

Sexual Violence in India: Examining the Gap Between Law and Implementation, and Lessons from Comparative Legal Frameworks

Yuvika

Student of BBA. LLB (Hons.), Vivekananda Institute of Professional Studies, Pitam Pura, Delhi.

Abstract-- Sexual violence continues to be a serious concern in India despite the introduction of several strong legal reforms over the years. Laws such as the Criminal Law (Amendment) Acts of 2013 and 2018, the Protection of Children from Sexual Offences (POCSO) Act, 2012, and the recently enacted Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS) have strengthened the legal framework for dealing with sexual offences. These laws provide stricter punishments, better protection for survivors, and improved procedures for investigation and trial.

However, the existence of strong laws has not always resulted in effective justice. Many survivors continue to face delays in investigation, shortage of forensic facilities, low conviction rates, under-reporting of offences, and difficulties during the legal process. Institutional challenges such as inadequate policing, judicial vacancies, and poor utilisation of the Nirbhaya Fund also affect the effective implementation of these laws.

This paper examines the gap between the law and its implementation by analysing the existing legal framework, the practical challenges faced by survivors, and the functioning of institutions responsible for delivering justice. It also studies the legal mechanisms adopted in the United Kingdom, Sweden, and South Africa to understand how different countries support survivors and improve the investigation and trial of sexual offences. Based on this analysis, the paper suggests practical measures to strengthen the implementation of sexual violence laws in India and promote a more effective, survivor-centred criminal justice system.

Keywords-- Sexual Violence; Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023; POCSO Act; Criminal Law (Amendment) Act, 2013; Criminal Law (Amendment) Act, 2018; Fast-Track Special Courts; Criminal Justice System; Victim Rights; Forensic Investigation; Nirbhaya Fund; Marital Rape; Gender-Neutral Laws; Comparative Criminal Law.

I. INTRODUCTION

The last decade has witnessed a profound transformation in India's legal response to sexual violence, catalyzed by public outcry over brutal cases like the 2012 Delhi gang rape.

Legislative reforms have expanded definitions of offences, introduced child-friendly procedures, mandated stricter punishments, and established specialized judicial mechanisms like Fast-Track Special Courts (FTSCs). The recent codification of criminal laws into the Bharatiya Nyaya Sanhita, 2023 (BNS) and the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) represents the latest step in this evolution. While these developments signify a strong statutory commitment to combat sexual violence, a chasm persists between legal provisions and ground-level realities. This paper posits that the primary challenge is no longer the absence of law but its ineffective implementation. The research aims to systematically analyze the implementation and institutional gaps that hinder justice, assess comparative international models for potential insights, and evaluate ongoing legal debates. By synthesizing data from official reports, judicial pronouncements, and academic literature, this study provides a comprehensive assessment of India's journey from legal reform to substantive justice for survivors of sexual violence.

II. BACKGROUND AND LITERATURE REVIEW

India's legal framework on sexual violence is an amalgamation of general penal law, special statutes, and procedural codes. The foundational shift occurred with the Justice J.S. Verma Committee Report (2013), which provided a blueprint for reform emphasizing survivor dignity, autonomy, and a rights-based approach (Justice J.S. Verma Committee, 2013). This led to the Criminal Law (Amendment) Act, 2013, which broadened the definition of rape, criminalized new offences like stalking and voyeurism, and introduced crucial procedural mandates.

Subsequent amendments, like the 2018 Act, focused on enhancing penalties for crimes against children. The POCSO Act, 2012, established a separate, child-centric regime with gender-neutral protections. The operationalization of Fast-Track Special Courts was aimed at addressing the chronic delays in the justice delivery system. The new BNS and BNSS, effective from July 2024, largely consolidate these earlier amendments within a reorganized structure (Ministry of Home Affairs, 2023).



Academic and policy literature, however, consistently highlights the gap between legislative intent and outcomes. The National Crime Records Bureau (NCRB) reports annually on crime statistics, revealing low conviction rates for rape and POCSO cases (NCRB, 2022). Supreme Court judgments, such as *Lillu @ Rajesh & Anr. v. State of Haryana* (2013), which condemned the unscientific and invasive “two-finger test,” illustrates the judiciary’s role in guiding procedure, yet enforcement remains patchy. The judgment in *Independent Thought v. Union of India* (2017) partially addressed the marital rape exception for minors, while the debate for adult women remains unresolved. This body of work establishes that while the legal framework is largely sufficient, its efficacy is contingent on the supporting ecosystem, which remains deficient.

III. RESEARCH GAP

Many studies have discussed the laws relating to sexual violence in India and the reforms introduced through the Criminal Law (Amendment) Acts, the POCSO Act, and the Bharatiya Nyaya Sanhita (BNS). However, only a few studies examine whether these laws are effectively implemented in practice. Issues such as delays in investigation, low conviction rates, judicial vacancies, and under utilization of the Nirbhaya Fund are often discussed separately rather than together. There is also limited comparative analysis of the legal mechanisms followed in countries like the United Kingdom, Sweden, and South Africa.

IV. RESEARCH METHODOLOGY

This paper follows a doctrinal method of legal research. It is based on the analysis of primary sources such as the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, the POCSO Act, judicial decisions, and government reports. Secondary sources including books, journal articles, reports, and research papers have also been used. The study adopts a descriptive and analytical approach and includes a comparative analysis of selected legal mechanisms followed in the United Kingdom, Sweden, and South Africa.

V. RESEARCH OBJECTIVES

- To examine India's legal framework on sexual violence.
- To identify implementation and institutional gaps.
- To study comparative legal mechanisms in selected countries.
- To analyze emerging legal debates.
- To suggest practical recommendations.

VI. LEGAL FRAMEWORK GOVERNING SEXUAL VIOLENCE IN INDIA

• *Bharatiya Nyaya Sanhita, 2023 (BNS)*

The Bharatiya Nyaya Sanhita, 2023, replaced the Indian Penal Code, 1860, and continues to treat sexual offences as serious crimes. It provides punishment for offences such as rape, gang rape, sexual harassment, voyeurism, stalking, and offences against children. The BNS also retains stringent punishments introduced through the Criminal Law (Amendment) Acts of 2013 and 2018. **Section 63** defines the offence of rape, while **Sections 64 to 70** prescribe punishments for rape, aggravated rape, and gang rape. **Sections 74 to 77** deal with sexual harassment, assault with intent to disrobe, voyeurism, and stalking. Punishments under these provisions range from **rigorous imprisonment of three years to life imprisonment**, while certain aggravated offences may also attract the **death penalty**, depending on the circumstances provided in the law.

• *Protection of Children from Sexual Offences (POCSO) Act, 2012*

The POCSO Act was enacted to provide special protection to children below the age of 18 years from sexual offences. The Act is gender-neutral and provides child-friendly procedures during investigation and trial. It also requires cases to be heard by Special Courts to ensure speedy disposal.

The Criminal Law (Amendment) Act, 2018 strengthened protection for children by increasing punishments, including the death penalty for rape of girls below twelve years of age in certain cases.

• *Criminal Law (Amendment) Acts, 2013 and 2018*

The Criminal Law (Amendment) Act, 2013 was enacted following the recommendations of the **Justice J.S. Verma Committee** after the 2012 Delhi gang rape case. It expanded the definition of rape and introduced new offences such as stalking, voyeurism, acid attacks, and sexual harassment. It also made investigation and trial procedures more survivor friendly.

The Criminal Law (Amendment) Act, 2018 further increased punishments for rape, particularly in cases involving minor girls, and introduced stricter timelines for investigation and trial.

• *Fast-Track Special Courts (FTSCs)*

Fast-Track Special Courts were established to ensure the speedy trial of rape and POCSO cases. These courts aim to reduce delays and improve access to justice for survivors.

However, their effectiveness depends on adequate judicial appointments, proper infrastructure, and timely forensic reports.

Landmark Judgments

- *Mukesh & Anr. v. State (NCT of Delhi) (2017) 6 SCC 1*

Commonly known as the *Nirbhaya case*, the Supreme Court upheld the death sentence of the convicts and emphasised the need for strict punishment in cases of brutal sexual violence.

- *Lillu @ Rajesh & Anr. v. State of Haryana (2013) 14 SCC 643*

The Court declared the **two-finger test** unconstitutional and held that it violates the dignity, privacy, and bodily integrity of rape survivors.

- *Independent Thought v. Union of India (2017) 10 SCC 800*

The Supreme Court held that sexual intercourse with a wife below eighteen years of age amounts to rape, thereby reading down the marital rape exception in respect of minor wives.

- *Aparna Bhat v. State of Madhya Pradesh (2021) 3 SCC 247*

The Court directed judges to avoid imposing sexist conditions or making gender stereotypes while deciding cases involving sexual offences.

- *State of Punjab v. Gurmit Singh (1996) 2 SCC 384*

The Supreme Court held that the testimony of a rape survivor deserves due weight and should not be rejected merely because of the absence of independent corroboration.

VII. IMPLEMENTATION GAPS

- *Low Conviction Rates*

Despite stringent laws, conviction rates for sexual offences remain disturbingly low. NCRB data for 2022 shows a conviction rate of approximately 39.2% for cases under section 376 (rape) of the IPC (now BNS), indicating that over 60% of trials do not result in a conviction (NCRB, 2022). This is often attributed to factors like victim retraction due to intimidation or social pressure, poor quality of investigation leading to insufficient evidence, and aggressive cross-examination of survivors that undermines their testimony.

- *Delays in Investigation*

The BNSS mandates prompt registration of FIRs and time-bound investigation. In practice, delays at the police stage are endemic. Initial hesitation to register complaints, prolonged and repetitive recording of statements, and slow evidence collection significantly delay the filing of chargesheets. These delays not only violate procedural mandates but also erode witness memory and survivor resolve, weakening the prosecution's case.

- *Forensic Infrastructure and DNA Report Delays*

Robust forensic evidence, particularly DNA analysis, is crucial in sexual violence cases. India faces a severe shortage of functional forensic science laboratories (FSLs), leading to massive backlogs. It is common for DNA reports to take 12 to 18 months, far exceeding the stipulated time for investigation and trial (Bureau of Police Research and Development [BPR&D], 2021). This delay is a primary reason for the adjournment of cases in FTSCs, defeating their purpose of speedy justice.

- *Under-reporting of Sexual Offences*

Official crime statistics capture only a fraction of actual incidents. Under-reporting stems from social stigma, fear of retaliation, lack of trust in the police, and the trauma of the judicial process. For marginalized communities, including Dalits, Adivasis, and transgender persons, these barriers are compounded by systemic discrimination. This gap means the legal framework fails to engage with a vast majority of survivors.

- *Enforcement of the Ban on the Two-Finger Test*

The Supreme Court in *Lillu @ Rajesh & Anr. v. State of Haryana* (2013) unequivocally ruled that the “two-finger test” is unscientific and violates the dignity and privacy of rape survivors, directing that it should not be conducted. However, studies and anecdotal reports indicate that many medical practitioners, particularly in rural and semi-urban areas, continue this outdated practice in their medico-legal examinations (Human Rights Watch, 2017). The lack of widespread, mandatory training for medical personnel and accountability mechanisms renders the judicial ban ineffective on the ground.

VIII. INSTITUTIONAL GAPS

- *Challenges in Policing and Investigation*

The police remain the first and most critical point of contact for survivors.

Institutional biases, inadequate training in gender-sensitive procedures, and a focus on extracting retractions to reduce official crime figures are pervasive problems. The provision for female police officers to record statements is often rendered meaningless due to the low representation of women in the force and their frequent non-availability, especially at police stations at night.

• *Utilization of the Nirbhaya Fund*

Established in 2013, the Nirbhaya Fund is a non-lapsable corpus for initiatives aimed at enhancing women's safety. Audit reports, however, have consistently highlighted underutilization and misallocation of funds. Projects face delays in approval and implementation, and funds are sometimes diverted for unrelated infrastructure (Comptroller and Auditor General of India [CAG], 2021). The potential for this fund to finance critical needs—such as one-stop crisis centers, improved forensic vans, and survivor support services—remains largely untapped due to bureaucratic and planning failures.

• *Judicial Vacancies and Their Impact*

Fast-Track Special Courts (FTSCs) and POCSO Courts are hampered by high vacancy rates for judges. As per the National Judicial Data Grid, many FTSCs are non-functional or operate with excessive caseloads due to these vacancies (National Judicial Data Grid, 2024). This leads to the very delays the courts were designed to eliminate, as cases get transferred back to regular overloaded dockets.

• *Functioning of Fast-Track Special Courts*

While FTSCs have increased disposal rates in some jurisdictions, their efficacy is uneven. They often lack dedicated support staff, prosecutors, and interpreters. The promise of a “fast-track” is undermined by the ancillary delays in receiving forensic reports, summoning witnesses, and the non-appearance of accused persons. Without addressing these systemic dependencies, FTSCs risk being merely symbolic.

IX. COMPARATIVE LEGAL FRAMEWORKS

United Kingdom – Specialized Victim Support Mechanisms

The UK employs a multi-agency approach centered on the survivor. Sexual Assault Referral Centres (SARCs) provide integrated medical, forensic, and counseling services under one roof, minimizing re-traumatization. Independent Sexual Violence Advisers (ISVAs) offer continuous, independent support to survivors throughout the criminal justice process.

Special Measures, such as giving evidence via video link or behind screens, are routinely available to reduce the stress of testifying in court (Ministry of Justice, UK, 2020). These mechanisms prioritize the survivor's well-being as integral to an effective judicial process.

Sweden – A Consent-Based Legal Model

Sweden reformed its rape law in 2018 to adopt an explicit affirmative consent standard. The law stipulates that sex must be voluntary; lack of consent is assumed if the participant does not express consent through words or conduct. The focus shifts from the survivor's resistance to the perpetrator's conduct and whether they ensured consent was present (Swedish Ministry of Justice, 2018). This model, while not without implementation challenges, legally embeds a more progressive understanding of sexual autonomy.

South Africa – Integrated Care and Specialized Courts

South Africa's Thuthuzela Care Centres (TCCs) are similar to the UK's SARCs, located in hospitals to provide medico-legal, counseling, and court preparation services. Crucially, they are linked to dedicated Sexual Offences Courts. These courts have trained prosecutors and intermediaries to assist vulnerable witnesses, and utilize designated waiting rooms to prevent contact with the accused (Department of Justice & Constitutional Development, South Africa, 2021). This integration of health and justice sectors creates a more coherent support pathway.

X. EMERGING DEBATES

Marital Rape Exception under the BNS

The BNS retains the marital rape exception for adult women, stipulating that sexual intercourse by a man with his own wife, provided she is not under eighteen years of age, does not constitute rape. This exemption, a colonial legacy, is a subject of intense legal and societal debate. Proponents often cite privacy of the marriage institution and potential for misuse. Opponents, including human rights bodies and the Supreme Court in *X v. Principal Secretary* (2022) (which emphasized bodily autonomy), argue that it violates the constitutional rights to equality, dignity, and life, and perpetuates the notion of wives as sexual property. The current legal position remains a significant anomaly in an otherwise progressive framework.

Gender-Neutral Sexual Offence Laws

Indian law presents a contradictory stance on gender neutrality. The POCSO Act is fully gender-neutral, protecting all children. However, the rape provisions under the BNS define the perpetrator as a “man” and the victim as a “woman.” This excludes male and transgender survivors of rape from its direct purview, who must rely on provisions related to “unnatural offences” or assault, which carry different social and legal connotations and penalties. The debate centers on whether expanding gender neutrality would better reflect the realities of sexual violence or potentially dilute focus on the predominant pattern of violence against women. A holistic framework that protects all survivors while acknowledging specific vulnerabilities is an unresolved challenge.

XI. RECOMMENDATIONS/ SOLUTIONS

To bridge the gap between law and justice, a systemic approach is essential:

- *Strengthen Forensic Infrastructure:*

Allocate dedicated resources to expand and modernize FSLs, establish strict timelines for DNA analysis, and deploy mobile forensic units.

- *Fill Institutional Vacancies:*

Expedite the recruitment and appointment of judges, prosecutors, and female police officers, with a special focus on FTSCs and sensitive posts.

- *Optimize the Nirbhaya Fund:*

Implement a transparent, outcome-based monitoring mechanism for fund utilization. Prioritize funding for survivor-centric infrastructure like comprehensive one-stop centers and training programs.

- *Mandatory and Continuous Training:*

Institute compulsory, curriculum-based training for police, prosecutors, judges, and medical personnel on survivor-centric procedures, forensic evidence collection, and combating biases.

- *Strengthen Victim Support Services:*

Institutionalize the provision of independent victim advocates (like ISVAs) and ensure the availability of psychological and legal aid from the FIR stage through trial.

- *Enhance Public Awareness and Monitoring:*

Conduct sustained awareness campaigns to combat stigma and inform survivors of their rights.

Establish independent oversight committees at district and state levels to monitor the implementation of sexual violence laws and protocols.

XII. CONCLUSION

India’s legal framework on sexual violence has evolved commendably, reflecting a societal demand for accountability and justice. The BNS, BNSS, POCSO, and FTSCs represent a comprehensive legislative and institutional response. However, this paper demonstrates that these advances are critically undermined by profound implementation and institutional deficits—from dysfunctional forensics and biased policing to under-resourced courts and unspent funds. The comparative analysis reveals that international jurisdictions have successfully integrated survivor support directly into the justice process, offering models for India to adapt. Furthermore, resolving enduring debates on marital rape and gender neutrality is crucial for the framework’s legitimacy and completeness. Ultimately, the goal must shift from merely enacting stricter laws to building a justice delivery ecosystem that is efficient, empathetic, and truly accessible. The path forward lies in unwavering political will, targeted resource allocation, and a fundamental institutional reorientation that places the survivor’s dignity and rights at the core of every procedure.

REFERENCES

- [1] Public Secrets of Law: Rape Trials in India – a well-known academic book on rape trials in India.
- [2] Bureau of Police Research and Development (BPR&D). (2021). Report on Forensic Science Infrastructure in India. Ministry of Home Affairs.
- [3] Dash, Preeti Pratishruti. (2020). *Rape adjudication in India in the aftermath of Criminal Law Amendment Act, 2013: findings from trial courts of Delhi*. Indian Law Review.
- [4] Department of Justice & Constitutional Development, South Africa. (2021). Annual Report on Sexual Offences Courts.
- [5] Human Rights Watch. (2017). Everyone Blames Me: Barriers to Justice and Support Services for Sexual Assault Survivors in India.
- [6] Independent Thought v. Union of India (2017) 10 SCC 800.
- [7] Justice J.S. Verma Committee. (2013). Report of the Committee on Amendments to Criminal Law. Government of India. <https://dor.gov.in/sites/default/files/Justice%20Verma%20Committee%20Report.pdf>
- [8] Lillu @ Rajesh & Anr. v. State of Haryana (2013) 14 SCC 643.
- [9] Ministry of Home Affairs. (2023). The Bharatiya Nyaya Sanhita, 2023. India Code. <https://www.indiacode.nic.in>
- [10] Ministry of Justice, UK. (2020). The Code of Practice for Victims of Crime.
- [11] National Crime Records Bureau (NCRB). (2022). Crime in India 2022. Ministry of Home Affairs. <https://www.ncrb.gov.in>
- [12] National Judicial Data Grid. (2024). Pendency Statistics for Fast-Track Special Courts. <https://njdg.ecourts.gov.in>



International Journal of Recent Development in Engineering and Technology
Website: www.ijrdet.com (ISSN 2347-6435 (Online) Volume 15, Issue 08, August 2026)

- [13] Swedish Ministry of Justice. (2018). The Swedish Sexual Crimes Act (SFS 2018:393).
- [14] X v. Principal Secretary, Health and Family Welfare Department (2022) 10 SCC 1.
- [15] Comptroller and Auditor General of India. *Report of the Comptroller and Auditor General of India on the Nirbhaya Fund (Union Government – Civil)*. (2021). https://cag.gov.in/?utm_source=chatgpt.com
- [16] Ministry of Women and Child Development. *One Stop Centre (OSC) Scheme – Official*
- [17] *Documents*. Government of India. https://www.spniwcd.wcd.gov.in/one-stop-centre-header/documents?utm_source=chatgpt.com
- [18] Mukesh & Anr. v. State (NCT of Delhi), (2017) 6 SCC 1.
- [19] Independent Thought v. Union of India, (2017) 10 SCC 800.
- [20] Aparna Bhat v. State of Madhya Pradesh, (2021) 3 SCC 247.
- [21] State of Punjab v. Gurmit Singh, (1996) 2 SCC 384.