLES: ANALYZING THE SYSTEMIC FAILURES IN ADDRESSING SEXUAL CRIMES AGAINST WOMEN IN INDIA

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### ABSTRACT

*Despite progressive legal reforms, sexual violence against women in India remains alarmingly prevalent. This article explores how patriarchal norms embedded within law enforcement, judiciary, and political structures continue to undermine access to justice, particularly for marginalised communities. Through an in-depth analysis of three emblematic cases, namely the 2012 Nirbhaya gang rape, the 2018 Kathua case, and the 2019 Disha case, this article examines how patriarchal norms shape institutional responses to sexual violence in India. Drawing on court judgments, official crime statistics, human rights reports, and media archives, the article shows that gender bias continues to permeate police reporting and judicial reasoning, despite a decade of legal reforms. These patterns reflect deeply ingrained patriarchal norms in legal practice. While punitive reforms, such as fast-track courts and harsher sentencing, were introduced after the Nirbhaya incident, their uneven implementation and cultural resistance expose the limits of carceral approaches. The article calls for a structural shift toward institutional gender audits, the criminalisation of marital rape, and pilot restorative justice models, offering a grounded policy response to gender-based violence in deeply patriarchal settings.*

## 1.0 INTRODUCTION

Sexual violence against women represents one of India's most pressing human rights challenges. The National Crime Records Bureau (NCRB) data reveals a disturbing escalation in crimes against women across India. In 2022, the total reported cases increased from 428,278 in 2021 to 445,256, marking a concerning 4% rise. (NewsClick, 2023). Within these statistics, rape cases accounted for 7.1% of all crimes against women, totalling 31,516 reported incidents or approximately 86 cases per day. The overall crime rate per 100,000 women population climbed to 66.4 in 2022, up from 64.5 the previous year. These official figures likely represent just the tip of the iceberg. Studies suggest that only about 10% of sexual assaults are reported due to social stigma and institutional barriers. (Shivam Patel, 2024). The crisis persists despite constitutional guarantees of equality (Articles 14-15) and the fundamental right to life with dignity (Article 21). India has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Recurring horrific cases of sexual violence in early 2025 brought into sharp focus the severity of the crimes committed and the persistent shortcomings of India's justice system. In Nainital, Uttarakhand, a 12-year-old girl was sexually assaulted by a 73-year-old man who lured her with money under the guise of a lift to the market. (Sonali Mishra, 2025). Around the same time, in Varanasi, a 19-year-old woman was reportedly gang-raped by up to 23 individuals over several days, abandoned near a riverbank, and left with no immediate institutional response from law enforcement. (Rajeev Dikshit, 2025). The body of a 9-year-old girl was found in a suitcase in Delhi in June 2025. Preliminary investigations suggest sexual abuse and a delayed police response (Hindustan Times, 2025). These tragedies reveal persistent patterns of systematic indifference towards victims, profoundly rooted in structural failures. These cases form a critical part of an alarming trend in which gender-based violence is both systematically facilitated and tolerated. Significant legislative changes, such as the Criminal Law Amendment Act (2013) and the Protection of Children from Sexual Offences (POCSO) Act (2012), are examples of how the political system has recognised the issue. Both reforms were designed to reduce sexual violence and expedite the justice process.

Still, as many studies have revealed, these reforms are often weakened by the inertia of institutions, police inaction, judicial procrastination, and, to top it all off, a culture of blaming the victim. The reforms certainly have not eliminated the problems. Poor police training, inadequate forensic infrastructure, and the social stigma that so many victims endure all weaken the intended effects of the POCSO Act (Belur & Singh, 2015). According to Maity & Chakraborty (2023), the protective effects of the POCSO Act are significantly diluted by implementation disparities across Indian states and entrenched gender norms. A critical assessment, a decade after the enactment of the Protection of Children from Sexual Offences (POCSO) Act, shows that meaningful justice delivery is impeded by institutional inertia and a lack of accountability mechanisms. (Pattath et al., 2023).

This article is based on three high-profile cases, namely, the 2012 Nirbhaya gang rape in Delhi, the 2018 Kathua child rape in Jammu, and the 2019 Disha murder in Hyderabad. The three cases provide documented evidence of gaping weaknesses in India's institutional mechanisms in dealing with sexual violence, questioning the structural conditions under which justice is defined, accessed, and denied. It argues that the everyday operations of police stations, courtrooms, and legal texts still hold the logics of patriarchy within them, and laws alone cannot guarantee justice. The high-profile nature of these cases forced the institutions of the Indian state to respond. However, in those responses is an unvarnished picture of patriarchy in action. This article has three interrelated objectives: first, to examine how patriarchal norms structure institutional responses to sexual violence in India; second, to analyse the Nirbhaya, Kathua, and Disha cases as illustrative of how caste, community, class, and geography mediate access to justice; and third, to evaluate the limits of post-2013 carceral reforms while outlining directions for structural transformation beyond symbolic law-making. This study

contributes to an understanding of sexual violence as both a gender issue and something produced by intersecting social hierarchies. The findings are intended to inform more nuanced policy and legal interventions that recognise how vulnerability to sexual violence is mediated by overlapping social positions, including caste, class, religion, and geography, which are often absent from mainstream policy debates.

## 2.0 RESEARCH METHODOLOGY

This article adopts a qualitative case study approach. It analyses three emblematic cases of sexual violence against women in India, Nirbhaya (2012), Kathua (2018), and Disha (2019), using court judgments, official reports of the National Crime Records Bureau (NCRB), parliamentary debates, human rights documentation, and media archives as primary sources. These materials are read through an intersectional feminist lens (Crenshaw, 1989), combined with insights from institutional ethnography and spatial justice theory, to trace how patriarchal norms operate within police stations, courtrooms, and other state institutions. The article does not offer a statistically representative picture of all sexual violence cases in India. It uses these high-profile cases, along with selected empirical studies on rape adjudication and police practice, to illuminate broader structural patterns in the criminal justice system. This methodology provides a robust examination of structural issues. Its limitations include the reliance on documented cases, which may underrepresent unreported crimes, and potential media biases. These are partially mitigated by cross-referencing with official records.

## 3.0 LITERATURE REVIEW

### 3.1 Patriarchy as a system of social structures

Academic research has established how norms of patriarchy that were codified in ancient texts like the Manusmriti have been perpetuated through social structures. According to Sabharwal (2023), these texts have shaped a form of authoritarian patriarchy that embeds male dominance into religious, legal, and cultural institutions. Nayak and Sinha (2024) contend that British colonialism has reinforced the idea. However, British colonisers fancied themselves as champions of a 'superior' form of law and order that, as Michael Mann (1993) describes, ironically mixes elements from different types of regimes. Tripathi (2023) documents the emergence of sexual violence across various urban landscapes of India. He has uncovered that working-class neighbourhoods with a lower socioeconomic status experience a much higher incidence of sexual violence, as well as a much lower responsiveness from the institutions meant to protect citizens. Patriarchy, as defined by Walby (1990), is a social system where men hold the predominant power over women. It is a system in which men control, dominate, and exploit women. In such a system, the power of men is the norm, not the exception. It is sometimes described as an 'elaborate dogma of male supremacy'.

Chakravarti (2018) coined the term "Brahmanical patriarchy" to describe how the structures of upper-caste social orders control the sexuality of women in the name of

caste purity. Tools of social control, like child marriage and the denial of education to girls, are used to sustain these practices and often backed by the force of law. It justifies control over their bodies and choices. This structural power imbalance is one of the driving forces behind gender-based violence (GBV). GBV includes a range of harmful acts such as rape, marital rape, domestic abuse, and child marriage, among others, all of which disproportionately affect women. The United Nations frames GBV as violence directed at someone because of their gender identity, and in patriarchal societies, this violence is often treated as acceptable or inevitable. Agarwal and Menon (2023) argue that institutions, particularly law enforcement and the judiciary, often reflect and reproduce these patriarchal attitudes, reinforcing the problem rather than addressing it.

### 3.2 Patriarchy Within Legal Structures

India's legal framework still carries vestiges of patriarchal thinking. The most glaring example is the marital rape exemption under Section 375 of the Indian Penal Code, which effectively allows a husband to force sex on his wife without legal consequence, unless she is under 15 (Narayan, 2022). This exemption assumes that marriage grants men permanent sexual access to their wives, a belief that scholars have long criticised as both unconstitutional and dehumanising. Shivika (2014) critiques the Criminal Law (Amendment) Act, 2013, for retaining the marital rape exception, arguing that it institutionalises patriarchal assumptions that marriage equates to permanent sexual consent. Kaur (2022) frames this exemption as a form of "licensed patriarchal terrorism". Religious and customary laws also complicate the legal landscape. Practices like *Nikah-e-Halala*, when interpreted through a patriarchal lens, have been used to justify coercive sexual practices against women under the guise of religious duty. Similarly, while the Prohibition of Child Marriage Act (2006) exists on paper, enforcement is patchy at best. Many communities still practice child marriage based on religious or cultural beliefs, often prioritising tradition over the law (Khan & Ganguli, 2024). Legal structures, consequently, embody the underlying rationales that facilitate violence against women. The persistence of patriarchal exceptions within the legal framework hinders the attainment of genuine justice.

### 3.3 Jurisdictional Marginalisation

The concept of "jurisdictional marginalisation" refers to the situation where marginalised communities face compounded obstacles to accessing justice due to their geographic and socio-political characteristics. It is increasingly gaining recognition in the critical legal academic circles in India. This systemic exclusion particularly affects lower-caste, tribal, rural, and nomadic populations, as documented across various analyses. Kannabiran (2020) identifies how "constitutional geographies" shape impunity, where the tribal and Adivasi groups are structurally excluded from legal protections through geographic and bureaucratic demarcations that hinder their access to redress. These are not incidental barriers but reflect deliberate configurations of power and governance that leave peripheral communities outside the purview of timely justice. This dynamic is clearly evident in the Kathua case, where the victim, an 8-year-old girl from the nomadic Bakarwal community, was denied immediate justice due to the invisibility and neglect

faced by nomadic groups in administrative jurisdictions. The 47-day delay in police action reflects the institutional biases and compounded vulnerabilities experienced by such communities (Cherukuri, 2021). Dey (2019) conducts an intersectional analysis of gender violence, observing how location and identity intersect to determine the quality of response from the justice system, thereby reinforcing the idea that access to justice in India is deeply intertwined with caste, geography, and community status. Hence, jurisdictional marginalisation is not just a descriptive term but a structurally embedded feature of the Indian legal system, wherein protection and redress depend as much on geography and identity as they do on legal merit.

### 3.4 Spatial Inequality

One of the less discussed dimensions of gender-based violence in India is spatial inequality. Where a woman lives and which community she belongs to can significantly impact whether she receives justice. Tripathi (2021) emphasises the insufficient institutional focus on working-class communities, tribal territories, and rural peripheral areas. In his 2020 work, Kannabiran introduces the concept of "constitutional geographies" as a means to examine how legal neglect and spatial marginalisation render tribal and rural communities particularly vulnerable to harm. He argues that this is similar to what has been referred to as "jurisdictional abandonment."

The legal maps reveal how the state systematically neglects the regions it pushes to the periphery. The 2018 case from Kathua serves as a bone-chilling example of the systemic breakdowns that occur when gendered violence and communal violence are dealt with by institutions that are supposed to ensure justice. The victim's ill-fated intersectional identity and the fact that she was a member of both a nomadic tribal community and a religious minority almost guaranteed that the channels which are supposed to facilitate help would function poorly. This was evident in the way the evidence was handled, falling far short of the care and rigour that forensic work is supposed to apply to sensitive materials. Judicial indifference is a recurring feature of the structural bias in the Indian criminal justice system. This bias does not operate neutrally. It disproportionately harms women from marginalised communities, whose complaints are often trivialised, delayed, or reframed in ways that protect dominant-caste and politically connected accused. In such cases, justice is subverted not by over-protection of complainants, but by the systematic devaluation of their claims. The pattern of judicial apathy aligns with Krishnan's (2017) critical examination of structural biases within India's criminal justice system. Krishnan's findings reveal that women from Dalit and Adivasi communities face institutional barriers like no other. They must challenge a system that does not recognise them as worthy of protection. The first step for any woman facing violence is to get that violence recognised. It means going to the police and getting a First Information Report (FIR) registered. However, instead of an FIR, they received a functional refusal (FR), which runs counter to the kind of progress the Constitution guarantees. Such disparities highlight the deep-seated intersection of caste, ethnicity, and gender that shapes access to justice.

### 3.5 Institutional Apathy and Judicial Inertia

Achieving gender justice is stymied not only by age-old backlashes but also by the inertia of many institutions that are supposed to protect women's rights. This inertia is evident in reports of inept police work, negligent prosecutors, and indifferent (often sham) law enforcement. It is exemplified in the words police use to describe incidents and the reasoning that judges use to justify their decisions. Judicial language frequently presents narratives that assign blame to the victim, effectively conveying to the community that it is permissible for men to engage in sexual misconduct against women, implying that such actions are not criminal. In the wake of legislative steps such as Section 53A of the Indian Evidence Act, which directly forbids examination of a survivor's character or conduct, courts continue to use old, tired tropes that claim 'provocation' based on the victim's dress, demeanour, or ethical calibre as if they were subtle rationales for justifying violence against women. Garg (2020) illustrates dissonance in this respect in Delhi's trial courts by analysing how judicial actors actively undermined Section 53A, by subjecting survivors to shameful cross-examinations on their sexual history or sexual decisions. These forms of questioning not only disregarded the requirements set out by law but also reproduced patriarchal logics back into the adjudicatory process, re-framing rape as a question of women's "provocation", rather than as a question of men's impunity from individual criminality. Uma (2023) has shown that even when cases are high-profile, as in the 2012 Nirbhaya gang rape, they take an inordinate amount of time to process, despite the claim that fast-track courts can process 'fast' cases. Delays are always caused by the frailty of departments, and never by the institutional, unexamined misogyny that drives the action. These are not simply instances of random individual failure; they are systemic forms. This dynamic exemplifies a form of governance feminism gone wrong. Law reform is used to signal responsiveness while leaving intact the institutional logics that sustain patriarchal violence. As a result, laws look progressive on paper but fail in practice.

### 3.6 Reform Without Transformation

India is not alone in this struggle. In Pakistan, the Hudood Ordinances, laws influenced by conservative Islamic interpretations, have blurred the line between rape and adultery, deterring women from reporting sexual violence (Jamal, 2020). Brazil faces a high femicide rate, with Afro-Brazilian and rural women particularly vulnerable due to the state's failure to prioritise their safety. Dos & Santos Da Silva (2023) Explores the intersection of institutional apathy and gendered violence, focusing on Afro-Brazilian women survivors in urban settings, showing how public institutions routinely neglect these women, compounding their vulnerability even in South Africa, where marital rape was criminalised more than two decades ago, meaningful enforcement remains a challenge due to social resistance and judicial backlog (Artz & Smythe, 2008). These global parallels reveal a recurring pattern: legal reform alone is insufficient without accompanying institutional and cultural change. Kalra and Bhugra (2013) rightly argue that sexual violence cannot be tackled through punishment alone. It requires a

dismantling of the patriarchal ideologies that underpin both the violence and the institutions responding to it.

#### 4.0 FINDINGS

For three decades, feminist legal scholarship has critiqued India's justice system (Jaising, 2018). However, these critiques have had limited impact on the deeply entrenched biases against women in the country's criminal justice system. The analysis of the Nirbhaya case and its retributive consequences shows how the justice system often focuses on policing women's behaviour rather than confronting perpetrators of sexual crimes. Victim-blaming attitudes systematically retraumatize survivors. Recent events suggest these problems have evolved rather than abated. The 2025 Dayalpur case (Hindustan Times, 2025) exemplifies this stagnation, illustrating how seemingly modern reforms, such as fast-track courts and more straightforward sentencing guidelines, are, in practice, ineffective and flaccid, particularly in working-class neighbourhoods and rural areas of the urban periphery. This inertia is compounded by outdated legal exceptions that sustain a culture of impunity, the marital rape exemption under IPC Section 375 being the prime example. This relic of a provision not only sanctifies gendered violence but also affirms a society-wide misogynistic tolerance for sexually coercive behaviour. From the police to the courts, a culture that still predominates profound disbelief in victims leads to not just scepticism but also victim-shaming, both of which deter victims from coming forward.

An analysis of three emblematic instances, Nirbhaya (2012), Kathua (2018), and Disha (2019), reveals the presence of institutional inertia, a bias in favour of the status quo, not only in the investigation and prosecution of sexual violence cases but also, more generally, in the way law enforcement deals with all sexual violence victims. In the Nirbhaya case, the police reaction was tardy, and the subsequent courtroom proceedings displayed numerous patriarchal characteristics, with judges and legal participants offering different moralistic judgments of the victim's conduct, including questioning her being in public at night. These narratives on gender reflect the larger patterns Human Rights Watch (2022) has found, which record the constant practice of the routine moralising of victims in cases of sexual violence. The Kathua incident underscores not just the obvious sexist contempt for law and victims, but an all-too-familiar systemic dysfunction that is supposed to serve public safety, with the law enforcement's delayed intervention for 47 days and actively tampering with forensic evidence to shield the perpetrators. The victim, a young Muslim girl from the Bakarwal nomadic community, faced multiple forms of discrimination. The combination of her status as a minor and her membership in a politically and socially marginalised group made it all the more difficult for her case to surface and succeed in the path toward justice. The police and others initially characterised the crime as a dispute over communal or property rights, rather than promptly recognising it as a gendered act of violence directed against the young girl, which indicates a persisting institutional culture of deflection and denial that too often

characterises cases involving low-income or minority victims. (Human Rights Watch, 2022). The *Disha* case demonstrated initial police indifference to the victim's disappearance. This indifference prompted an outcry that led to quick action in the form of a police encounter that resulted in the extrajudicial killing of the accused. The sequence of events indicates that the action was reactive rather than preventative. Following is the summary of the facts of the Nirbhaya, Kathua and Disha cases.

| Variable                 | Nirbhaya Case (2012)  | Kathua Case (2018)                                       | Disha Case (2019)                                      |
|--------------------------|---|--|--|
| Location                 | Delhi (Urban, National Capital Region)                      | Rasana Village, Kathua District (Rural, Jammu & Kashmir) | Hyderabad Outskirts (Semi-Urban)                       |
| Victim Profile           | 23-year-old, female, middle-class, urban                    | 8-year-old, tribal Muslim girl (Bakarwal community)      | 26-year-old, female veterinarian, lower-middle-class   |
| Community Identity       | Hindu, majority, urban                                      | Muslim, tribal, nomadic, minority                        | Hindu, working-class, peri-urban                       |
| Police Response Time     | Delayed (initial non-priority response)                     | Severely delayed (47 days), evidence tampering           | Delayed (dismissive attitude toward missing complaint) |
| Judicial Response        | Fast-track court; 7-year trial                              | Local court obstructed; case transferred to Punjab       | No formal trial; extrajudicial killing of the accused  |
| FIR Quality              | FIR filed, with moralistic framing in the defence pleadings | Initial FIR downgraded; sexual assault not prioritised   | FIR filed post-media attention                         |
| Institutional Misconduct | Victim-blaming by the defence; slow court process           | Police destruction of evidence; political obstruction    | Encounter killings without due process                 |
| Public Visibility        | Immediate and sustained media coverage                      | Gained traction after civil protest and media pressure   | Intensified post-crime with national outrage           |
| Systemic Themes Observed | Judicial delay, moral judgments, urban-centric justice      | Jurisdictional abandonment, minority erasure, caste bias | Spectacular justice, reactive state action             |

|                                |   |  |  |
|--------------------------------|---|--|--|
| Theoretical<br>Lens<br>Applied | Judicial patriarchy,<br>carceral feminism | Jurisdictional marginalisation,<br>caste intersectionality | Performative<br>justice,<br>governance<br>feminism |
|--------------------------------|---|--|--|

**Table 1: Comparative overview of the three cases**

Empirical studies of rape cases in India have shown that gender-biased language is widespread in police reporting, where complainants are frequently described in ways that question their morality, credibility, or conformity to idealised femininity (Garg, 2020; Jassal, 2020). In the Kathua case, the crime was initially treated as a domestic issue and not escalated until forensic confirmation of sexual assault emerged (Human Rights Watch, 2022). Judicial handling also exhibited a pattern of relying on inadmissible considerations. Scholarly analyses of trial court judgments in rape cases have documented frequent references to women's past sexual behaviour or perceived character, which are used to undermine their credibility and dilute the seriousness of the violence they report. This tendency was observable in both the Nirbhaya and Kathua proceedings.

#### **4.1 Identity and location stratify institutional response**

The data show that police and judicial responsiveness are highly stratified by caste, class, and geography. In the Kathua case, the victim's tribal and Muslim identity, coupled with the crime's rural location, contributed to a 47-day delay in police action and the destruction of forensic evidence by local officers (Human Rights Watch, 2022). By contrast, the Nirbhaya case, involving a middle-class Hindu woman in Delhi, received prompt media coverage and public protests that forced institutional engagement, despite significant courtroom delays. The Disha case, situated in a peri-urban area, initially faced institutional negligence, only to be followed by highly publicised extrajudicial action once national attention mounted. This pattern reflects a form of jurisdictional abandonment, in which the state's protective functions decline as the social and geographic marginality of the victim increases. Urban, majority-caste victims in politically visible settings are more likely to receive official attention, while victims from minority, nomadic, or low-income backgrounds face neglect or outright obstruction.

#### **4.2 Bias in Police Reporting and Legal Reasoning**

Across all three cases, language that blames the victim and assumptions about gender were clearly present in the police reports and legal arguments. Empirical research on rape adjudication in India indicates that gender-biased language is common in FIRs related to gender-based violence, where victims are implicitly blamed through references to their behaviour, clothing, or movement. Studies of trial court judgments likewise show frequent reliance on inadmissible considerations, including references to a complainant's

past sexual history, despite the protections introduced by Section 53A of the Indian Evidence Act. These patterns indicate that the law, despite its purported protective nature, is still interpreted through a patriarchal lens in both police and courtroom settings. This demonstrates that established informal practices that favour leaving women without protection continue to impede progressive legal advances.

#### **4.3 Justice Delivery is Reactive, Uneven, and Often Extra-Legal**

All three cases ended with resolutions that might be characterised as 'judicial': the death penalty for the rapists in the Nirbhaya case, life sentences for the rapists in the Kathua case, and police-led killings of the accused in the Disha case. Achieving those outcomes took very different trajectories and time spans, highlighting how some victims are understood to embody national honour and others are not worthy of such consideration. For Disha, the judiciary provided no justice. Instead, public figures hastily celebrated a police encounter, a form of spectacular justice, as delivering what the outraged public imagined was necessary: immediate, visible action. The outraged public had demanded action, and here was the result. This underscores a shift from rule-of-law mechanisms toward performative state violence when public outrage demands immediate action. At the same time, the Nirbhaya case demonstrated how legal reform, fast-track courts, and sentencing enhancements, although symbolic, failed to achieve genuine procedural speed or cultural transformation. The Kathua case followed a troubling trajectory. It was marked by a series of procedural obstructions that placed a heavy burden on the victim's family, until sustained public protest forced the case into the national spotlight.

#### **4.4 Structural Power Determines Access to Justice**

The findings confirm that justice in sexual violence cases in India is structurally mediated. Intersecting systems of caste, class, religion, and geography shape victims' access to protection, redress, and credibility. The very design of legal and policing institutions, including whom they listen to, whose pain they prioritise, and when they act, reflects these hierarchies. These systemic disparities affirm that sexual violence in India is a matter of legal patriarchy. Until the institutional logics that reproduce this hierarchy are confronted, reforms will remain largely performative. Significant procedural failures preceded all three cases despite resulting in convictions or high-profile resolutions. The Nirbhaya trial lasted seven years despite the establishment of a fast-track court. In Kathua, forensic protocols were violated, and local officials obstructed the investigation. In Hyderabad, due process was bypassed through a police-led encounter, raising concerns about adherence to legal standards. Structural inequalities rooted in geography, social identity, and institutional culture consistently shaped the timeline and nature of state response in each case.

## 5.0 DISCUSSION

The Nirbhaya, Kathua and Disha cases are symptomatic of the larger structural deficiencies of the criminal justice system in India, dealing with sexual violence. These specific cases reveal deep-seated structural inadequacies of legal and institutional responses to gender-based violence. In each instance, the public response ranged from demands for changes in the law to widespread political rebuke. They all lead to the system's failure to deal with sexual violence. This pattern of procedural delay, evidentiary dilution, victim-blaming, and appeal to extra-legal forms of retribution operates through established patterns of patriarchal and socio-spatial hierarchies that significantly influence the availability, timeliness, and nature of justice. While the 2013 Criminal Law Amendment Act marked a change in the legal landscape, in practice, it has been applied sporadically at best. The procedural ineffectiveness is well illustrated in the so-called Nirbhaya case. With the trial stretched out and another in a designated fast-track court, and amid immense public pressure, it seemed to drag on over the course of seven years, from 2013 to 2020. No economics of velocity or efficiency, not the shame of the defendant, were capable of quickening the patriarchal underbelly of the legal enterprise. Today, it is challenging to assess the impact of the Nirbhaya Act.

These three cases collectively challenge the foundational assumptions of *carceral feminism*, which posits that stronger laws and harsher penalties can deter sexual violence. While well-intentioned, this logic ignores the structural, cultural, and institutional environments in which those laws operate. Data from the National Crime Records Bureau (2023) shows that from 2018 to 2022, after the introduction of the death penalty for certain rape offences, there was no apparent increase in conviction rates. Reported cases remained consistently high, while conviction rates stagnated at below 30%. These insights reinforce the critique of over-investing in the symbolic value of legal reform without transforming the patriarchal structures that shape law enforcement, judicial discretion, and evidentiary standards.

The institutional culture within the police and judiciary continues to reflect gender bias despite reform. Jassal (2020) analysed over half a million crime reports and court documents from Haryana, a region with deeply patriarchal norms. The study found a high frequency of victim-blaming narratives embedded in both FIRs and judicial reasoning, corroborating existing empirical findings that document the prevalence of gender-biased language in police reports and the routine use of complainants' sexual history in judicial reasoning. These included moral judgments about victims' behaviour and attire. These procedural patterns suggest that formal protections such as Section 53A of the Indian Evidence Act, which prohibits referencing a victim's sexual history, are often ignored or reinterpreted in patriarchal terms. Nigam (2021) documents how informal courtroom practices, including the tone and framing of questions, often reflect societal misogyny rather than legal neutrality. The reliance on "extra-legal" norms is prevalent and accepted in routine operations. Reforms must go beyond punitive legislation and engage with the

structural, institutional, and epistemic roots of patriarchal violence. The following reform should be observed:

- a. The criminalisation of marital rape is essential to closing a legal loophole that legitimises coercion in intimate relationships. Despite the recommendations of the Justice Verma Committee in 2013, the exemption under IPC Section 375 persists, undermining India's international commitments under CEDAW (Jaising, 2018). Police officers routinely invoke this exemption to justify non-registration of intimate partner violence cases.
- b. Institutional gender audits should be implemented on a national scale. These audits must be binding, publicly disclosed, and integrated into performance reviews for officers and judges.
- c. Restorative justice models, particularly those rooted in community dialogue and survivor agency, offer an alternative to the retributive paradigm that has dominated Indian legal discourse. In rural Gujarat, Chatterji et al. (2016) provide evidence of successful reconciliation and community healing efforts following communal violence, suggesting that carefully constructed restorative frameworks can contribute to both justice and peacebuilding. However, these mechanisms must be carefully designed with prosecutorial oversight to prevent coerced reconciliation in severe cases.

A substantial obstacle remains in the form of political and fiscal resistance. S. Dhankhar (2024) critically examines the politics of resistance to the criminalisation of marital rape in India. The finding demonstrates how MPs from patriarchal backgrounds, in patriarchal constituencies, justify the criminalisation of these acts as posing a threat to the "sanctity of marriage" and as an encroachment on existing caste and cultural norms. Patriarchal politics have always been at the heart of parliamentary discourse. Parihar (2023) demonstrates that efforts to raise awareness in law enforcement are underprioritized in national security funding. He notes that 'although there are budgets that exist for the Police Modernisation Fund, allocations on gender training in most cases are kept at less than 5 per cent.' Upadhyaya et al. (2024) examine the overall trend of gender-responsive budgeting shortfalls. They argue that, despite policy rhetoric that frequently emphasises 'empowering women,' actual resource allocations remain fragmented and inadequate. The results underscore that fiscal institutions still resist transformative commitments, such as nationwide gender audits. However, the implementation challenges should not deter structural reform. Instead, they highlight the necessity of recalibrating the justice system not just to punish, but to transform. Substantive change will demand a doctrine that fully synchronises with institutional responsibility and that feminism takes root in the everyday work of the state, approaching the pursuit of justice through a paradigm of survivor dignity, institutional transparency, and structural equity.

## 6.0 CONCLUSION

This article highlights how India's legal and institutional systems still fail to respond effectively to sexual violence, even after years of promised reforms. Looking at the Nirbhaya, Kathua, and Disha cases—each powerful in its own way—it becomes clear that the problem is not the absence of laws. The deeper issue is how a deeply entrenched patriarchal mindset shapes the interpretation, enforcement, or ignoring of these laws. Institutional indifference, slow legal processes, tampered evidence, and systemic bias keep defining the ways and means by which the state manages gender violence, especially when the victims are from marginalised castes, poor communities, or far-off regions. The findings show that punitive legal reforms like the introduction of the death penalty and the establishment of fast-track courts have not produced the intended deterrent result. Rather than embodying real change, these reforms act as symbolic measures. They appear to satisfy public demands for justice and to represent what many might call 'real reforms'. However, they do little to change the cultural conditions that allow gendered harms to be committed.

This study develops a more structural understanding of gender violence in India, one that transcends the confinement of the carceral framework and engages with the deeper architecture of legal patriarchy. The intersectional feminist and institutional ethnography theory shows how not just the state but often society as a whole fails to protect survivors from domestic terrorism. It also critiques the limits of governance feminism, where progressive legal instruments exist on paper but remain detached from the realities of implementation. To bridge this gap between legal form and lived experience, the study recommends three interlocking reforms: the criminalisation of marital rape to close one of the most enduring legal loopholes; the institutionalisation of gender audits to ensure transparency and accountability in frontline justice agencies; and the adoption of restorative justice models that centre survivor agency and community-based prevention.

The study acknowledges significant implementation challenges, including political resistance, fiscal constraints, and the cultural backlash often associated with gender-progressive policies. These barriers only reinforce the need for a paradigm shift in how justice is conceptualised and delivered. True transformation will require more than legislation. It demands a sustained dismantling of patriarchal norms across legal, bureaucratic, and social systems. A reimagining of justice that is not only punitive but also preventive, participatory, and structural is critical. Future research should continue to map how caste, class, and geography interact with institutional logics, and how alternative justice models can be scaled responsibly. Until the state actively interrogates its own role in sustaining gendered violence, justice for survivors will remain delayed, diluted, or denied.

## REFERENCES

Agarwal, S., & Menon, S. V. (2023). The formal systems' response to violence against women in India: A cultural lens. *American Journal of Community Psychology*, 71(1-2), 86-100. <https://doi.org/10.1002/ajcp.12645>

Artz, L., & Smythe, D. (2008). *Should we consent? Rape law reform in South Africa*. Juta and Company Ltd.

Belur, J., & Singh, B. B. (2015). Child sexual abuse and the law in India: A commentary. *Crime Science*, 4(1), 1-6. <https://doi.org/10.1186/s40163-015-0026-5>

Chakravarti, U., & Krishnaraj, M. (2018). *Gendering caste*. SAGE Publications Pvt Ltd, <https://doi.org/10.4135/9789353287818>

Chatterji, A. P., Buluswar, S., & Kaur, M. (Eds.). (2016). *Conflicted democracies and gendered violence: Internal conflict and social upheaval in India*. Zubaan.

Cherukuri, S. (2021). Sexual violence against women, the laws, the punishment, and negotiating the duplicity. *Laws*, 10(2), 27. <https://doi.org/10.3390/laws10020027>

Crenshaw, K. (1989). Demarginalizing the intersection of race and sex: A Black feminist critique of antidiscrimination doctrine, feminist theory, and antiracist politics. *University of Chicago Legal Forum*, 1989(1), 139-167.

Dey, A. (2019). 'Others' within the 'others': An intersectional analysis of gender violence in India. *Gender Issues*, 36(4), 357-373. <https://doi.org/10.1007/s12147-018-9225-1>

Dhankhar, S. (2024). *Preserving human rights in marital relations: A critical examination of the criminalization of marital rape in India from a human rights perspective* [Master's dissertation, Thammasat University]. Digital Library of Thai Universities. <https://urn.kb.se/resolve?urn=urn:nbn:se:th:diva-2449>

Dos Reis, C., & Santos Da Silva, R. (2023). *Resilience in women survivors of intimate partner violence in Brazil* [Master's thesis, Saint Mary's University]. Saint Mary's University Institutional Repository. [https://library2.smu.ca/bitstream/handle/01/31840/dosReisSantosdaSilva\\_Camila\\_MASTERS\\_2023.pdf?sequence=1&isAllowed=y](https://library2.smu.ca/bitstream/handle/01/31840/dosReisSantosdaSilva_Camila_MASTERS_2023.pdf?sequence=1&isAllowed=y)

Garg, A. (2020). *Understanding rape adjudication in Delhi trial courts* [Doctoral dissertation, University of Oxford]. Oxford University Research Archive.

Halley, J., Kotiswaran, P., Rebouché, R., & Shamir, H. (2018). *Governance feminism: An introduction*. University of Minnesota Press. <https://doi.org/10.5749/j.ctt2121736>

*Hindustan Times*. (2025, June 8). 9-year-old girl's body found in suitcase in Delhi's Dayalpur; family alleges sexual assault.

Human Rights Watch. (2022, February 10). *World report 2022: Rights trends in India*. <https://www.hrw.org/world-report/2022/country-chapters/india>

Iyer, L., Mani, A., Mishra, P., & Topalova, P. (2012). The power of political voice: Women's political representation and crime in India. *American Economic Journal: Applied Economics*, 4(4), 165–193. <https://doi.org/10.1257/app.4.4.165>

Jaising, I. (2018). Violence against women: The Indian perspective. In L. O. Fernandes (Ed.), *Routledge handbook of gender in South Asia* (pp. 105–118). Routledge.

Jamal, A. (2020). Our young Muslim women, willfulness, and the honor crime. \*Al-Raida, 44\*(2), 21–48.

Jassal, N. (2020). Gender, law enforcement, and access to justice: Evidence from all-women police stations in India. *American Political Science Review*, 114(4), 1035–1054. <https://doi.org/10.1017/S0003055420000340>

Kannabiran, K. (2020). Constitutional geographies and cartographies of impunity: Human rights and adivasis/tribes in contemporary India. In A. Parashar & A. B. Thiruvengadam (Eds.), *Gender and rights* (1st ed., pp. 137–157). Routledge India.

Kalra, G., & Bhugra, D. (2013). Sexual violence against women Understanding cross-cultural intersections. *Indian Journal of Psychiatry* 55(3): :p 244-249: 10.4103/0019-5545.117139

Katz, E. (2015). Judicial patriarchy and domestic violence: A challenge to the conventional family privacy narrative. *William & Mary Journal of Race, Gender, and Social Justice*, 21(2), 379–412.

Kaur, J. (2022). Licensed patriarchal terrorism or sacramental institution: A socio-legal analysis of marital rape with an aspect of gender neutrality in India. *Indian Journal of Law and Legal Research*, 4(2).

Khan, S., & Ganguli, P. (2024). *Marital rape: A legal and social analysis in the Indian context*. SSRN. <https://ssrn.com/abstract=1234567>

Krishnan, P. S. (2017). *Social exclusion and justice in India*. Routledge. <https://doi.org/10.4324/9781315106229>

Maity, S., & Chakraborty, P. R. (2023). Implications of the POCSO Act and determinants of child sexual abuse in India: Insights at the state level. *Humanities and Social Sciences Communications*, 10(1), 1–13. <https://doi.org/10.1057/s41599-023-01522-3>

Mann, M. (1993). *The Sources of Social Power, Vol. 2: The Rise of Classes and Nation-States* (1st ed.). Cambridge University Press

Narayan, C. L., Narayan, M., Agarwal, K., Seth, L., & Deepanshu, M. (2022). An overview of criminal laws in India in relation to sex and sexuality. *Journal of Psychosexual Health*, 4(1), 56–62. <https://doi.org/10.1177/26318318221078133>

National Crime Records Bureau. (2023). *Crime in India 2022*. Ministry of Home Affairs, Government of India. <https://ncrb.gov.in/>

Nayak, B. S., & Sinha, G. (2024). Patriarchal family, gendered society and capitalist state in India. In B. S. Nayak (Ed.), *Political science: Volume 2* (pp. 39–50). Springer. [https://doi.org/10.1007/978-3-031-74406-8\\_3](https://doi.org/10.1007/978-3-031-74406-8_3)

NewsClick. (2023, December 5). Crime against women in India up by 4%: NCRB report 2023.

Nigam, S. (2021). *Domestic violence law in India: Myth and misogyny*. Routledge India.

Panickasseril, J. G. (2023). Judicial approaches to victims of sexual violence: The Indian criminal justice system and restorative justice principles. In R. G. G. Krstivi (Ed.), *Gendered perspectives of restorative justice, violence and resilience: An international framework* (pp. 41–62). Springer.

Parihar, P. (2023). *Coalition of violence against women: From marital rape to consent in sexual assaults: A global perspective analogy to reform laws in Western nations*. Notion Press.

Pattath, A. R., Saju, J. M., Choudhary, S. K., Singh, U. P., Dev, K., & Mittal, A. K. (2023). POCSO ACT (2012): A critical assessment after a decade of its enactment & enforcement. *International Journal of Medical Toxicology and Legal Medicine*, 26(1–2), 73–83.

Rajeev Dikshit. (2025, April 9). Varanasi gang rape: Teen claims gang-rape by 23 men over 7 days; 6 arrested. *Times of India*.

Sabharwal, M. (2023). Rising gender inequities: The case of authoritarian patriarchy. *Journal of Social Equity and Public Administration*, 1(1), 59–74. <https://doi.org/10.24926/jsepa.v1i1.4875>

Shivam Patel. (2024, August 16). India struggles with high rape cases, low conviction rates. *Reuters*.

Shivika, C. (2014). Marital rape: An evaluation of the patriarchal injustice in the Criminal Law (Amendment) Act, 2013. *Christ University Law Journal*, 3(2), 97–112.

Sonali Mishtra. (2025, May 6). Muslim community in Nainital 'expels' 73-year-old who raped minor girl. *The Times of India*.

Tripathi, P. (2023). Cartographies of sexual violence from Delhi to Hathras: An intersectional feminist understanding. *Gender, Place & Culture*, 30(7), 946-968. <https://doi.org/10.1080/0966369X.2023.2173257>

Uma, S. (2023). *Violence, gender and the state: Not just a legal analysis*. Sage Publications.

Upadhyaya, A. S., Kolås, Å., & Connolly, E. (Eds.). (2024). *Women's empowerment in India: From rights to agency*. Taylor & Francis.

Walby, S. (1990). *Theorizing patriarchy*. Basil Blackwell.