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# **THE JUSTICE GAP IN CRIMES AGAINST WOMEN IN INDIA: A CRITICAL EVALUATION OF INSTITUTIONAL ACCOUNTABILITY AND CRIMINAL JUSTICE DELIVERY.**

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## **ABSTRACT**

India's alarming rate of crime against women, despite the successive attempts of the legislation to curb the crime rate and institutional attempts to fill the void of justice, highlights the existence of a huge gap in criminal justice. As the Bharatiya Nyaya Sanhita, 2023, Bharatiya Nagarik Suraksha Sanhita, 2023, and Bharatiya Sakshya Adhiniyam, 2023 herald a new dawn in India's criminal law system, the effectiveness of these laws in enhancing conviction rates and improving access to justice for survivors of gender-based violence remains a concern. The justice gap is more than just statistics of disparities in conviction rates; it also includes disparities in investigation, prosecution, adjudication, forensic capacity, victim protection, institutional coordination, and accountability. Judicial delays, evidence issues, secondary victimisation, socio-cultural factors that hinder victim reporting and the growing sophistication of technology-facilitated violence against women add to these gaps. Thus, legislative change is an insufficient measure of effectiveness in criminal justice, and a better measure is the institutional performance of agencies that implement the legal rights and provide enforceable remedies. This study critically analyses the link between conviction rate, accountability of institutions and criminal justice in crimes against women in India. It states that conviction rates, if used alone, tell only part of the story and do not reveal systemic problems in the criminal process. The study thus uses a multidimensional analytical approach that covers the entire criminal justice chain, from the filing of complaints and investigative processes to prosecution, judicial decision-making, victim support, and post-conviction enforcement. Special focus is placed on identifying institution-related issues that may contribute to case attrition, delayed justice, lack of evidence, witness hostility, inconsistent prosecution practices, and a lack of trust in the justice system among survivors. The paper argues that the justice gap in India is also a non-legislative issue. The report calls for improvements to the professionalism and independence of investigators and prosecutors, forensic infrastructure, judicial capacity, the procedure-centred protection of survivors, inter-agency coordination, and clear accountability

mechanisms to achieve sustainable improvements in conviction rates. The study also calls for moving away from conviction-based assessments to a more comprehensive, institution-performance-based assessment that includes procedural fairness, timeliness, victim participation, and constitutional rights to access to justice. The paper, which addresses cutting-edge debates on gender justice, institutional governance, and accountability in criminal justice in a broad and multifaceted way, provides an analytical framework for understanding criminal justice and its effectiveness while incorporating the latest developments in Indian criminal law.

**Keywords:** Crimes Against Women; Criminal Justice Delivery; Conviction Rates; Institutional Accountability; Gender Justice.

## INTRODUCTION

Despite several legislations, judicial decisions and policy measures for promoting gender justice in India, crimes against women have remained a matter of concern to society in all its forms. However, the empirical analysis shows that even after the enactment of stringent criminal law amendments after high-profile incidents like the Delhi gang rape in 2012, and the subsequent Criminal Law (Amendment) Act, 2013, there is still a gap between the reported incidence of crime and the actual implementation of criminal justice in terms of substantive justice for the victim. The NCRB data invariably shows that the crimes reported under the Indian Penal Code, like rape, dowry death, domestic violence and sexual harassment, are very low when compared with the overall conviction rate of cognisable offences in the Indian Penal Code, despite the overall increase in the number of reports made in the past ten years. The gap between reporting and conviction is what can be referred to as a "justice gap", which can erode the deterrent effect of the criminal law and the public's trust in the effectiveness of the criminal justice system.

A single cause cannot explain this enduring disparity; it reflects a range of failures at various points in the criminal justice system. The existing literature has highlighted that failures in investigations, the lack of forensic facilities, delays in the proceedings, witness hostility and intimidation, victim-blaming attitude among police, the inefficiency of the prosecution, and the delays of the trial have been identified as reasons for the drop-off of cases at various stages, from the time of the First Information Report to the time of the final adjudication. In addition, the mechanisms for holding police, prosecution and judicial officials accountable for their responsiveness and sensitivity to the needs of women victims are weak, not well enforced or in practice, leaving women who are marginalised in vulnerable situations.

Although there has been extensive research on specific aspects of this issue, including police responsiveness, court delays, and the quality of substantive laws, there is a lack of consolidated research that critically examines conviction rates and institutional accountability mechanisms through a single analytical lens. Current research mostly analyses legal, procedural and institutional issues separately, which reduces the impact of policy recommendations aimed at addressing the interplay within the justice delivery gap. This study aims to fill this gap by critically analysing conviction rates in crimes against women in India in the context of the larger institutional and procedural framework of the criminal justice delivery system. In doing this, the study will seek to examine not only the statistical aspects of case attrition but also the structural and institutional mechanisms of accountability that influence and are often limiting in the process of seeking justice for women who are victims of crime. The outcomes of this research will be helpful in the current debate on criminal justice reform in India, providing an evidence-based understanding of the areas where the system of criminal accountability is failing, and thus, form the basis for policy interventions that will help bridge the ever-widening chasm between the promise of the law and lived justice.

### **Legal and Institutional Framework Governing Crimes Against Women in India**

The legal and institutional response to the crimes committed against women in India has been a process of constitutionalisation, legislation, judicial action, policy making and international human rights commitments. Despite having one of the most detailed legal frameworks to combat gender based violence, the continued incidences of rape, domestic violence, dowry deaths, sexual harassment, trafficking, violence through information technology, and honour crimes show that legislative measures are not enough to eliminate the structural gender inequality. Thus, the effectiveness of the legal framework should be determined not only by the existence of protective legislation but also by how the law is implemented through institutional arrangements that effectively guarantee prevention, protection, prosecution, and rehabilitation.

### **Constitutional Mandate for Gender Justice and Women's Protection**

The constitutional protection of women from violence is rooted in the constitutional protection of equality, dignity and social justice. Article 14 ensures that all people are equal before the law and are entitled to the same protection of the law; this means that there is no discrimination

against women. The Convention explicitly bans discrimination on the basis of sex (Article 15(1)) and allows the State to take positive action for women and children (Article 15(3)). The enabling power has become the underlying basis of many gender-specific laws that seek to tackle past inequalities and discrimination. By broadening the scope of the right to life, Article 21 has become one of the most important constitutional rights that protects against gender based violence, as it has established the right to live in dignity, with an intact body, privacy, sexual autonomy, and freedom from sexual violence. In addition to these enforceable rights, there are the Directive Principles of State Policy, including Articles 39(a), 39(d), 39(e), and 42, which impose duties on the State to ensure equal opportunities for livelihood, equal remuneration, humane working conditions, and maternity relief. Moreover, Article 51A(e) has imposed a fundamental duty on all citizens to denounce practices that denigrate women's dignity, thereby strengthening the constitutional obligation to ensure gender justice.

### **Statutory Framework for the Prevention and Prosecution of Crimes Against Women**

In relation to substantive criminal law governing offences against women, there has been tremendous change with the introduction of the Bharatiya Nyaya Sanhita, 2023 (BNS), which replaces the Indian Penal Code, 1860, and is effective from 1st July 2024. The BNS preserves most of the substantive protections of the previous Code while updating the criminal law to reflect technological advances, enhance victim-centric protections, and improve efficiency. The Act criminalises different types of offences against women, such as rape, gang rape, sexual assault, Voyeurism, stalking, attack with acid, kidnapping and abduction, trafficking of women, cruelty by husband or relatives, dowry-related offences and offences affecting the dignity and autonomy of women. The legislature's goal of enhancing deterrence, particularly for aggravated sexual violence, repeat offenders, and sex crimes against vulnerable victims, is evident in punitive amendments to the law. The legislature's efforts to be more punitive in the law are reflected in the enhanced punishments for aggravated sexual violence, for repeat offenders, and for crimes committed against vulnerable victims. Although there is a broad criminal law regime, Parliament acknowledges that GBV may require specific, distinct legal interventions beyond the penal system. As a result, a number of special laws form a cohesive framework for prosecuting crimes involving women. Of these, the Protection of Women from Domestic Violence Act, 2005, is a paradigm shift and acknowledges domestic violence as a multi-faceted violation of human rights as opposed to simply a family dispute. The Act is a rights-based and victim-centred approach characterised by immediate civil responses, such as protection orders,

residence rights, monetary relief, custody orders, compensation, and access to protection officers, service providers, shelter homes, and medical facilities. The Act identifies the forms of abuse – physical, emotional, verbal, sexual and economic, and thus takes a holistic view of domestic violence beyond the physical violence inflicted on the victim.

Likewise, the Dowry Prohibition Act, 1961, aims to eradicate one of the most omnipresent socio-cultural sources of violence against married women. Dowry demands are widespread in some parts of society, but the Act makes it an offence to give and receive dowry and supplements criminal offences for dowry death and matrimonial cruelty. However, implementation issues, evidentiary difficulties, and societal hesitation to report domestic violence persist in diminishing its deterrent effects.

Another major step towards gender justice was taken with the enactment of the Sexual Harassment of Women in the Workplace (Prevention, Prohibition and Redressal) Act, 2013. The law in *Vishaka v. State of Rajasthan* institutionalises employer responsibility – it calls for the establishment of Internal Committees, Local Committees, preventive policies, awareness programs, confidential enquiries and time-bound remedy processes. The Act acknowledges that violence against women is not confined to physical settings, but rather can take place in the workplace where inequalities in power may make harassment and discrimination more likely. The protective framework is further reinforced by other specific legislation, which tackles individual forms of exploitation of gender. The Immoral Traffic (Prevention) Act, 1956, is aimed at preventing commercial sexual exploitation and trafficking and the Commission of Sati (Prevention) Act, 1987, punishes the commission and glorification of sati. The Indecent Representation of Women (Prohibition) Act, 1986, is the law governing portrayals of women in advertisements and publications, though applying it to digital platforms and online content is increasingly challenging. The Protection of Children from Sexual Offences Act, 2012 offers broad protection against sexual offences committed against children and has special significance in ensuring the protection of girl children from sexual exploitation, abuse, trafficking and child pornography.

Another essential element of the legal framework of crimes against women is procedural justice. The Bharatiya Nagarik Suraksha Sanhita, 2023 contains a number of procedural safeguards that are victim-centric and aim to minimise secondary victimisation and enhance access to justice. This includes mandatory registration of information pertaining to cognisable offences, in-camera trials in sexual offences, recording of statements by women police officers where practicable, protection of the woman's identity, elaborate witness protection, electronic recording of evidence, provisions for speedy investigation of offences, etc. The Bharatiya

Sakshya Adhiniyam, 2023, also brings some significant updates to evidentiary law and introduces the concept of electronic evidence, ensuring that these safeguards are maintained while also adapting to the newfound digital environment. These procedural changes aim to make the criminal justice system more sensitive, responsive and efficient for survivors of gender-based violence.

The institutional framework for enforcing these legal safeguards is also important. The Judiciary is now one of the most important agencies of gender justice through progressive jurisprudence and interpretation of the Constitution. The concepts of dignity, privacy, bodily autonomy, reproduction, workplace safety, and compensation for victims have been broadened by landmark decisions, which have significantly influenced legislative changes and administrative practice. There have been numerous instances in which the judiciary has stepped in to fill gaps in the law and create constitutional norms commensurate with international human rights commitments and evolving social expectations.

### **Police Accountability in the Investigation of Crimes Against Women**

The police are the first and foremost agency that investigates crimes against women and therefore play a crucial role in the criminal justice system. Their duties are not limited to FIRs and criminal investigations but also include protecting the victim, preserving evidence, liaising with forensic experts, referring victims for medical examinations, and coordinating with prosecutors and victim-protection agencies. Several States have introduced Women Police Stations, Women Help Desks, Special Investigation Units and officers specialising in women to enhance the accessibility of the police, and to decrease barriers to reporting GBV. Women Police Stations, Women Help Desks, Special Investigation Units, and officers specialised in women have been introduced in several States to ensure easier access to the police for GBV reporting and to minimise barriers for reporting. However, issues of poor investigations, complaints not being handled sensitively, inadequate forensic resources and institutional bias remain to hinder effective police action.

### **Institutional Framework for Addressing Crimes Against Women in India**

The government's work is complemented by the efforts of independent statutory bodies. The National Commission for Women (NCW), constituted under the National Commission for Women Act, 1990, is the top statutory organisation to examine laws and policies regarding women, analyse and investigate complaints, suggest modifications in laws, conduct research, raise awareness about the law, and advise the government on women's rights policies. At the

regional level, Parallel State Commissions for Women work at a level similar to that of the National Commission and also help to unlock grievance redressal mechanisms. In addition, the National Human Rights Commission investigates systemic human rights violations against women, including complaints on issues of institutional neglect, failures of public authorities and custodial violence, including those relating to trafficking. In India, victim assistance has come to the forefront of the institutional framework. The introduction of One Stop Centres (Sakhi Centres), Women Helplines, victim compensation schemes, shelter homes, counselling services, and legal aid mechanisms through the National Legal Services Authority (NALSA), as well as Fast Track Special Courts, highlights a more victim-sensitive perspective on the criminal justice process. These institutions understand that in addition to obtaining a legal remedy, survivors need psychological assistance, medical treatment, rehabilitation, financial aid and social reintegration. The creation of forensic laboratories, DNA profiling centres, and digital forensic units has also enhanced the evidence gathering required for the successful prosecution of sexual crime.

This institutional capacity has been further strengthened by various government initiatives like Nirbhaya Fund, Women Safety Division (in Ministry of Home Affairs), Crime and Criminal Tracking Network and Systems (CCTNS), Inter-Operable Criminal Justice System (ICJS), Emergency Response Support System (ERSS), Women Help Desks in Police Stations and specific Investigative Units for Crimes Against Women. These efforts aim to enhance inter-agency coordination, support prosecutors, forensic institutions, and victim services, and incorporate technology into the administration of the criminal justice system.

### **International Human Rights Framework and India's Obligations**

Internationally, India is also bound by treaties such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Beijing Declaration and Platform for Action, the International Covenant on Civil and Political Rights, and the Universal Declaration of Human Rights, which have an impact on its domestic legal framework. The impact of these international commitments has been felt in judicial interpretation, legislative reform, and policymaking, with a focus on substantive equality, the elimination of discrimination, effective remedies for survivors, and State responsibility for preventing gender-based violence. Despite this elaborate legal and institutional structure, implementation remains a significant challenge. Cultural taboos, abuse by victims and perpetrators, economic dependence, and fears of reprisals contribute to underreporting and limit access to justice. Poor investigation and adjudication; poor forensic facilities; low conviction rates for certain

offences; shortage of trained investigators; secondary victimisation during criminal proceedings; inconsistent application across jurisdictions all result in reduced effectiveness of legal protections. Moreover, new forms of technology-enabled violence, such as cyberstalking, sexual exploitation, sharing of intimate images without consent, deep fake pornography and AI-driven gender-based violence, present new challenges for regulation and ongoing legislative adaptation and institutional preparedness.

Thus, though crime against women has been given a whole range of legal and institutional structures, it is imperative that the institutions have the capacity to turn legal guarantees into real protection. Gender-sensitive policing, an efficient judiciary, the modernisation of forensics, the rehabilitation of survivors, institutional accountability, and continued public awareness programmes are essential to complement legislative reforms. The goals of substantive equality, women's safety, and access to justice can only be achieved through the coordination of constitutional institutions, criminal justice institutions, independent statutory bodies, and civil society.

### **Examining the Justice Gap: An Empirical Study of Crimes Against Women in India**

The facts and circumstances clearly show that the crimes against women have remained one of the most intractable problems before the Criminal Justice System of India. The number of crimes against women reported rose to 4,48,211 in 2023, compared to 4,45,256 in 2022 and 4,28,278 in 2021. The national crime rate is 66.2 crimes per lakh of the female population, according to the National Crime Records Bureau (NCRB). The growing number of cases reported is partly due to better reporting systems and awareness, but also reflects the ongoing high levels of gender-based violence despite successive laws that have been enacted to tackle this issue. Empirical evidence also indicates that violence against women is not committed by strangers, but by those they know and trust, such as in the context of intimate relationships. The highest category of reported offences was by husband or relatives (29.8%), followed by kidnapping and abduction of women (19.8%), assault with intent to outrage modesty (18.7%) and rape (6.6%). The continuous nature of these crimes suggests that structural inequalities, patriarchal social norms and unequal power dynamics are still having a negative impact on women's safety despite the growing body of law.

A study of criminal justice results shows a significant gap between crime registration and good criminal justice. While the charge sheeting rate for crimes against women was about 77.6% in 2023, meaning that most crime cases were investigated and resulted in charges being framed

against the accused, the same proportion have been unable to get justice in time. The NCRB data also revealed that more than 90% of the cases regarding offences against women were pending with courts, accompanied by huge numbers and severe delays. This institutional constraint, together with relatively low conviction rates in some types of offences, long delays for investigations, the shortcomings in the forensic investigation process, witness intimidation, and secondary victimisation in the criminal proceedings, undermines confidence in the justice system. The performance of the special courts has also been inconsistent and uneven across jurisdictions, with noticeable differences in the number of cases disposed of, the availability of specialised prosecutors, judicial capacity, and infrastructure. As such, the criminal justice process often further burdens survivors, making it long and stressful, while failing to provide them with speedy and adequate remedies.

The empirical results also indicate that the justice gap is measured not only by delays in the justice system but also by institutional and socio-legal shortcomings. The efficiency of police departments, investigative processes, forensic facilities, victim assistance, and witness protection programs continues to affect justice outcomes in various States. The institutional response to gender-based violence has been bolstered by a number of initiatives such as the Nirbhaya fund, One Stop Centres (OSC) (Sakhi centres), Women Help Desks, Crime and Criminal Tracking Network and Systems (CCTNS), Inter-Operable Criminal Justice System (ICJS), and Specialised Investigative Units (SIUs), but considerable implementation gaps remain. Additionally, new technologies like cyberstalking, image-based sexual abuse, non-consensual sharing of intimate images, deepfake pornography and AI-generated sexism and violence have shifted the definition and landscape of violence beyond traditional legal definitions, requiring constant changes to laws and the preparations of institutions. To end this divide, there is a need not only for further strengthening of legal measures but also for institutional changes, increased investigative powers, a faster judicial process, measures to support survivors, and accountability within the criminal justice framework.

### **Institutional Accountability in the Administration of Criminal Justice**

An effective criminal justice system must take institutional accountability, especially in the justice response to crimes against women, where the quality of institutional response can make the difference between obtaining meaningful justice. Accountability isn't limited to the criminal law; it also includes the duties of the police, prosecution, judiciary, forensic institutions, legal aid authorities, statutory commissions, and victim-support agencies to ensure they perform in a fair, timely, and victim-centred way. Although India has been making significant strides in

enhancing the legal framework with successive criminal law amendments like the Criminal Law (Amendment) Acts 2013 and 2018, and the enactment of the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Bharatiya Sakshya Adhiniyam, 2023, the evolution of institutional accountability has been a slower process. The establishment of Fast Track Special Courts, One Stop Centres (Sakhi Centres), Women Help Desks, specialised investigation units, forensic laboratories and digital platforms like the Crime and Criminal Tracking Network and Systems (CCTNS) and the Inter-Operable Criminal Justice System (ICJS) is an ongoing commitment to capacity building and coordination. However, empirical studies show that these reforms have not been consistently adopted and implemented to achieve better justice outcomes across all jurisdictions.

Multi-institutionalisation of the criminal justice process means that responsibility for the prevention and response to crimes against women is shared among various institutions at different stages of the process. Police are the first point of contact and are responsible for the timely registration of complaints, the protection of victims, the collection of evidence, the investigation, and the preparation of charge sheets. The prosecutor must present the evidence effectively and secure a successful prosecution, while the judiciary must uphold due process and the victim's rights and ensure timely adjudication. In addition to these agencies, forensic science laboratories, National and State Commissions for Women, National Legal Services Authority, One Stop Centres, and other victim support mechanisms help to provide medical assistance, legal aid, counselling, rehabilitation, and compensation. But the lack of a sufficient police force, delays in investigations, backlogs in police investigations, shortage of trained police officers, inconsistent implementation of witness protection measures, judicial pendency, etc., continue to impede effective justice delivery. Social issues like underreporting, fear of retaliation, financial reliance, and social stigma often prevent survivors from pursuing justice through the criminal justice system, exacerbating these gaps. Institutional accountability is thus more than simply a legal obligation: it is the ability of criminal justice institutions to provide accessible, efficient, transparent, and survivor-centred justice.

### **Case Studies: Institutional Failures and Criminal Justice Responses in Crimes Against Women in India**

#### **1. *Mukesh v. State (NCT of Delhi – Systemic Failure and Criminal Justice Reforms***

*The Nirbhaya case continues to be a stark case of an institutional failure and the criminal justice reform in response to violence against women. The brutal gang rape and murder highlighted flaws in women's safety mechanisms, police response and time*

*lag in the criminal justice system. While the investigation was efficient and effective and led to convictions, it also raised issues of prevention, victim protection, and delays in trial and sentence execution. The public reaction led to the enactment of the Criminal Law (Amendment) Act 2013, the broadening of the sexual offence sections, and the establishment of fast-track courts. But the continued incidence of sexual violence despite these reforms highlights the need for a more fundamental reform of institutional practices in policing, prosecution and social accountability.*

## **2. RG Kar Medical College rape and murder case – Institutional Accountability and Failure of Workplace Safety Mechanisms**

The Medical College of RG Kar Justice Gap for Rape and Murder Cases remains ongoing.

The recent rape and murder of a medical doctor trainee (31 years) at R.G. Kar Medical College & Hospital, Kolkata, exposed the extent of the lacunae in the criminal justice delivery system in cases involving crimes against women in August 2024. In the initial investigation by the Kolkata Police, many issues were raised in court, including the manner in which the investigation was conducted, the delay in filing an FIR, and the handling of the crime scene. Later, the Calcutta High Court directed the Central Bureau of Investigation (CBI), and the Supreme Court took suo motu cognisance of the case. The action by the apex court itself was a pointer to the confidence gap in the regular institutions that investigate the offences committed against women.

The alleged tampering with and destruction of evidence, and interference with the investigations, by the institutions are among the more important aspects of the case. In September 2024, the CBI arrested the former Principal of RG Kar Medical College and Hospital, Sandip Ghosh, and the former officer-in-charge of Tala Police Station, Abhijit Mondal, on charges of tampering with evidence, withholding facts about the crime, and delaying the investigation. The CBI shared with the court evidence of phone calls and a significant amount of CCTV footage obtained in its investigation into whether an attempt was made to cover up or dilute the crime. Although the charges Ghosh and Mondal faced were serious, the CBI did not file the chargesheet within 90 days. Hence, they were granted bail by default by the Sealdah court in December 2024. This is a particular development from the perspective of the victim-centred justice approach: no cases were resolved in connection with interference in the investigation, and procedural non-compliance in cases led to the release of people accused of interfering with the

investigation. This incident has highlighted the need to address investigative delays to minimise issues with institutional accountability and the public's trust in the criminal justice system.

The justice deficit is persisting beyond the first trial. The Calcutta High Court, in 2026, after taking cognisance of fresh material submitted by the victim's parents, granted permission to the CBI to re-question Sanjay Roy, suspecting that more evidence had been lost and that there could be a bigger conspiracy at work. The High Court further issued directions in August 2026 to the CBI to conduct a fresh investigation, stating that the agency ought to look into the events till the victim's cremation and should not just stick to the findings of the earlier investigation.

In the case of RG Kar, thus, the issue of justice deficit in the crime against women is not just restricted to the conviction of the accused. It can manifest in the very early stages, including the preservation of the crime scene, the recording of the crime, the classification of an offence, the collection of forensic evidence, the protection of witnesses, and the independence and transparency of investigators within institutions. This is particularly problematic with regard to tampering with evidence, as evidence tampered with during the investigation can be lost forever, undermining the basis for a future trial. On the other hand, if the allegations are serious but a follow-up is not conducted within the statutory periods, it can compromise accountability. The case thus exposes a structural problem: Formal justice is secured by punishing an individual offender, but substantive justice is at risk if there is an unresolved problem with the integrity of the investigative process, institutional participation, and alternative offenders.

### **3. *Bilkis Bano case – Failure of Investigation, Prosecution and Victim Protection***

*The Bilkis Bano case shows how in the context of a crime against women, the failure of the justice system can start at the initial stage of the criminal justice process and extend through the various stages. During the 2002 Gujarat riots, Bilkis Bano, who was pregnant at the time, was gang-raped, while several members of her family were killed. The first police response was riddled with grave deficiencies. No FIR was filed to mention that Bilkis had named the rapists, or record allegations of rape. The local police then filed closure reports, which Bilkis appealed in the Supreme Court. In 2003, the Supreme Court referred the investigation to the CBI, and in 2004, the trial was shifted from Gujarat to Mumbai due to apprehensions of bias in the proceedings and*

*concerns for the safety of witnesses and evidence.*

The case's shortcomings were not just in the investigation. Authorities and first responders in the initial investigation were also charged for their actions. The five policemen and two doctors were found guilty of failing to perform their duties as police to altering evidence. This part of the case underlines the more general principle of institutional responsibility: if officials tasked with gathering evidence, investigating and prosecuting crimes are unable to perform their statutory functions, then the institutions responsible for the administration of justice can become an impediment to justice. The Supreme Court's role and the transfer of the investigation and trial were not merely procedural steps but judicial interventions in response to shortcomings in the normal criminal justice system.

The institutional duty to protect the evidence, victims, and witnesses is also emphasised in the case. The transfer of the trial was based on several issues, including concerns about witness security and the risk of evidence tampering, as well as the desire to avoid the case taking place in Gujarat. The sharing of the investigation and the trial showed the level to which the trustworthiness and neutrality of criminal justice institutions are also part of access to justice. If the institutions entrusted with determining what has happened are seen as unable to ensure the safety of witnesses, preserve evidence, and provide a fair trial, a victim cannot reasonably expect to secure an impartial investigation and a fair trial.

In this case, the Gujarat Government remitted the eleven convicts nearly 20 years later in August 2022. The ruling sparked considerable public and legal debate and questions around the use of executive discretion in cases of serious crimes against women. In January 2024, the Supreme Court set aside the remission orders, holding that the Gujarat Government had no jurisdiction to grant remission in the case, and ordered the convicts to surrender. The Court's action showed that institutional accountability need not end after a conviction. Subsequent executive action, such as the exercise of remission powers, could also affect a victim's substantive experience of justice and would similarly be subject to constitutional and judicial review.

The Bilkis Bano case illustrates a series of institutional failures across all stages of the criminal justice process. These include deficiencies in police response and initial-stage investigation, failure of officials to perform their statutory duties, the need for judicial intervention to ensure an impartial investigation and a fair trial, and the exercise of executive power in relation to remission. The case, therefore, illustrates that the

problem of justice deficit in cases involving offences against women is not only about getting a conviction. Denial or dilution of justice may occur at any point in the process when State institutions fail to protect the victim, preserve and safeguard evidence, perform their constitutional and statutory duties, conduct a fair and impartial process, and exercise their powers in accordance with the Constitution and the law. The responsibility of the institutions towards the victim, therefore, should be seen as an ongoing responsibility starting from the moment the victim comes in contact with the criminal justice system until the case is finished, including during investigation, prosecution and trial, and even during the exercise of executive powers that could determine the case's outcome.

#### **4. Hathras gang rape and murder case – Investigative Failure and Questions of State Accountability**

The Hathras case of 2020 demonstrates how institutional failures at the earliest stages of a criminal investigation can deepen the victimisation of survivors and their families while simultaneously weakening the possibility of an effective prosecution in cases of sexual violence. The case concerned a 19-year-old Dalit woman who was attacked on 14 September 2020 and subsequently succumbed to her injuries. The police's initial response attracted considerable criticism. The first FIR was registered under Section 354 of the IPC and did not initially record an allegation of rape. More serious allegations emerged only through the victim's subsequent statements. Concerns were also raised regarding the delay in collecting forensic samples, which had implications for the preservation and evidentiary value of material relevant to the investigation. The CBI, which later investigated the matter, identified deficiencies in the investigation and chargesheet submitted by the Uttar Pradesh Police.

Perhaps the most contentious institutional issue concerned the handling of the victim's body after her death. She was cremated in the early hours of 30 September 2020, with her family alleging that the cremation was carried out without their consent or knowledge. The circumstances surrounding the cremation subsequently came under judicial scrutiny when the Allahabad High Court took suo motu cognisance of the matter. The issue extended beyond the question of the victim's dignity after death. The manner in which a victim's body is preserved, handled and ultimately released for cremation can have a direct bearing on the credibility and integrity of a criminal investigation. In a case involving allegations of sexual violence, any departure from

established procedures concerning the body and forensic evidence can therefore raise serious questions regarding institutional responsibility.

Further concerns arose from the restrictions imposed on the victim's family and the movement of people within the village. Although the administration justified these measures on the grounds of security and the maintenance of public order, their cumulative effect raised questions about transparency and the family's ability to communicate freely with the media, legal representatives, and others seeking to assist them. The family was placed under security, while access by political representatives and members of the media was restricted. Such measures may be legitimate in particular circumstances, but in a case already marked by allegations of institutional failure, restrictions on communication can contribute to a perception that the investigative process is being insulated from public and independent scrutiny.

The subsequent involvement of multiple institutions itself reflected the seriousness of these concerns. The CBI eventually assumed responsibility for the investigation, while the Allahabad High Court exercised continuing judicial oversight, and the Supreme Court intervened in matters concerning the protection of the victim's family and witnesses. The intervention of higher judicial institutions was significant because it demonstrated that the ordinary mechanisms of investigation and victim protection had become insufficient to address the concerns surrounding the case. This raises a broader question of institutional accountability: where agencies entrusted with registering allegations, collecting evidence, protecting victims and conducting impartial investigations fail to discharge those responsibilities effectively, the consequences are not confined to administrative shortcomings but can directly affect the course of criminal justice.

The outcome of the trial further illustrates how deficiencies at the investigative stage can shape the eventual prosecution. In March 2023, the Special Court convicted Sandeep Sisodia for culpable homicide not amounting to murder and offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, while the other accused were acquitted. The court also rejected the charges of rape and murder against the accused. While the final acquittals cannot automatically be characterised as the consequence of investigative failure alone, the weaknesses identified during the earlier stages of the case are relevant to understanding the difficulties faced by the prosecution. Delays in collecting forensic material, the manner in which the initial allegations were recorded, and questions surrounding the collection and preservation of

evidence can all create difficulties when the prosecution is subsequently required to establish its case beyond a reasonable doubt.

The Hathras case, therefore, illustrates a significant dimension of the justice gap in crimes against women: the gap may emerge long before a matter reaches the courtroom. When allegations are not promptly and accurately recorded, forensic evidence is not collected in a timely manner, the victim's dignity is compromised, and the family does not receive adequate support, the prosecution enters the trial process with disadvantages created at the very beginning of the justice chain. Judicial institutions may subsequently intervene to correct or supervise these failures, but such intervention cannot always restore evidence, credibility or procedural safeguards that have already been compromised.

The broader lesson from Hathras is that institutional accountability cannot be confined to the conduct of the trial or the final judicial outcome. Police and administrative authorities exercise significant responsibilities from the moment an allegation is reported: they must register the complaint appropriately, investigate it fairly, preserve evidence, protect witnesses, and ensure that victims and their families are treated with dignity. Failure at any of these stages can have consequences that extend throughout the criminal justice process. The Hathras experience consequently demonstrates that meaningful justice for victims of sexual violence requires accountability across the entire justice chain—from the first police response and forensic investigation to victim and witness protection, family support, prosecution and judicial determination.

The case studies mentioned above illustrate the fact that there is a considerable disparity when it comes to justice for crimes against women in India, and that at times, legislation does not guarantee justice. While the Nirbhaya case brought about reforms in legal provisions related to sentencing and punishment, the case studies of Bilkis Bano, Hathras and RG Kar highlight long-lasting challenges in police inquiry, evidence collection, prosecutorial effectiveness, victim protection, and institutional accountability. Although it is typically assessed through conviction rates, the effectiveness of justice delivery is judged by the entire process, including the reporting of offences, the conduct of investigations, the prosecution of offenders, and subsequent proceedings in the courts.

## **Bridging the Justice Gap: Comparative Analysis of International Models for Institutional Accountability and Criminal Justice Delivery**

India's international human rights obligations provide a valuable normative framework to address violence against women. Under CEDAW, in particular General Recommendation No. 35, States should exercise due diligence to prevent, investigate, prosecute and punish gender-based violence, and offer effective reparations. Notably, State responsibility is not limited to acts of State officials; omissions and negligence may also involve State responsibility. The International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights also embody these values of equality and security, dignity and freedom from cruel, inhuman or degrading treatment. The problem for India, however, is not simply that there are no legal standards; it is the gap between what is stated in law and what is done under it.

International experience shows that to effectively respond to crimes against women, it is necessary to shift from a purely offence-based approach to an approach that is coordinated within institutions, victim-centred and creates accountability. The United Kingdom, the United States and the European framework are the most pertinent comparables for the most relevant comparative lessons.

### **United Kingdom: Specialised Prosecution and Victim-Centred Criminal Justice**

The United Kingdom is a model of specialisation in the criminal justice system. The Crown Prosecution Service (CPS) in England and Wales has specialist Rape and Serious Sexual Offences (RASSO) guidance which lays down requirements for prosecutors to pursue cases of sexual offences in a victim-centred and suspect-centred case approach based on the principle of evidential soundness. The guidance focuses in particular on reasonable lines of enquiry, supporting complainants, the conduct of trials, sexual-history evidence, misunderstandings about rape and the management of sexual-offence prosecutions. One of the most important aspects of this model is the institutionalisation of separation between the investigation and prosecution. The CPS is independent of the police and provides guidance on charging and prosecution, as well as on the use of the Full Code Test. Prosecutors will also evaluate whether there is sufficient evidence to proceed without unnecessarily involving the victim in all aspects of the evidentiary process. This establishes a convenient mechanism for accountability, as the prosecutor's role is not merely an extension of the police investigation. Multiple public institutions are also held responsible under the UK framework, instead of focusing on the

violence against women as a police issue only. The guidance for the Domestic Abuse Act 2021 applies to the police, prosecutors, courts, local authorities, health and education services, and specialist support organisations. It encourages coordinated action and explicitly states that the 3 components of the justice response – victim protection, perpetrator accountability, and justice response enhancement – are institutional goals.

The key to India is, therefore, specialisation of institutions and measurable responsibility. Investigation, prosecution, victim support, and protection activities should be conducted in a manner that creates clear and distinct lines of responsibility, with no gaps between activities.

### **United States: Coordinated Community Response and Dedicated Victim Services**

In the United States, coordinated community response and dedicated victim services are available. Coordinated community response and dedicated victim services are available in the United States. The United States offers another example, but one just as relevant: the Violence Against Women Act (VAWA) and the programs run by the Department of Justice's Office on Violence Against Women (OVW). It is not just about criminal prosecution—it's also about supporting victims, prevention, legal aid, forensic services, and strengthening institutional capacity. There are several grant programs administered by OVW focused on domestic violence, sexual assault, stalking and other forms of violence. A coordinated community response model is important for institutional accountability in India. The USDOJ's Improving Criminal Justice Responses programme is a formal engagement process between law enforcement, prosecutors, courts, victim-service providers, rape crisis centres and community groups. The objective is simultaneously to enhance victim safety and offender accountability. The US approach also acknowledges that the victims of marginalised or culturally different communities may have other obstacles to a grievance and justice. A dedicated programme ensures culturally specific services, legal and medical accompaniment, crisis intervention, advocacy and support in interactions with the police and the courts.

This model is of special significance for India as the lack of justice is often exacerbated by caste, class, rural living, disability, economic dependence and social vulnerability. The barriers that victimised individuals face may differ, however, and a one-size-fits-all approach may not resolve this issue. Institutional linkages between police, prosecutors, hospitals, legal services, social workers and specialised support organisations within India's criminal justice system are strengthened.

## **The EU and the Istanbul Convention: The Four Pillars Model**

The European framework may be the most extensive in terms of institutional models, with the Council of Europe's Istanbul Convention adopting a four-part approach: prevention, protection, prosecution, and coordinated policies. The Convention acknowledges that the fight against violence against women cannot be limited to one institution but must involve cooperation between the law enforcement, judicial authorities, health services, social services, NGOs and others involved. It also highlights the importance of professional training, victim safety, evidence collection and the prevention of secondary victimisation in judicial proceedings. The reason this is important is that it is not a reactive approach to criminal justice. Prevention and protection are not considered welfare issues alone, but part of the justice process. In addition, the model demands institutional coordination at the national, regional and local levels, minimising the risk of responsibilities being lost between departments. This strategy has been further reinforced at the EU level by Directive (EU) 2024/1385 on combating violence against women and domestic violence. The Directive establishes national plans of action with priorities, objectives, monitoring mechanisms, and funding, and introduces specific elements of coordination among law enforcement, judicial, support services, healthcare, educational, and other concerned bodies. The European way of doing it, in this regard, offers an important lesson for India: institutional accountability should be measurable and coordinated, not merely declarative. Agencies need to be very clear about their duties, how they cooperate with each other, have monitoring systems and what they will do in the case of institutional non-compliance.

## **International Best Practices and Their Relevance to India**

The most beneficial international experiences do not necessarily involve more severe punitive measures or harsher criminal laws. Rather, they are about the quality and accountability of the justice process. There are four institutional principles that are of special interest. One initial point is that specialisation is necessary. The case of the UK model illustrates the importance of specific prosecutorial guidance and trained staff who are handling rape and serious sexual offences. India should enhance the capacity of specialised investigation and prosecution units for alleged sexual and gender-based violence (SGBV) with mandatory and ongoing training. Second, the need for institutional-level coordination to supersede the disjointed response. Community response work and the multi-agency approach in Europe illustrate the need to link with the police, the prosecutor's office, the court, healthcare providers, victim support services,

and social services. In India, this kind of coordination can help bridge the institutional voids seen in instances such as Hathras, Badlapur, and RG Kar.

Thirdly, victim protection needs to be integral to the delivery of the criminal justice system. Protection must include physical security, confidentiality, legal support, psychological support, protection from intimidation and protection from secondary victimisation. The international models show that the victim is not just a source of evidence to the case for prosecution, but that the State have a duty towards her safety and dignity. Fourth, it needs to be monitored, and the consequences need to be applied to institutional accountability. CEDAW's due diligence approach is particularly significant in this regard, as it acknowledges that failures or omissions by public authorities can give rise to State responsibility. Therefore, the responsibility should not only reside with the individual perpetrator, but also with the police who have not registered or investigated complaints, with the prosecutor, with the institutions that do not provide protection to victims, and with the public authorities, whose inaction helps ensure impunity. Experience in the other countries does not indicate that the Indian legal system should be simply copied. Instead, it shows how the institutional mechanisms needed for the implementation of criminal justice must be designed to translate legal rights into protection and accountability. The problem becomes not that Indian legislatures lack even more but that they don't do more of what they are supposed to do. The problem is not the lack of legislatures in India, but the lack of implementation, coordination, professional capacity and institutional responsibility. The central comparative lesson is that a justice gap is not a problem that can be solved simply by raising penalties for the perpetrator. What is needed on Indian ground is a more effective framework for sexual-offense investigations and prosecution, with special procedures and protocols for the investigation and prosecution of sexual offences involving public officials or institutional actors; mandatory inter-agency protocols; independent monitoring of sexual-offense investigations carried out by public officials or institutional actors; improved standards for witness and victim protection; forensic standards and evidence management; trauma-informed procedures; and improved standards for the investigation of sexual offences and for the review of failures to investigate. These reforms would also ensure the implementation of India's substantive rights commitments under CEDAW. Due diligence offers a suitable link between international human rights obligations and accountability of institutions in the domestic field: the State should not only criminalise violence against women, but it should also show that its institutions have been able to act swiftly, effectively and independently to prevent violence, investigate complaints, prosecute perpetrators, protect victims and offer effective remedies. The lessons learnt from the comparative experiences of

the UK, the US and Europe, therefore, indicate that addressing the justice deficit in India would require a paradigm shift from a punishment-centred justice delivery system to a holistic one comprising prevention, protection, prosecution and institutional accountability.

## SUGGESTION AND CONCLUSION

### Suggestions

1. **Improve institutional accountability:** Provide clear statutory responsibilities and accountability for police, schools, health services, and other government institutions responsible for preventing, reporting, and investigating gender-based crimes. The obligations must be enforced in a manner that may result in disciplinary action and even criminal punishment.
2. **Create Specialised and Independent Investigation Mechanisms:** Specialised, sufficiently trained and independent units that are not subject to local administrative and political influence should conduct investigations into crimes of sexual violence, involving institutional actors or allegations against public officials. The period for investigation shall be mandatory and shall be monitored judicially or independently.
3. **Enhance Victim and Witness Protection:** A victim and witness protection system that is comprehensive, accessible and sufficiently resourced should provide confidentiality, physical security, legal support and services, psychological support and protection from intimidation and institutional retaliation. Special protection needs to be given to victims of socially and economically deprived communities.
4. **Enhance Inter-Institutional Coordination and Forensic Capacity:** Police, prosecutors, hospitals, forensic laboratories, courts, and victim-support services should work together on a consistent basis regarding evidence collection, preservation, and sharing. Independent forensic mechanisms and systems of evidence management should be enhanced to reduce evidence tampering, loss, and delay.
5. **Implement a Measurable Due Diligence Framework:** India should put its CEDAW obligations into practice by adopting measurable indicators for prevention, investigation, prosecution, victim protection, and institutional response. Regular audits of cases involving women, the availability of information on investigations and convictions, and independent reviews of serious investigative failures would enhance the transparency and effectiveness of institutional accountability. The problem of a 'justice gap' in crimes against women in India cannot be captured just through conviction rates and the presence of a strict penal code. The analysis of the RG Kar,

Badlapur, Bilkis Bano, and Hathras cases shows that prevention, reporting, investigation, evidence preservation, witness protection, prosecution, and the exercise of executive power are all areas in which justice fails. The following cases illustrate how institutional gaps and shortcomings can impact the realisation of substantive legal rights for victims.

The comparative analysis also shows that the design of criminal justice systems is increasingly specialised, response is coordinated, procedures are victim-centred, independent oversight is increasing, and there are measurable mechanisms of accountability. The United Kingdom's specific prosecution system, the coordinated victim support and criminal justice systems in the United States, and the European focus on prevention, protection, prosecution and coordinated policy offer pertinent models for enhancing institutional response in India. Hence, it is essential to move from punitive approaches to a more holistic model of justice in India, aligned with its international obligations as reflected in CEDAW and other human rights instruments, and to adopt a due diligence model. Meaningful institutional accountability, victim protection, independent and timely investigations, strengthening forensic capacities, and meaningful scrutiny of institutional failures are key to bridging the gap between the law and its implementation. Finally, it is not enough to have an offender convicted of a crime to achieve justice for women. It also needs to be evaluated in terms of the State's swift response to prevent harm, its protection of the victim, the preservation of evidence, the impartial investigation of the incident, the prosecution of the case, and the responsibility assumed by the institution and each person involved. A change in the institutional framework on which criminal justice is provided is therefore not only a question of legal reform, but also of changing that framework.

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