Gender, Sexual Violence, and Access to Justice

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**Abstract**

When a victim lodges a crime with the police, they come with a set of outcome-oriented expectations. The perceived or actual sense of harm is real to the victim and they expect the criminal justice processes to understand and give recognition to their concerns. Thus, in a functioning democracy, access to justice is crucial and remains a key human right. Whilst access to justice can be challenging for many people, it is especially so for women due to persistent historical and ongoing gender inequality and power imbalances in society. This chapter deals with women victim’s access to justice in the context of India over the last fifty years or so. In particular, we focus on sexual violence to understand how the Indian Criminal Justice System has sought to respond in achieving gender sensitive justice. Given the dearth of literature into gender, sexual violence and access to justice, we explore how procedural justice theory and feminism can help understand the processes of access to justice. Sexual violence against women, the low rates of reporting, and access to justice remain important areas of concern across the globe. By focusing on the Indian jurisdiction as a case study, this chapter seeks to shine a light on the situation of women as victims of sexual crime. To help explicate the historical trajectory, we utilise Baxi’s (2014:1) understanding of landmark cases as ‘laboratories for judicial reform’. In doing this, we focus on 2 major cases – Mathura (1972), and Nirbhaya (2012) to sketch out key historical developments including procedural interventions by the legislature, how judiciary has widened it scope; and the ways in which the police as an arm of the CJS has intervened to deal with sexual crimes against women.

**Introduction**

Historically, the primary locus for modern criminal justice systems has resided within a framework of retribution, with punishment of the offender as the major objective. With the central goal of infliction of pain to the offender, the pain of the victim has been largely overlooked. The modern nation of India is no exception to this (Srinivasan and Matthew 2007, Bajpai and Gauba 2016, Singh and Kumar 2019). Chockalingham (2018: 33) has argued that there has been little attention paid to the victims of crime within India ‘during the investigation, prosecution and disposal of the criminal cases by the criminal court”. He maintains that during the early development of the discipline of criminology in India, an academic focus on victims was non-existent. Over the last 20 years or so, there has been a shift towards highlighting the need for understanding the needs and concerns of victims (Bajpai 2006). Comparative international scholarly work has identified a lack of comprehensive legislative framework in relation to the rights of victims in India (Sahni et al 2016).

Much of the concern about victims and legal outcomes, globally, has been about fairness and justice in the law, and the implementation gap. Initially introduced by Thibaut and Walker (1975), procedural justice theory about fairness in procedures has popularised the notions of consistency, bias suppression, accuracy, correctability and the voice effect in relation to process control and outcomes in decision-making (Leventhal et al 1980, Lind and Tyler 1988). A significant body of research in the USA has suggested that the fair process effect is that fair procedures enhance the acceptance of outcomes (Greenberg 2000). Research in other country contexts (UK, and India) in relations to legitimacy, trust, interactions and satisfaction with policing have identified the importance of public trust and interpersonal / information justice (Hough 2010, Vinod Kumar 2018).

In relation to rape victims, some pertinent questions include: What constitutes justice for rape victims? Is justice about meting out appropriate punishment to the offender? Is it about compensation for harm and injury? How is harm and injury to be calculated? Is it limited to the physical and emotional trauma or do these include the social ostracism and isolation not only of the rape victim but her family too? Is it about being heard during the process of justice? Is it about all of these things, and more? Arguably, women’s movements in different part of the world have played a key role in highlighting gender inequality and crimes of violence against women. Perhaps for reasons of sluggishness in the implementation of rape laws in patriarchal societies (low rates of referral, delays in process, attrition rates, low conviction rates, etc), feminist and popular public discourse voices have pushed for carceral punishment to the detriment of other possibilities to promote the rights of victims. Inevitably, with pityingly low rates of rape convictions, a limited approach such as carceral punishment results in a lack of justice for most victims of rape and other sexual offences (McGylnn 2011). The carceral punishment has proven to be counterproductive specially in cases where the offender is a family member or known to the family. 94% of rape are reported to be committed by persons known to the victim. The victim is subjected to tremendous pressure to retract her statement as family will lose all income with the incarceration of the bread earner. The benefits of restorative, and procedural justice for rape victims have been stressed by some scholars who have argued that such approaches not only give voice and motivation to victims to be involved in the process of justice, but that outcomes are also long-lasting and that traditional functions of formal justice (that is, retribution, rehabilitation/ reintegration, individual and public protection) are also encompassed within these programmes (Hudson 2002, Kelly et al 2005, Miller 2011).

This chapter is divided into three sections. Firstly, we sketch out the historical framework in relation to rape and victimology in India. We then proceed to examine two historic cases to offer rich insights into recent developments including procedural interventions by the legislature, how judiciary has widened it scope; and the ways in which the police as an arm of the CJS has intervened to deal with sexual crimes against women. Finally, operating within a feminist framework, we utilise procedural justice theory to argue that consistency, bias suppression, accuracy, correctability and the voice effect in relation to process control and outcomes in decision-making are an essential pre-requisite to effective justice. Moreover, we conclude by saying that the trend towards carceral punishment in India is unlikely to promote the best interests of victims of rape, and that a broader conceptualisation of possibilities is required to help achieve effective justice.

**Historical Context: Indian Criminal Justice System**

Within the modern Indian jurisdiction system, which is based on the colonial Indian Penal Code (hereafter IPC) 1860, during criminal proceedings the victim had no right to protect their interest. The accused/convicted however has been granted several rights including the automatic right to appeal against their conviction (See Barn and Kumari 2015). The victim on the other hand can struggle to even have the criminal act registered as a crime (Jassal 2021) and is regarded as a witness for the prosecution in the criminal trial to prove beyond reasonable doubt the guilt of the defendant to help ensure appropriate punishment. In this sense, the Indian system is not too radically different from many other jurisdictions around the world. Indeed, the plight of women who are victims of rape remains a key area for concern in most societies.

In post-independent India, rape laws which were enshrined in the IPC 1860, the Code of Criminal Procedure 1898 and the Indian Evidence Act 1912, by the British colonialists, have undergone some legislative reform over the last 50 years or so, largely as a consequence of feminist critiques and interventions that have argued that such laws operate against the best interests of rape victims (Kapur and Cossman 1996, Baxi 2014, Hoenig and Singh 2014). To understand the changes over the last 50 years or so, it is important to be cognisant of the original rape law of IPC 1860:

A man is said to commit rape who, except on cases herein after excepted, has sexual intercourse with a woman under circumstances falling under any of the following five descriptions:

First: Against her will.

Second: Without her consent when she is insensible.

Thirdly: With her consent when her consent has been obtained by putting her in fear of

death or of hurt.

Fourthly: With her consent, when the man knows her consent is given because she believes

that he is a different man to whom she is, or believes herself to be married to.

Fifthly: With or without her consent, when she is under ten years of age. (Cited in Baxi

1995, 91–92).

Explanation – Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception – Sexual intercourse by a man with his wife is in no case rape (cited in Vibhute 2001:27).

The architect of the IPC 1860 and the rape law, Thomas Babington Macaulay, operated on a set of assumptions about consent, including the notion of permanent consent upon marriage, as noted in the exception above. Whilst there has been some change to other aspects of the original law, rape within marriage in India remains an exception and permissible in case of wife above the age of 18 years.[[1]](#footnote-1) In her paper, ‘Rape laws: A social problem for the 21st century, Yllo (1999) argues that rape laws are a patriarchal act, in other words, they were introduced to protect men’s property (that is, virgin daughters and wives) from other men. She argues that the tenacity of the patriarchal system and the very notion of family, and marriage is embedded in the fact that marital rape was only criminalised in the USA, for example, in 1993; and in 1991 in Britain. Thus, although many other countries now consider non-consensual sex within marriage to be a criminal act, in India the practice of non-consensual sex within marriage is permitted. Notably, whilst the fifth Law Commission in 1971 demonstrated some ‘sensitivity to, and concern for, the underlying assumptions of the familial ideology of the ‘all time irrevocable consent’ of a wife for sexual act’ (Vibhute (2001: 29), no subsequent Law Commission report has come close to criminalising marital rape in India.

As mentioned above, the contemporary Indian Criminal Justice System (CJS) is based on the British colonial IPC 1860. It comprises four sub-systems (Legislature, Law enforcement, Adjudication, and Corrections), and remains adversarial. The system comprises Legislature, Judiciary, and the Executive, and is governed by four laws. These include the Indian Penal Code, the Constitution of India, the Code of Criminal Procedure of India, and the Indian Evidence Act. Crucially, the Indian CJS deploys three legal frameworks – namely the IPC 1860 which defines crimes and provides for punishments, the Code of Criminal Procedure which lays down procedure to be followed by police and courts in dealing with offences (the first Cr PC was introduced in 1898), and the Indian Evidence Act 1912 which lays the principles of evidence to be observed by the courts in determining facts. Notably, evidence is integral to judicial proceedings. The arms of the CJS including the police, prosecution, and judiciary play a crucial role under these three criminal laws. Over the last 40-50 years, there are some key developments in relation to gender, sexual violence and access to justice that are worthy of consideration here.

Below we outline two high-profile / landmark cases which came to public attention and led to reforms in rape laws and arguably have helped pave the way to promote victim rights to some extent. Following the discussion of these two cases, we offer an analysis of what has changed and what this means for victims of sexual violence in India.

**Landmark cases: ‘Laboratories for judicial reform’**

1. **Mathura (1972)**

The Tukaram & Another v. State of Maharashtra, 1979 case has bled into the public discourse as the Mathura case. The case serves as a pivotal example of legislative reform. It relates to the alleged custodial rape of a tribal young woman (Mathura) by two policemen at a police station in the small town of Gadchiroli in the state of Maharashtra in 1972. Following the incident of rape, the accused policemen – Ganpat and Tukaram – were acquitted by a Sessions Court in 1974. The court ruled that only sexual intercourse could be proved, not rape; and that Mathura (who was believed to be between 14-16 at the time of the incident) gave her consent voluntarily and that she was ‘habituated to sexual intercourse’[[2]](#footnote-2). The court judgment stated that there was a ‘world of difference between sexual intercourse and rape’, and that Mathura was a ‘shocking liar’ whose testimony was ‘riddled with falsehood and improbabilities’. The Sessions Court judge, Chandrapur, held that ‘she (Mathura) could not have admitted that of her free will, she had surrendered her body to a police constable. The crowd included her lover Ashok, and she had to sound virtuous before him’. The Session Court’s order of the acquittal of the accused was reversed by a High Court which convicted Ganpat under s.376 IPC (rape) to rigorous punishment of five years, and imposed rigorous imprisonment for one year on Tukaram under s. 354 IPC (use of force with the intent to outrage modesty). The High Court’s ruling drew attention to some key points of importance in relation to consent in rape cases, namely that a lack of injury on the part of the victim does not equate to consent to sexual intercourse, and that ‘mere passive or helpless surrender of the body and its resignation to the other’s lust induced by threats or fear cannot be equated with the desire or will, nor can it furnish an answer by the mere fact that the sexual act was not in opposition to such desire or volition’. As we have outlined elsewhere, convicts have an automatic right of appeal (see Barn and Kumari, 2015), and so in this case, the two convicted filed an appeal against their conviction in the Supreme Court. The decision of the High Court was reversed by the Supreme Court which held that since Mathura did not raise any alarm, her consent could not be understood as ‘passive submission’.

The Mathura case is renowned for its high-profile Open Letter to the Supreme Court. This Open Letter was written by four law professors, namely Upendra Baxi, Raghunath Kelkar, Lotika Sarkar and Vasudha Dhagamwar. The Open letter was critical of the Supreme Court’s verdict and in particular its judicial interpretation of consent. The letter also drew attention to social and economic inequities in relation to rape victims and their treatment in the criminal justice system[[3]](#footnote-3):

The Court gives no consideration whatsoever to the socio-economic status, the lack of knowledge of legal rights, the age of the victim, lack of access to legal services, and the fear complex which haunts the poor and the exploited in Indian police stations. May we respectfully suggest that yourself and your distinguished colleagues visit incognito, wearing the visage of poverty, some police stations in villages adjoining Delhi?

My Lord, your distinguished colleagues and yourself have earned a well-merited place in contemporary Indian history for making preservation of democracy and human rights a principle theme of your judicial and extra-judicial utterances, especially after March, 1977. But a case like this with its cold-blooded legalism snuffs out all aspirations for the protection of human rights of millions of Mathura’s in the Indian countryside. Why so?

The Open Letter can be viewed as having galvanised the progressive elements of civic society across the nation whereby the previously fragmented and disparate campaign groups cohered to help achieve a collective voice (Kumar, 1993). In 1980, a feminist group called Forum Against Rape, based in Bombay, worked in alliance with feminist groups all over the country to seek the re-opening of the Mathura case. Notably, this action helped raise understanding and awareness of representation, victim rights, public shaming and stigma when the said feminist group realised that they had not included the perspective of Mathura in their activism. There was considerable debate and discussion about whether court judgements were a private or a public affair with social significance. The collective feminist voice pursued the demand for justice for rape victims in calling for a retrial of the Mathura case, and in demanding judicial reform in laws against rape. Crucially, the collective campaign against rape led to a form of mainstreaming with explorations of the crime of rape against women in India including a focus on custodial rape, caste and class and access to justice, marital rape, rape within the family, rape of minors, workplace rape, rape of sex workers.

It is important to note that the demand for the retrial of the Mathura case was occurring in tandem from a range of feminist campaign groups against rape, asking for a review of the Supreme Court decision. Interestingly, in a sort of #MeToo manner, these actions led to nationwide protests against incidents of police rape as reports began to emerge of other such atrocities. As mentioned above, the concern about rape against women had become a mainstream issue. Kumar (1993) points to the role of the media in covering key police rape cases across the nation, and the entry of national political parties into the fray as significant. Following a sustained campaign by a range of societal interests, government action resulted in the introduction of a bill to review laws on rape. It would appear that the campaigns that had focused on custodial rape were given a voice through the introduction of this bill. Indeed, the major clauses of the bill related to definitions of custodial rape; and to conceptualising this as more heinous than other forms of rape. Following the introduction of the bill, the select committee of both houses of Parliament spent two years travelling the length of the country to collect evidence on its various clauses including the category of custodial rape and the mandatory punishment of 10 years associated with this, trials in camera, shift in the burden of proof onto the accused, and gang rape. The bill was eventually passed in 1983 with some reforms to the rape laws, although feminists disagree about the effectiveness of their campaign (Kumar 1993).

**(ii) Nirbhaya (2012**

In December 2012, the rape and murder of a 23-year-old Indian Physiotherapy student in New Delhi, India, was followed by widespread condemnation and public action organised and coordinated through social media (Barn 2013). Following the mainstream media attention given to it, the case came to be known as Nirbhaya (fearless in Hindi). Arguably, the street and social media protests in relation to this case led to a significantly fast-moving response in comparison to the 1972 Mathura case. Within days of the atrocity, and amidst the widespread street protests across India, and overseas among diasporic Indian communities; the government announced the establishment of the Justice Verma Committee to review rape laws and access to justice for victims of this heinous crime. Arguably, some reforms in the criminal laws had already taken place in 2005 and 2009 after the Malimath Committee Report 2003; but it would appear that the Nirbhaya case provided the added urgency to revisit and reform rape laws. Some scholars maintain that the legal and policy reforms arising in the wake of the Nirbhaya case represent a watershed moment in the ‘history of efforts towards seeking justice for survivors of gender-based violence in India (Bandewar et al 2018). Principally, the Criminal Law (Amendment) Act, 2013 and the "Guidelines and protocols: Medico-legal care for survivors/victims of sexual violence" issued by the Ministry of Health and Family Welfare in March 2014 are considered to be two landmark reforms. In addition to this, the establishment of ‘one stop centres’ to provide immediate to long-term care for survivors of gender-based violence; and the creation of the Nirbhaya Fund by the central government are considered to be significant developments. The four principles enshrined within the recommendations of the Justice Verma Committee, namely access to justice, compensation, restitution and victim assistance (enshrined in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985) are lauded as an important step forward in the history of the Indian CJS. The sphere of CJS was expanded by changing the definition of rape from non-consensual peno-vaginal intercourse to include non-consensual penetration of mouth, anus, or urethra by penis, fingers or objects, introduction of new offences of sexual harassment, disrobing, voyeurism, stalking, and trafficking in the IPC, The Code of Criminal Procedure was amended to provide for recording of statements of women victims by women police officers. Calling of any woman to the police station for recording of statement was prohibited. The requirement of seeking sanction of the state government before prosecuting a public servant for a criminal offence was abolished in case the offence of rape and the newly introduced offences. It was further clarified that compensation to victims of crime by State shall be in addition the compensation paid from fine. It also obligated all hospitals, government or private to provide immediate first-aid or treatment free of cost to the women victims of rape and acid attack. The Indian Evidence Act was also amended to specifically provide that the past sexual history of the woman was not relevant on the issue of consent or quality of consent. The first Fast-track court for dealing with offences against women was inaugurated in 2013. In 2021, the Indian Cabinet has approved extension of 1023 fast-track courts to deal with rape cases till March 2023.[[4]](#footnote-4) Delhi took the lead in establishing vulnerable witness court rooms tailored to the need of child witnesses and women victims of sexual offences. These special court rooms ensure that child and woman witnesses feel safe, they do not come face to face with the alleged offenders. At the same time, it gives complete opportunity to the alleged offender to see and hear the witnesses from behind a one-way mirror window and microphone from the room adjoining to the court room. The force of such victim-oriented principles has led some to argue for a paradigmatic shift to the extant criminal justice system to help ensure a system where the focus is on victims instead of offenders.

**Discussion**

In this discussion, we explore what has changed over the last 50 years in promoting the rights of victims of sexual violence in India. In particular, we anchor our discussion on social and legal change in the context of the two cases presented above.

Amendments in the law after the Mathura Case had introduced many firsts in the Indian CJS. For the first time mandatory minimum punishments were introduced in the IPC. Presumption of absence of consent by the victim of custodial and gang rape, shifting the burden of proof in certain cases of rape, and mandatory minimum punishment for rape – all were introduced in the IPC for the first time. However, effectiveness of law is in its implementation. One would have expected that things would changed on the ground with such drastic changes in the law. However, implementation is dependent on the personnel who have the responsibility of implementing the law. The journey of implementation of these laws ever since has seen regressive as well as progressive in judicial pronouncements. The notable among the regressive judgment was *State of Haryana v Prem Chand* decided in 1989 - ten years after Mathura. The facts were almost identical to Mathura. The victim had run away from her home with her boyfriend. She and her boyfriend were recovered pursuant to complaint by her family. She was raped by two policemen in the police station. She filed the complaint eight days later after reaching her home. In this case the Supreme Court did convict the two constables for custodial rape but gave them imprisonment of five years instead of the mandatory minimum punishment of ten years in view of “the peculiar facts and circumstances of this case coupled with the conduct of the victim young woman? This was followed by uproar among women’s rights groups and a review was filed. The Supreme Court did accept the review*[[5]](#footnote-5)* but only to clarify that it had “used the expression "conduct" in the lexigraphical meaning for the limited purpose of showing as to how Suman Rani had behaved or conducted herself in not telling anyone for about 5 days about the sexual assault perpetrated on her.”  This judgment perhaps led a session judge to acquit the four accused belonging to high caste in a gang rape case filed by Bhanwari Devi, a scheduled caste woman and a *sathin[[6]](#footnote-6)* in Rajasthan who had prevented a child marriage in their household for not reporting the rape “immediately and not telling anyone about it till the next morning”.[[7]](#footnote-7) This approach does not take cognisance of the natural hesitation of women to report rape due to social stigma attached to the offence and other social consequences that follow the victim after rape.

Among the well celebrated judgment of the Supreme Court is *State of Punjab* v *Gurmeet Singh.*[[8]](#footnote-8) In view of the increase in offences against women, specially of rape, the Supreme Court laid down various guidelines to be followed by judges during rape trials. It emphasised that women victims must be treated with dignity. The cross examination should not be allowed by the trial judge to become a tool of harassment of the victim. It reiterated that the sole testimony of the victim may be relied for convicting an accused without the need for further corroboration. Minor discrepancies must not become an instrument of acquittal. It also directed that the courts must hold rape trial in camera as provided by the amendments in 1983. It further suggested that rape case be tried by women judges and names of the victims should not be disclosed in the judicial orders. However, when the judgment is examined in relation to the case before it, it is found that the Supreme Court did not use the word ‘gang rape’ in the whole judgment despite the fact that it was a case of gang rape. The Supreme Court gave them a sentence of imprisonment of five years and a fine of Rs.5000/- without any reference to mandatory minimum sentence of ten years prescribed for gang rape. It also made no order of any compensation to the victim. Substantively speaking, this well celebrated judgment did nothing for the victim in the case at hand.

In 1990, Crime in India reported conviction in 41.5% cases of rape, disposed of in that year.[[9]](#footnote-9) Ten years later the conviction plummeted to 28.1% of the total cases of rape disposed of in 2000.[[10]](#footnote-10) In 2010, the Crime in India reported further reduction in conviction to 26.8% in the total rape cases disposed of.[[11]](#footnote-11) However, Crime in India 2020 has reported conviction in 38.5% of rape cases disposed of in that year. [[12]](#footnote-12) It is noteworthy that while the number of cases disposed of from 1990 to 2010 increased from 6177 to 21036, the conviction decreased from 41.5% to 26.8%. In 2020, the total number of cases disposed of dropped to mere 9898 and the conviction increased to 38.5%. The increase in quantum of punishment seems to have resulted in plummeting in the number of convictions initially and now it is leading to plummeting in disposal rate in rape cases itself despite the fast-track courts.

As per the information given by the Ministry of Women and Child Development in July 2021, the total Nirbhaya Fund was Rs. 6212.85 crore. Out of this Rs. 4087.37 had been disbursed and Rs. 2871.42 was yet to be utilised.[[13]](#footnote-13) However, the Annexures show that only 200 crores have been kept for creation of Central Victim Compensation. Another 767.25 crore has been spent on establishing fast track special courts for disposing of rape and cases under POCSO Act. The rest has been allocated for various other schemes for women by the Central and State Government.

High profile cases invariably play an influential role in being the harbinger of social and legal change in society. Such cases serve to capture the public imagination and help enforce pressure on those in power and control to effect some change. In the context of India, since the Mathura (1972) case, there have been numerous high-profile incidents of sexual violence against women. We have focused on two in this chapter as they represent a significant shift in the legal framework. The two cases are in stark contrast in respect of the background of the victim – Mathura, a poor tribal young woman, and Nirbhaya, an aspirational modern young woman from a brahmin family with whom the burgeoning middle class connected to claim her as one of their own (Lapsia 2015). Scholars and women’s activists have utilised intersectional theory to argue that victims from a Dalit, Muslim, and a lower-socio-economic background are rarely given the same attention (Kannabiran and Kannabiran 1991, Kannabiran 2008, Dey and Orton 2016, Kumar 2021). Indeed, as discussed above, even when the Mathura case was proving to be the anchor to help effect change in rape laws, women’s groups paid little attention to the voice of the subaltern, ie, the victim herself (Spivak 1994). In contrast, the parents and especially the mother of Nirbhaya has played a pivotal role in voicing her perspective on the tragic loss of her daughter; and subsequent cases of rape and justice in India. For example, following the killings of four suspects by the Hyderabad police in the rape case of a Vet in 2019, she said: "I am extremely happy with this punishment. Police have done a great job’ (BBC, 6 December 2019). In the context of regular and rising incidents of rape, coupled with dissatisfaction with the machinery of the CJS, it is evident that the public mood is one for strict punishment. The notion of justice was invoked by the different parties. Whilst Amnesty International called for investigations to determine if the Hyderabad police killings were extrajudicial and illegal, many people took to social media and celebrated on the streets to argue that justice had been done.

Returning to the theory of procedural justice, key questions remain: What constitutes justice for rape victims? Is justice about meting out appropriate punishment to the offender? Is it about compensation for harm and injury? Is it about being heard during the process of justice? Is it about all of these things, and more? Evidently, the two cases discussed above illustrate that justice may not be served at an individual/personal level, but such cases can be transformative in their role and function in shaping society. Indeed, the reforms of rape laws can be said to carry the symbolism that justice is a cherished value in society. However, justice as punishment or annihilation of offender or suspected offender remains problematic. Increase in severity of punishment by introduction of life imprisonment without the possibility of release and death penalty for certain categories of rape goes against the feminist approach to justice and inclusiveness and has been constantly opposed by women’s rights groups in India.[[14]](#footnote-14) The increased punishments are more a political gimmick rather than giving a central place to the victims.

However, whilst legal reforms remain important to take cognizance of contemporary issues and concerns, and in their symbolic value, feminist discourses rightly continue to question the ability of patriarchal systems to ensure a fair and just implementation of laws (Baxi 2014, Bandewar et al 2018). Indeed, the implementation gap is not unique to India. A seven-country survey recently concluded that the ‘spirit and promise of these laws have not been sufficiently fulfilled because many states have not risen to the challenge – and obligation – of implementation’ (Hughes 2018: 48). In their comment in the Indian Journal of Medical Ethics, Bandewar et al (2018) argue that there is much that needs to be addressed in the aftermath of the Nirbhaya case. In particular, they identify ‘poor utilisation of funds, misguided focus on technologies in place of strengthening of institutions, and contradictions in the legal provisions’ (Bandewar et al 2018: 219). The government launched the Nirbhaya Fund project designed to ensure the safety of women using public transportation by setting up emergency buttons, GPS technology, and CCTVs in major cities across the country. In a country such as India with its high-tech companies and personnel, it is surprising that there has been so little creativity and imagination to make use of this fund to generate some tech infrastructure of support. Victim rights and justice cannot be promoted if such funds remain mere gestures with little practical value (Barn and Kumari 2015, Chockalingham 2018).

In conclusion, a criminal justice system does not and cannot exist in a vacuum. The active participation of the different components of the system (Police, Courts, Prisons, Health) is paramount, as is the involvement of key civil society actors to help ensure that procedural justice is served. To help build capacity and strengthen societal infrastructures of support, an integrated approach is necessary whereby the different domains of the CJS and government ministries are able to work with relevant stakeholders to ensure access to justice, and fair and just implementation of laws. It is evident that concerted efforts on the part of civil society organisations, women’s groups, the media, academic and legal scholars have done much to help reform rape laws in India. Whilst there is still scope for further improvement in the legislative framework, the implementation of existing laws together with a robust academic evidence-base are essential to create a safe environment for victims of sexual violence.

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1. Exception 2, S.375 declares that sexual intercourse or sexual acts by husband with his wife above the age of 15 years is not rape. The age of 15 years was increased to 18 years by the Supreme Court in *Independence Thought v Union of India*, on 11th October 2017, available at https://indiankanoon.org/doc/87705010/. [↑](#footnote-ref-1)
2. See Tukaram & Another v. State of Maharashtra (1979) 2 SCC 143, para 4. [↑](#footnote-ref-2)
3. An Open Letter to the Chief Justice of India, [https://aud.ac.in/uploads/1/admission/admissions2014/open%20letter.pdf](about:blank) [ACCESSED on 6 September 2021]. [↑](#footnote-ref-3)
4. https://www.thehindubusinessline.com/news/national/cabinet-extends-fast-track-court-mechanism-for-rape-victim/article35726570.ece. [↑](#footnote-ref-4)
5. State of Haryana v Prem Chand, https://indiankanoon.org/doc/476694/. [↑](#footnote-ref-5)
6. A voluntary social worker under Rajasthan Government’s Women Development Project and one of responsibility was to prevent child marriages in the village. This case ultimately resulted in the enactment of Protection of Women against Sexual Harassment Act 2012 following the Vishakha Guidelines given by the Supreme Court, https://indiankanoon.org/doc/1031794/. [↑](#footnote-ref-6)
7. https://www.indiatoday.in/magazine/special-report/story/19951215-womens-group-shaken-after-jaipur-court-dismisses-bhanwari-devi-rape-case-and-clears-accused-808044-1995-12-15 [↑](#footnote-ref-7)
8. <https://indiankanoon.org/doc/1046545/> [↑](#footnote-ref-8)
9. The total number of cases of rape disposed of by the Court was 6177 and the number of convictions was 2566. https://ncrb.gov.in/sites/default/files/crime\_in\_india\_table\_additional\_table\_chapter\_reports/Table-15-1990.pdf. [↑](#footnote-ref-9)
10. The total number of cases of rape disposed of by the Court was 15807 and the number of convictions was 4442. [↑](#footnote-ref-10)
11. The total number of cases of rape disposed of by the Court was 21036 and the number of convictions was 5632. [↑](#footnote-ref-11)
12. The total number of cases of rape disposed of by the Court was 9898 and the number of convictions was 3814. [↑](#footnote-ref-12)
13. https://pib.gov.in/PressReleasePage.aspx?PRID=1737773. [↑](#footnote-ref-13)
14. https://www.thehindu.com/news/national/womens-rights-groups-reiterate-stand-against-death-penalty-in-rape-cases/article30584681.ece. [↑](#footnote-ref-14)