



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## Examining A Decade of Criminal Law (Amendment) Act, 2013 in Light of Combating Crime against Women: A Contemporary Legal Analysis

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*Received* 17 October 2024; *Accepted* 18 November 2024; *Published* 21 November 2024

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*In response to the Nirbhaya case, the Criminal Law (Amendment) Act 2013 was passed, which represented a dramatic change in India's strategy for preventing crimes against women and sexual assault. This research study critically examines the Act's ten-year effects on the Indian Criminal Justice System, emphasising its advantages, disadvantages, and current problems. Although the Act brought forth significant reforms—such as broadening the definition of rape, toughening up penalties, and tackling crimes like acid assaults and stalking—its execution has run into several difficulties. The paper looks at the discrepancy between the law and how it is applied, the sociocultural obstacles that prevent victims from getting the justice they deserve, and how law enforcement may help maintain these improvements. By providing suggestions and a contemporary outlook, it also attempts to thoroughly understand how the ongoing challenges should be addressed to ensure a more effective and just legal framework in India.*

**Keywords:** *criminal law, criminal justice system, rape, stalking, justice.*

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## INTRODUCTION

Women, since ages, in a country like ours, have been sacrosanct creatures where she is worshipped like a devi and treated with due respect. It is evident from the fact that an average Indian connects himself with his country by portraying it as Bharat Mata, with the utmost sense of reverence and honour. There is no doubt that women have a prominent role in any society, whether as mothers, wives, sisters, or sole breadwinners to their families. Generally speaking, no nation, culture, community, or family can survive without the substantial role of a woman. However, it is an unfortunate matter that rising crime against women, whether from a national or international perspective, has been a scorching matter of concern. Such crimes may include Sexual Assault, Workplace Harassment, Acid Attack, Stalking, Outraging Modesty, Dowry Deaths, Domestic violence or the most heinous of them all, commission of Rape. In the twenty-first century, women's situation in traditional Indian culture is thus abhorrent.

In 2012, our civilised nation witnessed a barbaric act by a few individuals who robbed a girl out of her esteem by raping her most scarcely and atrociously, and that too on the roads of the Indian Capital. The infamous case of the *Nirbhaya Gang rape* not only shocked the country at its core but the world as well. A 23-year-old medical student was viciously gang-raped on a moving bus on the chilly night of December 16, 2012, and left unconscious in the middle of the road. The manner of the rape committed on her was not just horrific but unusual too, which eventually led to her death after being in intolerable pain and suffering. The aftermath of the case was followed by a large-scale protest by the general masses demanding capital punishment for the accused to seek justice for the deceased. The prominent pressure on the gatekeepers of law and order led to the development and emergence of the Criminal Law (Amendment) Act, 2013, as the then laws were insufficient in addressing the intricacies of such monstrous crimes.

The primary objective of the Amendment was to create a deterrent against gender-based violence, enhance victim protection, and improve the overall legal response to crimes against women, addressing the societal demand for greater accountability and justice.

## LEGAL FRAMEWORK PRE-2013: UNDERSTANDING THE GAPS IN COMBATING CRIME AGAINST WOMEN

The Indian legal system for dealing with crimes against women, namely rape, sexual assault, and harassment, was beset by loopholes before the passing of the Criminal Law (Amendment) Act, 2013, which frequently left victims in danger and offenders with insufficient punishment. Though intended to offer protection, the rules included in the Criminal Procedure Code (CrPC), the Evidence Act, and the Indian Penal Code (IPC) represented antiquated social views and lacked the necessary safeguards to address the changing face of gender-based violence effectively. A few of them are as follows:

*Defining Rape:* Before 2013, the definition of rape<sup>1</sup> in IPC was limited to penile-vaginal penetration. Under the strict definition of rape, this excluded additional types of sexual abuse, such as oral and anal penetration or the use of objects, leaving victims of these horrible acts without legal redress. Furthermore, the act of penetration was frequently highlighted rather than the absence of permission, which is a crucial component in treating sexual assault.

*Absence of Legal Provisions for Sexual Harassment:* Additionally, sexual harassment was not adequately addressed by the legal system. Without a clear definition of sexual harassment, IPC defines it as an act that deals with *assault or criminal force on a woman with intent to outrage her modesty*<sup>2</sup>, which is ambiguous and subjective. It mostly relied on outmoded ideas like modesty. This clause also carried a modest penalty, which made it ineffective as deterrence for similar crimes. Nevertheless, there was no systematic approach to dealing with sexual harassment in public or business settings.

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<sup>1</sup> Indian Penal Code 1860, s 375

<sup>2</sup> Indian Penal Code 1860, s 354

*Sexual Harassment at Workplace:* Before the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act was passed in 2013, there was no formal framework in place to prevent sexual harassment in the workplace, despite the Supreme Court's 1997 *Vishaka's*<sup>3</sup> ruling laying out guidelines that were frequently ignored.

*Doing away with questions about previous sexual experiences:* Before 2013, victims of sexual assault faced severe legal restrictions, with the judicial system frequently questioning their morals and character. By raising doubts about the victim's prior sexual behaviour, the defence was able to undermine her credibility under the Evidence Act, which encouraged a victim-blaming mentality. Because they were afraid of being rejected by society and humiliated, women were deterred from reporting crimes. However, such questions<sup>4</sup> are done away with under the Indian Evidence Act 1872 and Evidence of character or previous sexual experience is not relevant in certain cases.<sup>5</sup>

Apart from aforesaid modifications, even in situations where charges were filed, there were frequent delays in the criminal justice system and uneven application of the law. The efficacy of the legal system was weakened by low conviction rates in rape and sexual assault cases, which indicated a lack of trust in the legal system among victims and the general public.

In summary, before 2013, the judicial system lacked the necessary tools to effectively handle the gravity and complexity of crimes against women. The deep-seated patriarchal beliefs in Indian society were mirrored in victim-blaming inclinations, lax definitions of sexual offences, and lax enforcement measures. The Criminal Law (Amendment) Act, 2013 was introduced in response to the urgent need for revisions due to the law's shortcomings. Its purpose was to close these gaps and establish a stronger legal framework to prevent crimes against women.

### **ANALYSING CRIMINAL LAW (AMENDMENT) ACT 2013**

Women around the country are disproportionately impacted by gender-based violence, including Rape, sexual assault and sexual harassment, which are considered to be the heinous

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<sup>3</sup> *Vishaka & Ors v State of Rajasthan* (1997) 6 SCC 241

<sup>4</sup> Indian Evidence Act 1872, s 146

<sup>5</sup> Indian Evidence Act 1872, s 53A

crime and violative of human rights and also have a traumatising effect on the mind of a victim and a long-term impact on their health. The pervasive nature of these crimes and as a consequence of the aforesaid incident marked the urgent need for stronger protections and support systems for women, which led to the changes in the golden triangle of the Indian Criminal Justice System, Indian Penal Code 1860, Code of Criminal Procedure 1973 and Indian Evidence Act 1872 by enhancing the severity of the penalties for crime against women and introduced much-needed provisions to address the change in the society. Therefore, the then government reevaluated the effectiveness of the existing legal protections for women's safety. Consequently, the Criminal Law (Amendment) Act, 2013, which was ratified by the President on April 2, 2013, was founded by the Committee.

The Criminal Law Amendment Act 2013 brought significant changes to the entire Criminal Justice system. It also introduced a new provision under the IPC for punishing police officers who do not record FIR in cases of crime against women<sup>6</sup>, amendment not only increases the liability of the police officer but also the in-charge of the hospital for non-treatment of victims of rape<sup>7</sup>. The intensity and the rigidity of section 375 of IPC, which deals with the heinous act of Rape, was expanded and broadened, which led to include acts other than forcible sexual intercourse. Section 376 and its ambit were expanded to include provisions such as provision regarding causing death or a vegetative state of the victim of Rape<sup>8</sup>, with punishment of 20 years to life or death. It added provision to Gang rape<sup>9</sup>, with a minimum punishment of 20 years to life imprisonment. Also, repeated offenders<sup>10</sup> can be punished with life imprisonment or the death penalty. Apart from that, the Amendment also inserted punishment for offences such as Sexual Harassment<sup>11</sup>, Stalking<sup>12</sup>, Voyeurism<sup>13</sup>, Disrobe<sup>14</sup>, etcetera.

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<sup>6</sup> Indian Penal Code 1860, s 166A

<sup>7</sup> Code of Criminal Procedure 1973, s 357C

<sup>8</sup> Indian Penal Code 1860, s 376A

<sup>9</sup> Indian Penal Code 1860, s 376D

<sup>10</sup> Indian Penal Code 1860, s 376E

<sup>11</sup> Indian Penal Code 1860, s 354A

<sup>12</sup> Indian Penal Code 1860, s 354D

<sup>13</sup> Indian Penal Code 1860, s 354C

<sup>14</sup> Indian Penal Code 1860, s 354B

In the Code of Criminal Procedure, 1973, directory provisions were added, such as any hospital, public or private, owned by the Central government, the State government, local governments, or any other individual, must give victims of sexual offences free medical attention or first aid right away and notify the police of the incident right away<sup>15</sup>.

Moreover, to enhance the effectiveness of the police system, certain amendments were made to the Code of Criminal Procedure 1937 by the Criminal Law (Amendment) Act, 2013, one such amendment is made under section 154 by adding a proviso that if any information is given by the women against whom an offence is committed or attempted, then the women police officer has to record the information of an offence. This step underscores the importance of a sensitive and responsible approach in handling cases involving women, ensuring that their voices are heard and justice is pursued.

Apart from this, if a person against whom an offence under sections 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E or 509 of the Indian Penal Code is alleged to have been committed or attempted and also if the victim gets permanently or temporarily, mentally or physically disabled then the information related to crime will be recorded at the residence of the victim or at a convenient place of such person's choice<sup>16</sup>.

All these provisions reflect a robust and comprehensive approach to strengthening the protection of women's rights in India.

### **CHALLENGES AND CRITICISMS: A DECADE OF IMPLEMENTATION OF THE CRIMINAL LAW (AMENDMENT) ACT, 2013**

Despite strict laws and intensification of the penalties for crime against women under criminal law (amendment) 2013, the picture did not effectively change and the safety of women remains a pressing concern as the NCRB report has revealed an aggrieved surge of 4% in crime against women throughout 2022<sup>17</sup>. Alarming, assault with intent to outrage the modesty of women

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<sup>15</sup> Indian Penal Code 1860, s 357C

<sup>16</sup> Code of Criminal Procedure 1973, s 154

<sup>17</sup> 'Crime Against Women in India Up by 4%: NCRB Report 2023' (*News Click*, 5 December 2023)

<<https://www.newslick.in/crime-against-women-india-4-ncrb-report-2023>> accessed 05 October 2024

constitutes 18.7% and Rape 7.1%<sup>18</sup>. The crime rate per lakh women's population surges from 64.5 in 2021 to 66.4 in 2022,<sup>19</sup> which reflects the clear picture that legal reforms alone have not been enough to create a safe and sound environment for women.

Major cities, which are most favourable for students and businesses because of their vibrant opportunities, are unfortunately also the hotspots for crime against women as the report reflects the picture where Delhi, our nation's capital, home to major headquarters and a place which is also known as the epicentre of lawmaking, is leading the chart with 14,158 cases recorded of crime against women<sup>20</sup>, on the other hand, Mumbai, which is a hub of innovation and enterprise, which is referred by people as a *city which never sleep* saw 6,176 cases with a high 80.6% chargesheet rate<sup>21</sup>. These figures reveal a contrast between the promise of growth and persistence.

When you increase the horizon and make the picture bigger, Uttar Pradesh tops the list of crimes against women from 56,083 in 2021 to 65,743 in 2022 recorded cases. Maharashtra recorded 45,331 cases, while Rajasthan recorded 45,058 cases, each with varying chargesheet rates<sup>22</sup>. Each State reflects the grim reality, underscoring the ongoing struggle to ensure women's safety across the country.

**Component of Criminal Justice System/Low Conviction Rate:** The criminal justice system is not only centric to courts but extends far beyond that by encompassing several vital bodies, including Police, Prosecution, Defence, Court and correction agencies. The police department is

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<sup>18</sup> Dipankar Dey, 'Mosaic of malevolence' (*Millennium Post*, 09 December 2023)

<<https://www.millenniumpost.in/sundaypost/in-retrospect/mosaic-of-malevolence-543615>> accessed 05 October 2024

<sup>19</sup> 'Women Safety in India - Challenges and Way Forward - Explained Pointwise' (*Forum IAS*, 16 August 2024)

<<https://forumias.com/blog/women-safety-in-india-significance-and-challenges-explained-pointwise/#:~:text=Increase%20in%20crimes%20against%20women,2021%20to%2066.4%20in%202022>> accessed 06 October 2024

<sup>20</sup> Nalini Sharma, 'Delhi leads in crime against women, Rajasthan in rape cases in 2022: NCRB Report' *India Today* (New Delhi, 04 December 2023) <<https://www.indiatoday.in/law/story/delhi-leads-in-crimes-against-women-rajasthan-in-number-of-rape-cases-in-2022-ncrb-report-2471924-2023-12-04>> accessed 06 October 2024

<sup>21</sup> *Ibid*

<sup>22</sup> 'UP records highest number of crimes against women among the 28 states last year: Report' *The Telegraph Online* (New Delhi, 10 October 2024) <<https://www.telegraphindia.com/india/bjp-ruled-uttar-pradesh-records-highest-number-of-crimes-against-women-among-the-28-states-last-year-report/cid/1984613>> accessed 07 October 2024

the key component of the Indian Justice System to provide justice to the victim and any misstep by them can result in significant errors and hinder the true essence of Justice. The main objective of law enforcement agencies is to investigate the crime and send them to trial.

Even after having robust laws, headlines of alarming failure in the administration of justice are permanent. Stories like UP rape survivor kills herself as cops refuse to register FIR against accused<sup>23</sup>, etc. These incidents reveal the gaps between the legislature and its implementation. It is also peculiar to note that the rate of conviction of rape offences in India is below 30%<sup>24</sup>, which raises concern about the efficacy of the entire Criminal Justice System.

**Formation, Implementation & Challenges:** This Amendment tried its best by increasing the severity of the penalties for crime against women, introducing much-needed provisions to address the change in society and seeking to create a stronger legal framework. However, there is a very big difference between the formation of the law and its implementation. Implementation and following the law is a collective responsibility of law enforcement agencies, the judiciary and society as a whole. As the Amendment mandates, the women police officer must record any information from the women victim, but the shocking fact is that women are abysmally under-represented in the police force as they constitute only 10.49% of the police force.<sup>25</sup> The Parliamentary Standing Committee on Home Affairs on 'Atrocities on Crimes against Women and Children' has often expressed disappointment that despite the Ministry of Home Affairs's recommendations to the States to ensure 33%<sup>26</sup> of the police force are women, the desired results have not been yet met. This void not only impacts the registration of F.I.R. but also contributes to a lower conviction rate and creates hesitation for women in reporting offences. The lack of female representation in the police force hinders the pursuit of justice.

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<sup>23</sup> 'UP cops refuse gang-rape plaintiff, woman kills herself' *The Times of India* (Lucknow, 22 August 2024) <<https://timesofindia.indiatimes.com/city/lucknow/up-cops-refuse-gang-rape-plaint-woman-kills-herself/articleshow/112692017.cms>> accessed 07 October 2024

<sup>24</sup> 'India sees 88 rape cases a day; conviction rate below 30%' *The Times of India* (New Delhi, 07 October 2020) <<https://timesofindia.indiatimes.com/india/india-sees-88-rape-cases-a-day-but-conviction-rate-below-30/articleshow/78526440.cms>> accessed 07 October 2024

<sup>25</sup> Archis Mohan, 'Women in police: Bihar leads, Bengal one of the lowest among large states' *Business Standard* (9 September 2024) <[https://www.business-standard.com/economy/analysis/women-in-police-bihar-leads-bengal-one-of-the-lowest-among-large-states-124090900800\\_1.html](https://www.business-standard.com/economy/analysis/women-in-police-bihar-leads-bengal-one-of-the-lowest-among-large-states-124090900800_1.html)> accessed 08 October 2024

<sup>26</sup> Ministry of Home Affairs, *Police-Training, Modernisation and Reforms* (Report No 237, 2022) para 2



Moreover, the Judiciary plays a vital role in the Indian criminal justice system, from taking cognisance of the case to providing justice to the victim, but it has certain problems responsible for the low conviction rate in crimes against women.

- The judicial system has a large backlog of cases. This is the reason for the trial's delay, hostile witness behaviour, and case withdrawals.
- There is a lack of a witness protection scheme, which results in a shortage of witnesses for the case or the risk that witnesses would alter their testimony in court. As a result, the witnesses in this case cannot be trusted.
- Additionally, a very small ratio of judges to cases is observed. Consequently, this lengthens the cases' pendency and contributes to the low conviction rate. Pronouncing the verdict or order is delayed. Some judges take years to render a decision. A judge may overlook crucial details of a case if it is delayed, which would be an injustice.

**Lack of Awareness about Forensic Evidence:** The foundation of contemporary legal systems is forensic science, sometimes known as forensic evidence, which offers a factual foundation for criminal investigations and prosecutions. Since its inception, the criminal justice system has undergone a radical change, moving away from dependence on witness testimony and toward an evidence-based strategy that may conclusively connect suspects to crimes or clear innocent parties.

The Criminal Law (Amendment) Act, 2013 was passed to bolster India's legal defences against sexual offences. However, various problems have prevented its effective implementation:

**1. Problems with Police Enforcement:** Inconsistency persists in the filing of First Information Reports (FIRs) for sexual offences, even in the face of the Act's prohibitions. The Supreme Court stressed in *Lalita Kumari v Government of Uttar Pradesh and Ors*.<sup>27</sup> that filing a First Information Report (FIR) as soon as one learns of a criminal offence. However, there are still cases of non-compliance, frequently because law enforcement is unaware of them or is reluctant to deal with them.

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<sup>27</sup> *Lalita Kumari v Government of Uttar Pradesh and Ors* (2014) 2 SCC 1

**2. Judicial Delays:** To speed up sexual offence cases, fast-track courts were established. Despite this, the legal system is nevertheless beset with delays that impede the prompt administration of justice. A backlog of cases, ineffective procedural processes, and a lack of court resources are the causes of these postponements.

**3. Societal Factors:** Victim stigma and ingrained cultural standards make it difficult to disclose and prosecute sexual offences. A lot of victims are afraid of being shunned by society or facing reprisals, which makes it difficult to gather evidence and leads to underreporting.

**4. Judicial Interpretations:** Although the Act included thorough definitions of crimes such as rape, the judiciary's interpretations have occasionally differed, resulting in inconsistent rulings. For example, the definition of rape has been widened, which has led to discussions about how it should be used in particular situations and reflects changing judicial viewpoints. To achieve the goals of the 2013 Amendment, addressing these issues would need coordinated efforts to improve police training, expedite court procedures, promote social change, and guarantee uniform judicial interpretations.

## **FUTURE PROSPECTS AND SUGGESTIONS: STRENGTHENING WOMEN'S LEGAL PROTECTIONS**

Even though the Criminal Law (Amendment) Act 2013 brought about a lot of progress, further legislative and policy changes are still desperately needed to strengthen the protection of women from abuse. Even if the Act filled in a lot of holes, new legal frameworks are necessary due to the way crimes are developing, notably the surge in cybercrimes and more subtle forms of sexual harassment.

A crucial aspect of change is fortifying the enforcement system. Strict legislation alone won't cut it if law enforcement organisations aren't equipped or trained to properly enforce it. Regular training is necessary to ensure that police staff, particularly those who deal with sensitive crimes, are sensitive to gender issues and follow appropriate investigation procedures. Judiciary and police must also have complete and mandatory aid of forensic experts so that the conviction rates improve and complete justice can be attained. Additionally, this can aid in minimising

investigational hold-ups and inefficiencies, which frequently discourage victims from pursuing justice. Furthermore, the creation of special fast-track courts has aided in the expediting of some cases, but a more comprehensive systemic change is required. Expanding the number of such courts and ensuring that cases linked to crimes against women receive priority consideration would assist greatly in decreasing the judicial backlog.

Additionally, comprehensive victim assistance networks must be implemented in addition to judicial and legislative reforms. Without strong psychological, financial, and medical support for victims, legal protection is insufficient. Important steps in this approach include establishing government-funded programs for survivors' rehabilitation and its proper execution and management, guaranteeing their unhindered access to the legal system, and providing mental health treatment. For this, Creating and providing funds for long-term rehabilitation programs that offer survivors of domestic and sexual abuse legal, medical, psychological, and financial help may be a boon for the victims.

Moreover, the topic of gender biases in law enforcement should be the main emphasis of specialised training programs. Also, providing a clear and consistent framework for the frequent release of crime data, such as conviction rates, so that it is possible to evaluate the effectiveness of the legislation and identify any gaps or improvements becomes crucial to combat the evil at hand.

Having regard to the latest developments and trends, and given the surge in digital abuse, it is imperative to address loopholes in the law pertaining to cybercrimes against women, including online harassment, stalking, and the unauthorised use of personal information. Lastly, it is critical to understand that legislation pertaining to crimes against women needs to be continuously reviewed to accommodate shifting social environments. The safeguards envisioned by the 2013 Amendment will need to be reinforced by a victim-centred approach and a dynamic legal framework in order to remain an effective deterrence against gender-based violence.

To address the underlying causes of gender-based violence, the government may also think about including gender equality education and awareness in the curricula of the schools.

Mandatory workshops and awareness campaigns about equality, respect, and consent ought to be implemented. Enhancing and optimising the operation of emergency response systems and women's hotlines is crucial to guaranteeing their accessibility and responsiveness throughout the nation. The government, through various measures, may motivate residents to actively participate in neighbourhood watch initiatives, which seek to detect and report acts of harassment or violence. Women may live in safer communities when local authorities work together. By supporting movements like #MeToo that have raised awareness of sexual harassment and abuse, citizens may also use social media platforms to magnify the voices of survivors of gender-based violence.

As part of their CSR efforts, corporations may also play a significant role by funding programs that advance women's safety, legal knowledge, and economic empowerment. In a similar vein, non-governmental organisations and the public and commercial sectors can work together to develop grassroots initiatives aimed at giving women safety spaces and the assistance they require in the event of an assault.

It is also imperative that academic and legal institutions be encouraged to regularly investigate the efficacy of the Criminal Law (Amendment) Act, 2013 and other relevant laws. Ongoing policy assessments can lead to essential adjustments and improvements based on ground realities. To support ongoing legislative reform, individuals should also have access to platforms where they may offer comments and recommendations for changes to legislation about violence against women.

## CONCLUSION

Without a speck of doubt, by enhancing and broadening legal safeguards, the Criminal Law (Amendment) Act 2013 was a historic legislative reaction meant to address the widespread crimes against women. Ten years after it was put into effect, the Act has significantly changed the legal and social environment by boosting awareness, encouraging more people to report cases of sexual abuse, and broadening the legal safeguards available to women.

However, the aim of achieving a safer environment for all, and women in particular, is still a dream too far from reality. The recourse and responsibility do not only lie at the end of the government but at the same time at the court of the general public. Changing the mindset, unifying against wrong and moving with courage is what contemporary society demands. Therefore, to sum up, enhancing the effectiveness of the Criminal Law (Amendment) Act, 2013 in preventing crimes against women requires a collaboration of aggressive government activities, zero tolerance policies, engaged public engagement, and cooperative efforts. Reforms to the law must be supported by changes in public opinion, strong enforcement, and extensive support networks for victims.