
REASSESSING CONSENT IN INDIAN RAPE LAWS: A COMPARATIVE JURISPRUDENTIAL APPROACH

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ABSTRACT

Ensuring justice for victims of sexual offences depends on effective investigations. Over the years, even with the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 coming into force, India has constantly introduced legal reforms to make procedures more victim-centric; however, challenges in enforcement, sensitivity, and efficiency persist. Historically, the Code of Criminal Procedure (CrPC), 1898, and later the CrPC, 1973, lacked victim-centric provisions, often leading to secondary victimization. Even after the reforms such as the Criminal Law (Amendment) Act, 2013, with 445,256 crimes against women reported in NCRB 2022, the gaps in police accountability remain. This research examines the evolution of investigative procedures and assesses whether BNSS, 2023, effectively addresses existing shortcomings in the justice system.

Introduction

India's criminal justice system was set up during British rule with the Indian Penal Code (IPC), 1860¹ and CrPC, 1898². These laws prioritized defining crimes over victims, especially in cases of sexual violence. The Indian Evidence Act, 1872³ further disadvantaged survivors by allowing inquiries into their past sexual history, often leading to victim blaming and deterrence from reporting.

Post independence, legal reforms were slow and investigative procedures remained outdated. The CrPC, 1973⁴ and other laws introduced important provisions like in-camera trials (Section 327(2))⁵, confidentiality of victim identity (Section 228A IPC)⁶, mandatory medical examination (Section 164A CrPC)⁷ and prohibition on irrelevant inquiries into a victim's past (Section 53A Evidence Act)⁸. While these reforms improved procedural safeguards, gaps in implementation persisted and more amendments were needed for sensitive and effective investigations. The Criminal Procedure (Amendment) Act, 2005⁹ aimed to speed up trials and enhance the victim's role in the legal process. Fast track courts and victim compensation schemes were introduced to improve justice delivery and provide financial support to survivors.

Cases which defined the history of rape laws in India

The Mathura Rape Case and Its Legal Impact

Before the Mathura Rape Case (Tukaram v. State of Maharashtra, 1979)¹⁰, the rape laws in India were archaic and patriarchal. Investigations were marred by police reluctance to register cases, insensitive questioning and forensic lapses. Courts put an unreasonable burden on survivors to prove non-consent, based on outdated notions of resistance and victim character assessment.

¹ Indian Penal Code, 1860 (India).

² The Code of Criminal Procedure, 1973, No. 2 of 1974, Acts of Parliament (India).

³ The Indian Evidence Act, 1872 (India).

⁴ The Code of Criminal Procedure, 1973 (India).

⁵ The Code of Criminal Procedure, 1973, No. 2 of 1974, § 327(2) (India).

⁶ The Indian Penal Code, 1860, No. 45 of 1860, § 228A (India).

⁷ The Code of Criminal Procedure, 1973, No. 2 of 1974, § 164A (India).

⁸ The Indian Evidence Act, 1872, No. 1 of 1872, § 53A (India).

⁹ The Criminal Procedure (Amendment) Act, 2005, No. 25 of 2005, Acts of Parliament (India).

¹⁰ Tukaram v. State of Maharashtra, (1979) 2 SCC 143 (India).

The Mathura Rape Case exposed the system and led to the Criminal Law (Amendment) Act, 1983¹¹. The key changes were Section 327(2) CrPC¹² which made in-camera trials mandatory to protect the survivor from public scrutiny, Section 376(2) IPC¹³ which introduced stricter punishment for aggravated rape including custodial and gang rape, Section 228A IPC¹⁴ which criminalized disclosure of survivor's identity and Section 114A Evidence Act¹⁵ which presumed absence of consent in custodial rape cases if the survivor said so. Despite these changes, police apathy, long trials and societal stigma continued to undermine them.

Judicial Interventions Strengthening Investigative Procedures

The courts have time and again emphasized the need to make the investigation process more woman friendly. In *State of Maharashtra v. Madhukar Narayan Mardikar* (1991)¹⁶ the Supreme Court held that a woman's past sexual history is irrelevant in determining consent and hence the survivor's right to dignity. In *State of Karnataka v. Manjanna* (2000)¹⁷ the court emphasized the urgency of medical examination and as a result Section 164A¹⁸ was introduced in CrPC to ensure prompt forensic examination. In *Sakshi v. Union of India* (2004)¹⁹ the court pointed out the trauma faced by the survivors during trial and recommended video conferencing for victim statements, support persons during trial and safeguards against aggressive cross examination. All of this led to the 2012 reforms.

Pre-Nirbhaya Investigation Framework and Reforms

Now before 2012, sexual assault investigations were plagued by delays, FIR refusals, forensic backlogs and victim blaming. The 2008 Criminal Procedure (Amendment) Act²⁰ tried to address this by mandating FIR registration, magistrate recorded victim statements and right to legal representation but major gaps remained.

¹¹ The Criminal Law (Amendment) Act, 1983, No. 43 of 1983, Acts of Parliament (India).

¹² The Code of Criminal Procedure, 1973, No. 2 of 1974, § 327(2) (India).

¹³ The Indian Penal Code, 1860, No. 45 of 1860, § 376(2) (India).

¹⁴ The Indian Penal Code, 1860, No. 45 of 1860, § 228A (India).

¹⁵ The Indian Evidence Act, 1872, No. 1 of 1872, § 114A (India).

¹⁶ *State of Maharashtra v. Madhukar Narayan Mardikar*, (1991) 1 SCC 57 (India).

¹⁷ *State of Karnataka v. Manjanna*, 2000 SCC OnLine Kar 353 (India).

¹⁸ The Code of Criminal Procedure, 1973, No. 2 of 1974, § 164A (India).

¹⁹ *Sakshi v. Union of India*, AIR 2004 SC 3566 (India).

²⁰ The Code of Criminal Procedure (Amendment) Act, 2008, No. 5 of 2009, Acts of Parliament (India).

The 2012 Nirbhaya case triggered nationwide protests and led to the formation of the Justice Verma Committee (December 23, 2012)²¹ which received 80,000+ suggestions and recommended key changes. It asked for an expanded definition of rape (including non-penile penetration and forced oral sex), criminalization of marital rape, withdrawal of AFSPA immunity in sexual violence cases, gender neutral rape laws and strict punishment for officials who don't register cases. Based on these recommendations the Criminal Law (Amendment) Act, 2013²² was enacted which introduced an expanded definition of rape (Sec 375 IPC²³), harsher punishments (Sec 376 IPC²⁴), new offences like sexual harassment (Sec 354A²⁵), disrobing (Sec 354B²⁶), voyeurism (Sec 354C²⁷), stalking (Sec 354D²⁸), procedural reforms like mandatory FIR registration (Sec 166A IPC²⁹), time bound investigations, standardized medical exams (Sec 164A CrPC³⁰), police accountability and free medical aid to victims (Sec 357C CrPC³¹). Victim protection was strengthened by making past sexual history inadmissible (Sec 53A Evidence Act³²). Even though this was a major overhaul in the criminal system, still systemic issues remained.

Judicial Mandates Influencing Investigations

The Lalita Kumari v. Government of Uttar Pradesh (2013)³³ judgment was pivotal, mandating immediate registration of FIRs in cognizable offences, including rape. The Supreme Court eliminated police discretion, ensuring victims were not subjected to procedural delays, skepticism, or refusal to file complaints. This decision strengthened investigative efficiency, preserved crucial evidence, and reinforced institutional responsibility.

The Kathua (State of J&K v. Sanji Ram & Ors., 2018)³⁴ and Unnao (CBI v. Kuldeep Singh

²¹ Justice Verma Committee, *Report on Amendments to Criminal Law* (Jan. 23, 2013), available at <https://www.prsindia.org/reports-summaries/justice-verma-committee-report>.

²² The Criminal Law (Amendment) Act, 2013, No. 13 of 2013, Acts of Parliament (India).

²³ The Indian Penal Code, 1860, No. 45 of 1860, § 375 (India).

²⁴ The Indian Penal Code, 1860, No. 45 of 1860, § 376 (India).

²⁵ The Indian Penal Code, 1860, No. 45 of 1860, § 354A (India).

²⁶ The Indian Penal Code, 1860, No. 45 of 1860, § 354B (India).

²⁷ The Indian Penal Code, 1860, No. 45 of 1860, § 354C (India).

²⁸ The Indian Penal Code, 1860, No. 45 of 1860, § 354D (India).

²⁹ The Indian Penal Code, 1860, No. 45 of 1860, § 166A (India).

³⁰ The Code of Criminal Procedure, 1973, No. 2 of 1974, § 164A (India).

³¹ The Code of Criminal Procedure, 1973, No. 2 of 1974, § 357C (India).

³² The Indian Evidence Act, 1872, No. 1 of 1872, § 53A (India).

³³ Lalita Kumari v. Government of Uttar Pradesh, (2014) 2 SCC 1 (India).

³⁴ State of J&K v. Sanji Ram, (2018) SCC OnLine J&K 1009 (India).

Sengar, 2019)³⁵ cases exposed grave police lapses, including delays and evidence tampering. In response, the Criminal Law (Amendment) Act, 2018³⁶, introduced reforms mandating the completion of rape investigations within two months (Section 173 CrPC³⁷), barring anticipatory bail for rape accused in cases involving minors under 16 years (Section 438 CrPC³⁸), and establishing fast-track courts to conclude trials within six months.

Despite Standing Orders No. 303/2010³⁹ and No. 303/2019⁴⁰, delays and discouragement in filing complaints persist, reflecting non-compliance. The 2019 SOPs require empathetic statement recording by female officers with video documentation for minors, yet improper documentation and missing recordings undermine evidence integrity. Failures in timely medical and forensic procedures further weaken cases. Though SOPs set a 60-day investigation timeline for rape and POCSO cases, bureaucratic inefficiencies frequently cause delays. Victim support remains ineffective due to poor coordination. Irregular training and weak accountability lead to mishandling and insensitive victim interactions.

Systemic Failures in Police Investigations: Comparative Analysis

Despite all the laws, police investigations into sexual violence are still deeply flawed as studies in Delhi (2015)⁴¹ and Uttar Pradesh (2020)⁴² show. Procedural lapses, delays, coercion and institutional bias continue to deny justice to survivors. FIRs were often undermined by jurisdictional rigmarole, bribery and refusal to give copies. Police would say it was a “family matter”, ignore Zero FIR, and delays would stretch for weeks or months, with illegal preliminary inquiries and caste bias protecting powerful perpetrators.

Gender sensitive procedures were ignored. Medicals focused on stigma over forensic evidence; married survivors were dismissed; male officers were in charge of cases; mandatory videography was ignored; and survivors were forced to recount trauma in public spaces. Judicial failures made the crisis worse. Delayed arrests, insensitivity and weak oversight

³⁵ CBI v. Kuldeep Singh Sengar, (2019) SCC OnLine Del 11893 (India).

³⁶ Criminal Law (Amendment) Act, No. 22 of 2018, Acts of Parliament (India).

³⁷ The Code of Criminal Procedure, 1973, No. 2 of 1974, § 173 (India).

³⁸ The Code of Criminal Procedure, 1973, No. 2 of 1974, § 438 (India).

³⁹ Standing Order No. 303/2010, Delhi Police (India).

⁴⁰ Standing Order No. 303/2019, Delhi Police (India).

⁴¹ Partners for Law in Dev. & U.N. Dev. Programme, *A Study of Pre-Trial and Trial Stages of Rape Prosecutions in Delhi (Jan. 2014–Mar. 2015)* (2017), <https://pldindia.org/publications/>.

⁴² Commonwealth Hum. Rts. Initiative & Ass’n for Advocacy & Legal Initiatives, *Barriers in Accessing Justice: The Experiences of 14 Rape Survivors in Uttar Pradesh, India* (2020) (ISBN 978-93-81241-89-9).

allowed witness intimidation, coerced settlements and forced marriages with perpetrators. Magistrates rarely invoked Section 166A(c) IPC⁴³ against negligent officers. There was no accountability; survivors had no guidance on compensation; forensic delays weakened cases and political pressure suppressed crime statistics. All this shows a culture of impunity.

The Nirbhaya Fund Scandal

The Nirbhaya Fund was set up after the 2012 Delhi gang rape to strengthen investigations, forensic capabilities and survivor support. By 2018 the corpus had grown to Rs 3,600 crore but utilisation was shockingly low. Reports said⁴⁴ funds were being diverted to infrastructure instead of reforms like police training. By 2019 states had used only 11% of the sanctioned funds, Maharashtra and Delhi below 5%. Even by 2021 the Ministry had used only 20% of its allocation⁴⁵. This is a reflection of the broader collapse of reforms where policies exist on paper but fail on the ground.

Institutional Lapses and Barriers to Justice

The Indian policing system is plagued by structural inefficiencies. Over the past decade crime rates have gone up by 28% while police forces are working with a 24% vacancy rate. Conviction rates are low at 25% for rape cases. Negligence like refusal to register FIRs, delays in medical examination and lack of trauma informed training deters women from reporting crimes⁴⁶.

Survivors from marginalised communities face systemic discrimination. Dalit survivors face additional barriers like caste based bias and police coercion to withdraw complaints. Many victims unaware of their rights are excluded from the formal justice system⁴⁷. While Section 114A presumes lack of consent where the survivor testifies, procedural inefficiencies benefit the accused. Corruption and misconduct further weakens the investigation. Transparency

⁴³ The Indian Penal Code, 1860, No. 45 of 1860, § 166A(c) (India).

⁴⁴ Press Release, Ministry of Women & Child Dev., *Nirbhaya Fund: Progress and Schemes* (Aug. 5, 2021), <https://pib.gov.in/PressReleasePage.aspx?PRID=1742345>.

⁴⁵ Kailash Satyarthi Children's Found., *An Analysis of Utilisation of Nirbhaya Fund by the States/UTs* (Dec. 6, 2019), <https://kschildrenfoundation.org/wp-content/uploads/2020/01/An-Analysis-of-Utilisation-of-Nirbhaya-Fund-by-the-States-UTs.pdf>.

⁴⁶ N. A., *Investigation of Sexual Offences Against Women in India: A Review of Legal Procedural Mandates and Directives*, 15 Nat'l L. Sch. J. 11 (2019), <https://repository.nls.ac.in/nlsj/vol15/iss1/11>.

⁴⁷ M. Kaithwas & N. Pandey, *Incompetency and Challenges of Police in Rape Cases*, 7 Soc. Work Chron. 52 (2018), <http://publishingindia.com/swc/>.

International (2019)⁴⁸ ranked the police as the most corrupt department, and bribery cases increased in Delhi. The continued failure of law enforcement sets the stage for the BNSS to address systemic deficiencies.

BNSS: Promises and Provisions

The BNSS brings in many changes. One of the biggest is the empowerment and accessibility it gives to the victims. Under Section 173(1) BNSS⁴⁹ Electronic filing of First Information Reports (FIRs), including Zero FIRs, is allowed, a big departure from Section 154(1) CrPC⁵⁰ which allowed FIRs only orally or in writing without formalising Zero FIRs or allowing electronic filing. By allowing women to file FIRs electronically, including from private spaces, the BNSS enables discreet and safe reporting, bypassing social stigma and fear of visiting police stations. Institutionalisation of Zero FIRs allows victims to file complaints at any police station, regardless of jurisdiction, so that crucial forensic evidence like DNA and medical reports can be preserved promptly.⁵¹ This empowers women to get justice quickly and effectively, as seen in cases like *Harpal Singh v. State of Punjab*⁵², where immediate action is required in sexual offence cases.

Further empowering the victims, Sections 173(2)⁵³ and 193(3)(ii) BNSS⁵⁴ gives victims the right to information throughout the investigation process. Unlike Section 154(2) CrPC⁵⁵ which only gave FIR copies to informants and no updates on the case, the BNSS mandates that victims get free copies of the FIR and be informed about the investigation within 90 days. This enables women to track their cases, challenge delays and be part of the legal process, thus reducing feelings of isolation and disempowerment during critical time-bound investigations.

The BNSS also improves procedural safeguards to handle women complainants sensitively. Section 179 BNSS⁵⁶ builds on Section 160 CrPC⁵⁷ by exempting women, minors, elderly and disabled persons from mandatory attendance at police stations and allowing them to appear

⁴⁸ Transparency Int'l, *India Corruption Study 2019* (2019).

⁴⁹ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 173(1) (India).

⁵⁰ The Code of Criminal Procedure, 1973, No. 2 of 1974, § 154(1) (India).

⁵¹ Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

⁵² *Harpal Singh v. State of Punjab*, (1973) 2 SCC 342 (India).

⁵³ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 173(2) (India).

⁵⁴ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 193(3)(ii) (India).

⁵⁵ The Code of Criminal Procedure, 1973, No. 2 of 1974, § 154(2) (India).

⁵⁶ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 179 (India).

⁵⁷ The Code of Criminal Procedure, 1973, No. 2 of 1974, § 160 (India).

voluntarily at a place of their choice. This reduces the psychological trauma and intimidation women face in police stations and encourages greater cooperation and participation in the investigation. Additionally, Section 173(3) BNSS⁵⁸ introduces a provision for preliminary enquiry with the approval of a Deputy Superintendent of Police for offences punishable by three to seven years, like sexual harassment. While this filters out frivolous complaints and focuses resources on genuine cases, it excludes heinous crimes like rape, so such cases get immediate attention. The BNSS also provides multiple avenues of recourse if an FIR is not registered. While Section 154(3) CrPC⁵⁹ allowed a complainant to approach the Superintendent of Police, it was not specific about judicial remedies. Section 173(4) BNSS⁶⁰ allows a person to approach the SP in writing, who may investigate or direct a subordinate to do so. If the complainant is not satisfied, they can approach a magistrate under Section 175(3)⁶¹ so that there is an additional judicial safeguard and complaints are not arbitrarily dismissed, a common problem faced by women.

Integrity and forensic evidence is also ensured through mandatory audio-video recording of rape victims' statements as per Section 176(1) BNSS⁶² which is not available in Section 157 CrPC⁶³. This way statements are preserved accurately, reducing scope of coercion or misrepresentation and minimizing retraumatization during trials. Section 176(3) BNSS⁶⁴ also mandates collection of forensic evidence like DNA and semen samples for offences punishable by 7 years or more with the process videographed using mobile or electronic devices. This reduces over reliance on oral testimony which is often difficult for women to substantiate and strengthens scientific evidence and conviction rates.

To address delays in medical documentation, Section 184 BNSS⁶⁵ requires medical examination reports to be submitted within 7 days of examination which is more stringent than CrPC's vague "without delay" under Section 164A⁶⁶. This prevents loss of evidence and ensures survivors get timely medical attention which is critical in sexual offence cases. BNSS

⁵⁸ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 173(3) (India).

⁵⁹ The Code of Criminal Procedure, 1973, No. 2 of 1974, § 154(3) (India).

⁶⁰ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 173(4) (India).

⁶¹ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 175(3) (India).

⁶² The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 176(1) (India).

⁶³ The Code of Criminal Procedure, 1973, No. 2 of 1974, § 157 (India).

⁶⁴ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 176(3) (India).

⁶⁵ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 184 (India).

⁶⁶ The Code of Criminal Procedure, 1973, No. 2 of 1974, § 164A (India).

also has gender sensitive procedural reforms, notably under Section 183(6)(a)⁶⁷ where statements of victims of rape, gang rape or acid attacks must be recorded by a woman magistrate as far as possible. If a woman magistrate is not available, a male magistrate must record the statement in the presence of a woman thereby reducing intimidation and encouraging accurate disclosure. For offences punishable by 10 years or more, the magistrate is also required to record witness statements forwarded by the police, thus ensuring comprehensive and early evidence collection.

Also, audio-video recording of vulnerable victims including women with physical or mental disabilities is mandatory as per 4th proviso to Section 183(6)(a) BNSS. Statements should be recorded using electronic means, preferably mobile phones, with the help of interpreters or special educators if required. This is more inclusive and accessible than the CrPC's limited videography requirement especially for rural or disabled women.

BNSS also focuses on speed and timeliness. Section 193(2) extends the 2 months time limit for investigation for POCSO Act offences so that justice can be delivered to child survivors of sexual offences faster. Electronic submission of police reports as per Section 193(3)(i) speeds up the process by enabling digital transmission to magistrates and reducing the time lag in cases where digital and forensic evidence is involved.

More safeguards for victim centric justice. Audio video recording of searches (Section 185(2)) prevents tampering of evidence, time bound submission of records (Section 185(5)) and mandatory submission of documents (Section 193(8)) ensures accountability and judicial oversight. Victim access to case records (Section 230) ensures transparency and empowers survivors to be part of their cases. Witness protection under Section 398 protects women from intimidation and Section 53's flexibility in medical examination ensures forensic accuracy.

Also Section 48(3) requires wider arrest notifications so that more people can support the arrested women and Section 35(7) restricts arrests in minor offences so that women are not harassed unnecessarily.

Post-BNSS Saga: Systemic Failures

This 2024 study, published International Journal for Crime, Justice and Social Democracy

⁶⁷ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, § 183(6)(a) (India).

conducted a through intersectional analysis, where it examines police responses to sexual violence, revealing deep-rooted systemic failures that persist despite legal reforms⁶⁸.

The Methodology and Continued Relevance of the paper: Using qualitative interviews with three victim-survivors and 15 police personnel, analyzed through reflexive thematic analysis, the study provides an in-depth look into policing culture and institutional bias. The data was collected between 2016 to 2024 , the increasing incidents of sexual violence and continued police inaction underscore the study's ongoing significance.

Victim Narratives and Police Lapses

- Sarah (Middle-Class, 40-Year-Old) : Subjected to victim-blaming and insensitive remarks, her case was initially neglected. Police delayed filing an FIR, and only media pressure forced a proper investigation and arrests.
- Simmi (17-Year-Old, Economically Disadvantaged) : Dismissed and ridiculed by police, her complaint was rejected while the accused—a police informer—was shielded. A counter-case against her supporter led to his suicide. Police acted only after media scrutiny.
- Banu (33-Year-Old Housemaid) : Unlike the others, Banu's case, which fit the "real rape" stereotype (stranger assault, visible injuries), received prompt police action. However, this response was likely influenced by prior media coverage rather than adherence to legal mandates.

Systemic Failures and Consequences

Despite clear legal mandates, such as mandatory FIR registration (*Lalita Kumari v. Govt. of UP*, 2008), systemic policing failures remained evident:

- Insensitive and Victim-Blaming Attitudes: Police taunted and humiliated survivors, compounding their trauma.
- Delays and Institutional Bias: Cases were dismissed or delayed, often to protect perpetrators

⁶⁸ P. Sharma & G. Hamilton, *Police Responses to Rape in Metropolitan India*, Int'l J. Crime Just. & Soc. Democracy (Advance online pub'n, 2024), <https://doi.org/10.5204/ijcjsd.3409>.

with police ties.

- Corruption and Complicity: Officers shielded offenders, particularly in Simmi's case, exposing a police-criminal nexus.
- Procedural Inconsistency: Banu's case saw proper legal procedures, but this was an exception, highlighting the arbitrary nature of police responses.

Media pressure remains the primary catalyst for action, exposing reliance on external influence rather than procedural adherence.

Critical Analysis of Procedural and Investigation Laws Related to Women and Sexual Offences under BNSS

The Bharatiya Nagarik Suraksha Sanhita (BNSS) was introduced to modernise criminal procedure, especially in cases of sexual offences against women. But despite its progressive text and promises of change, the deep rooted systemic flaws in investigation, law enforcement and judicial processes continue to undermine its effectiveness on the ground.

One of the biggest concern is the push for speedy investigations and trials. BNSS has time bound requirements, including the requirement to complete investigation within 2 months (Section 193(2)) and submit medical reports within 7 days (Section 184). While the intention is to prevent delay that derails justice, these time limits can lead to superficial investigation. Overburdened and understaffed police forces with 24% vacancy and procedural lapses may rush cases, leading to incomplete evidence collection and procedural errors. Expediency should never come at the cost of thoroughness and accuracy.⁶⁹

Victim protection is talked about but largely remains theoretical. BNSS has introduced important provisions like mandatory audio-video recording of victim statement (Section 176(1)), controlled cross examination and provision for statements to be recorded by woman magistrate (Section 183(6)(a)). While these reforms aim to prevent re-traumatisation and promote survivor dignity, ground reality is different. Studies from Delhi (2015) and Uttar Pradesh (2020) show that survivors are still being humiliated and treated insensitively, often

⁶⁹ S. Swetapadma, R.N. Subudhi & P. Chatteraj, *Are Reporting and Investigation of Rape Cases Victim Friendly? Responses of the Police from a Cross-Sectional Study Conducted in Three States of Eastern India*, 30 Int'l Rev. Victimology 576 (2023), <https://doi.org/10.1177/02697580231185156>.

being blamed or coerced into silence. The patriarchal mindset of law enforcement officials and even some sections of the judiciary continues to erode victim credibility, directly contributing to India's low conviction rates which are only 25% in rape cases.

Forensic infrastructure is another area where the policy reality gap is huge. While BNSS mandates timely forensic evidence collection and has specific timelines, these are ineffective when forensic labs are overburdened and under-resourced especially in rural and semi-urban areas. Without substantial investment in personnel, equipment and digital tracking systems these provisions remain symbolic rather than transformative. Delays in medical and forensic examinations can weaken cases to the point where perpetrators can escape conviction and further erode survivors' trust in the system.

Law enforcement agencies still have too much discretionary power despite the accountability measures introduced by BNSS. While Section 173(4) which allows judicial remedies against refusal to register FIRs is a step forward, systemic failures persist. Police negligence, refusal to register FIRs and corruption are widespread. Complaints are often diluted or dismissed due to social pressure, political influence and entrenched corruption and survivors have no recourse. The RG Kar Hospital rape case is a stark example of these deep rooted failures. In this case police failed to act promptly, delayed forensic evidence collection and failed to ensure timely medical intervention and this is a gross dereliction of duty and the institutional apathy that continues to deny justice to survivors.

Moreover, BNSS fails to address certain fundamental gaps in the legal understanding of sexual violence. Notably, marital rape remains unrecognized under the law, perpetuating archaic notions of conjugal rights and denying women bodily autonomy within marriage. This glaring omission underscores a reluctance to fully confront and dismantle patriarchal structures that continue to normalize and protect sexual violence within the domestic sphere.

Also, BNSS does not provide adequate legal attention to modern forms of sexual violence like cyberstalking, revenge porn and deepfake abuse. These digital crimes have become more common and harmful, yet the current legal framework does not provide enough remedies or protection to the victims. This gap reflects the failure to keep pace with the evolving threats in a digital society and leaves the victims without legal recourse or support mechanisms.

The Nirbhaya Fund is a perfect example of the gap between the legislative promise and actual

implementation. Created to strengthen safety mechanisms, forensic capacities and survivor support systems after the 2012 Delhi gang rape, it was supposed to be a game changer. By 2021, the total allocation was Rs. 5,712.85 crore, out of which Rs. 3,766.03 crore was disbursed for emergency response systems and fast-track courts. A report in March 2025 said the allocation was increased to Rs. 7,712.85 crore, out of which Rs. 5,846.08 crore (76%) was utilised. While these numbers may look good on paper, the reality is that investigative inefficiencies and survivor support structures are woefully inadequate. Funds have been diverted to unrelated infrastructure projects rather than strengthening police capabilities and victim aid. This shows the persistent gap between policy formulations and ground level implementation, and survivors are once again left in a cycle of empty promises and failed delivery.

Sarah's and Simmi's cases further reveal the failures of law enforcement post BNSS. Sarah, a middle class woman, was blamed and belittled; her FIR was delayed and filed properly only after media intervention. Simmi, a 17 year old from an economically disadvantaged background was dismissed and ridiculed by the police, while the accused who had police ties was shielded. Only after intense media scrutiny did the police act. Banu whose case fit the traditional "real rape" stereotype (stranger assault, visible injuries) saw relatively quick police response, showing how arbitrary and discriminatory the police response is. These stories show that despite legislative reforms, police culture remains reactive rather than proactive, influenced more by media and public pressure than procedural adherence.

Also, the oversight mechanisms of the judicial system, though improved by BNSS provisions like magistrate monitored statements and mandatory victim updates, don't completely eliminate the biases. Patriarchal mindset within the judiciary often leads to secondary victimization, survivors are subjected to humiliating cross examinations and character assassinations.

Marginalized survivors, especially from Dalit and other lower caste backgrounds face even steeper barriers. Institutional bias, caste discrimination and social exclusion often keep these survivors from even reaching the stage where BNSS can be invoked. Police often refuse to register their FIRs, conduct illegal "preliminary inquiries" or coerce survivors into settlements, protecting powerful perpetrators and reinforcing the power hierarchies.

Ultimately, for BNSS to become a transformative framework rather than a superficial revision,

it must be accompanied by serious investments in infrastructure, strict enforcement of mandates, and a fundamental commitment to survivor-centered reform. Until then, the promise of justice will continue to be conditional, selective, and largely inaccessible for countless women across India.

Final Conclusion

Legal reforms like BNSS are meaningless without systemic accountability. Police apathy, corruption, and bias continue to obstruct justice, forcing survivors to fight against the very system meant to protect them. True justice demands a shift in policing culture, strict enforcement, and survivor-centered reforms. Without this, the cycle of impunity persists, leaving justice conditional and inaccessible.