

She AND THE SCALES JUSTICE

Women, Crime & the Law :
A Modern Criminology

Anirudh Alex Victor | Yash Prasad Sonkar | Karan Kumar



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PREFACE

For decades, criminological scholarship has largely framed women through a singular narrative of victimhood and protection, often overlooking the broader and more complex realities of women's engagement with crime and the criminal justice system. While legal safeguards for women remain essential and non-negotiable, justice cannot be meaningfully achieved through selective or incomplete narratives. *She and the Scales of Justice: Women, Crime & the Law — A Modern Criminology* seeks to challenge this limitation by offering a bold, balanced, and contemporary re-examination of women's place within criminology.

This book is grounded in the conviction that women occupy multiple and intersecting roles within the legal system—as victims deserving protection, as offenders subject to criminal liability, as witnesses navigating institutional bias, and as individuals negotiating social expectations and legal consequences. To recognise only one dimension while silencing others is to risk distorting facets both law and justice. Accordingly, this work adopts a critical yet responsible approach that neither undermines gender-based crimes nor avoids difficult legal questions.

This book examines crimes against women alongside the less-discussed issues of women as offenders, the misuse and overextension of protective laws, institutional responses, and the growing gap between legislative intent and legal practice. Rather than weakening the discourse on gender justice, this approach strengthens it by demanding accountability, fairness, and integrity from all stakeholders within the criminal justice system.

Written from an Indian legal perspective, the book draws upon statutory law, judicial reasoning, criminological theory, and contemporary legal challenges. Emphasis is placed on analysis over narration, reason over rhetoric, and justice over ideology, treating law as a living and evolving institution shaped by social change, judicial discretion, and practical limitations of enforcement.

The modern era has significantly reshaped women's criminology. Cyber-crimes, digital surveillance, media-driven narratives, changing family structures, and evolving gender roles have introduced new forms of victimisation as well as new patterns of criminalisation. This book engages with these emerging realities while addressing rehabilitation, reformation, restorative justice, and societal responsibility in shaping legal outcomes. This work is intended for law students, researchers, academicians, legal practitioners, policymakers, and readers seeking a deeper and more mature understanding of gender justice. It aims to provoke critical inquiry, encourage

informed debate, and foster a responsible engagement with women's issues within the framework of criminal law.

Ultimately, *She and the Scales of Justice* asserts that true justice lies in balance—between protection and accountability, empowerment and restraint, reform and responsibility. By placing women at the centre of criminological inquiry without shielding the subject from critical examination, this book aspires to contribute meaningfully to modern legal thought and to the pursuit of a fair, inclusive, and principled criminal justice system.

AUTHORS

ACKNOWLEDGEMENT

The completion of *She and the Scales of Justice: Women, Crime & the Law — A Modern Criminology* is the culmination of an academic pursuit deeply intertwined with reflection, resilience, and collective intellectual engagement. While this book stands as a work of sole authorship, its ideas, arguments, and perspectives have been shaped within a broader ecosystem of mentorship, dialogue, and unwavering support. This manuscript represents not merely an academic contribution, but a conscious effort to interrogate evolving legal realities through the lens of gender justice and modern criminology.

I am equally thankful to my Seniors for their thoughtful discussions, critical exchanges, and scholarly debates, which quietly yet significantly refined many of the arguments presented in this book. Such intellectual engagement fostered clarity, depth, and balance, strengthening the interdisciplinary nature of this work.

My deepest appreciation is reserved for my Family, especially my Parents whose constant encouragement, patience, and faith provided the emotional stability essential to completing this manuscript. Their belief in my academic journey remained steadfast, even during moments of uncertainty, and served as a source of enduring motivation.

A special and heartfelt thanks go to Ms. Nancy Namdev, whose intellectual encouragement, constructive feedback, and consistent moral support played a meaningful role in shaping this work. Her thoughtful perspectives, attentiveness to detail, and belief in the significance of this project contributed not only to its academic rigor but also to its clarity of purpose. Her support reinforced my commitment to addressing complex legal questions with sensitivity, integrity, and courage.

I am grateful to the Publisher for recognizing the relevance and timeliness of this work and for providing a platform to present a balanced, contemporary, and critical discourse on *She and the Scales of Justice: Women, Crime & the Law — A Modern Criminology* to a wider readership. I extend my sincere appreciation to the **Hon'ble Justices, Senior Advocates and bureaucrats** who, despite their demanding professional commitments, generously contributed Forewords and letters of appreciation to this book. Their insights, encouragement, and scholarly engagement have significantly enriched the work and lent it greater academic depth and credibility.

Finally, my sincere appreciation extends to the Readers, scholars, legal professionals, technologists, and members of the academic community whose

engagement with this work will contribute to ongoing conversations on law, gender, and justice. It is my hope that this book inspires critical reflection, informed dialogue, and progressive reform in the pursuit of a more equitable legal order.

AUTHORS



FOREWORD

It gives me immense pleasure to pen the Foreword to "**She and the Scales of Justice: Women, Crime & The Law — A Modern Criminology**," a work that stands at the vital intersection of intellectual rigor and transformative jurisprudence. As our socio-economic paradigms continue to evolve rapidly, the role of legal scholarship is paramount in providing the intellectual foundation for a more progressive and equitable legal system.

In this comprehensive study, **Anirudh Alex Victor** offers an incisive examination of the complex relationship between women and the Indian criminal justice system. The book goes beyond traditional narratives by viewing women not merely as victims, but also as accused persons, witnesses, and subjects of regulation within historically entrenched patriarchal structures. It traces how these deep-seated social and legal traditions have contributed to persistent inequalities in autonomy, dignity, and access to justice.

The author provides an intellectually stimulating critique of conventional criminological frameworks, arguing that they are often developed from male-centric perspectives that fail to account for gender-specific pathways to victimization and offending. The book rightly urges that legal adjudication be firmly anchored in constitutional guarantees of equality and personal liberty, incorporating intersectional realities shaped by poverty, caste, and social marginalisation.

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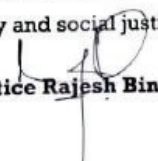


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Equally noteworthy is the book's detailed examination of contemporary challenges. It dissects the continuing prevalence of domestic and sexual violence, identifying structural causes such as investigative insensitivity and economic dependency. Furthermore, the discourse addresses the "insidious" nature of economic abuse and the emerging threats posed by technological advancements, including cyber harassment and the complexities of transnational trafficking networks. By exploring the blurring lines between victimhood and criminal liability in these contexts, the work underscores the necessity for an adaptive legal framework in an increasingly globalized world.

A significant contribution of this work is its balanced approach to the potential misuse of protective statutes, advocating for "vigilant judicial oversight" to preserve genuine protections while ensuring fairness and due process. The author's support for gender-responsive sentencing and restorative justice processes reflects a commitment to a justice system that moves beyond formal neutrality toward context-sensitive equality.

This book, by dissecting the interplay of legal principles with social realities, serves as a beacon for practitioners, academicians, and policymakers alike. I have no doubt that this work will enrich its readers and inspire them to engage deeply with the multifaceted challenges of women's rights and the law. May this book serve as an invaluable repository of legal thought, fortifying the foundation of a dynamic system grounded in constitutional morality and social justice.


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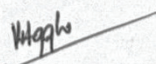
FOREWORD

Reflecting upon my years in judicial service, I am often reminded of a fundamental truth, that the law attains its highest purpose when it safeguards the vulnerable and amplifies the voices of those relegated to the margins of the society. This book titled, "*She & The Scales of Justice: Women, Crime & Law; A Modern Criminology*" is a compelling reaffirmation of the said principle.

This manuscript offers a rigorous and methodical study of the multifaceted relationship between women and criminal justice in contemporary India. It traces with notable scholarly diligence, how vulnerable social, philosophical and jurisprudential traditions, many of which have been absorbed, at times uncritically, often unreflectively into the framework of statutory and personal laws, have perpetuated enduring asymmetries that undermine feminine autonomy, erode inherent dignity, restrict proprietary rights and impede their meaningful access to the institutions of justice.

The work further proposes a holistic jurisprudential vision anchored in constitutional morality, institutional sensitivity, making coordinated purposive engagement among the judiciary, the legislature, and civil society so that the law may serve not merely as an instrument of control, but as an enduring means of protection, empowerment and transformative social justice within a dynamic democratic polity.

I extend my sincere congratulations to the author for undertaking this significant scholarly endeavour which invites us not merely to interpret legal doctrine, but to reimagine the law itself as a catalyst for genuine social transformation. In my opinion, this work is a tribute to all, who strive hard to remain committed to the ideals of justice, dignity and equality within the framework of the rule of law.


[VIKRAM AGGARWAL]

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FOREWORD

Date

It gives me immense pleasure and intellectual satisfaction to write the Foreword to *She and the Scales of Justice: Women, Crime & the Law; A Modern Criminology*. This work is not merely an academic exercise; it is a profound legal and philosophical inquiry into the evolving relationship between women and the criminal justice system in India and beyond.

The principles contained under article 15 (2) of the Constitution of India to the following effect:

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

The author has tried to develop the same in relation of Justice for the women in all spheres.

The author begins, quite appropriately, with an exploration of the philosophical and historical roots of patriarchy in Chapter One—*Tracing Patriarchy*. By revisiting thinkers such as Plato, Aristotle, Rousseau, Nietzsche, Marx, Engels, and John Rawls, the book demonstrates how intellectual traditions have shaped legal norms and social structures that confined women to secondary status. The discussion on ancient legal orders, Marxist and socialist perspectives, and post-independence constitutional developments is both rigorous and reflective. It reminds us that subordination was not incidental—it was institutionalised through law, religion, and custom.

As one who has spent decades on the Bench, I have witnessed how deeply embedded patriarchal assumptions influence both litigation and adjudication. The chapters that follow move from theory to lived reality. The treatment of adultery and its constitutional transformation in *Joseph Shine v. Union of India* exemplifies how the judiciary can dismantle archaic notions of ownership and restore dignity and autonomy to women. Similarly, the analysis of domestic violence, sexual offences, economic abuse, and succession rights highlights the continuous tension between statutory reform and societal inertia.

The book's engagement with contemporary legal developments—particularly the transition from the Indian Penal Code to the Bharatiya Nyaya Sanhita—demonstrates its relevance to current jurisprudential discourse. Its examination of privacy jurisprudence through *K.S. Puttaswamy v. Union of India* and reproductive autonomy cases such as *X v. Principal*

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Ref. Secretary, Health and Family Welfare Dept., Govt. of NCT of Delhi reflects the Date
dynamic and transformative potential of constitutional interpretation.

What particularly distinguishes this volume is its balanced approach. While it strongly advocates gender justice, it does not shy away from examining the alleged misuse of women-centric laws. Such a nuanced perspective is essential in preserving both the credibility of protective legislation and the sanctity of due process. Justice must remain gender-sensitive, yet anchored in fairness and constitutional morality.

The later chapters addressing cybercrime, trafficking, women as offenders, rehabilitation, probation, media narratives, and future technological challenges underscore that criminology cannot remain static. The criminal justice system must respond to evolving forms of vulnerability—digital exploitation, transnational matrimonial fraud, economic violence, and institutional neglect of women prisoners.

From a judicial standpoint, the greatest strength of this book lies in its insistence that equality must be substantive, not merely formal. Articles 14, 15, and 21 of the Constitution are not ornamental provisions; they are living commitments. Courts have a solemn duty to interpret them in a manner that dismantles structural disadvantages rather than perpetuate them.

She and the Scales of Justice is therefore timely and necessary. It bridges philosophy, criminology, constitutional law, and social reform. It will serve as a valuable resource for students of law, criminology scholars, judicial officers, advocates, policymakers, and all those engaged in the pursuit of gender justice.

As I reflect upon my years in judicial service, I am reminded that law is at its noblest when it protects the vulnerable and empowers the marginalized. This book reinforces that ideal. It challenges us not only to interpret the law but to reimagine it as an instrument of transformation.

I congratulate the author for undertaking this important scholarly endeavour and commend this work to all readers committed to justice, dignity, and equality under the rule of law.

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FOREWARD

26 DECEMBER 2025

She and the Scales of Justice: Women, Crime & the Law is a timely and powerful contribution to contemporary legal scholarship. In a world where women continue to confront layered challenges – social, structural, and institutional – this book offers a thoughtful and comprehensive exploration of crimes against women and the legal mechanisms that respond to them. By examining both doctrinal frameworks and lived realities, it reminds us that law is not merely a set of rules, but an instrument of justice that must reflect compassion, equality, and dignity.

One of the most compelling strengths of this work lies in its depth and clarity. Through its well-structured chapters, the book brings together legal analysis, case insights, policy perspectives, and socio-legal understanding to present a holistic view of women's experiences within the justice system. It sheds light not only on the nature of offences committed against women, but also on the systemic barriers that often impede their access to fair and timely justice. In doing so, it encourages readers to critically reflect upon existing legal frameworks and the need for reforms that are sensitive, inclusive, and progressive.

This book also resonates beyond legal discourse. It speaks to scholars, practitioners, students, policymakers, and every individual concerned with the rights and dignity of women. By addressing issues of accountability, victim protection, procedural fairness, and societal responsibility, it underscores the urgent need to strengthen legal institutions and societal attitudes so that justice is not delayed, denied, or diluted.

The authors deserve appreciation for their commitment, meticulous research, and clarity of vision. Their effort in presenting a balanced and insightful narrative makes this book an important academic resource as well as a meaningful contribution to ongoing conversations on justice and gender equality. It serves as a reminder that the true measure of justice lies in how effectively it protects the vulnerable and empowers the marginalized.

I am confident that *She and the Scales of Justice* will inspire thought, encourage dialogue, and contribute significantly to strengthening the legal and moral fabric of our society.




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DISTRICT & ADDITIONAL SESSIONS JUDGE,
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FOREWORD

The relationship between law and women has never been static. It has evolved through contestation, reform, resistance, and reinterpretation. From being subjects of protection to claimants of rights, and from objects of regulation to agents within the legal system, women's engagement with law reflects both the promise and the limitations of legal institutions. Any serious work that examines women, crime, and the law must therefore move beyond description and address the deeper structures that shape legal outcomes. This book undertakes that task with commendable breadth and seriousness.

She and the Scales of Justice: Women, Crime & the Law situates women not merely at the receiving end of legal processes but at their very centre. By engaging with criminology, history, constitutional philosophy, and lived social realities, the work recognises an essential truth: crime and criminal justice cannot be understood in isolation from gender, power, and social context. The book does not treat women as a homogeneous category, nor does it approach law as a neutral instrument divorced from societal hierarchies. Instead, it acknowledges complexity, contradiction, and evolution.

One of the notable strengths of this work is its historical grounding. By tracing women's legal position from ancient Indian legal traditions through medieval practices and colonial codification to post-independence constitutional developments, the book demonstrates how continuity and change coexist within the legal system. It reminds the reader that many contemporary debates on women's rights are not new, but are rooted in inherited structures of authority, property, and control.

The engagement with feminist criminology is another important contribution. Traditional criminology has often been male-centric in both theory and application, treating women either as anomalies or as passive victims. By foregrounding feminist

and intersectional perspectives, the book challenges these assumptions and broadens the analytical frame.

The chapters dealing with domestic violence, sexual offences, cyber crimes, trafficking, and misuse of protective laws are handled with balance and restraint. The book recognises the necessity of strong legal protections for women, while also acknowledging implementation gaps, institutional weaknesses, and the risk of oversimplification.

Equally significant is the discussion on women in conflict with law and on rehabilitation and reformation. These chapters remind us that the criminal justice system must not only punish but also reform, and that women offenders often arrive at conflict with law through pathways marked by vulnerability, coercion, and deprivation.

From a constitutional standpoint, the book resonates with the idea that equality is not merely formal, but substantive. Articles 14, 15, and 21 of the Constitution of India impose upon the State a duty not only to refrain from discrimination but to dismantle structural barriers that impede real freedom and dignity.

In the course of my practice of law, I have often seen how courts are called upon to balance individual liberty, social protection, and institutional integrity. Works such as this are valuable because they perform that balancing exercise with scholarship, context, and empathy.

This book is a timely and thoughtful contribution to the discourse on law and women. It will be of interest not only to students of criminology and law, but also to practitioners and policymakers concerned with building a justice system that is fair, responsive, and grounded in constitutional values.



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FOREWARD

*It is a matter of honour and Professional privilege to write the foreword to this book, **"SHE AND THE SCALES OF JUSTICE: WOMEN, CRIME & THE LAW – A MODERN CRIMINOLOGY"**, which offers a comprehensive and thoughtful examination of women's position within the criminal justice system. The subject addressed in this work is of substantial legal and social relevance, particularly in the Indian context where constitutional guarantees often remain underutilised due to lack of awareness and access.*

In my experience as an officer associated with the Women and Child Welfare Department, I have observed that a large number of women remain unaware of their legal rights, protective laws, and available institutional mechanisms. This lack of awareness frequently results in under-reporting of offences, delayed access to justice, and continued vulnerability. The gap between law as enacted and law as experienced on the ground remains a major challenge in achieving substantive gender justice.

This book engages meaningfully with that gap. It examines women not only as beneficiaries of welfare measures but as rights-holders under the Constitution and statutory law. Through its discussion on criminology, feminist perspectives, and specific legal issues such as domestic violence, sexual offences, cyber-crimes, trafficking, and rehabilitation, the book highlights how social conditions, institutional responses, and legal frameworks intersect in shaping women's experiences with crime and justice.

The structured and accessible presentation of legal concepts, combined with socio-criminological analysis, makes this work particularly valuable. It has the potential to enhance legal awareness among students, educators, social workers, and practitioners, and

to support those engaged in policy implementation and community outreach. Such informed scholarship contributes directly to strengthening institutional sensitivity and improving the effectiveness of welfare and protection mechanisms.

From the standpoint of women and child welfare administration, this book aligns closely with ongoing efforts to promote awareness, ensure protection, and facilitate empowerment through law. It reinforces the understanding that gender justice is not only a constitutional mandate but also an administrative responsibility requiring informed action and coordinated institutional support.

I appreciate the effort and commitment of the author in producing this well-researched and socially relevant work. I am confident that this book will serve as a useful academic and reference resource and contribute positively to the broader objective of advancing gender justice and legal awareness.



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Chapter 1

TRACING PATRIARCHY

Philosophical Roots of Women's Subordination and Feminist Consciousness

"If you have no knowledge, have no education, and you yearn not for the same, you possess intellect but work not on the same, how then can you be called a human being?"

-Savitribai Phule

CONCEPTUAL FOUNDATION

Confucius insisted that a woman's subordination to a man was one of the cornerstones of social order. Aristotle similarly regarded male dominance in the family as natural and essential. He considered the man to be the undisputed leader of the household, with the woman, in his way of thinking, in a lower and dependent position.¹ Manu, the ancient Hindu law-giver, condemned women to a life of perpetual dependence. Nietzsche, the German philosopher, is even on record as stating, 'When you approach a woman, take a whip with you.' Women under common law systems were considered nothing more than possessions. In classical Greece, even during the zenith of its civilization, women led lives confined to their homes and deprived of basic rights. The Spartan society at times did away with women who could not give birth to robust children. The great and civilized Roman Empire also granted little legal status to women; husbands enjoyed absolute authority over their wives, treating them as mere servants.²

In short, women in all societies were made to face subordination and were restricted to narrowly defined roles. Thinkers like Aristotle and Rousseau stereotypically labelled characteristics such as modesty, delicacy, and submissiveness as specifically feminine and naturally suitable for women. Even Plato, in his Republic, did speak of equal status for women, but his view remained a singular exception to the general trend³. Marxist and allied socialist thinkers, Karl Marx and Friedrich Engels being the most famous, but

¹ Edgar Bodenheimer, *Jurisprudence: the Philosophy and Method of the Law* (Harvard University press, Cambridge 1974)

² Lady Evelyn Cobbold, *Pilgrimage to Mecca* (Arabian Publishing Ltd. 2009) 193.

³ Rama Mehta, *Socio-legal Status of Women* (Mittal Publications, New Delhi 1987).

by no means the only ones to do so, argued that women, formerly independent and equal participants in social production, were made subordinate wives and dependants. They traced this decline in status to the emergence of privately owned property and to family forms which both supported and maintained male supremacy. Even the major political philosophers—for example, Hobbes and Locke—who argued for human equality, excluded women from the principle.

HISTORICAL CONSTRUCTION OF WOMEN'S INFERIOR STATUS

Feminism is a broad field of inquiry and activism concerned with the depth of women's subordination, the explanation for it, and the strategies towards substantive improvements in women's lives⁴. Constitutional feminism would imply the use of constitutional provisions and authority to further the status of women. It envisages commitments to feminist goals at the social and individual levels complemented by democratic mechanisms which guarantee that women have equal opportunities in decision-making. However, given the limitations imposed by democratic processes and the risks of parliamentary majoritarianism, an interpretive approach to the Constitution and the legal system should be one that supports women and repudiates subordination. In a patriarchal social order—where freedom is related to the quantum of power—women's limited access to power often translates into reduced freedoms. Empowerment becomes the surest route to genuine liberation as a way to bridge the gap and make freedom real for women.

Instead of an uncritical reliance on democratic forces, appropriate interpretive techniques can protect their interests. This is a perspective that differs from the dominant theories of justice, which, according to Aristotle, were marked by “some sort of equality”.⁵ A considerably more egalitarian view of justice was put forward by the American sociologist Lester Ward, who declared that “*justice consists in the enforcement by society of an artificial equality in social conditions which are naturally unequal.*” Karl Marx and Friedrich Engels foresaw a future social order in which people would be genuinely equal in that all of their individual needs could be met. By contrast, Herbert Spencer took a thoroughly different tack, relating justice not to equality but to liberty. As a result, most philosophies of justice have focused on either equality or liberty as the central axis on which the problem of justice is thought to turn. The philosophy of justice developed by John Rawls

⁴ Clare Dalton, “Where We Stand: Observations on the Situation of Feminist Legal Thought” (1987) 3 Berkeley Women's LJ

⁵ Lester F. Ward, Applied Sociology (Boston 1906)

incorporates freedom and equality in its consideration of justice. His theory consists of two main principles:

1. Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others; and
2. Social and economic inequalities are to be arranged so that they are, in the judgment of competent persons, likely to be to the general benefit, and in such a way that offices and positions of command are open to all.

The first principle is prioritized over the second⁶. Nevertheless, throughout history, equality and freedom have remained a dream for women. In the various and historically vast cultures, there is a common thread: to one degree or another, women are held in contempt. This unequal status of women-in fact, an affront to human dignity and human rights-has increasingly become a major crisis in human development worldwide. The complete development of personality, essential freedom, and full participation by women in political, social, economic, and cultural life, as well as their contribution to national development, depend on social and family stability. All forms of gender-based discrimination breed social unrest.⁷

The worldwide women's movement represents a broad-based feminist analysis of society. Many of the ideas considered radical in contemporary feminism echo concerns voiced by nineteenth-century feminists as well. Past and present activists have all engaged in a deep re-examination of women's functions in all areas of life and of the power relations that determine interaction between men and women in social, political, economic, and cultural arrangements. They uniformly view women as a subordinate class and link their subordination to male-controlled institutions and values.

Before proceeding further, let me clarify a few terms—women's rights, women's liberation, and the women's movement. The first term, women's rights, denotes that part of the movement that is concerned with winning legislative, economic, and educational reform which would eliminate gender discrimination. Activists associated with this area typically work through established political and legal channels. These organizations are usually national in scope and often comprised of moderate or conservative feminists. In some usages, the terms women's liberation or women's movement are used to describe an analysis of the causes, character, and scope of women's oppression, with special emphasis upon the psychological aspects of oppression. Correspondingly, this component of the movement relies largely

⁶ John Rawls, *A theory of Justice* (Cambridge 1971).

⁷ Judith Hole and Ellen Levine, *Rebirth of Feminism* (2nd Edn., Quadrangle /the New York Times Book Co 1974)

upon the small, local consciousness-raising groups. Lastly, the general term women's movement encompasses all shades of feminist activities, from moderate reformers to radical advocates.⁸ The organized woman's movement took form during the nineteenth century - a time of territorial expansion, industrialization, rise of reform movements, and serious intellectual ferment with its focus on individual liberty, human rights, and universal education. Education was one of the earliest arenas in which efforts were made to expand opportunities for women. Frances Wright, one of the very first woman public speakers, referred to women as an oppressed class and insisted that legitimate human advance would be impossible until women assumed their proper place in society.⁹

The political origins of the women's rights movement can be traced back to the abolitionist movements of the 1830s. As women became actively involved in the struggle against slavery, they soon realized that political equality with men was withheld from them. Excluded from membership in various organizations and often obstructed from speaking publicly, they also faced discrimination directly. The 1840 World Anti-Slavery Convention in London further crystallized their realization that their freedom could not be achieved without challenging the very structures of their oppression.

On July 14, 1848, a notice was published in Seneca Falls, New York, advertising a Women's Rights Convention. Five days later, roughly 300 attendees adopted a Declaration of Sentiments and twelve resolutions. The concerns expressed in this Declaration are remarkably similar to the concerns of modern feminist discourse.¹⁰

THINKERS ON "WOMEN"

This humanity is male and man defines woman not in herself, but as relative to him; she is not regarded as an autonomous being She is defined and differentiated with reference to man and not he with reference to her; she is the incidental; the inessential as opposed to the essential. He is the subject; he is the Absolute-she is the other

-Simone de Beauvoir¹¹

For almost two centuries, gender has influenced cultural practices and legal codes around the world. Although women make up half of the world's population, their representation in politics and their overall social influence

⁸ *Ibid*

⁹ Modelled on Declaration of Independence.

¹⁰ Seneca Falls Convention, 1848.

¹¹ H.M. Parshley (Tr.), S. Beauvoir, *The Second Sex* (Alfred Knopf, New York 1983).

remain limited. In many aspects of social life, gendered inequities persist; several of these distinctions appear minor or even natural, but they add up and have considerable consequences for most women. While there are meaningful changes in the direction toward gender equality, substantial chasms remain—much of which is poorly understood. Gender equality not only entails equal numbers but also equal power and social status. Eleanor Holmes Norton states that only through relentless and intentional efforts will policies like affirmative action and comparable worth, both of which are necessary for women to achieve true equality. From the view of Durkheim, gender role differentiation remains constant because people strongly enforce norms by placing penalties both internal and external on actions believed to be deviant.¹²

It is necessary to look at the social relations between the sexes if one is to understand why women's subordinate status endures. Societies maintain a complex set of stereotypical images and assumptions about women, reinforced through various cultural and institutional mechanisms. Given the gender role expectations, distinct roles of men and women are made clear; once internalised, such roles rarely come into question and are treated as objective truth. According to Goffman, gender ideals are central to maintaining these distinctions, and such ideals provide an endless reservoir of justifications for regulating individuals' behaviour or legitimising existing social arrangements.¹³

It is, therefore, significant to explore how leading philosophers conceptualized women since their writing has formed the basis of normative behaviour and social expectation. Few philosophers wrote about women's rights, but what they did write about seems to reflect their views on the issue. They were, above all, interested in the cohesiveness and stability of the State, something that could be furthered through well-organized gender roles. At the same time, the status of women was often used as fodder for plays and satires, which suggests that questions about women's rights were in the air.

Unconventional ideas of Plato regarding an ideal State can be read from works such as *The Republic*, *Laws*, and his *Dialogues*. In *The Republic*, he presented a unique system where a king as well as a queen could be chosen as rulers, which hinted at his endorsement of gender equality. However, this belief in equality was based on reason rather than humanitarian motives. Nevertheless, he reconsidered this stance in *Laws*, where he advocated for private homes, thus relegating women to their traditional roles. In this

¹² Josefina Figueira-McDonough and Rosemary C. Sarr, *The Trapped Woman* (Sage Publications, New Delhi 1987).

¹³ E. Goffman, "The Arrangement Between the Sexes"(1977) *Theory and Society*

context, the nature of women was believed to be entirely different from men and was found better suited for a home. It therefore followed that women, restricted to homes, would be less likely to lean toward civic virtue. It was thus necessary for society that a so-called "natural flaw" in women be moulded into those qualities termed "feminine purity."¹⁴

This differential treatment of women in the Republic and the Laws is not due to a change in Plato's views, but to the fact that private property and the family were abolished in the former and reinstated in the latter. Critics argue that this reinstitution in fact made women the private property of men. The family and its demands provide the context in which a woman's role is specified. The socialization and control to which she is subjected are designed to guarantee that her essential nature is shaped and preserved in conformity with this function.¹⁵

Aristotle held that everything obtains its character from its function; thus, his discussion of women is also functional. He believed that everything has a purpose and exists for the common good, and he proposed a hierarchical ordering ending with the human species at the pinnacle. Within the human species, a similar hierarchy functions as a natural law. Based on this, he pronounces the Greek State - Polis - to be natural and, therefore, the highest form of State and the model form of family organization. By attributing to the Greek State a "natural" status, Aristotle begins his treatise with an account of the development of the Polis from the household and the village.

The Polis is understood as an organism, whose character can be gauged by its origin, development, and growth. The household is the beginning, based upon two principles of human nature: the distinction of male and female, and the division of ruler and ruled. To the question as to who is the ruler of the State, Aristotle's response is that it is the man who exercises the right of control as father, husband, and master. The basis of male control is the supposed natural inferiority of women; the woman is directed towards child-bearing, while man provides the form and the woman the matter.¹⁶

If there exists a relationship of ruler and ruled, why should the ruled never rise to rulership? Why is the inequality permanent for women? Aristotle tries to square the perennial inequality with the equality implicit in political rule by arguing that wherever there subsists a relationship of ruler and ruled—

¹⁴ Susan Moller Okin, *Women in Western political Thought* (Princeton University Press, New Jersey 1979) 69-70

¹⁵ *Ibid*

¹⁶ R.G. Mulgan, *Aristotle's Political Theory: An Introduction for Students of Political Theory* (Clarendon Press, Oxford 1977) 44-47

even among equals—the very fact of ruling renders the ruler inherently different and superior.

Rousseau's ideas on women typify attitudes that were common throughout the Western world. In the *Discourse on Inequality*, he associates social inequality with private property, but argues that nature gives men equality in all other respects. The role of “nature” in Rousseau's texts is important, as it provides the grounding through which he allocates a specific role to women. He argues that women have a significantly different status because it is a part of their nature: procreative capability makes them different from men, who possess boundless capability and rationality; while women are capable of creativity, they are assumed to be functionally determined by reproductive roles, a potential that has been cut short. Thus, his general implication seems to be that woman symbolizes the origin of evil. To him, modesty was the only virtue of a woman, and man had absolute authority over his wife.¹⁷

Examining these natural traits individually, Rousseau's mention of the charm women wield over men perhaps is related to his view of women as a source of evil. To offset this fear, he stresses men's dominance in unambiguous terms and claims no regret about it. He seems to begrudge the ambition of some women to take on roles that nature has reserved for the male, and he insists that an ordinary woman can get along well by retaining her natural coquetties across diverse behavioural situations. Thus, he depicts women as the source of evil, and in support of this assertion, he extols a litany of “feminine qualities”—shame, stupidity, weakness, and ignorance—and disavows intellectual pursuits for women.¹⁸

Rousseau's ideas on the intellectual development of women are anathema to scholars today, especially those espousing gender emancipation. He bases his reflections on the assumption that nature intended women essentially for domestic roles. Nevertheless, those who defend Rousseau's thinking argue that he did not altogether exclude women from the pursuit of intellectual development; the fact is that he opposed a state of affairs in which husbands and wives could not share communications. What he apparently advocated was that women should have an ability to reason practically in line with his idea of “sensitive reason,” leaving the sphere of “logical analysis” to men. He saw marriage as an institution for the development of good sons, husbands, and fathers and put forward a sentiment-and-chastity-based family life, preserved by the authority of the husband.

¹⁷ *Ibid* 140-147

¹⁸ Susan Moller Okin, *Women in Western political Thought* (Princeton University Press, New Jersey 1979) 99-100

The more progressive ideas of thinkers like John Stuart Mill were a reflection of the general exclusion of political status for women in the period. The family took on a peculiar identity and importance in English society, wherein contractarian reciprocity slowly replaced assumptions of status, and rationalism and education eroded the bases of a status-based social order. Philosopher contemporaries who refused women political status include Maxwell and Roger Coke, who categorized women as incapable of fitness for civil business¹⁹. The advanced ideas, however, are reflected by Hobbes, Locke, Jeremy Bentham and John Stuart Mill.

Locke believed that familial authority was a joint affair of the parents, and the parental power should be thought of as a joint dominion over children. Here, mothers play a significant role in the nurturance process. Contrary to the seventeenth-century patriarchalism, Hobbes held that paternal power in the state of nature does not emanate from the father alone. For if the source of patriarchal sovereignty is procreation, then the mother has an equal right to the child since she too is a participant in generation. But shared power is impossible because governance cannot be divided between two masters, and supreme power is not divisible. Hobbes therefore rejects the genotypic origin of governmental authority in fathers and maintains that subordination is the result of conventions and human wills or consent. His attitude toward women is then ambivalent.

Jeremy Bentham was a latent feminist and took a radical approach by trying to mobilize the untapped intellect and energy of women. He held the view that women have more sensibility than men, although they are physically weak; despite this, women are more suited generally for domestic life, whereas men are more suited for public life. However, what is important here is that Bentham did not seek to exclude women from public life; in fact, he believed in universal suffrage and the secret ballot.²⁰

WOMEN IN ANCIENT LEGAL AND SOCIAL ORDERS

The position of women in ancient legal and social orders was deeply shaped by patriarchal structures, religious doctrines, customary practices, and economic relations. In most ancient civilizations, law was not merely a system of rules but a reflection of prevailing social hierarchies, where gender roles were rigidly defined and reinforced. Women were largely perceived

¹⁹ Gordon J. Schochet, *Patriarchalism in Political Thought* (Basil Blackwell, Oxford 1975) 71

²⁰ Mary Peter Mack, *Jeremy Bentham: An Odyssey of Ideas, 1748-1792* (Heinemann, London 1962) 323

through relational identities—as daughters, wives, or mothers—rather than as autonomous legal subjects.

In ancient Indian society, legal texts such as the *Manu smriti*, *Yagnakaya Smriti*, and *Narada Smriti* played a decisive role in regulating women's lives. While these texts accorded women a certain degree of reverence—often idealising them as symbols of purity and moral virtue—they simultaneously imposed strict limitations on their autonomy. A woman's legal capacity was mediated through male guardianship, with the father, husband, or son exercising control over her property, movement, and decision-making. The doctrine of *stridhan* recognised women's right to certain forms of property, yet its control and alienability were often restricted in practice.

Similarly, in ancient Greek and Roman legal systems, women were excluded from political participation and public life. Roman law placed women under the authority of the *paterfamilias*, limiting their contractual capacity and legal independence. Even where women enjoyed relative economic privileges, such as in later Roman society, these rights were exceptions rather than norms and did not challenge the fundamental patriarchal order.

Across ancient civilizations, marriage functioned as a key legal institution governing women's sexuality, labour, and reproduction. Practices such as child marriage, polygamy, and the absence of consent in marital arrangements reinforced women's subordinate status. Legal sanctions for sexual transgressions were disproportionately harsh on women, reflecting a moral code that prioritised male honour and lineage over female agency.

Thus, ancient legal and social orders institutionalised gender inequality by embedding it within law, religion, and custom. While isolated instances of female authority and scholarship existed, they did not substantially disrupt the overarching structure of male dominance that defined women lived realities.

MARXIST AND SOCIALIST PERSPECTIVES ON WOMEN'S SUBORDINATION

Marxist and socialist theories offer a materialist explanation for women's subordination, locating gender inequality within the broader framework of economic relations and class structures. Unlike liberal feminist approaches that emphasise legal equality, Marxist perspectives argue that women's oppression is intrinsically linked to the development of private property, capitalism, and the sexual division of labour.

Friedrich Engels, in *The Origin of the Family, Private Property and the State*, contended that the historical defeat of women coincided with the emergence of private ownership and inheritance systems. According to Engels, the

patriarchal family arose as an economic unit designed to ensure male control over property and lineage, thereby reducing women to instruments of reproduction and domestic labour. This marked a shift from earlier communal societies, where women allegedly enjoyed greater social status.

Marxist feminists further argue that capitalism exploits women through both paid and unpaid labour. Women's domestic work—childcare, household management, and emotional labour—remains largely unpaid and unrecognised, yet it is essential for sustaining the capitalist workforce. By relegating women to the private sphere, capitalism perpetuates economic dependence and reinforces gender hierarchies.

Socialist feminists expand this analysis by acknowledging that women's oppression cannot be explained solely through class relations. They emphasise the dual systems of patriarchy and capitalism, arguing that both operate simultaneously to marginalise women. Legal structures, in this view, serve capitalist interests by regulating women's reproductive roles, controlling labour participation, and maintaining social order.

From a legal standpoint, Marxist and socialist critiques highlight how laws relating to marriage, labour, property, and reproduction often reflect economic priorities rather than gender justice. Protective labour laws, for instance, while seemingly beneficial, have historically been used to exclude women from higher-paying employment under the guise of safeguarding morality and family values.

Thus, Marxist and socialist perspectives contribute a critical understanding of women's subordination by revealing its structural and economic foundations, urging transformative social change rather than mere formal legal reforms.

WOMEN POST-INDEPENDENCE LEGAL DEVELOPMENTS

The post-independence period marked a significant turning point in the legal status of women, particularly in India, as the newly formed State undertook the task of restructuring society on principles of equality, justice, and constitutionalism. The adoption of the Constitution of India in 1950 laid a strong legal foundation for gender equality by guaranteeing fundamental rights such as equality before law (Article 14), prohibition of discrimination on grounds of sex (Article 15), and equal opportunity in public employment (Article 16).

One of the most notable developments in the post-independence era was the codification and reform of personal laws. The Hindu Code Bills—enacted between 1955 and 1956—introduced substantial changes in matters of marriage, divorce, succession, and adoption. Laws such as the Hindu

Marriage Act, Hindu Succession Act, and Hindu Adoption and Maintenance Act sought to dismantle deeply entrenched patriarchal norms by recognising women's rights to property, consent in marriage, and legal remedies against marital injustice.

In the realm of criminal law, post-independence reforms increasingly addressed violence against women as a serious legal and social concern. Legislative interventions such as amendments to the Indian Penal Code to criminalise dowry deaths, domestic cruelty, sexual harassment, and rape reflected a growing recognition of women's bodily autonomy and dignity. The enactment of special legislations, including the Protection of Women from Domestic Violence Act, 2005, further expanded the scope of legal protection by acknowledging economic and emotional abuse alongside physical violence.

Judicial activism also played a crucial role in advancing women's rights. The Indian judiciary, through progressive interpretations of constitutional provisions, has addressed issues such as workplace harassment, reproductive rights, and gender discrimination. Landmark judgments have reinforced the principle that equality is not merely formal but substantive, requiring the State to address structural disadvantages faced by women.

Despite these legal advancements, post-independence developments reveal a persistent gap between law and lived reality. Social customs, lack of awareness, and uneven enforcement continue to hinder the effective realisation of women's rights.

WAY FORWARD

The way forward lies in adopting a holistic and intersectional approach to gender justice—one that recognises the interconnection between law, society, economy, and culture.

1. First, there is a pressing need to strengthen the implementation of existing laws through improved institutional accountability, gender-sensitive policing, and accessible judicial mechanisms. Laws must move beyond symbolic recognition and translate into tangible protections for women across social strata.
2. Second, legal reforms should be informed by lived realities. Policymaking must incorporate voices of women from marginalised communities, acknowledging how caste, class, religion, disability, and geography intersect with gender to produce layered forms of disadvantage. This requires continuous review of personal laws, labour regulations, and criminal justice policies through a feminist and rights-based lens.

3. Third, education and legal awareness must be prioritised as tools of empowerment. Without awareness of rights and remedies, legal provisions remain ineffective. Educational institutions, civil society organisations, and the State must collectively work towards dismantling gender stereotypes and fostering a culture of equality from an early age.

Finally, the judiciary must continue to play a proactive role in interpreting laws in light of constitutional values, international human rights norms, and evolving social realities. Gender justice should not be viewed as a concession but as an integral component of democratic governance and the rule of law.

CONCLUSION

The historical examination of women's position in ancient legal and social orders, the critical insights offered by Marxist and socialist perspectives, and the analysis of post-independence legal developments collectively reveal that women's subordination is neither accidental nor isolated. These early frameworks laid the foundation for persistent gender inequalities that were later rationalised through economic and ideological structures, as highlighted by Marxist and socialist critiques. Even in the post-independence era, despite the constitutional promise of equality and progressive legislative reforms, the lived experiences of women continue to be shaped by patriarchal norms, economic vulnerability, and uneven enforcement of laws

However, the post-independence legal landscape also demonstrates that law possesses transformative potential when guided by constitutional morality and social consciousness. Legislative reforms, judicial interventions, and evolving interpretations of equality have gradually expanded the scope of women's rights, moving beyond formal equality towards substantive justice. Yet, legal reform alone is insufficient to achieve genuine emancipation unless it is accompanied by social, economic, and institutional change.

Chapter 2

FROM DHARMA TO DISSENT

Women's Position in Ancient Indian Legal and Social Orders

“To understand the present legal status of women, one must first understand the foundations history dared to write—and often dared to hide.”

— Justic P.N. Bhagwati

CONCEPTUAL FOUNDATIONS OF WOMAN-HOOD IN ANCIENT INDIAN JURISPRUDENCE

conceptualisation of womanhood was further reinforced through the normative hierarchy embedded within ancient legal texts, where male authority was treated as both natural and necessary. Law did not operate as a neutral instrument but as a means of preserving an idealised social order in which gender roles were rigidly demarcated. The emphasis on obedience, modesty, and sacrifice as feminine virtues transformed ethical expectations into enforceable social norms, thereby legitimising women's subordination within both the household and the broader community.

The notion of *stri-dharma* played a pivotal role in shaping women's legal and moral obligations. Unlike *dharma* as a universal principle applicable to all individuals, *stri-dharma* was gender-specific and closely tied to service, chastity, and devotion to male kin. This differentiated moral code limited women's scope of action and justified their exclusion from public life, governance, and formal legal processes. Consequently, womanhood was framed less as a site of rights and more as a duty-bound existence, reinforcing asymmetrical power relations.

Moreover, the symbolic glorification of women as mothers and goddesses functioned as a subtle mechanism of control rather than empowerment. By idealising sacrifice and endurance, the legal and social order normalised suffering as an inherent aspect of womanhood. This idealisation obscured structural inequalities and discouraged resistance, as deviation from prescribed roles was often equated with moral transgression. The law thus merged morality with social discipline, rendering dissent both unlawful and socially unacceptable.

The gradual shift from fluid Vedic practices to rigid Brahmanical legalism marked a decisive moment in the institutionalisation of patriarchy. As religious authority became centralised, women's customary freedoms were curtailed in favour of textual orthodoxy. Customary practices that may have allowed flexibility were increasingly subordinated to scriptural interpretation, leaving little space for contextual justice or individual autonomy. This transition illustrates how legal codification, while promoting uniformity, also entrenched gender inequality.

Importantly, these ancient jurisprudential assumptions did not remain confined to their historical context. They permeated subsequent legal traditions and influenced colonial and post-colonial personal laws in India. Ideas of female dependency, moral guardianship, and family-centric justice continue to inform contemporary legal reasoning, particularly in matters relating to marriage, sexuality, and honour. The persistence of these notions demonstrates how historical constructions of womanhood shape modern legal consciousness.

A critical engagement with ancient Indian jurisprudence, therefore, is not merely an exercise in historical analysis but a necessary step towards understanding present-day gender bias within the legal system. By interrogating the philosophical foundations of womanhood embedded in early legal thought, feminist jurisprudence seeks to dismantle inherited assumptions and advocate for a rights-based conception of women as autonomous legal persons. Such re-evaluation enables the law to move beyond symbolic reverence toward substantive equality and justice.

RISE AND EVOLUTION OF WOMEN

The rise and evolution of women is not a linear narrative of continuous progress but a complex historical process shaped by social transformations, economic changes, cultural ideologies, and legal developments. Across civilizations, women's status has fluctuated—ranging from relative autonomy in certain historical moments to pronounced subordination during others. Understanding this evolution requires examining how power, labour, and law have interacted to define women's roles and rights over time.

In early human societies, particularly in hunting and gathering communities, women played a central role in economic survival through food collection, caregiving, and knowledge transmission. Anthropological studies suggest that such societies often exhibited more egalitarian gender relations, as survival depended on collective contribution rather than rigid hierarchies. However, the transition to agrarian economies and the emergence of private property altered gender dynamics significantly. Control over land and surplus production became concentrated in male hands, leading to the

institutionalization of patriarchy and the marginalization of women from decision-making processes.

The evolution of social institutions such as family, marriage, and inheritance further reinforced gender hierarchies. Women's reproductive roles became closely regulated, and their labour within the household was naturalized rather than recognized as economic contribution. Legal systems across ancient and medieval societies codified these inequalities by restricting women's legal capacity, property rights, and public participation. Despite these constraints, women continued to exercise influence through informal networks, cultural practices, and resistance within domestic and community spaces.

The medieval and early modern periods witnessed both stagnation and subtle shifts in women's status. While religious doctrines often reinforced obedience and moral restraint for women, education and spiritual movements created limited spaces for intellectual engagement and leadership. The rise of mercantile economies and early capitalism gradually drew women into wage labour, albeit under exploitative conditions and without legal protection. This period marked the beginning of women's visibility in economic life, though not yet their recognition as equal participants.

A decisive transformation occurred with the advent of modernity, industrialization, and political revolutions. The demand for labour during industrial expansion altered traditional gender roles, enabling women to enter factories, offices, and public institutions. Simultaneously, enlightenment ideals of liberty, equality, and rights sparked critical debates on women's exclusion from citizenship and legal recognition. Early feminist movements emerged as a response to these contradictions, challenging patriarchal laws and advocating for education, suffrage, and property rights.

In the twentieth century, women's evolution accelerated through organised social movements, legal reforms, and international human rights discourse. Women increasingly asserted their identities beyond familial roles, demanding autonomy over their bodies, labour, and political participation. Legal recognition of equality, labour protections, reproductive rights, and anti-discrimination measures reflected a growing acknowledgment of women as independent legal subjects.

In post-colonial societies, including India, the evolution of women has been shaped by the dual forces of constitutionalism and social tradition. While constitutional guarantees and legislative reforms have expanded women's rights, social realities continue to impose constraints through customs, economic dependency, and systemic violence. Nevertheless, women's participation in education, governance, law, and social movements

demonstrates an ongoing transformation that challenges historical subordination.

The rise and evolution of women, therefore, is best understood as a dynamic process of struggle, negotiation, and resistance. It reflects not only changes in law and policy but also shifts in social consciousness and power relations. This evolving journey underscores the reality that women's empowerment is neither automatic nor complete; it requires sustained engagement with legal structures, social norms, and institutional practices to ensure that progress is both meaningful and inclusive.

STATUS OF WOMEN IN ANCIENT CIVILIZATIONS

The role and status of women in ancient India have long been a subject of both reverence and controversy. While some scriptures and texts portray women as symbols of power, wisdom, and dignity, others reflect deeply entrenched patriarchy and control. To understand the evolution of women's rights, victimhood, and agency in Indian society, it is essential to delve into ancient Indian legal traditions where law, morality, religion, and social customs were tightly interwoven.²¹

This chapter seeks to unpack the complex position of women within ancient legal frameworks such as the Dharma Shastra, Smritis, Vedas, Manu smriti, and the evolving customs of different regions and periods. It aims to highlight both the empowering and oppressive dimensions of these traditions, laying the groundwork for understanding how deep-rooted ideas continue to influence gender justice in modern India.

1. The Vedic Period: A Time of Relative Dignity

The early Vedic period (roughly 1500–1000 BCE) is ²²often regarded as a time when women enjoyed comparative freedom and respect. Women were allowed to:

1. Participate in religious rituals (e.g., the *Upanayana* or sacred thread ceremony was not restricted to males),
2. Compose hymns (e.g., female sages like Gargi and Lopamudra were respected scholars),
3. Access education and learning (through the Gurukul system),
4. Choose their partners through practices like *Swayam Var*.

²¹ M.P. Jain, *Outlines of Indian Legal History* (7th ed. 2014).

²² Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* (1994), ch. 1 (for discussion on women's autonomy in early India).

While the society was not entirely egalitarian, the position of women was not as subjugated as in later periods. The legal and spiritual systems, often governed by oral traditions and evolving customs, did not yet enforce rigid control over women's autonomy.

2. The Later Vedic and Smriti Periods: Codification of Patriarchy

With the passage of time, especially during the Later Vedic period (after 1000 BCE), the status of women gradually declined. Legal codes began to be documented in texts known as Dharma shastras and Smritis. Among them, the most well-known and controversial is the Manu smriti (circa 200 BCE to 200 CE).

According to Manu Smriti:

1. A woman was expected to be under the control of her father in childhood, husband in youth, and son in old age.
2. Women were seen as needing protection rather than autonomy.
3. Widow remarriage was discouraged, and in some interpretations, Sati (self-immolation of widows) began to be viewed as idealized devotion.
4. Women were denied independent property rights, especially over land.

While Manu smriti is often criticized rightly for its patriarchal tone, it must be noted that it was not the only text in ancient India. Other Smritis like Yagnakaya Smriti were comparatively more liberal, granting women certain rights over *Stridhan* (women's property) and inheritance under specific conditions.

3. Marriage, Morality, and Control

Ancient Indian law placed immense emphasis on marriage as a sacred duty (Dharma). For women, chastity and obedience were elevated as supreme virtues. Adultery by a woman was treated far more harshly than by a man reflecting deep gender bias.

Crimes such as rape, though mentioned, were often interpreted through the lens of family honor rather than the rights of the woman. The concept of consent was loosely defined, and many legal responses were more concerned with the damage to patriarchal lineage than with the trauma or autonomy of the victim.

However, some exceptions existed. In certain tribal and regional customs particularly among matrilineal communities in southern and northeastern India women retained greater autonomy in marriage, property, and community participation.

4. Women as Legislators, Rulers, and Thinkers

Despite legal constraints, history provides examples of women who defied normative boundaries and shaped the legal political sphere:

1. Gargi Vacha Navi and Maitreyi were renowned philosophers who participated in legal and metaphysical debates.²³
2. Queen Didda of Kashmir, Rani Rudrama Devi, and Rani Durgavati were rulers who made administrative and legal decisions in their territories.²⁴
3. Women were sometimes judges in local assemblies (Sabha's) or decisionmakers in village councils.

Such examples reveal that legal tradition in India was not monolithic; it was shaped by time, region, caste, class, and political power.

5. Custom vs. Text: The Dual Nature of Ancient Law

Ancient Indian legal systems were pluralistic. Law was not just what was written in texts, but also what was practiced as custom (achara). Often, women's rights were better preserved in local customs than in elite Sanskrit law. For example:

1. In many regions, widow remarriages are socially accepted.
2. Women could inherit movable property as part of their *stridhan*.
3. In some traditions, women could seek divorce or separation in cases of abuse or neglect.

This duality between scriptural patriarchy and local flexibility defines the complexity of ancient Indian legal traditions.

MARRIAGE, FAMILY, AND REPRODUCTIVE CONTROL

Marriage in ancient Indian society was regarded not merely as a personal union but as a sacred institution essential for maintaining social and cosmic order. It was deeply embedded within religious duty and patriarchal authority, leaving little room for women's consent or autonomy. The sacramental nature of marriage rendered it indissoluble, reinforcing the subordination of women within the marital household.

Women's reproductive capacity was central to their legal and social value. Control over female sexuality and reproduction was exercised through strict norms governing chastity, fidelity, and motherhood. Legal and religious texts imposed severe sanctions on women for deviations from prescribed sexual

²³ A.L. Basham, *The Wonder That Was India* 89–91 (3d ed. 1981).

²⁴ F.E. Pargiter, *Ancient Indian Historical Tradition* 56–58 (1922).

conduct, while similar transgressions by men were treated with relative leniency. This asymmetry reveals the gendered moral framework underlying ancient family law.

Family structures were organised to preserve lineage and property through male succession, further marginalising women's agency. Practices such as child marriage and restrictions on widow remarriage exemplified how reproductive control functioned as a tool of social regulation. Though these norms were justified in the name of tradition and morality, they systematically denied women bodily autonomy and personal choice.

Modern personal laws, despite reforms, continue to reflect remnants of these ancient assumptions, particularly in matters of marriage, divorce, and reproductive rights. Understanding these historical foundations is crucial to critically evaluating present-day family law and advocating for substantive gender equality.

GUARDIANSHIP, LEGAL PERSONALITY, AND ACCESS TO JUSTICE

Ancient Indian legal systems largely denied women independent legal personality by placing them under continuous male guardianship. The doctrine that a woman must be protected by her father in childhood, her husband in marriage, and her son in old age exemplifies this framework. While framed as protective, guardianship operated as a mechanism of control, effectively excluding women from direct participation in legal and economic transactions.

Women's access to justice was mediated through male representatives, limiting their ability to assert rights or seek remedies independently. Legal proceedings involving women often prioritised familial reconciliation over individual justice, reinforcing the idea that women's grievances were private matters rather than legal wrongs. This resulted in systemic silencing of women's experiences of harm and injustice.

The absence of full legal personality also restricted women's capacity to own property, enter contracts, or represent themselves in courts. Although concepts like *Stridhan* provided limited economic security, they did not translate into comprehensive legal empowerment. These structural limitations laid the groundwork for long-standing gender disparities in legal access.

In contrast, modern constitutional law recognises women as equal legal persons entitled to dignity, autonomy, and justice. However, the persistence of procedural barriers, social stigma, and institutional bias indicates that the transition from guardianship to genuine legal agency remains incomplete.

CONSTITUTIONAL FEMINISM & JUDICIAL REINTERPRETATION

Constitutional feminism in India represents a decisive departure from patriarchal legal traditions, including those rooted in ancient jurisprudence. The Indian Constitution enshrines equality, non-discrimination, and dignity as fundamental values, providing a transformative framework for reinterpreting laws that historically subordinated women. Articles 14, 15, and 21 have become powerful tools for challenging gender-based injustice.

The judiciary has played a crucial role in dismantling discriminatory customs by invoking constitutional morality over social morality. Through progressive judgments, courts have questioned practices that deny women autonomy in matters of marriage, sexuality, inheritance, and religious participation. Judicial reinterpretation has thus served as a corrective lens, exposing the inherent bias embedded in traditional legal norms.

Constitutional feminism does not seek to erase cultural traditions but to subject them to scrutiny through the principles of justice and equality. By re-reading ancient concepts such as *dharma* in light of constitutional values, courts have attempted to reconcile tradition with modern human rights standards.

Nevertheless, the success of constitutional feminism depends not only on judicial pronouncements but also on societal transformation. Law must function as an instrument of social change, challenging entrenched patriarchal attitudes and ensuring that women's rights are realised in practice, not merely in theory.

CONTEMPORARY ISSUES – FEMINIST CRIMINOLOGY

Contemporary feminist criminology addresses the persistent and evolving gendered dimensions of crime, victimisation, and justice that traditional criminological theories have often overlooked. It emphasises that crime involving women cannot be understood in isolation from social structures such as patriarchy, economic inequality, and institutional bias.

A central issue is the continued prevalence of gender-based violence, including domestic abuse, sexual offences, trafficking, and cyber-enabled crimes. Feminist criminology highlights how such violence is sustained by societal norms that normalise control over women's bodies and discourage reporting through stigma and victim-blaming. Despite legal reforms, systemic failures in investigation, prosecution, and victim support remain significant challenges.

Additionally, feminist criminology critiques the gap between formal legal equality and substantive justice. Procedural neutrality often fails to account for power imbalances, resulting in unequal outcomes. Contemporary discourse therefore stresses the importance of intersectionality and inclusive justice mechanisms. In sum, contemporary feminist criminology calls for a reorientation of criminal justice systems towards dignity, equality, and social justice by recognising women lived experiences and addressing the structural roots of crime.

WAY FORWARD

The study of women in ancient Indian legal traditions highlights the need to critically reassess historical legal norms through a contemporary constitutional and gender-just lens. While ancient texts provide valuable insights into social organisation, their patriarchal assumptions must not be uncritically upheld in modern legal reasoning. The way forward lies in separating cultural heritage from gender bias, ensuring that historical traditions are interpreted in harmony with principles of equality and human dignity. Legal education and scholarship should engage with ancient sources analytically rather than reverentially, acknowledging both their contributions and limitations. Policymaking and judicial interpretation must prioritise constitutional values over customary practices that perpetuate discrimination. Greater emphasis on gender-sensitive legal reform, awareness, and historical reinterpretation can help bridge the gap between tradition and justice, ensuring that the legacy of ancient law informs progress rather than restrains it.

CONCLUSION

Women's position in ancient Indian legal traditions was shaped by a complex interplay of reverence and restriction. While legal texts acknowledged women's moral and familial significance, they simultaneously limited their autonomy through doctrines of guardianship, controlled property rights, and rigid social roles. These traditions institutionalised gender inequality by embedding patriarchy within law, religion, and custom. A critical understanding of this historical framework is essential, not to legitimise past practices, but to recognise their influence on contemporary legal thought and to reaffirm the need for gender-just interpretation of law grounded in equality and dignity.

Chapter 3

BREAKING THE SILENCE

Emergence and Evolution of Feminist Criminological Thought

*“Feminist criminology does not rewrite crime;
it reveals the truths the law once overlooked”*

-JUSTICE V.R KRISHNA LYER

INTRODUCTION

For a long time, the study of crime and justice has been built on a male centric lens where men were seen as the primary actors, both as offenders and enforcers. Women, in contrast, remained largely invisible within the mainstream criminological discourse. Whether as victims, offenders, or participants in the criminal justice system, their unique experiences were often ignored, marginalized, or oversimplified.

This chapter serves as a foundational entry point into understanding women and criminology not just as two separate fields, but as deeply interconnected areas that demand critical reflection. To truly understand crime, justice, and social responses to deviance, one must explore how gender shapes our perceptions, institutions, and legal outcomes.

WHY IS A SPOTLIGHT DRAWN ON WOMEN WHILE STUDYING CRIMINOLOGY?²⁵

The idea behind this section is that criminology, for most of its history, was built around men both as offenders and as subjects of study. Women were either ignored or treated as exceptions, not as individuals with their own social and psychological realities.

When we focus on women in criminology, we're not just adding a new category; we're challenging the assumptions that shaped the old models. Traditional theories often explained crime in gender-neutral terms, if what applied to men must also apply to women. But women's lives, opportunities,

²⁵ Carrington, K., Gomes, S., & Sousa, P., *Feminist Criminology and Women in Organized Crime: A Theoretical Exercise, Ex Aequo* (2022).

and constraints differ in ways that shape how they encounter the law whether as offenders, victims, or even law enforcers.

Rise and Evolution of Feminist Criminology

Feminist criminology emerged as a critical response to traditional criminological theories that overlooked women's experiences and treated crime as a gender-neutral phenomenon. Early criminology largely relied on male behaviour as the norm and explained women's criminality through biological or moral assumptions, ignoring the social conditions shaping women's lives.

In India, the evolution of feminist criminology has been closely linked to women's movements, constitutional values, and legal reforms after independence. Issues such as dowry deaths, domestic violence, custodial abuse, sexual offences, and workplace harassment exposed the inadequacy of conventional criminological approaches. Feminist scholars highlighted how crime against women is rooted in patriarchal social structures, economic dependence, and cultural norms rather than individual deviance alone.

Indian feminist criminology also critiques the functioning of the criminal justice system, pointing to problems such as under-reporting of crimes, victim-blaming, insensitive investigation procedures, and unequal access to justice. Laws addressing violence against women, while progressive, often face implementation gaps, reinforcing the need for gender-responsive policing and judicial processes.

Over time, feminist criminology in India has adopted an intersectional approach, recognising that women's experiences of crime and criminalisation vary based on caste, class, religion, and social marginalisation. In its contemporary form, it advocates for victim-centred justice, legal reforms, and structural change aimed at achieving substantive gender equality.

Feminist criminology asks: ***What pushes a woman toward crime?*** Often, it's tied to poverty, abuse, unequal relationships, or lack of access to education and employment factors that don't always fit the classic "rational choice" or "strain" theories of crime developed around men. Similarly, when women become victims of domestic violence, trafficking, or sexual assault the justice system's treatment can reflect deep social biases, from disbelief and victim-blaming to lenient sentencing for male perpetrators.

Intersectionality makes this picture more complex. A woman's caste, class, religion, race, or sexuality can shape both her vulnerability to crime and the way the justice system treats her. For example, a Dalit woman or a queer woman may face compounded discrimination first from society, then from the legal process meant to protect her.

So, studying women in criminology isn't a side note. It reshapes how we define justice, punishment, and social responsibility. It insists that crime can't be understood or prevented without understanding gender, power, and inequality.

Need for New Laws

The early criminological theories like those of Cesare Lombroso, Emile Durkheim, or Edwin Sutherland hardly ²⁶addressed women's criminality. If they did, their views were often based on stereotypes: women as naturally passive, overly emotional, or biologically inferior. This historical neglect created a vacuum of a distorted picture of crime, justice, and human behavior.

It wasn't until the late 20th century that feminist scholars began to systematically critique these omissions. They introduced the idea that crime must be understood through a gendered lens not just adding women into the picture, but reexamining the entire canvas

Women as Victims and Offenders in past

When women are victims, their suffering often goes unseen or unacknowledged. Crimes like domestic violence or sexual assault occur within private spaces and carry deep social stigma. Many women hesitate to report them due to fear of judgment, retaliation, or disbelief. Even when they do, the response from law enforcement and courts can be slow, insensitive, or influenced by patriarchal bias. The result is a cycle of silence where justice remains out of reach, and the victim bears the burden of both harm and shame.

As offenders, women face a different kind of prejudice. The justice system and society at large often struggle to reconcile criminal behaviour with traditional notions of femininity. If a woman commits a crime, she's not just seen as a lawbreaker but as someone who has violated social expectations of being "nurturing," "obedient," or "moral." This leads to inconsistent treatment: some judges show excessive leniency, seeing her as a misguided person in need of protection; others punish more harshly, as if to correct her deviation from gender norms.

The root causes of women's offending behaviour are often tied to survival escaping abuse, economic desperation, or coercion by men in power. But these social contexts rarely receive attention in sentencing.

So, women occupy a contradictory space in criminology: victims who aren't fully protected, and offenders who aren't fairly understood. Recognizing this

²⁶ Cesare Lombroso & Guglielmo Ferrero, *The Female Offender* (1903).

duality is essential to building a justice system that sees women not through stereotypes, but through the realities of their lived experiences.

Towards an Inclusive Criminology

An inclusive criminology recognizes that crime doesn't exist in isolation; it reflects the society that shapes it. When women's experiences are brought into focus, the discipline begins to question its own blind spots how social inequality, patriarchy, and economic dependence influence both victimization and offending. It also forces a re-examination of how laws are written, enforced, and interpreted.

The call here is intellectual and moral. Studying women in criminology doesn't fragment the field; it deepens it. It invites scholars and readers to move beyond theory into empathy, to see crime through the lens of context and consequence. By doing so, criminology becomes not just a study of crime, but a study of humanity messy, complex, and evolving toward fairness.

Historical views on Feminist Criminology

For much of the 20th century, criminology remained rooted in male centric theories. Women, when studied, were either treated as anomalies or judged through sexist stereotypes that had little to do with real-life experiences. This neglect led to a skewed understanding of crime one that silenced female voices and overlooked the unique circumstances under which women interact with the criminal justice system.

Feminist criminology emerged as a response a powerful academic and political movement that aimed not just to "add women" to criminological inquiry, but to transform the very way crime is studied, theorized, and addressed. It brought gender to the center of analysis, arguing that crime, victimization, and justice cannot be fully understood without examining the roles played by patriarchy, power, and social inequality.

1. Origins of Feminist Criminology

The roots of feminist criminology can be traced back to the second wave feminist movement of the 1960s and 1970s, particularly in the West. As women began to challenge the patriarchal structures in society, workplace, family, and law, scholars turned their attention to how these structures also shaped crime and criminal justice.

During this time, traditional criminological theories were being criticized for several reasons:

- a) **Lack of female representation:** Most criminological studies focused on male offenders, ignoring the fact that women too committed crimes, albeit under different circumstances.
- b) **Biased theories:** Early thinkers like Cesare Lombroso portrayed criminal women as biologically deviant or morally corrupt, often linking crime in women with mental instability or sexuality.
- c) **Neglect of victimization:** The justice system and mainstream scholarship failed to recognize or respond adequately to crimes like domestic violence, rape, and sexual harassment which disproportionately affect women.

These gaps triggered a wave of feminist scholarship that sought to correct the course of criminological thinking.

2. Major Contributions and Theoretical Shifts

Feminist criminology is not a single theory, but a broad umbrella that includes several perspectives. Over time, different branches of feminist thought contributed uniquely to criminology:

a) **Liberal Feminist Criminology**

It emerged as one of the earliest approaches, emphasizing equality and legal reform. It argued that women commit fewer crimes not because of innate morality but because of restricted access to opportunities, education, and public life. According to this view, as gender roles become more balanced and women gain greater social and economic freedom, their participation in various forms of crime may mirror men's patterns. The liberal feminist approach therefore calls for equal treatment in the justice system, the removal of gender-based legal barriers, and structural reforms that promote access to education, work, and social mobility.

b) **Radical Feminist Criminology**

On the other hand, patriarchy identified as the central force behind both women's victimization and the broader structure of crime itself. It focused heavily on issues like domestic violence, sexual assault, and exploitation, revealing how these acts are not isolated incidents but manifestations of systemic male dominance. Radical feminists pushed for a rethinking of ideas such as consent, coercion, and "rape culture," exposing how legal systems often protect male perpetrators while silencing or blaming victims. Their work reshaped how society and law perceive power dynamics in personal relationships and gendered violence.

c) Marxist and Socialist Feminist Criminology²⁷

It added another layer by examining how class and capitalism intersect with gender. These theorists argued that economic structures create inequality, influencing both crime and punishment. Poor women may resort to crime due to survival needs, while wealthy or privileged women might escape accountability altogether. This perspective exposed the link between material deprivation, exploitation, and criminal behavior, urging a broader understanding of justice that considers both gender and class oppression

d) Intersectional Feminist Criminology

brought the conversation into sharper focus by recognizing that gender cannot be studied in isolation. Pioneered by scholars like Kimberli Crenshaw, this approach emphasizes how overlapping identities such as caste, race, class, religion, and sexuality shape a woman's experience of both victimization and justice. For instance, a Dalit woman in India faces compounded discrimination that differs profoundly from that faced by upper-caste women, just as a Black woman in the U.S. may encounter biases invisible to others. Intersectionality expanded feminist criminology beyond national or cultural boundaries, making it more inclusive, contextual, and globally relevant.

Together, these perspectives transformed criminology from a male-centred discipline into one that acknowledges the complex realities of women's lives how power, inequality, and identity intersect to shape every stage of the justice process.

3. Feminist Criminology in Action: Reforms and Resistance

Feminist criminology has never been confined to classrooms or research papers; its influence has reached the ground level, shaping activism, legal reform, and policy across the world. It transformed the way societies understand justice, particularly when it comes to women's safety, dignity, and participation in the justice system. The central idea of feminist criminology challenging structures that perpetuate gender-based discrimination has inspired real-world reforms that continue to redefine both law and practice.

One of the most visible outcomes has been the creation of specialized laws addressing crimes that disproportionately affect women. Feminist scholars and activists pushed for recognizing domestic violence, sexual harassment, and human trafficking not as private or moral issues, but as serious social and legal wrongs. This led to laws that specifically protect women from abuse

²⁷ Messerschmidt, J. W., *Capitalism, Patriarchy, and Crime: Toward a Socialist Feminist Criminology* (Rowman & Littlefield 1986).

within the home, workplace, and broader society. Alongside these laws, gender-sensitive policing and judiciary reforms have been introduced, ensuring that victims are treated with dignity and empathy rather than suspicion or hostility. Specialized police units and women's courts, for instance, are part of this growing awareness that justice must adapt to the realities of women's lives.

Feminist criminology also paved the way for stronger victim support systems. The establishment of helplines, crisis intervention centres, shelter homes, and one-stop support facilities for survivors of violence reflects a shift from punitive to restorative justice. These mechanisms acknowledge that the process of recovery is as crucial as punishment for the offender. They aim to empower victims—helping them rebuild their lives rather than merely survive the legal process.

In the academic realm, feminist critique has also changed how criminology and law are taught. **Curriculum reforms** have ensured that gender perspectives are no longer seen as “add-ons” but as central to understanding crime and justice. Students of law, sociology, and criminology now study feminist theories, gendered violence, and intersectionality as essential frameworks. This intellectual inclusion has broadened how future lawyers, judges, and policymakers think about fairness and justice.

In India, the influence of feminist movements has been particularly powerful. The Protection of Women from Domestic Violence Act, 2005 was a direct outcome of years of advocacy that challenged the invisibility of domestic abuse in law. It extended legal protection to women facing physical, emotional, and economic abuse recognizing domestic violence as a violation of human rights, not a private family matter.

Similarly, the Criminal Law (Amendment) Act, 2013, enacted after the horrific Nirbhaya case, marked a watershed moment in Indian criminal jurisprudence. The public outrage and feminist mobilization that followed the incident led to expanded definitions of sexual assault, harsher punishments for offenders, and improved legal procedures for victims. The amendment represented a collective reckoning with the deep-seated gender bias in law enforcement and society.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, commonly known as the POSH Act, was another milestone. Rooted in the Vishaka Guidelines laid down by the Supreme Court in 1997, it institutionalized workplace safety by mandating Internal Complaints Committees and formal redressal procedures in both public and private sectors. This legislation recognized a woman's right to work with dignity and without fear of exploitation or harassment.

Altogether, these developments show how feminist criminology moved beyond theory to transform policy, practice, and consciousness. It bridged the gap between scholarship and social action—proving that understanding crime through a gendered lens can lead not only to academic insight but to real justice for those who have long been silenced or ignored.

4. Critiques and Internal Debates

Feminist criminology, like any evolving field, is not free from debate. Some critiques include:

1. Overgeneralizing women's experiences
2. Ignoring male victimization
3. Too much emphasis on Western feminist thought, ignoring the Global South

In response, newer feminist scholars are striving for more nuanced, localized, and inclusive perspectives that consider cultural diversity, colonial history, and indigenous knowledge systems.

Legal Identity and Property Rights

The question of a woman's legal identity and her right to own, inherit, and control property lies at the very heart of gender justice. In societies that equate ownership with power, property rights become not just an economic matter, but a symbol of autonomy, dignity, and survival. When women are denied the right to property, they are not only dispossessed of land or wealth they are dispossessed of voice, protection, independence, and personhood.

This chapter explores how women's legal identity as autonomous legal subjects has evolved across ancient, colonial, and postindependence India. It also traces the historical and contemporary struggles for property rights, which remain entangled with customs, religious personal laws, patriarchal values, and state inaction. In doing so, it examines how the denial of property rights reinforces vulnerability, especially to crime, domestic abuse, economic exploitation, and generational inequality.²⁸

• Legal Identity: From Dependency to Recognition

A woman's legal identity forms the basis of her interaction with the law and determines how she is recognized as an individual in society. It shapes her ability to own property, enter into contracts, seek justice, and participate in civic life. However, this notion of identity has undergone a long and complex evolution in India.

- a) **Ancient Notions of Identity;** In ancient India, a woman's identity was largely defined by her relationships with men rather than her

²⁸ *Mimbar Hukum*, vol. 36, no. 2 (2024)

individuality. She was known as the *daughter of*, *wife of*, or *mother of* someone, her existence constantly mediated through male authority. Sacred texts and customary laws described women as “guardian-bound,” implying that they needed male approval for decisions related to both their spiritual duties and material affairs. This structure left little space for women to act as independent legal or moral agents. Their voices were often unheard in public and legal matters because they were not seen as full individuals before the law.

- b) **Lack of Personhood;** Traditional patriarchal systems in India denied women independent legal personhood. They could neither initiate legal proceedings nor own land or property in their name, except under limited exceptions like *Stridhan*. Women were barred from making wills, entering contracts, or managing finances without male consent. Even in early colonial times, these patterns persisted courts would often not recognize a woman’s complaint unless it was filed by a male relative. In effect, women existed within the legal system, but only as dependents, never as autonomous persons. For centuries, law reflected the broader social belief that women required guardianship rather than rights.

2. Property Rights in Ancient India: Privilege or Tokenism?

Property ownership in ancient India was deeply intertwined with power, status, and gender. Although some texts appeared to grant women property rights, these provisions were often symbolic, designed to preserve patriarchal structures rather than challenge them.

- a) **Stridhan (*The Illusion of Ownership*);** The concept of *Stridhan*—literally “woman’s wealth”—was presented in Dharma Shastra literature as property a woman could possess. It typically included gifts received from her parents, husband, or relatives at marriage, such as jewellery, garments, or livestock. In theory, texts like the *Yajnavalkya Smriti* recognized a woman’s right to control this property. Yet, in practice, *Stridhan* rarely translated into genuine ownership. Most women were not allowed to sell, use, or manage their property independently. Husbands and in-laws frequently controlled it, treating it as family wealth rather than personal property. Over time, *Stridhan* lost its original meaning and became associated with dowry, reinforcing women’s economic dependence rather than their empowerment. The idea of *Stridhan* thus offered an illusion of autonomy while ensuring that women remained financially tied to the men in their lives.
- b) **Inheritance (*Exclusion by Design*);** Ancient inheritance laws systematically excluded women from property rights. Daughters were typically denied inheritance if a son existed, under the belief that they

“belonged” to another family after marriage. Sons were seen as the rightful heirs who would preserve family lineage and perform ancestral rites. This exclusion was not incidental it was designed to maintain patriarchal continuity and male control over resources.

There were, however, rare exceptions. In some cases, a daughter without brothers could inherit, and certain matrilineal societies like Kerala’s Nair community or the Khasi tribes of Meghalaya granted women property rights. Yet, these examples were anomalies rather than the norm. For most of Indian history, property remained an overwhelmingly male domain, and the legal system worked in tandem with social norms to protect this monopoly.

In essence, while ancient India acknowledged women’s property rights in theory, it denied them in practice. Both identity and ownership were tightly bound to male authority, leaving women dependent, invisible, and legally constrained a legacy that would shape centuries of struggle for equality ahead.

3. Colonial Law and the Institutionalization of Patriarchy

The advent of British colonial rule brought a drastic shift in India’s legal landscape. The British claimed to be modernizing and rationalizing Indian laws, but their legal interventions reinforced and systematized patriarchal hierarchies. What had once been a diverse set of customary practices with varying degrees of flexibility for women was transformed into a uniform, codified structure that privileged male authority.

- a) **Codification of Personal Laws;** The British administration’s approach to Indian law was guided by convenience and control rather than justice or equality. Instead of introducing a secular or uniform civil framework, they divided the legal system along religious lines separating Hindu, Muslim, and customary laws. In doing so, they relied heavily on scriptural sources that best suited their understanding of “law,” even when those texts did not accurately reflect lived customs.

For instance, Hindu law was codified primarily through selective readings of texts like *Manu smriti* and *Dayabhaga*, which emphasized patriarchal control over women. The diversity of local traditions many of which allowed women certain property or inheritance rights—was ignored. Similarly, Anglo-Mohammedan law was applied to Muslims, where the British interpretation often distorted Islamic principles that had originally recognized women’s independent property rights.

Customary laws that deviated from British notions of order or morality were dismissed as “unreliable.” The colonial state thus institutionalized gender hierarchy by enforcing rigid personal laws that treated women as

dependents rather than as autonomous individuals. Matrilineal systems, such as those practiced among the Nair's of Kerala or Khasi tribes of Meghalaya, were gradually eroded under this new legal orthodoxy.

- b) **Influence of English Law; The Doctrine of Coverture;** The colonial legal mindset was further shaped by the English common law doctrine of *coverture*, which held that a married woman's legal identity was subsumed under that of her husband. A wife could not own property, sign contracts, or initiate lawsuits independently her husband acted as her legal representative in all matters. This principle, though imported from England, deeply influenced judicial reasoning in colonial India.

As a result, Indian women who sought justice were often told that their claims were invalid unless made through a male guardian or relative. Their independent voices were muted within a system designed to speak *for* them, not *to* them. Ironically, even as the British portrayed themselves as reformers bringing "modern law" to India, they transplanted an already patriarchal English framework onto Indian society, amplifying gender inequality instead of reducing it.

- c) **The Aftermath:** Colonial codification thus froze gender roles within the law. Where custom once allowed some adaptability, codified law-imposed permanence. The intersection of British paternalism and Indian patriarchy created a legal order that recognized women as subjects of protection, not as holders of rights. This institutionalized dependency laid the groundwork for many of the legal and social struggles that women in post-independence India would later confront and challenge.

4. Property Rights in Post-Independence India

The years following India's independence marked a historic attempt to rebuild a society on the foundation of justice and equality. The makers of the Constitution envisioned a legal order where all citizens irrespective of gender would enjoy equal rights and opportunities. Yet, the translation of these ideals into practice, especially in the realm of property and inheritance, proved to be complex and uneven. The struggle between constitutional promises and social realities continues to define women's property rights in modern India.

- **Constitutional Promises;** The Constitution of India was a revolutionary document in many respects. It enshrined the principles of equality and non-discrimination that were absent in earlier systems.
- **Article 14** guarantees *equality before the law* and *equal protection of the laws*.
- **Article 15(1)** prohibits discrimination by the state on the grounds of religion, race, caste, sex, or place of birth.

- **Article 15(3)**, however, recognizes that true equality may require *special measures* for women and children acknowledging centuries of structural disadvantage.

Despite this progressive vision, the framers of the Constitution approached personal laws with caution. They treated religion-based personal laws as part of India's cultural pluralism and thus left them largely untouched. The dream of a *Uniform Civil Code*, mentioned in *Article 44 of the Directive Principles of state policy*, was deferred allowing patriarchal structures within Hindu, Muslim, Christian, and customary systems to persist. Consequently, women's property rights advanced only through piecemeal legislative reform rather than through a unified framework of gender justice.

b. Major Reforms and Their Limits

- I. **The Hindu Succession Act, 1956**; This Act marked a significant departure from earlier patriarchal inheritance laws under Hindu personal law. For the first time, daughters and widows were formally recognized as legal heirs. However, the progress was limited and conditional. Daughters were still *excluded as coparceners* in joint family property under the Mitakshara system a privilege reserved for sons. Widows, mothers, and unmarried daughters could inherit property, but their rights often depended on male relatives' willingness to acknowledge them. Married daughters, especially those who had moved to their husband's household, were frequently excluded from land ownership on the assumption that their husband's family would provide for them. Thus, while the Act recognized women as heirs in principle, it did not disrupt the deeply patriarchal structure of family property relations.
- II. **The Hindu Succession (Amendment) Act, 2005**; This amendment represented a long-awaited and landmark correction. It finally granted daughters equal rights as coparceners in Hindu joint family property, putting them on the same legal footing as sons. Under this law: Daughters now inherit by *birthright*, not merely as substitutes for deceased male heirs. They have the same rights and obligations regarding ancestral property as their brothers. Despite this milestone, the reform's impact has been uneven. Social resistance, lack of awareness, and patriarchal manipulation of inheritance proceedings—such as coerced relinquishment deeds—have diluted its reach. In many rural areas, women still face stigma or pressure to “gift back” their share to preserve family unity or agricultural continuity.
- III. **Muslim Personal Law**: Muslim law, derived from the Qur'an, does grant women a defined share in inheritance—a progressive recognition compared to pre-Islamic norms. However, the principle of “*male*

getting twice the share of female” reflects a patriarchal rationale that assumes men bear financial responsibility for the household. In practice, this theoretical right is often compromised. Many women are persuaded, or pressured, to relinquish their inheritance for the sake of family harmony. Community-level arbitration and social expectations frequently override the spirit of equality that the Constitution seeks to promote.

IV. Customary Laws among Adivasi and Northeastern Communities

Among many tribal and indigenous groups, property is considered communal rather than individual. While this framework is culturally distinct, it often results in women being excluded from land ownership altogether. The justification is couched in terms of preserving tradition or protecting the integrity of community land.

For example, in several Northeastern states, inheritance continues through the male line, with daughters having little or no claim. State governments often refrain from intervening, citing respect for tribal autonomy under the Fifth and Sixth Schedules of the Constitution. As a result, women’s equality is sacrificed at the altar of cultural preservation.

- V. The Continuing Tension:** The gap between *constitutional equality* and *legal reality* in India’s property rights regime reflects a broader social truth: laws may change faster than mindsets. While the legal system now formally recognizes women as equal heirs, the lived experience of ownership—especially in rural and customary contexts—remains fraught with gendered obstacles. For true equality, the challenge lies not only in reforming statutes but also in transforming the social and institutional cultures that continue to see property as a man’s domain.

5. Property and Power: A Feminist Criminological View

From a feminist criminological perspective, the denial of property rights to women cannot be seen merely as a matter of civil or family law it is a deeply entrenched form of *structural violence*. It perpetuates dependence, reinforces social control, and directly affects women’s vulnerability to crime and injustice. Property, in this sense, is not just an economic asset it is a source of security, status, and power. When women are denied ownership or control over property, they are systematically excluded from autonomy and protection.

At its core, feminist criminology urges us to look beyond individual acts of violence and examine the *structures* that make such violence possible. One of those structures is economic inequality rooted in gender. Without property

or land, women often lack bargaining power within the family, face economic coercion, and remain dependent on male relatives for survival. This economic dependence fuels a cycle of exploitation, making property rights a crucial crime-prevention mechanism rather than a mere civil entitlement.

- I. **Economic Dependence and Domestic Violence;** Domestic violence rarely exists in isolation it is often enabled by financial control. In households where women have no independent income or ownership, the abuser holds total authority. The absence of property rights makes leaving an abusive marriage practically impossible. Many women tolerate violence because they have *nowhere to go* no land, no home, and no financial means to rebuild their lives.

Studies in India and across the world have shown that women with secure property rights face significantly lower rates of domestic violence. Ownership gives them not just a physical refuge but also psychological strength. A woman who owns her house or a piece of land can negotiate her safety, walk out of abuse, or seek justice without fearing destitution. In contrast, economic dependency often traps women in cycles of violence, where silence becomes a survival strategy.

- II. **Dowry Deaths and Property Disputes: Interlinked Violence;** Dowry deaths represent one of the most brutal intersections between gender, property, and crime. While dowry is legally prohibited under the Dowry Prohibition Act, 1961, it remains socially entrenched because it is seen as a *form of property transfer*. Women are denied their rightful share in parental property, yet their families are expected to “compensate” through dowry at marriage a twisted substitute for inheritance.

These dynamic turns marriage into an economic transaction, and when the expectations of dowry are not met, violence often follows. Many cases of dowry deaths and bride burning are fundamentally disputes over money, land, or gifts disguised as cultural practice. The denial of equal inheritance fuels the dowry system, which in turn perpetuates violence and even murder. Thus, from a criminological standpoint, dowry crimes are not isolated they are direct consequences of economic patriarchy and property exclusion.

- III. **Legal Disempowerment and Fear of Homelessness;** The lack of property ownership leaves women legally and physically vulnerable. Many married women live in homes owned by their husbands or in-laws, giving them no legal standing or shelter rights if conflict arises. When abuse occurs, they cannot claim residence or security; if they leave, they often face homelessness or social ostracism.

Even legal provisions like the *Protection of Women from Domestic Violence Act, 2005* which grants women the right to residence are difficult to enforce when property documents are in the husband's name. This legal disempowerment forces many women to remain in abusive situations out of fear of losing their shelter, their children, and their social respectability. It also deters them from filing police complaints or pursuing justice, as the cost of resistance is too high. In essence, property denial becomes a tool of social control.

IV. Widows and Single Women: Dispossession and Crime; Among the most affected groups are widows and single women, particularly in rural India. When a husband dies, his property often reverts to his male relatives' brothers, uncles, or sons leaving the widow dependent or homeless. Many widows are forced out of their marital homes, sometimes violently, through coercion, intimidation, or manipulation of legal documents.

In some cases, this dispossession escalates into criminal acts physical assault, harassment, or forced land grabbing. Without strong legal support or property documentation, widows become easy targets for exploitation. The pattern is especially visible among lower-caste and tribal women, who face multiple layers of discrimination. Feminist criminology recognizes such acts not just as "civil disputes" but as expressions of *systemic gendered violence* where social structures enable property-based crimes against women.

V. Empowerment through Ownership; On the other hand, when women own land or housing, the social and economic dynamics shift dramatically. Property ownership transforms a woman's status from dependent to decision-maker. Research shows that women who own property are:

- **Less likely to experience domestic abuse:** Property ownership enhances a woman's power in household negotiations. A husband is less likely to use violence when his wife has the economic means to leave.
- **More likely to educate their children:** Women with assets invest more in children's welfare, breaking cycles of poverty and neglect.
- **Better able to participate in local governance:** Ownership grants legitimacy and confidence in public spaces. Women landowners are more likely to contest elections for *panchayats* or *gram sabhas*, participate in community meetings, and advocate for others.

Property thus acts as a *shield and a platform* protecting women from abuse while empowering them to influence social and political life. It redefines their

role not as dependents but as active contributors to family and community development. Property rights act as protective tools, insulating women from legal and social vulnerabilities.

Contemporary Challenges and the Road Ahead with legal Reforms

Despite several legislative reforms, women in India continue to face deep-rooted barriers when it comes to owning and inheriting property. Legal recognition on paper has not automatically translated into equality on the ground. Social attitudes, bureaucratic inertia, and systemic discrimination continue to shape women's access to economic independence and ownership rights.

One of the most persistent challenges is the **social stigma** attached to women especially daughters asserting their inheritance rights. In many families, a daughter claiming her share is seen as disrupting family harmony or being “greedy.” Cultural expectations often pressure her to “sacrifice” her legal entitlement in the name of family peace or tradition. This emotional coercion ensures that, while laws may guarantee equality, social norms still dictate compliance with patriarchal expectations.

Adding to this is the prevalence of fraudulent practices, where male relatives sometimes manipulate or forge property documents to exclude women. Cases of forged wills, fabricated signatures, or manipulated land transfers are common, particularly in rural areas where women may not have access to reliable legal advice or documentation. Even when women are aware of their rights, the bureaucratic machinery with its complicated procedures, corruption, and gender bias often discourages them from pursuing claims. Land registration offices, for instance, remain heavily male-dominated spaces where women feel unwelcome or intimidated.

The problem is further compounded by low legal literacy among women, especially in rural regions. Many women are unaware that laws like the *Hindu Succession (Amendment) Act, 2005*²⁹ grant them equal rights in ancestral property. This lack of awareness, combined with dependence on male family members, keeps them from asserting ownership or challenging illegal transfers. For widows and divorced women, the struggle is even harder as they face social isolation, economic vulnerability, and procedural delays that prolong justice.

To create genuine equality, reforms must go beyond the written law and focus on implementation and social change. Property should ideally be jointly

²⁹ The Hindu Succession (Amendment) Act, No. 39 of 2005, Acts of Parliament, 2005 (India).

registered in the names of both husband and wife to ensure financial security and shared ownership within households. This not only safeguards women's interests but also strengthens the economic foundation of the family. Similarly, daughters must be explicitly included in agricultural land titles, a domain still largely dominated by sons under the guise of preserving family property. Agricultural land is not just an asset but a source of livelihood, and denying women equal access perpetuates cycles of economic dependence.

The state can also play a transformative role through legal literacy and awareness campaigns, particularly in rural and semi-urban regions. Workshops, village-level awareness drives, and community outreach programs can help women understand their legal rights and the procedures to enforce them. Further, a gender audit of government housing and land-allotment schemes is essential to ensure that policies meant to empower women are not undermined by gender bias during execution.

Equally important is strengthening legal aid mechanisms and establishing fast-track tribunals for property-related disputes involving women. Prolonged litigation not only drains financial resources but also discourages women from fighting for justice. Swift and accessible legal remedies, supported by trained counsellors and legal aid volunteers, can make the system more responsive and humane.

In essence, achieving gender justice in property rights requires more than statutes; it demands a shift in collective consciousness. Laws can mandate equality, but only society can normalize it. The road ahead lies in creating a culture where a woman claiming her rightful inheritance is not seen as rebellion but as recognition of her dignity, agency, and equality before the law.

Women and the Law in Medieval India³⁰

The medieval period of Indian history, spanning roughly from the 8th to the 18th century, was marked by vast sociopolitical changes, the rise and fall of dynasties, and the consolidation of religious and customary laws. For women, this era brought complex and often contradictory legal positions. While certain ancient ideals lingered, new power structures, religious interpretations, and patriarchal institutions reshaped the legal landscape. The position of women under law in medieval India cannot be seen as uniformly oppressive or liberating; it varied based on region, religion, caste, and class. This chapter seeks to uncover and critically analyze the laws, customs, and norms that governed women's lives during this transformative period.

³⁰ Sudha Sharma, *The Status of Muslim Women in Medieval India*, SAGE, 2016.

1. Religious Influence on Legal Norms

Medieval India was deeply shaped by the overlapping influences of Hindu law (as interpreted through Smritis and commentaries) and Islamic jurisprudence (Sharia and customary Islamic law).

a) Hindu Legal Tradition:

Hindu law in the medieval era continued to be interpreted through texts like Manu smriti, Yajnavalkya Smriti, and other dharma shastra based commentaries. Women's legal rights were often viewed through a patriarchal lens:

- A woman's legal identity was subsumed under that of her father, husband, or son.
- The notion of 'stridhan' (woman's property) existed but was limited in scope. Women had rights over gifts received at the time of marriage, but they had minimal authority over ancestral property.
- Widow remarriage was generally discouraged, and sati (self-immolation of widows), though not uniformly practiced, gained social sanction in certain regions.

b) Islamic Legal Tradition:

With the establishment of Delhi Sultanate and later the Mughal Empire, Islamic legal codes became influential:

- Under Sharia, Muslim women had clearer rights to property and inheritance as compared to their Hindu counterparts.
- Muslim women could own and manage property, initiate divorce (khula) under specific conditions, and were entitled to mahr (dower) at the time of marriage.
- However, purdah (seclusion) and patriarchal norms often restricted their participation in public and legal affairs.

Status of Women in Royal Courts and Administration

- While medieval India was largely patriarchal, it did produce remarkable examples of women who broke through social and political barriers to hold positions of authority. Figures like Razia Sultana, the first and only woman to rule the Delhi Sultanate, stand as striking exceptions. Her reign (1236–1240) directly challenged entrenched gender norms that confined women to domestic or

symbolic roles.³¹ Razia not only administered the empire but also led armies and exercised independent political judgment a feat that drew admiration and controversy in equal measure. Similarly, Rani Durgavati, who ruled the Gondwana kingdom in central India during the sixteenth century, demonstrated extraordinary administrative skill and valor. She personally led troops against Mughal invasions and acted as the final arbiter in regional disputes, blending governance with justice in a way few rulers male or female ever did.

- In Mughal India, women such as Nur Jahan wielded immense informal power within the royal court. Her political influence extended to the issuance of imperial orders, management of trade and revenue, and even the appointment of officials. Nur Jahan's position was not merely ceremonial; she was a formidable political strategist whose name was inscribed on imperial coins a rare honour for a queen consort. Yet, these examples, while inspiring, remained exceptions rather than a reflection of women's general status in the legal or political sphere. The vast majority of women had little to no access to governance or legal decision-making, their voices mediated through male relatives, court officials, or community elders who represented them in both civil and criminal matters.

Customary and Community Laws

- Beyond formal state or religious law, customary and community laws held powerful sway over the daily lives of women in medieval India. These informal systems rooted in caste, clan, and regional traditions often dictated women's rights, behaviour, and moral conduct. Village panchayats³² served as the primary forums for dispute resolution, exercising immense authority over issues like marriage, inheritance, and social discipline. For women, these institutions functioned less as protectors and more as instruments of control. Panchayat decisions frequently reinforced patriarchal norms, curtailing women's freedom of movement, choice in marriage, and even personal expression.
- Similarly, jati panchayats (caste-based councils) imposed strict codes of morality and punishment. A woman accused of adultery, interacts relationship, or sexual "misconduct" could face social ostracism, public humiliation, or even exile from the community. Her consent or version of events rarely held weight against male testimony. These customary systems, while claiming to maintain social order,

³¹ Ishwari Prasad, *A History of Medieval India* 139 (Oxford University Press, 10th ed. 2008).

³² Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* 103–05 (Cambridge Univ. Press 1994).

effectively silenced women's agency and reinforced their dependence on male guardianship. Justice, in this context, was less about fairness and more about preserving community reputation and male authority.

Marriage, Morality, and Punishment

- Marriage in medieval India was deeply intertwined with ideas of property, lineage, and morality. A woman's legal identity was largely defined through her husband or father, leaving her with minimal autonomy in family or civil matters. Child marriage was a deeply rooted custom, particularly among upper castes, where it was seen as a means to secure alliances and preserve caste purity. Once married, women had little recourse to divorce or separation. While Islamic law (Sharia) allowed limited provisions for divorce (*khula*) and certain tribal customs recognized separation under specific circumstances, the overwhelming social norm viewed marriage as permanent and unbreakable.
- The concept of female chastity carried immense social weight. Any perceived deviation whether adultery, elopement, or interrupted union was often punished harshly, both socially and physically. In many communities, women were made to bear the collective "honour" of the family or caste, so any transgression, real or alleged, invited severe retribution. Punishments could include public shaming, expulsion, or even death in extreme cases. Meanwhile, male offenders in similar situations were frequently pardoned or faced milder consequences. This unequal moral code revealed the double standard embedded in medieval notions of justice and morality, where women were both symbol and scapegoat of family honour.

Access to Justice

- In theory, both Hindu and Islamic legal traditions recognized women as capable of seeking justice. Hindu law texts, for instance, permitted women to inherit and to petition the king in certain disputes, while Islamic jurisprudence granted women the right to approach *Qazi's* (religious judges) for settlement of personal or property matters. In practice, however, these rights were seldom exercised freely. Access to formal courts was largely restricted to elite or royal women, who could petition rulers directly in cases involving inheritance, dowry disputes, or personal grievances. Historical records show instances of queens and noblewomen successfully appealing to kings and

emperors for justice, using their social standing to navigate male-dominated institutions.

- For common women, the situation was far more constrained. Illiteracy, lack of resources, and rigid social hierarchies meant that most disputes were settled at the community level through local panchayats. These bodies, dominated by upper-caste men, operated within patriarchal frameworks that prioritized male authority over individual rights. A woman's access to justice was thus filtered through male intermediaries' fathers, husbands, brothers, or community elders who often acted in their own interests rather than hers. The result was a justice system that was formally open but practically inaccessible, reflecting the broader pattern of exclusion that shaped women's status throughout medieval India.

Feminist Criminology in Practice in India

The dawn of independence in 1947 marked a turning point in the legal and constitutional framework of India. For Indian women, this period signified not only political emancipation from colonial rule but also the beginning of a slow and ongoing struggle toward legal recognition, equality, and empowerment. The newly adopted Constitution of India laid a strong foundation for gender justice by enshrining principles of equality, non-discrimination, and dignity for all citizens, regardless of sex.

Constitutional Promises and Guarantees

The Indian Constitution, which came into force on 26th January 1950, is a landmark document in the history of Indian legal reforms. It contains several provisions that directly address the rights and status of women:

- **Article 14** guarantees equality before the law and equal protection of laws to all persons, men and women alike.
- **Article 15(1)** prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. Further, Article 15(3) empowers the State to make special provisions for women and children, recognizing the need for affirmative action.
- **Article 16** ensures equal opportunities in matters of public employment.
- **Directive Principles of State Policy** (especially Articles 39 and 42) direct the State to promote justice and ensure that men and women have equal rights to adequate means of livelihood, equal pay for equal work, and humane conditions of work and maternity relief.

LEGAL PROVISION DEALING WITH LEGISLATIVE REFORM

Following independence, India witnessed several important legal reforms aimed at improving the status of women, particularly in the fields of marriage, inheritance, property rights, and protection from violence. Some of the most significant reforms include:

JUDICIAL ACTIVISM AND EXPANDING RIGHTS

The Indian judiciary has played a significant role in interpreting laws to promote gender equality. Landmark judgments such as:

1. The Hindu Code Bills (1955–56); The Hindu Code Bills were a landmark attempt to modernize personal laws governing Hindus, codifying and reforming centuries-old customs. These included the Hindu Marriage Act, Hindu Succession Act, Hindu Minority and Guardianship Act, and Hindu Adoptions and Maintenance Act. Before these laws, women had limited autonomy: they could not easily divorce, had restricted rights to inherit property, and were excluded from guardianship or adoption roles. The Code Bills changed this by:

- Giving women the right to divorce, challenging patriarchal norms that kept them bound in unhappy or abusive marriages.
- Granting inheritance rights, allowing daughters to claim property rather than relying entirely on male relatives.
- Allowing women to adopt children and assume guardianship, formally recognizing their capacity for legal responsibility.

These laws marked a major step toward recognizing women as independent legal actors rather than dependents under male authority. However, social and cultural resistance meant that many women did not immediately benefit in practice, especially in rural areas.

The Dowry Prohibition Act, 1961: Addressing Financial Exploitation and Dowry-Related Violence

The Dowry Prohibition Act of 1961 was introduced to combat the longstanding and destructive practice of dowry in India. Traditionally considered a customary gift from the bride's family to the groom, dowry over time became a tool of harassment and financial exploitation. Many women faced violence and, in extreme cases, death when dowry demands were unmet. The Act criminalized both giving and receiving dowry, aiming to protect women from abuse and coercion linked to this practice. Despite its promise, enforcement remained weak for decades. Social acceptance of dowry, reluctance of families to report cases, and inefficiencies within the

police and judicial systems allowed many offenders to go unpunished. This highlights that legal measures alone cannot immediately overturn deep-seated social norms, and broader cultural change is essential.

The Equal Remuneration Act, 1976: Promoting Economic Justice and Gender Equality in the Workplace

The Equal Remuneration Act of 1976 sought to reduce economic inequality by ensuring that women receive equal pay for equal work and are not discriminated against in hiring, promotion, or working conditions. By mandating fair compensation, the law challenged workplace stereotypes that framed women as less capable or committed than men and promoted broader economic justice. However, its impact has been limited in practice. A significant portion of women work in the informal sector, which often falls outside the law's reach. Even in formal employment, lack of transparency and weak monitoring mechanisms have allowed wage gaps to persist. This underscores the importance of not only legal provisions but also active enforcement and cultural transformation to achieve true gender equality in the workplace.

The Protection of Women from Domestic Violence Act, 2005: Expanding Legal Safeguards Against Domestic Abuse

The Protection of Women from Domestic Violence Act of 2005 marked a significant expansion of women's legal rights within the domestic sphere. Unlike earlier laws, it recognized multiple forms of abuse, including physical, emotional, sexual, and economic harm. The Act provided women with legal remedies such as protection orders, residence rights, and maintenance, while strengthening mechanisms for support and enforcement through protection officers, NGOs, and courts. It acknowledged that domestic violence is not a private matter but a violation of women's fundamental rights. Despite these reforms, challenges persist in implementation, including delays in the judicial process, lack of awareness about legal remedies, and social pressures discouraging women from pursuing justice. Nonetheless, the law represents a critical step toward ensuring safety, dignity, and empowerment for women within their homes.

By treating domestic violence as a systemic problem rather than a private family matter, the law acknowledged that abuse is often connected to **economic and social dependency**, not just physical harm.

5. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013³³; This Act came in response to the Supreme Court's Vishaka Guidelines (1997),³⁴ which highlighted the absence of formal mechanisms to prevent and address workplace sexual harassment. Key contributions include:

- Mandating the creation of Internal Complaints Committees (ICCs) in all workplaces.
- Defining sexual harassment broadly, including verbal, non-verbal, and physical acts.
- Ensuring awareness programs and strict timelines for complaints, investigations, and resolution.

This law shifted the responsibility from women having to avoid harassment to workplaces being accountable for creating safe environments. Yet, challenges remain, particularly in smaller organizations and informal sectors where awareness and compliance are low.

These laws, taken together, show a gradual but consistent attempt by Indian law to recognize women as independent legal subjects, protect them from exploitation, and empower them socially, economically, and politically. They illustrate a movement from private regulation of women's lives toward public legal protection, while highlighting that legal reform alone cannot overcome deep-seated social norms and systemic enforcement challenges.

The landmark cases of *Vishaka v. State of Rajasthan* (1997),³⁵ *Shayara Bano v. Union of India* (2017)³⁶, and *Joseph Shine v. Union of India* (2018)³⁷ collectively illustrate the transformative role of judicial intervention in advancing women's rights in India. The Vishaka case arose from the brutal gangrape of Bhanwari Devi, a social worker, and exposed a critical gap in legal protections against sexual harassment in the workplace. In response, the Supreme Court laid down the **Vishaka Guidelines**, which provided a detailed framework to prevent harassment, obligating employers to establish complaint mechanisms and raise awareness among employees. Beyond filling a legislative vacuum, the court also relied on international conventions like CEDAW, signalling a willingness to integrate global standards into

³³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, Acts of Parliament, 2013 (India).

³⁴ Ibid

³⁵ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (India).

³⁶ *Shayara Bano v. Union of India* (2017) 9 SCC 1

³⁷ *Joseph Shine v. Union of India* (2019) 3 SCC 39, AIR 2018 SC 4898

domestic jurisprudence and shifting the burden of protection from individual women to institutions.

Shayara Bano v. Union of India³⁸ addressed the constitutionality of instant triple talaq, a practice that allowed Muslim men to divorce their wives unilaterally. The Supreme Court struck down this practice, holding that it violated fundamental rights under Articles 14 and 21, specifically equality and the right to dignity. The judgment balanced religious freedoms with gender justice, demonstrating that customs and personal laws must align with constitutional guarantees. By invalidating instant triple talaq, the court not only protected the legal rights of Muslim women but also ensured social recognition of their dignity and security, establishing a precedent for judicial scrutiny of discriminatory religious practices.

In ***Joseph Shine v. Union of India***³⁹, the Supreme Court struck down Section 497 of the IPC, which criminalized adultery but only from a patriarchal perspective, treating women as the property of their husbands. The court emphasized that the law was inconsistent with constitutional principles of equality and personal liberty, recognizing women's sexual autonomy and agency. By invalidating a law that reinforced gender stereotypes and imposed unequal standards, the judgment advanced the cause of gender-neutral legal interpretation, reinforcing that women cannot be subjected to laws rooted in patriarchal notions of morality.

Taken together, these judgments demonstrate how judicial activism has been pivotal in reshaping the legal landscape for women in India. They reflect a consistent effort by the courts to address systemic gender inequalities, protect women's autonomy, and ensure that constitutional principles of equality and dignity are not subordinated to social customs or outdated norms. Each case, in its context, illustrates a different dimension of gender justice workplace safety, protection against discriminatory personal laws, and sexual autonomy showing the judiciary's central role in advancing women's rights in both legal theory and practice.

Modern Challenges and Future Directions

Even with a robust legal framework protecting women's rights in India, significant challenges remain in translating laws into real-world protection and empowerment. Deeply entrenched patriarchal norms continue to influence social behaviour and institutional responses, often undermining the effectiveness of legal reforms. Women frequently face social stigma when asserting their rights, whether in cases of domestic violence, workplace

³⁸ *ibid*

³⁹ *ibid*

harassment, or property disputes. Fear of retaliation, both from family members and broader communities, can discourage them from reporting crimes or pursuing justice. A lack of awareness about existing laws further compounds this problem, particularly among rural and marginalized populations, leaving many women unable to claim the protections they are entitled to.

In practice, this means that progressive legislation, no matter how comprehensive, does not automatically guarantee equality or safety. Court delays, limited access to legal aid, and uneven enforcement of statutory provisions contribute to a persistent gap between the law as written and the law as experienced by women on the ground. Post-independence India therefore presents a paradox: the nation has made remarkable strides in codifying women's rights, yet social, cultural, and institutional barriers continue to limit their effectiveness.

The path forward requires a multidimensional approach. Legal equality must be matched by effective enforcement, ensuring that violations are addressed swiftly and fairly. Education and awareness campaigns are critical to inform women of their rights and empower them to claim those rights confidently. At the same time, broader societal transformation is necessary to challenge patriarchal attitudes, dismantle discriminatory practices, and create a culture that genuinely values women's autonomy and participation. Only when law, education, and social norms work in tandem can India move from legal aspiration to real empowerment, ensuring that women are not merely protected on paper but respected and supported in everyday life.

Contemporary Issues in Feminist Criminology⁴⁰

In the modern era, feminist criminology has evolved beyond its foundational critiques of the male dominated justice system to engage with a wide range of urgent, complex issues. These contemporary concerns reflect the dynamic nature of gender relations, societal structures, and legal frameworks. Today, feminist criminology is not just about advocating for women; it is about addressing the deeper, intersecting forces that contribute to inequality, marginalization, and systemic injustice in the realm of crime and criminal justice.

I. Gendered Nature of Violence

One of the most pressing contemporary concerns is the gendered nature of violence. Feminist criminologists highlight how violence against women including domestic violence, sexual assault, honor killings, dowry related

⁴⁰ Carol Smart, *Women, Crime and Criminology: A Feminist Critique* 45–60 (1976).
Frances Heidensohn, *Women and Crime* 120–135 (2d ed. 1996).

deaths, and trafficking remains alarmingly prevalent. Such violence is not random; it is deeply embedded in cultural, economic, and patriarchal power structures. The justice system's historical failure to adequately respond to these crimes, either through weak enforcement or victim-blaming narratives, continues to be a major area of critique.

II. Intersectionality and Marginalization

Modern feminist criminology strongly embraces intersectionality, a concept that recognizes how different forms of discrimination based on gender, caste, class, race, religion, and sexuality interact to compound vulnerability. For instance, a Dalit woman in India faces layered forms of discrimination that a privileged caste woman may not. These multiple marginalizations often result in unequal access to legal remedies and heightened exposure to exploitation. Feminist criminologists today argue that any meaningful reform must consider these overlapping structures of oppression.

III. Representation in the Criminal Justice System

Despite progressive laws and policies, women particularly those from marginalized communities remain underrepresented in law enforcement, judiciary, and policymaking bodies. The lack of female perspectives in these spaces often leads to a justice system that fails to understand or sensitively respond to the lived realities of women. Feminist criminology calls for increased representation of women not just for equity's sake, but because their inclusion leads to more just, empathetic, and effective governance.

IV. Criminalization of Women's Behavior

Another contemporary issue is the criminalization of women for nonconforming behavior. Women are often subjected to legal and social penalties for asserting autonomy, such as choosing their partners, rejecting traditional gender roles, or engaging in sex work. In many societies, including India, laws related to adultery (recently struck down), obscenity, and public morality have historically been used to control and police female behavior. Feminist scholars highlight how these laws reflect the state's interest in controlling women's bodies and choices rather than promoting genuine justice.

V. Digital and Cyber Crimes

The rise of digital technology has opened a new front in feminist criminology. Cyberbullying, revenge porn, deepfakes, stalking, and online harassment disproportionately target women. These crimes often go underreported and are inadequately addressed by the legal system, which is still evolving in its understanding of technology that facilitated gendered harm. Feminist

criminologists argue for more robust legal protections, digital literacy, and gender sensitive training for law enforcement dealing with cybercrimes.

VI. Carceral Feminism vs Transformative Justice

In recent years, feminist criminology has been grappling with the debate between carceral feminism (relying on the prison system to address gender violence) and transformative justice (focusing on community led, healing based approaches). Critics of carceral feminism argue that relying solely on punitive state measures often reproduces systemic harms, especially for poor or minority women. Transformative justice, on the other hand, aims to address root causes, support survivors, and create long-term social change without overreliance on incarceration.

VII. Global Solidarity and Transnational Feminism

Contemporary feminist criminology also recognizes that issues of crime and justice are not confined by national borders. Global movements like #MeToo, protests against femicide in Latin America, or campaigns for reproductive justice in the US have found echoes in India and beyond. Transnational feminist criminology urges scholars and activists to build global solidarity while being sensitive to local cultural and political contexts. It challenges western centric models and encourages more inclusive, plural approaches to justice.

CONCLUSION

Feminist criminology in practice has contributed significantly to reshaping India's criminal justice response to gender-based crimes by shifting the focus from individual wrongdoing to structural inequality and power relations. Legislative reforms, judicial interventions, and institutional mechanisms reflect growing recognition of women lived experiences within the justice system. However, persistent gaps in implementation, social stigma, and procedural insensitivity continue to limit its transformative potential. A sustained commitment to gender-responsive enforcement, legal awareness, and institutional accountability is essential to ensure that feminist criminological principles translate into meaningful and accessible justice for women in India.

Chapter 4

ADULTERY, SUCCESSION, AND ECONOMIC VIOLENCE AGAINST WOMEN

Private Relationships, Property, and Criminal Vulnerability

“Gender equality is not a matter of charity, but a matter of justice. The law must ensure that women are neither denied their rights in private relationships nor left vulnerable to economic exploitation.

— Justice Indu Malhotra, Supreme Court of India

INTRODUCTION

Crimes against women are not confined to public spaces or overt acts of physical violence. Some of the most persistent and damaging forms of victimisation occur within private relationships, family structures, and economic arrangements. Adultery, denial of succession rights, and economic violence operate at the intersection of intimacy, morality, property, and power. While traditionally viewed as civil or personal matters, modern criminology recognises these issues as structurally linked to gender-based crime and women’s systemic vulnerability.

This chapter examines how private relationships and property regimes become sites of criminal injustice for women. It analyses the evolution of adultery laws, the persistent denial of women’s succession rights, and the criminological significance of economic violence. Together, these dimensions reveal how legal frameworks, social norms, and patriarchal control mechanisms transform private inequality into criminal harm.

ADULTERY AND WOMEN’S AUTONOMY: FROM CRIMINALISATION TO CONSTITUTIONAL MORALITY

Adultery occupies a complex position at the intersection of morality, marriage, sexuality, and criminal law. For centuries, it was treated not merely as a private moral failing but as a public wrong warranting state punishment. However, the criminalisation of adultery has historically reflected patriarchal anxieties about lineage, property, and control over women’s sexuality rather

than genuine concerns about social harm. The gradual decriminalisation of adultery represents a significant shift in legal thought—from moral authoritarianism to constitutional liberalism, and from patriarchal protectionism to recognition of women’s autonomy.

From a criminological perspective, adultery laws reveal how criminal law has been misused to regulate private intimacy and reinforce gender hierarchy rather than prevent real harm.

HISTORICAL CRIMINALISATION OF ADULTERY

Adultery has historically been regulated not as a moral failing of individuals but as an offence against patriarchal family order. In colonial criminal law, adultery was conceptualised as a violation of a husband’s proprietary interest over his wife. The woman involved was treated not as an offender or a victim but as a passive object whose consent was legally irrelevant.

This framework reflected a broader assumption that women lacked sexual autonomy and that marriage conferred ownership-like rights over a wife’s body and fidelity.

- **SECTION 497 IPC⁴¹: GENDER BIAS AND OWNERSHIP THEORY**

Section 497 of the Indian Penal Code criminalised adultery by punishing only the man involved in a sexual relationship with a married woman, while granting immunity to the woman herself. This apparent protection was, in reality, a manifestation of deep gender bias. The provision reinforced the notion that women were incapable of agency and that their sexuality was controlled by male guardianship.

From a criminological perspective, Section 497 institutionalised inequality by legitimising male dominance within marriage and denying women individual moral and legal responsibility.

- **DECRIMINALISATION: JOSEPH SHINE V. UNION OF INDIA⁴²**

In *Joseph Shine v. Union of India*, the Supreme Court struck down Section 497 IPC, holding it unconstitutional for violating Articles 14, 15, and 21. The Court recognised that criminalising adultery entrenched gender stereotypes, reduced women to property, and infringed upon personal autonomy and dignity. The judgment marked a shift from patriarchal morality to constitutional morality,

⁴¹ Section 497 IPC, 1860: - Adultery

⁴² 3 SCC 39

affirming that consensual sexual relationships between adults fall within the domain of personal liberty.

- **ADULTERY AS A CIVIL WRONG AND MATRIMONIAL GROUND**

While adultery is no longer a criminal offence, it continues to have civil consequences under matrimonial laws. It remains a valid ground for divorce and judicial separation. This reflects a nuanced legal position where the state refrains from criminal punishment but recognises the impact of infidelity on marital trust and obligations. However, civil adjudication of adultery must be approached cautiously to avoid moral policing and gender bias.

- **MORALITY VERSUS PERSONAL AUTONOMY**

The decriminalisation of adultery highlights a broader conflict between societal morality and individual autonomy. Modern criminology rejects the criminalisation of private consensual conduct, emphasising that the role of criminal law is to prevent harm, not enforce moral conformity. For women, this transition is significant as it affirms their sexual agency and equal citizenship.

ECONOMIC VIOLENCE AGAINST WOMEN: DOWRY, DEPENDENCY, AND FINANCIAL CONTROL

Economic violence is one of the most pervasive yet under-recognised forms of abuse against women. It involves controlling access to financial resources, confiscation of earnings, denial of maintenance, and forced economic dependence.

- **DOWRY-RELATED OFFENCES AND PROPERTY CRIMES**

Dowry transforms marriage into an economic transaction, commodifying women and normalising extortion. Dowry demands often escalate into cruelty, harassment, and severe violence. Dowry-related crimes reflect how economic expectations rooted in patriarchy translate into criminal conduct.

- **ECONOMIC VIOLENCE AS AN INVISIBLE CRIME**

Unlike physical abuse, economic violence is often normalised within family life. Denial of money, exclusion from decision-making, and financial manipulation are rarely reported yet deeply damaging. This invisibility allows economic abuse to persist without accountability.

- **MAINTENANCE, ALIMONY, AND FINANCIAL ABANDONMENT**

Maintenance and alimony laws aim to protect women from destitution, but weak enforcement undermines their effectiveness. Delayed proceedings and non-compliance with court orders result in

prolonged financial insecurity, effectively criminalising poverty for women.

- **INTERSECTION OF CRIMINAL AND FAMILY LAW**

Economic abuse exists at the intersection of criminal and family law. While criminal provisions address cruelty and coercion, family law focuses on financial relief. The lack of coordination between these frameworks often fragments justice delivery and burdens women with multiple legal battles.

COMPARATIVE AND JUDICIAL PERSPECTIVES

The understanding of adultery, succession rights, and economic violence against women has undergone significant transformation across jurisdictions. Comparative legal analysis reveals a global shift away from moralistic criminalisation toward rights-based and gender-sensitive frameworks. Judicial interventions, particularly constitutional courts, have played a pivotal role in dismantling patriarchal legal structures and re-conceptualising women as autonomous rights-holders rather than dependents within familial arrangements.

This section examines both comparative global trends and judicial responses in India, highlighting how courts have reshaped criminal and family law to address gendered injustice.

WAY FORWARD

The analysis of adultery, succession denial, and economic violence against women demonstrates that harms occurring within private and familial spaces cannot be dismissed as purely personal or civil disputes. Contemporary criminology increasingly recognises that private inequality often translates into public harm, producing long-term patterns of victimisation, dependency, and vulnerability to crime. A forward-looking response must therefore involve structural, legal, and institutional reforms.

1. Reconceptualising Private Harm as Public Concern
2. Strengthening Enforcement of Succession and Property Rights
3. Recognition of Economic Abuse as a Distinct Criminal Harm
4. Integrating Criminal Law and Family Law Remedies
5. Institutional Sensitisation and Capacity Building
6. Legal Awareness and Economic Empowerment
7. Policy Reforms and Future Directions

CONCLUSION

Adultery, denial of succession rights, and economic violence collectively expose how private relationships often operate as sites of structural injustice against women. These harms, though rooted in familial settings, produce wide-ranging social and criminological consequences by reinforcing dependency, silencing resistance, and perpetuating cycles of abuse.

The decriminalisation of adultery marks a significant shift away from moral regulation toward constitutional morality. However, decriminalisation alone is insufficient if women remain economically vulnerable and socially constrained. Succession denial and economic abuse continue to undermine women's autonomy, revealing the limitations of formal legal equality without substantive enforcement.

Modern criminology demands a paradigm shift—one that recognises economic autonomy and personal liberty as foundational to crime prevention. Criminal justice responses that ignore structural inequality risk addressing only symptoms rather than causes. Without confronting the economic and relational foundations of women's vulnerability, legal reforms remain fragmented and ineffective.

A rights-based, gender-sensitive, and integrated legal framework is therefore essential to transform private spaces from zones of control into domains of dignity, autonomy, and justice.

Chapter 5

VIOLENCE BEHIND CLOSED DOORS

Domestic Abuse, Law, and Women's Struggle for Justice

"Violence against women is not a private matter—it is a crime against society."

— Justice A. S. Anand

(Former Chief Justice of India, Supreme Court of India)

INTRODUCTION

Domestic violence is not just a private matter hidden behind closed doors it is a deep-rooted societal issue that affects the physical, emotional, psychological, and economic well-being of countless women. For centuries, women across cultures have endured violence within the confines of their own homes, often at the hands of those who were meant to protect and care for them. The silence around domestic violence has been fueled by patriarchal norms, social stigma, lack of legal awareness, and systemic failure to protect survivors.

In India, domestic violence manifests in various forms physical assault, verbal abuse, emotional manipulation, sexual coercion, and economic deprivation. While the abuse may be invisible to the outside world, its impact is devastating and long-lasting, affecting not just the individual woman but also her children and broader community. For a long time, such violence was normalized as a "family matter" beyond the reach of law. Women were expected to "adjust," suffer in silence, or endure for the sake of family honor.

However, with the rise of feminist movements and growing legal consciousness, the need to recognize domestic violence as a violation of human rights and dignity gained momentum. One of the most significant milestones in this regard was the enactment of the **Protection of Women from Domestic Violence Act, 2005 (PWDVA⁴³)**. Unlike previous legal remedies that were limited in scope, the 2005 Act provided a more comprehensive, victim-centric framework focusing not just on punishment of

⁴³ The Protection of Women from Domestic Violence Act, No. 43 of 2005, INDIA CODE (2005).

offenders, but also on protection, residence rights, maintenance, and support for women.

This chapter delves into the causes and societal roots of domestic violence, explores its multifaceted impact on women, and critically examines the legal mechanisms introduced by the Domestic Violence Act, 2005. Through this discussion, we aim to understand how far the law has come in protecting women and how much farther we need to go.

CAUSES OF DOMESTIC VIOLENCE

Domestic violence is not an isolated act of cruelty committed in the heat of the moment; it is a deeply entrenched pattern of control, domination, and abuse that arises from structural inequalities in society. To truly understand why domestic violence persists, especially against women in India, we must examine the multifaceted causes ranging from cultural norms to legal gaps, psychological triggers to economic structures. Each cause, individually and collectively, contributes to a hostile environment where women continue to suffer in silence.

1. Patriarchal Social Structure: The Foundation of Control

At the heart of domestic violence lies patriarchy a social system in which men hold primary power and predominate in roles of leadership, moral authority, and control over property. In such a setup, the man is seen as the ‘natural head’ of the family, and the woman as subservient.

In many Indian households, especially in rural or semi-urban settings, the idea that "a husband has the right to discipline his wife" is culturally ingrained. This belief legitimizes control and abuse as an accepted norm. Even in educated families, subtle forms of coercion, emotional manipulation, or restrictions on mobility are present often unnoticed or unchallenged.

This systemic dominance translates into a power imbalance where the woman’s opinion, dignity, and autonomy are constantly undermined creating fertile ground for psychological, physical, or economic abuse.

2. Cultural and Religious Norms That Enable Silence⁴⁴

Cultural expectations in India have long dictated how a "good woman" should behave she should be patient, forgiving, obedient, and devoted to her family. These expectations become social barriers when women try to report abuse.

⁴⁴ Flavia Agnes, *Law and Gender Inequality: The Politics of Women’s Rights in India* 50–70 (1999).

In many cases, violence is brushed aside as a private matter, a "normal" part of marital life, or worse, a "test" of a woman's endurance. Religious and cultural teachings are sometimes misused to convince women that tolerance is a virtue, and separation is sinful. Even parents, fearing societal shame, advise their daughters to "adjust" rather than support their decision to leave an abusive household.

This social stigma silences survivors and emboldens abusers.

3. Economic Dependence and Financial Vulnerability

One of the most significant causes of domestic violence is the economic dependence of women on their abusers. In India, a large proportion of women are not part of the formal workforce. They rely on their husbands or in-laws for shelter, food, and basic needs.

In such a scenario, walking away from an abusive relationship isn't just emotionally difficult, it becomes economically impossible. Even educated women hesitate to report abuse because they fear losing their children, home, or lifestyle, and have no financial safety net to fall back on.

This dependence traps women in violent homes, making them more vulnerable to ongoing cycles of abuse.

4. Dowry System and Post-Marital Exploitation

Despite legal prohibitions, dowry practices continue to thrive in India. A woman is often seen as a source of income through dowry at the time of marriage. When the groom's family feels the dowry is insufficient or wants more, they may begin harassing, threatening, or torturing the woman to extract more money or property.

This form of violence is systemic and cruel, often involving not just the husband but his parents and extended family. Verbal abuse, denial of food, confinement, physical beatings, and even deaths due to dowry-related harassment are common and horrifying realities.

Dowry is not just a custom; it becomes a tool for coercion and violence, making marriage a dangerous institution for many women.

5. Alcohol and Substance Abuse: Fuel for Violence⁴⁵

Substance abuse is a common catalyst for violent behavior in the household. Alcoholism is a major factor in domestic abuse cases. When intoxicated,

⁴⁵ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 100–110 (1999).

some individuals lose their inhibitions and act aggressively, often targeting their spouses.

Unfortunately, society tends to excuse such violence, blaming the substance rather than the abuser. This leads to a lack of accountability and reinforces a pattern where violence is normalized after drinking episodes.

Moreover, families that spend excessive money on alcohol often suffer financial stress, which increases tension and can result in further abuse.

6. Legal Illiteracy and Institutional Barriers

Many women in India especially in rural and marginalized communities are unaware of the legal rights and protections available to them under the law, including the *Protection of Women from Domestic Violence Act, 2005*.

Even when women know their rights, the legal system itself may fail them:

- Police officers may refuse to register FIRs.
- Courts may delay hearings or press for compromise.
- Women's commissions and helplines are often underfunded or inefficient.

This institutional apathy discourages women from seeking justice, and many suffer in silence rather than navigating a complex and unsympathetic system.

7. Lack of Social Support and Fear of Isolation

Women often fear that if they report domestic violence, they will be abandoned by their own families. Parents may refuse to take them back, siblings may see them as a burden, and communities may brand them characterless or difficult.

The fear of being ostracized, of losing their children, or of having no place to go pushes women to remain in abusive marriages. There are few shelters, and even when available, they are overcrowded, lack resources, and are not seen as long-term solutions.

This lack of emotional and social safety nets reinforces the power of the abuser and the helplessness of the victim.

8. Cycle of Violence and Learned Behavior⁴⁶

Another often overlooked cause is the intergenerational transmission of violence. Children who grow up witnessing their fathers abusing their mothers often internalize these patterns:

- Boys may believe that violence is acceptable in marriage.
- Girls may think that suffering is a part of womanhood.

This normalization of abuse becomes a lifelong curse, repeated generation after generation, unless serious intervention, counseling, and awareness break the cycle.

9. Psychological Factors and Insecurity

Sometimes, domestic violence stems from deep-rooted insecurities of the perpetrator's jealousy, feelings of inadequacy, or the need to assert dominance. Men who feel threatened by their partner's independence, intelligence, or success may resort to abuse to regain control.

This may include controlling behavior, emotional manipulation, gaslighting, or outright threats. Such psychological abuse, though less visible, is equally damaging and often leads to depression, low self-esteem, and long-term trauma for the victim.

10. Media Influence and Gender Stereotyping

Media also plays a role in reinforcing toxic masculinity and gender roles. Many television serials, films, and advertisements glorify submissive wives and dominant husbands. Abuse is sometimes portrayed as a form of passion or love, making it seem romantic rather than violent.

These portrayals shape public perception and blur the line between affection and aggression, making it harder for women to even recognize the abuse they're suffering.

IMPACT OF DOMESTIC VIOLENCE ON WOMEN⁴⁷

Domestic violence is not just an act of aggression it is a deeply rooted societal problem that damages the very foundation of a woman's life. When woman experiences abuse in what is supposed to be the safest place her home it shatters not only her physical safety but her emotional and psychological well-being. The impact of domestic violence goes far beyond physical harm;

⁴⁶ Lenore E. Walker, *The Battered Woman* 30–50 (1979)

⁴⁷ Pawandeep Kaur & Dr. Varinder Kaur, *Jai Maa Saraswati Gyandayini: An International Multidisciplinary e-Journal*, Vol. 10, No. 1 (2025).

it affects every aspect of a woman's identity, relationships, economic freedom, mental health, and even her future.

1. Psychological and Emotional Trauma

The most serious yet often invisible impact of domestic violence is the psychological trauma it causes. Emotional abuse includes constant criticism, humiliation, threats, manipulation, and isolation. Over time, these experiences can destroy a woman's sense of self-worth. She may start to believe she deserves abuse or that she is incapable of living independently. This leads to anxiety, depression, post-traumatic stress disorder (PTSD⁴⁸), sleep disorders, panic attacks, and chronic feelings of fear and helplessness.

Victims may lose their ability to trust others, fearing judgment or betrayal. They may become emotionally numb or overly sensitive to their surroundings. Even when physical abuse stops, emotional scars often remain for years, sometimes a lifetime. The victim begins to view herself as weak, powerless, and voiceless, making it harder for her to seek help or rebuild her life.

2. Physical Health Consequences

Physical abuse can take many forms slapping, punching, kicking, burning, choking, or the use of objects and weapons. Some women suffer broken bones, head injuries, or permanent disabilities. Many others silently carry internal injuries that are left untreated because they fear going to the hospital or are stopped by their abusers from seeking medical help.

The physical pain is often coupled with shame. In many cultures, women are discouraged from speaking up about family issues, and they may feel pressured to "adjust" or "stay silent for the sake of the children." This silence causes many cases to go unreported, untreated, and unnoticed. Repeated trauma can also lead to long-term health issues such as high blood pressure, gastrointestinal problems, reproductive health complications, and substance abuse.

3. Economic Dependence and Financial Control

Domestic violence often includes financial abuse a tool used by abusers to control and trap women. This could mean denying them access to money, forbidding them from working, taking away their salary, or controlling every expense. Women who are economically dependent on their abuser find it

⁴⁸ Bessel A. van der Kolk, *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma* 45–70 (2014).

extremely difficult to leave the relationship, even if they are being brutally mistreated.

Financial control is a way to weaken a woman's ability to make decisions for herself. Even educated women or those with jobs may be forced to give up their earnings or work under strict limitations. Without economic freedom, a woman cannot rent a home, hire a lawyer, or even afford basic needs for herself or her children. The fear of poverty becomes a barrier that keeps her locked in an abusive environment.

4. Impact on Children and Family Life⁴⁹

Domestic violence doesn't just harm the woman it affects the entire household, especially children. Growing up in a violent home creates emotional wounds in children that can shape their personality and behavior for life. They may feel anxious, afraid, angry, or helpless. Children who witness abuse may struggle in school, have trouble forming healthy relationships, and are at a higher risk of becoming either future abusers or future victims themselves.

Girls who watch their mothers being abused may start to believe that such behavior is normal in a relationship, while boys may learn that violence is a legitimate way to assert control. This creates a cycle of violence that can be passed down from one generation to the next unless it is consciously interrupted and addressed.

5. Social Isolation and Stigma⁵⁰

In many cases, women are isolated from their friends, family, and support systems by their abuser. They are discouraged or forbidden from socializing, making phone calls, or visiting relatives. This isolation serves the purpose of weakening the woman's support network and making her more dependent on the abuser.

Even when women gather the courage to speak out or seek help, they often face societal stigma. Victim-blaming is common. People may ask, "Why didn't she leave?" instead of "Why did he abuse her?" Many women are told to think about their family's reputation, their children's future, or the "sanctity of marriage" pressuring them to stay silent.

⁴⁹ Murray A. Straus, *Beating the Devil Out of Them: Corporal Punishment in American Families* 50–70 (1994).

⁵⁰ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 215–230 (1999).

In some communities, divorced or separated women are looked down upon, and survivors of domestic violence are made to feel like outcasts. This fear of judgment forces many women to continue suffering in silence.

6. Loss of Identity and Confidence⁵¹

Living under constant fear, control, and humiliation slowly erodes a woman's sense of identity. She may lose her hobbies, interests, and passions. She may no longer remember what it feels like to live freely, to laugh openly, or to feel safe. Over time, many women forget who they are outside of the abusive relationship. They stop dreaming, stop planning for their future, and simply survive day by day.

This deep psychological damage affects her ability to rebuild her life, even after the abuse ends. The healing process is long and difficult. Many survivors require counselling, therapy, emotional support, and financial assistance to start fresh.

7. Broader Societal Consequences⁵²

When domestic violence is allowed to continue unchecked, it sends a message to society that such behavior is acceptable. It affects not only families but also workplaces, schools, healthcare systems, and the justice system. Women who are abused are less likely to participate in the workforce, less likely to raise healthy children, and more likely to need long-term medical and psychological care putting pressure on public resources.

Moreover, the failure of society to protect women erodes trust in institutions like police, courts, and social services. Many women who report abuse face insensitive handling by authorities, delayed justice, or are pressured into reconciliation. This adds a second layer of victimization being betrayed not just by their abuser but also by the system meant to protect them.

GAPS IN THE LEGAL FRAMEWORK AND IMPLEMENTATION

Although the *Protection of Women from Domestic Violence Act, 2005* (PWDVA) was hailed as a major legislative milestone, its journey from paper to practice has been marred by systemic shortcomings, bureaucratic delays, and deep-rooted societal biases. The law exists, but justice often does not follow as swiftly or effectively as intended.

⁵¹ Judith L. Herman, *Trauma and Recovery: The Aftermath of Violence from Domestic Abuse to Political Terror* 90–110 (2d ed. 1997)

⁵² Carol Smart, *Women, Crime and Criminology: A Feminist Critique* 160–175 (1976).

1. Lack of Awareness Among Women

One of the most pressing issues is the lack of awareness among women, especially those from rural backgrounds, tribal communities, or marginalized castes. Many women remain unaware that they have the right to seek protection, residence, maintenance, and custody orders under this Act. Education levels, social conditioning, and the fear of community backlash keep women from even approaching the system. A law, no matter how progressive, loses its value if the people it is meant to protect do not even know it exists.

2. Role and Limitations of Protection Officers

The Act assigns a pivotal role to **Protection Officers (POs)**⁵³ who act as a bridge between the survivor and the justice delivery system. However, the ground reality is bleak. Most POs are overburdened government employees who have been given additional duties without proper training or infrastructure. They often lack transport, official support, or even a dedicated space to operate from. In many cases, survivors are asked to travel long distances just to file a complaint or meet the PO an added burden that discourages reporting.

3. Weak Enforcement Mechanism

The enforcement mechanism under the PWDVA is often delayed and ineffective. Police officers sometimes refuse to register complaints, viewing domestic violence as a “family matter” rather than a legal violation. Magistrates, too, are known to prioritize reconciliation over protection, suggesting victims return to abusive households rather than issuing protection or residence orders.

Further, there is no time-bound system for hearing and disposal of applications under the Act, even though the law mandates that proceedings be completed within sixty days. These delays can discourage victims, especially when they are financially dependent on the abuser.

4. Lack of Support Services⁵⁴

The law mandates that survivors should be provided with access to shelter homes, medical facilities, legal aid, and counseling services. However, these services are either poorly funded, non-functional, or simply absent in many

⁵³ The Protection of Women from Domestic Violence Act, No. 43 of 2005, INDIA CODE § 9 (2005) (establishing the role of Protection Officers).

⁵⁴ Carol Smart, *Women, Crime and Criminology: A Feminist Critique* 180–195 (1976).

parts of the country. Shelter homes, where they exist, are overcrowded and lack basic amenities. Mental health support remains an afterthought, despite the psychological trauma that survivors endure. Legal aid is often inaccessible due to lack of female lawyers or culturally sensitive professionals who understand the victim's context.

5. Live-in Relationships and Ambiguity⁵⁵

Although the law extends protection to women in “relationships in the nature of marriage,” it fails to define the boundaries of such relationships clearly. As a result, women in live-in relationships often face resistance from the judiciary when seeking protection. There are still inconsistent interpretations by courts, some recognize the relationship, while others question its legitimacy, especially in conservative settings. This inconsistency leaves many women vulnerable and unprotected under the law.

6. Cultural and Familial Pressures⁵⁶

Indian society places a high premium on preserving family honor and marital unity, often at the cost of women's safety and dignity. Women are taught to tolerate abuse rather than “break the home.” As a result, even when legal remedies are available, victims may be discouraged by family members or religious institutions from taking legal action. These cultural stigmas act as invisible barriers to justice.

7. No Accountability for Systemic Failures⁵⁷

A major legal vacuum lies in the lack of accountability mechanisms within the system. When police officers refuse to file reports, or POs neglect their duties, there is no clear recourse or punishment. The absence of punitive provisions for authorities who fail to act in accordance with the law often means that state machinery is not held responsible, even in cases where delay or negligence leads to further harm or death of the victim.

SOCIETAL AND CULTURAL BARRIERS TO JUSTICE

Laws, no matter how well-drafted, cannot bring true justice if society remains shackled by regressive beliefs, patriarchal norms, and a culture of silence. In

⁵⁵ *Shah v. Swarup*, AIR 1970 SC 1541 (discussing cohabitation and legal ambiguities). *Velusamy v. Patchaiammal*, (2010) 10 SCC 469 (recognizing live-in relationships for certain protections under domestic violence laws).

⁵⁶ Sharmila Rege, *Dalit Women Talk Differently: A Critique of 'Difference' and towards a Dalit Feminist Standpoint Position*, 33 Econ. & Pol. Wkly. 39 (1998).

⁵⁷ Carol Smart, *Women, Crime and Criminology: A Feminist Critique* 220–235 (1976).

India, domestic violence is not just a legal issue it is deeply rooted in the country's social, cultural, and familial fabric. These societal barriers not only discourage women from reporting abuse but also work actively to normalize and sustain the cycle of violence⁵⁸.

1. Patriarchy and Gender Roles

At the heart of the issue lies patriarchy a system in which men hold power over women in most spheres of life. From childhood, girls are taught to be submissive, obedient, and sacrificial, while boys are raised with entitlement, control, and dominance. These gender roles play out in adult relationships, especially marriage, where a woman is often seen as the caretaker and the man as the decision-maker.

This leads to a situation where abuse is either tolerated or excused, often under the pretext of disciplining a 'disobedient' wife. Many women internalize these beliefs and do not even recognize emotional, verbal, or economic abuse as wrong because they have been conditioned to accept suffering as part of their role.

2. Stigma of Speaking Out

One of the most powerful cultural tools used to silence women is *shame*. Women who speak out against domestic violence are often viewed as *rebellious*, *disloyal*, or *disruptive*. The fear of being labelled as a "home-breaker" or "bad wife" deters many from filing complaints or seeking help.

There is also the fear of being ostracized by the community, ridiculed by neighbors, or excluded from family functions. In conservative and rural settings, these fears are magnified, often leading to complete social isolation of the survivor.

3. Pressure to “Save the Marriage”

In India, the concept of marriage is sacred and non-negotiable. Divorce is seen as a failure—not just of the couple but of the woman herself. Many women face intense pressure from their parents, in-laws, and even religious leaders to “*adjust*,” “*compromise*,” or “*wait for him to change*.”

This pressure comes from the belief that a woman's ultimate duty is to uphold family honor, no matter what the cost. Sadly, this leads many women to stay in abusive relationships, fearing that divorce will bring greater shame to their families than the violence they are enduring.

⁵⁸ Carol Smart, *Women, Crime and Criminology: A Feminist Critique* 115–130 (1976).

4. Economic Dependence and Lack of Alternatives

A majority of Indian women, especially in rural or low-income households, are financially dependent on their husbands. They lack control over property, bank accounts, or even basic mobility. Without a job or stable income, the idea of leaving an abusive relationship becomes terrifying.

Even though the PWDVA offers the right to residence and maintenance, many women are unaware of these provisions or do not trust the legal system to enforce them swiftly. The lack of state-supported shelters, childcare, and vocational training adds to their helplessness, making them feel that enduring abuse is a safer option than stepping out into the unknown.

5. Normalization of Violence⁵⁹

Another disturbing aspect is how violence has been normalized in Indian society. Slapping a wife, shouting at her, denying her money, or controlling her movements is often dismissed as “minor quarrels.” Even emotional and verbal abuse, which can leave deep psychological scars, is rarely taken seriously.

Popular culture films, television, and even social media often romanticize controlling behavior or portray domestic violence as something that can be fixed with love or patience. This distorts public perception, making it harder for women to recognize their suffering as a violation of rights.

6. Silence in the Name of Honor⁶⁰

For many families, a daughter leaving her husband’s house is seen as a blemish on family honor. Parents, especially in traditional households, may beg their daughters to return to abusive husbands rather than “ruin the family’s name.”

In such cases, the woman becomes a victim twice over first of her husband’s abuse, and then of her family’s betrayal. The burden of “upholding honor” always falls on the woman, even if she is being physically or emotionally destroyed in the process.

⁵⁹ Frances Heidensohn, *Women and Crime* 185–200 (2d ed. 1996).

⁶⁰ Nivedita Menon, *Seeing Like a Feminist* 160–175 (2012).

7. Intersectionality: Caste, Religion, and Region⁶¹

Cultural barriers become even more complex when intersectionality is considered. A Dalit woman, for example, may not only face domestic violence but also caste-based discrimination if she seeks help from the police or courts. A Muslim woman may fear being disowned by her community if she seeks justice outside religious norms. A tribal woman may have no access to legal infrastructure at all.

These layered identities caste, class, religion, location shape a woman's ability to resist, report, or recover from domestic violence. For many, the justice system is a distant dream, inaccessible both legally and culturally.

8. Victim Blaming and Lack of Community Support

Instead of supporting the survivors, many communities engage in blaming victims. Questions like:

- “What did she do to provoke him?”
- “Why didn’t she keep quiet?”
- “Maybe she’s exaggerating...”

...are commonly asked, not just by neighbors but sometimes by family, police officers, and even judges. This culture of disbelief and minimization further discourages women from speaking out.

JUDICIAL RESPONSES AND LANDMARK CASES

The judiciary in India has played a transformative role in not only interpreting the provisions of domestic violence laws but also in ensuring that the spirit of justice prevails over procedural technicalities. Courts have frequently stepped in to clarify legal ambiguities, expand the scope of protection for victims, and enforce accountability in cases where institutional responses fell short. Through various landmark judgments, the Indian judiciary has helped evolve the practical application of the Protection of Women from Domestic Violence Act, 2005, and related laws under the Indian Penal Code.

One of the most notable contributions of the judiciary is the expansive interpretation of the term “domestic relationship” and “shared household.” In *S.R. Batra v. Taruna Batra (2007)*,⁶² the Supreme Court ruled that a wife does not have the right to reside in the house owned by the mother-in-law if it was not a shared household. This decision sparked considerable debate and

⁶¹ Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 Stan. L. Rev. 1241 (1991).

⁶² *S.R. Batra v. Taruna Batra*, (2007) 3 S.C.C. 169 (India).

was criticized for being restrictive. However, subsequent rulings such as *Satish Chander Ahuja v. Sneha Ahuja (2020)*⁶³ revisited this issue and overturned the earlier view, affirming that a wife has the right to reside in a shared household even if she has no legal ownership, provided it was her matrimonial home. This judgment marked a significant victory for women's rights and reflected a progressive stance by the Court.

Another crucial case is *V.D. Bhanot v. Savita Bhanot (2012)*,⁶⁴ where the Supreme Court ruled that the Domestic Violence Act is applicable retrospectively, meaning even if the act of violence occurred before the enactment of the 2005 law, the victim could still seek relief under it. This interpretation was pivotal because it recognized the continuing nature of domestic abuse and enabled justice for many women who had long suffered in silence.

In *Hiral P. Harsora v. Kusum Narottamdas Harsora (2016)*,⁶⁵ the Supreme Court struck down the term “adult male” from the definition of the respondent in Section 2(q) of the DV Act. This progressive move opened the door for complaints to be filed against female relatives as well, acknowledging that perpetrators of domestic violence are not always men and that abuse can also be perpetrated by mothers-in-law, sisters-in-law, or others in the household.

IMPLEMENTATION CHALLENGES AND GROUND REALITIES⁶⁶

While the Protection of Women from Domestic Violence Act, 2005 (PWDVA), represents a significant legislative step toward safeguarding women's rights, its implementation on the ground has faced numerous challenges. These challenges span across legal, institutional, social, and psychological dimensions, often diluting the effectiveness of the law and delaying justice for survivors.

1. Lack of Awareness Among Victims

One of the most serious obstacles is the lack of awareness among women about their legal rights. Many women particularly in rural areas and marginalized communities are unaware that they are entitled to seek protection, maintenance, shelter, and other relief under the PWDVA. Even in urban areas, domestic abuse is often normalized, especially when it is non-physical (verbal, emotional, or economic), and women hesitate to label it as

⁶³ *Satish Chander Ahuja v. Sneha Ahuja*, (2020) 1 SCC 414

⁶⁴ *V.D. Bhanot v. Savita Bhanot*, (2012) 3 SCC 183

⁶⁵ *Hiral P. Harsora v. Kusum Narottamdas Harsora*, (2016) 8 SCC 501 (India).

⁶⁶ Carol Smart, *Women, Crime and Criminology: A Feminist Critique* 220–235 (1976).

violence. This ignorance stems from deep-rooted patriarchy and a lack of civic education.

2. Weak Infrastructure and Institutional Gaps

Although the law mandates the appointment of Protection Officers (POs) to facilitate access to the justice system, in practice, many states have failed to appoint adequate and properly trained POs. In some regions, POs are given additional charge along with other administrative duties, which affects the timely processing of domestic violence cases. Shelter homes and counseling centers are either poorly managed or unavailable in many districts, leaving victims without proper support.

Furthermore, courts are often overburdened. Domestic violence cases, which are supposed to be handled expeditiously, often suffer delays due to procedural backlogs, shortage of dedicated magistrates, or insufficient coordination between the police, judiciary, and welfare departments.

3. Police Apathy and Gender Bias

The police, who are often the first point of contact for survivors, are frequently untrained in handling domestic violence complaints with sensitivity. Many victims report that police officers try to discourage them from filing formal complaints, urging reconciliation instead. In extreme cases, victims are even ashamed or blamed for the violence they face. This kind of victim-blaming not only re-traumatizes the survivor but also reinforces a culture of silence.

Moreover, there is a tendency to treat domestic violence as a "family matter" rather than a criminal offense. This attitude severely undermines the seriousness of abuse and delays critical interventions that could prevent further harm.

4. Stigma and Social Pressures

Societal norms play a major role in silencing victims of domestic violence. Women are often advised to "adjust," "stay quiet for the sake of children," or avoid "washing dirty linen in public." Divorce or separation continues to carry a social stigma, and many survivors are economically dependent on their abusers. These social and economic pressures prevent women from seeking legal recourse, leaving them trapped in abusive households.

Additionally, in some cases, even family members of the victim discourage legal action, fearing damage to the family's honor or reputation. These cultural barriers compound emotional trauma and make escape or justice even harder for the survivor.

5. Misuse of the Law and Backlash

Though far less common, there have been cases where domestic violence laws are misused, which has fueled negative narratives about the legislation. Some male rights groups claim that false allegations are used as tools for vengeance or to gain leverage in divorce or custody battles. While such misuse exists, studies and judicial statistics consistently show that most complaints are genuine, and the number of false cases is statistically negligible.

Nevertheless, this perception has led to hesitancy among law enforcement officials and even judges in some cases, who become overly cautious or skeptical, which ultimately hurts genuine victims. It is important to strike a balanced approach that punishes false complaints without undermining the core purpose of the law to protect women from real harm.

6. Inadequate Legal Aid and Support Services

Free legal aid, counseling, and psychological support are critical for survivors, but they are often not readily available or of poor quality. Many victims, especially from low-income backgrounds, are unable to afford private legal representation. Legal aid clinics exist on paper but are often non-functional, inaccessible, or inefficient. Without proper guidance, many women are unable to file correct applications or pursue their cases effectively.

ROLE OF POLICE AND LAW ENFORCEMENT IN DOMESTIC VIOLENCE CASES

Domestic violence cases do not just require good laws on paper, they demand effective enforcement, sensitive policing, and a supportive ecosystem. The police often serve as the first point of contact for women facing abuse, and their response can determine whether justice is served or denied.

I. Challenges in Police Response⁶⁷

Challenges in police response to cases of domestic violence and crimes against women remain a significant barrier to justice, despite the existence of progressive laws and protective mechanisms. One of the most persistent issues is the insensitive attitude of police officers towards victims. Many women report that when they approach the police, their complaints are often trivialized or dismissed outright. A common response in such situations is, *“Yeh to ghar ki baat hai, suljha lo apas mein,”* implying that domestic disputes are private matters that should be resolved within the family. This dismissive approach not only undermines the seriousness of the crime but

⁶⁷ Carol Smart, *Women, Crime and Criminology: A Feminist Critique* 230–245 (1976).

also discourages victims from coming forward again, fostering a culture of silence and perpetuating abuse.

Another major challenge is the reluctance of police to file First Information Reports (FIRs), especially under laws related to domestic violence or cruelty by relatives. In numerous instances, police officers attempt to “mediate” or reconcile the parties involved rather than registering formal complaints. While the intention might be to prevent family disruption, such mediation often has serious consequences. It delays the initiation of legal proceedings, allows crucial evidence to be lost or tampered with, and exposes victims to repeated cycles of violence. This reluctance disproportionately affects women, particularly when the alleged abuser is a spouse or an in-law, leaving victims vulnerable and eroding trust in law enforcement.

A further concern is the widespread lack of gender sensitivity and specialized training among police personnel. Most officers are not adequately prepared to understand the complex dynamics of domestic abuse, which often extend beyond physical violence to include emotional, psychological, or economic manipulation. This knowledge gap can lead to victim-blaming, misinterpretation of the victim’s behaviour, or failure to recognize the subtle but significant forms of abuse. Without proper training, police interventions may inadvertently reinforce the victim’s trauma rather than provide protection and support. Consequently, the combination of dismissive attitudes, procedural reluctance, and insufficient gender-sensitive training creates a systemic obstacle to effectively addressing crimes against women, highlighting the urgent need for comprehensive reforms in law enforcement practices.

II. Legal Duties of the Police Under DV Act, 2005⁶⁸

Under the Protection of Women from Domestic Violence Act, 2005, the police are entrusted with specific legal responsibilities to protect and support victims. Section 10 of the Act explicitly outlines these duties, emphasizing that police officers are not mere bystanders but active facilitators of women’s rights. One of their primary obligations is the duty to inform the aggrieved woman about her legal entitlements. This includes explaining her right to file a First Information Report (FIR), seek protection orders from the court, access free legal aid, and approach designated Protection Officers and other service providers for assistance. By doing so, the police ensure that women are aware of the avenues available to safeguard themselves, which is crucial in a context where lack of information often prevents victims from acting.

⁶⁸ The Protection of Women from Domestic Violence Act, No. 43 of 2005, INDIA CODE (2005).

Another critical responsibility is mandatory reporting. Upon receiving information about domestic violence, the police must document the incident through a Domestic Incident Report (DIR) and forward it promptly to the concerned magistrate and Protection Officer. This ensures that the legal machinery is engaged immediately, creating a formal record that can be used for protective and judicial measures.

Finally, the Act tasks the police with ensuring the immediate safety of the victim. In situations of imminent danger, officers are expected to escort the woman to a secure location, such as a shelter home, and arrange medical assistance if required. These duties collectively highlight the proactive role the police are meant to play under the DV Act, transforming them from passive responders into protectors and facilitators of justice for women facing domestic abuse.

III. Judicial Observations on Police Inaction

Indian courts have consistently highlighted that police inaction in domestic violence cases undermines both the law and the safety of victims. In **Hiral P. Harsora v. Kusum Narottamdas Harsora (2016)**,⁶⁹ the Supreme Court underscored that state authorities have a constitutional and statutory duty to respond promptly and impartially to complaints of domestic abuse. The Court observed that delay, indifference, or bias on the part of law enforcement can exacerbate the harm suffered by victims and erode public confidence in the justice system. Similarly, various High Courts have emphasized that failing to register FIRs in serious domestic violence cases is not a trivial oversight; it can amount to gross dereliction of duty and invites judicial scrutiny. These judgments reinforce the principle that the police must act as enablers of justice rather than obstacles, ensuring that the legal protections afforded under the Protection of Women from Domestic Violence Act, 2005 are meaningful in practice.

NEED FOR POLICE REFORM AND SUPPORT SYSTEMS

Addressing domestic violence effectively requires a serious rethink of how police respond and the support systems they offer. One key step is gender sensitization training. Regular workshops can help police officers understand the dynamics of abuse, recognize signs of non-physical violence like emotional or economic abuse, and respond with empathy rather than judgment. Without this, victims often face indifference or even blame from those meant to protect them.

Another essential reform is increasing female representation in the police force. Women officers can create a safer and more approachable environment

⁶⁹ Hiral P. Harsora v. Kusum Narottamdas Harsora, (2016) 10 SCC 165 (India).

for victims, making it easier for them to report crimes without fear or embarrassment. Their presence can also shift the broader culture within the force, encouraging more sensitive handling of cases. Specialized units, like dedicated domestic violence cells, are equally important. These units would combine trained police personnel with legal advisors and counsellors, allowing victims to navigate the system efficiently and with support. By centralizing expertise, the response becomes faster, consistent, and more victim centred.

Finally, collaboration with NGOs and women's shelters ensures that victims are not left to face the aftermath alone. Police should actively coordinate with organizations that provide emotional counselling, temporary housing, and social services, complementing the legal protection offered by law enforcement. Together, these reforms create a network where victims are supported at every stage from reporting to recovery rather than being left vulnerable to bureaucratic inertia or social stigma.

ROLE OF NGOS AND CIVIL SOCIETY

Non-governmental organizations (NGOs) and civil society play an indispensable role in addressing domestic violence in India, complementing formal legal mechanisms and law enforcement. While legislation like the Protection of Women from Domestic Violence Act, 2005 (DV Act) and police intervention provide structural avenues for redress, these systems alone are often insufficient. Social stigma, fear of retaliation, and bureaucratic hurdles can prevent victims from accessing justice. In this context, NGOs become the frontline support system, offering a combination of emotional, legal, and practical assistance that addresses the multidimensional challenges faced by survivors.

I. Victim-Centric Approach

One of the key strengths of NGOs is their victim-centric approach. Unlike formal institutions that may focus predominantly on procedural compliance, NGOs prioritize the survivor's emotional and psychological well-being. They are trained to recognize the subtle and complex dimensions of domestic abuse, including repeated psychological manipulation, financial control, and coercive behavior, which often go unnoticed by law enforcement. This focus on empowerment rather than mere legal action helps women regain confidence, self-worth, and agency over their lives. Survivors who interact with NGOs often receive counselling, trauma-informed care, and practical guidance to rebuild their lives in both personal and professional spheres.

II. Bridging the Trust Gap

Another critical function of NGOs is bridging the trust gap between victims and formal systems. Many women hesitate to approach the police or judiciary

due to fear, shame, or previous negative experiences. NGOs act as mediators, accompanying victims to police stations, guiding them through court procedures, and explaining their rights under the law. This not only ensures that survivors can exercise their legal rights effectively but also reduces the likelihood of secondary victimization, where the process itself adds to their trauma. By serving as intermediaries, NGOs make the justice system more approachable and less intimidating for survivors.

III. Services Provided by NGOs

The services provided by NGOs are wide-ranging and cater to multiple dimensions of victim support. Emotional and psychological counselling is a primary service, helping survivors process trauma and build coping mechanisms. Legal aid is another critical area; many NGOs connect victims with lawyers, assist in filing Domestic Incident Reports (DIRs), and help prepare petitions or affidavits. Shelter services provide temporary accommodation for women who need to escape abusive households, often including children, offering safety, nutrition, and healthcare. In addition, some NGOs focus on financial independence, providing vocational training, skill-building workshops, or small loans, enabling women to support themselves and reduce economic dependence on abusive partners. This holistic approach recognizes that empowerment is not limited to legal protection but extends to social and economic self-sufficiency.

IV. Collaboration with Government Agencies

The collaboration between NGOs and government agencies is institutionalized under the DV Act, 2005. NGOs are recognized as official service providers under Section 10 of the Act, allowing them to work alongside Protection Officers, police, and the judiciary. This partnership ensures that survivors receive timely interventions such as medical care, psychological counselling, safe accommodation, and follow-up services. NGOs often play a critical role in connecting victims to medical professionals, legal counsel, and rehabilitation programs, creating a support network that spans multiple facets of recovery.

V. Notable NGOs in India

Several notable NGOs in India exemplify the impact of civil society in combating domestic violence. Sneha in Mumbai provides crisis intervention, emotional support, and healthcare services. Jagori in Delhi focuses on feminist counselling, legal aid, and raising awareness about women's rights. SAHELI offers shelter, psychological counselling, and advocacy for women facing gender-based violence. Majlis provides specialized legal support in domestic violence and sexual abuse cases, while Shakti Shalini runs shelters and community interventions, addressing both immediate safety needs and longer-term rehabilitation. These organizations demonstrate that sustained,

community-driven interventions can complement and sometimes even compensate for gaps in formal systems.

VI. Awareness and Education by Civil Society

Civil society also plays a crucial role in awareness and education. By conducting workshops in schools and colleges, NGOs help inculcate values of gender equality, mutual respect, and understanding of legal rights from a young age. Public campaigns—including candle marches, social media drives, and community theatre—work to reduce stigma and normalize discussions around abuse, encouraging victims to come forward. Community monitoring initiatives enable local groups to track patterns of recurring violence, especially in vulnerable neighbourhoods, slums, and rural areas, creating early warning mechanisms that can prevent escalation.

CHALLENGES FACED BY NGOS

Non-governmental organizations play a vital role in protecting women's rights, providing support for victims of violence, advocating for legal reforms, and raising awareness about gender equality. Despite their importance, these organizations encounter a wide range of obstacles that limit their effectiveness. Funding constraints remain one of the most persistent issues. Many NGOs, particularly those working at the grassroots level in rural or marginalized communities, operate on minimal budgets and rely heavily on donations or short-term grants. This financial uncertainty can affect their ability to maintain staff, run shelters, provide counselling, or carry out educational campaigns consistently.

Another major challenge is navigating bureaucratic and administrative processes. Securing government recognition, registering as a legal entity, or applying for grants and subsidies often involves lengthy paperwork, strict eligibility criteria, and procedural delays. These hurdles can slow down or even prevent timely assistance to women in urgent need. In addition, NGOs frequently face safety and security risks. Activists, social workers, and volunteers may encounter threats, harassment, or intimidation from perpetrators of violence, local political actors, or other groups resistant to their work. Women in vulnerable situations may also face backlash if they are seen engaging with NGOs, further complicating outreach and support efforts.

Cultural and societal barriers add another layer of difficulty. In communities where patriarchal norms are deeply ingrained, women may hesitate to approach NGOs for help, fearing social ostracism or familial retaliation. NGOs must therefore work not only as service providers but also as educators and mediators, gradually building trust and challenging discriminatory norms. Despite these obstacles, NGOs continue to operate with remarkable

resilience and dedication, often filling gaps left by formal institutions. Their persistence underscores the essential role they play in advancing gender justice, providing critical support to victims, and advocating for systemic change in society.

ROLE OF JUDICIARY IN GENDER-SENSITIVE JUSTICE

The Indian judiciary has been instrumental in shaping the landscape of domestic violence law, interpreting statutes and constitutional provisions to protect women's rights and uphold their dignity. Through proactive and progressive rulings, courts have consistently reinforced the principles enshrined in the Constitution, particularly Article 21, which guarantees the right to life and personal liberty. The judicial approach has not only provided remedies in individual cases but has also set important precedents, influencing policy, law enforcement, and societal perceptions of domestic abuse.

I. Pro-Women Interpretation by Courts

One of the keyways courts have advanced women's protection is through a liberal interpretation of "domestic relationship" under the Protection of Women from Domestic Violence Act, 2005 (PWDVA). Traditionally, protections were seen to apply only to legally recognized marriages. However, in the case of *Indra Sarma v. V.K.V. Sarma (2013)*,⁷⁰ the Supreme Court clarified that while not all live-in relationships would qualify, stable and genuine relationships where cohabitation resembled a domestic partnership could indeed fall within the ambit of the Act. This interpretation acknowledges modern social realities and ensures that women in non-traditional domestic setups are not left unprotected.

Another crucial aspect of judicial interpretation concerns a woman's right to residence. Courts have affirmed that women have the right to reside in the "shared household" even if they are not legal owners. Initially, in *S.R. Batra v. Taruna Batra (2007)*⁷¹, the scope of this right was limited, creating challenges for women seeking shelter in marital homes. This was later clarified and strengthened by the Supreme Court in *Satish Chander Ahuja v. Sneha Ahuja (2020)*⁷², which explicitly upheld a woman's right to live in a shared household regardless of ownership, thereby prioritizing safety and dignity over property formalities.

⁷⁰ *Indra Sarma v. V.K.V. Sarma* AIR 2014 SC 309

⁷¹ *S.R. Batra v. Taruna Batra*, (2007) 3 SCC 169 (India).

⁷² *Satish Chander Ahuja v. Sneha Ahuja*, AIR 2020 SC 2483

Courts have also emphasized the need for speedy relief and effective remedies under the PWDVA. These include interim maintenance, protection orders, and residence orders to ensure that women can escape abusive environments without undue delay. The Supreme Court in *Hiral P. Harsora v. Kusum Narottamdas Harsora* (201609⁷³) struck down provisions that excluded female relatives of the husband as respondents, thereby making the Act more gender-neutral and applicable even when the abuser is a woman. Such rulings reflect judicial recognition that domestic violence can occur in various forms and from multiple perpetrators, challenging stereotypical notions about victimhood.

II. Guidelines and Progressive Orders

Beyond case-specific decisions, courts have issued systemic guidelines to police, magistrates, and judicial officers. These directions focus on ensuring that victims are treated with dignity, avoiding re-traumatization, and facilitating the setting up of dedicated domestic violence courts. Sensitization of judicial officers has been stressed to better understand the nuanced dynamics of domestic abuse and provide just, timely remedies.

III. Judicial Observations on Social Context

Courts have repeatedly acknowledged that domestic violence is rooted in entrenched patriarchal structures, dowry demands, and societal silence. Judges have often remarked on the delicate balance between preserving matrimonial harmony and protecting individual dignity, asserting that protecting women's rights should not be compromised under the pretext of maintaining family unity. These observations reflect an understanding that domestic violence is not only a legal issue but a deeply social problem requiring sensitivity and societal awareness.

IV. Criticism of Judicial Implementation

Despite these advances, challenges remain in the judicial response to domestic violence. Delays in hearings and the overburdened court system prevent women from accessing timely relief. Inconsistent interpretations across different states and jurisdictions create confusion and hinder uniform application of the law. Additionally, victim-blaming attitudes persist in some lower courts, underscoring the need for ongoing judicial training and sensitization. While the judiciary has been proactive in many landmark cases, the practical implementation of these protections continues to face systemic obstacles.

⁷³ Hiral P. Harsora v. Kusum Narottamdas Harsora, (2016) 9 SCC 243

THE WAY FORWARD: POLICY RECOMMENDATIONS AND SOCIAL CHANGE

Although India has made significant strides in recognizing and addressing domestic violence through legislation and judicial activism, the real challenge lies in effective implementation and fostering societal change. Combating domestic violence is not only a matter of legal enforcement but also requires cultural, institutional, and community-level reform.

1. Policy Recommendations

A critical step is strengthening the implementation of existing laws. The Protection of Women from Domestic Violence Act (PWDVA), 2005, must be enforced rigorously, ensuring that its provisions are applied consistently across districts. Establishing dedicated Domestic Violence Cells at the district level can facilitate faster resolution of cases, while appointing more Protection Officers, adequately trained and sensitized to the complexities of domestic abuse, would enhance support for victims.

Budgetary support is equally important. Adequate funding should be allocated to shelter homes, legal aid services, counselling centres, and rehabilitation programs for survivors. Helplines and digital grievance platforms must be equipped with sufficient resources, including multilingual support, to reach diverse populations and ensure timely assistance. Capacity building and sensitization are essential for creating a responsive ecosystem. Regular gender-sensitization training for police personnel, judicial officers, medical professionals, and local authorities should be institutionalized. Domestic violence modules must be included in police academies and judicial training institutes to ensure that personnel understand both the legal and social dimensions of abuse.

Enhanced data collection and research are necessary to inform policy. Comprehensive, nationwide statistics on domestic violence cases, including conviction rates and compliance with court orders, will allow for evidence-based interventions. Academic and grassroots-level research should also explore regional and cultural variations in domestic abuse, providing insight into targeted strategies. Legal reforms may also be needed. The definition of “domestic violence” could be expanded to explicitly include digital abuse, economic coercion, and other emerging forms of exploitation. Uniformity and clarity in state-level rules and procedures under the Act would reduce inconsistencies in enforcement and improve access to justice.

CONCLUSION

Domestic violence remains one of the most pervasive yet underreported forms of abuse in India, cutting across economic, social, and cultural

boundaries. Its causes are deeply rooted in patriarchal norms, gender inequality, economic dependence, and social conditioning that often normalizes control and coercion within households. The consequences of domestic violence are far-reaching, affecting not only the physical and psychological well-being of women but also the social and economic health of families and communities. Victims often face emotional trauma, financial instability, and social isolation, while children in such environments may experience long-term developmental and behavioural challenges.

The Domestic Violence Act of 2005 represents a landmark step toward protecting women from abuse, recognizing the multidimensional nature of violence, and providing a legal framework that goes beyond physical harm to include emotional, sexual, and economic abuse. By offering remedies such as protection orders, maintenance, and residence rights, the Act empowers women to assert their rights and seek justice. However, the gap between law and practice remains a pressing concern. Challenges such as lack of awareness, social stigma, delayed judicial processes, and inconsistent enforcement limit the effectiveness of these legal provisions.

Addressing domestic violence requires more than legal reform alone. It calls for a comprehensive approach that combines effective enforcement of the law, widespread legal literacy, accessible support systems, and societal transformation to challenge patriarchal attitudes and cultural norms that perpetuate abuse. Only through coordinated legal, social, and educational interventions can the promise of the Domestic Violence Act be fully realized, ensuring that women are not only legally protected but truly empowered to live free from fear and oppression.

Chapter 6

SEXUAL VIOLENCE AND THE LAW

Interpreting Consent, Power, and Justice in India

“A woman’s dignity is her most precious possession, and the law must protect it with utmost seriousness.”

— Justice Dipak Misra
(Former Chief Justice of India, Supreme Court of India)

INTRODUCTION

Sexual offences, particularly rape, stand among the most brutal violations of human dignity, bodily autonomy, and fundamental rights especially when committed against women. In India, where traditional gender norms and patriarchal values continue to dominate social structures, the crime of rape has long been a subject of public outrage, legal reform, and moral debate. Despite constitutional guarantees of equality and protection, women continue to face a disturbing reality: the persistent threat of sexual violence, often compounded by social stigma, victim-blaming, and institutional apathy.

Rape is not merely a physical act; it is an expression of power, humiliation, and control. It is a tool often used to silence, subjugate, or punish women for asserting agency or independence. Historically, Indian law treated sexual offences with a narrow understanding defining rape primarily in terms of penile-vaginal penetration and placing an inordinate burden of proof on the victim. The perception was more about protecting "modesty" or "chastity" than recognizing a woman's right to autonomy, dignity, and consent. Over time, especially after the landmark *Mathura* case in the 1970s, public movements and legal scholars began questioning this flawed narrative.

The real turning point came in 2012, following the horrific gang rape and murder of a young woman in Delhi a case that shook the nation and led to massive protests demanding legal reform. The recommendations of the **Justice J.S. Verma Committee** and the subsequent **Criminal Law (Amendment) Act, 2013**, marked a watershed moment in Indian criminal jurisprudence. These changes not only expanded the definition of rape but also introduced new categories of sexual offences such as stalking, voyeurism, and acid attacks. It also redefined "consent" to ensure it reflects the victim's autonomy and willingness, not societal expectations of morality.

Yet, despite these progressive developments in statutory law, the experience of victims in real-life cases often reveals a disturbing gap between legislative intent and ground-level enforcement. Women continue to face barriers in accessing justice — ranging from insensitive police response and inadequate medical examination to long trials and social ostracism. Moreover, judicial interpretation although progressive in many landmark cases is still inconsistent in some areas, particularly when it comes to marital rape, custodial rape, or the role of consent in complex circumstances.

In this chapter, we will critically examine the legal landscape surrounding sexual offences and rape in India. It begins with a discussion of the relevant provisions under the Indian Penal Code (IPC) and the Code of Criminal Procedure (CrPC), highlighting how the statutory framework has evolved. It then moves on to analyze key judicial decisions that have shaped the interpretation of rape laws in India. By bringing together law, lived experience, and social critique, the chapter aims to offer a holistic view of how the Indian legal system treats victims of sexual violence and what more needs to be done to make justice truly meaningful and accessible for all women.

This chapter is particularly significant in the broader context of feminist criminology, which argues that the legal system often reflects the biases of a male-dominated society. It pushes us to ask: Are our laws genuinely empowering women, or are they still grounded in outdated notions of shame, honor, and female purity? Through this exploration, we hope to provide not just a legal understanding, but also a socio-political insight into the challenges women face as survivors of sexual crime in contemporary India.

LEGAL PROVISIONS UNDER IPC AND CRPC: UNDERSTANDING THE STATUTORY FRAMEWORK

The legal provisions concerning rape and other sexual offences in India are primarily codified in the Indian Penal Code, 1860 (IPC) and the Code of Criminal Procedure, 1973 (CrPC). Over the years, these statutes have undergone significant amendments to respond to evolving social realities, feminist critiques, and public demands for justice. In this section, we explore the key provisions that define, penalize, and govern the investigation and trial of sexual offences against women.

1. Definition of Rape under IPC: Section 375⁷⁴

Section 375 of the IPC defines the offence of rape. Prior to the Criminal Law (Amendment) Act, 2013, the definition was narrow and limited primarily to

⁷⁴ Indian Penal Code, § 375 (India, 1860).

penile-vaginal penetration. However, after the 2013 amendment, the scope of the definition was widened significantly to include:

- Penetration of penis into vagina, mouth, urethra or anus of a woman
- Insertion of any object or body part (not being the penis) into the vagina, urethra, or anus
- Manipulation of any body part to cause penetration
- Oral sex without consent

Most importantly, the amendment placed emphasis on the absence of consent, rather than resistance, as the defining element of rape. The law now recognizes that consent must be an unequivocal voluntary agreement, communicated through words, gestures, or conduct. The mere lack of physical resistance does not imply consent.

2. Consent and Its Legal Interpretation

The amended explanation under Section 375 states:

"Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act."

This was a major step forward in Indian criminal law, aligning it with global standards where consent is affirmative and conscious, not implied by silence or submission.

Furthermore, Section 90 of the IPC provides that consent given under fear or misconception is not valid. This means that if a woman agrees under coercion, fraud, or misrepresentation, the consent is legally void.

3. Marital Rape Exception: A Continuing Concern

Despite the progressive definition of rape, **Section 375 Exception II** still grants immunity to husbands:

"Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape."

This outdated provision reflects the patriarchal assumption that marriage implies perpetual consent. Feminist activists and legal experts have long argued for the removal of this exception, but the Indian legislature has, so far, hesitated to criminalize marital rape. Multiple petitions challenging this provision are pending before the courts, and it remains one of the most hotly debated legal issues concerning women's rights.

Punishment for Rape and Related Sexual Offences under Indian Law

Section 376⁷⁵ of the Indian Penal Code prescribes the punishment for the crime of rape, reflecting the seriousness with which Indian law treats sexual violence. The section mandates a minimum of ten years of rigorous imprisonment for the perpetrator, with the potential for life imprisonment depending on the circumstances. In particularly aggravated cases, such as when the rape is committed by a police officer, public servant, or during communal disturbances, the punishment can escalate to life imprisonment or even death. Notably, the **Criminal Law (Amendment) Act of 2013** and subsequent amendments, including the **Protection of Children from Sexual Offences (POCSO) Act** amendments in 2019, enhanced these punishments, especially for cases involving minors under twelve years of age. These reforms highlight a legislative recognition that sexual offences against women and children are not only individual crimes but also a grave social concern that demands stringent penalties.

Beyond the primary offence of rape, the Indian Penal Code recognizes a range of other sexual offences designed to broaden the scope of legal protection for women. Section 354 of the Indian Penal Code criminalizes assault or use of criminal force intended to outrage the modesty of a woman. Section 354A of the Indian Penal Code specifically addresses sexual harassment, reflecting the growing awareness of workplace and public space violations. Section 354B of the Indian Penal Code punishes assault with the intent to disrobe, while Section 354C of the Indian Penal Code criminalizes voyeurism, and Section 354D of the Indian Penal Code addresses stalking. More serious crimes, such as gang rape or the rape of minors, are codified under Sections 376AB, 376DA, and 376DB of the Indian Penal Code. These provisions, inserted through the 2013 Criminal Law (Amendment) Act and subsequent amendments, significantly expanded the legal definitions of sexual offences, ensuring that acts which might have previously fallen outside the narrow⁷⁶ legal interpretation of rape are now punishable under law. Collectively, these provisions reflect a comprehensive approach aimed at protecting women's bodily autonomy and dignity.

Equally important are the procedural safeguards outlined under the Code of Criminal Procedure, which ensure that the reporting, investigation, and prosecution of sexual offences are conducted with sensitivity toward victims. Section 154 CrPC empowers a woman who is a victim of a sexual offence to lodge a First Information Report at any police station, and it mandates that

⁷⁵ Indian Penal Code, § 376, Act No. 45 of 1860 (India).

⁷⁶ The Indian Penal Code, Sections 354, 354A-D, 376, 376AB, 376DA, 376DB; Criminal Law (Amendment) Act, 2013; Protection of Children from Sexual Offences Act, 2012; Code of Criminal Procedure, Sections 154, 164-A, 173, 228-A, 327 (India).

this report be recorded by a woman officer, reducing the intimidation victims might face in approaching authorities. Section 164-A CrPC requires that a medical examination of the victim be conducted within twenty-four hours by a registered medical practitioner, ensuring timely evidence collection and safeguarding the victim's health. Section 173 CrPC mandates that investigations be completed within two months of FIR registration, emphasizing prompt action. Further, Section 228-A CrPC prohibits the disclosure of the identity of a rape survivor, protecting her privacy, and Section 327 CrPC mandates that rape trials be held in-camera to prevent public exposure of the victim and to ensure dignity and safety throughout the judicial process. Together, these procedural safeguards aim to create a legal environment that supports victims, encourages reporting of crimes, and ensures that justice is pursued without further traumatizing the survivor.

These procedural safeguards aim to create a sensitive and survivor-centric approach in the criminal justice system.

7. Fast Track Courts and Victim Compensation

The Nirbhaya case led to the establishment of Fast Track Courts for rape cases and the Nirbhaya Fund, which supports victim rehabilitation and compensation. Under Section 357A of CrPC, states are required to provide compensation to victims of sexual offences, especially in cases of physical or mental trauma, medical expenses, or loss of livelihood.

This statutory framework reflects India's gradual but growing recognition of the seriousness of sexual crimes. However, as we will explore in the next section, judicial interpretation plays a vital role in shaping how these laws are implemented on the ground and whether they truly serve the interests of justice.

Legal Provisions under IPC and CrPC : Understanding the Sexual Framework

The Indian Penal Code (IPC) and the Code of Criminal Procedure (CrPC) serve as the legal foundation for addressing sexual offences in India. These statutory provisions reflect both the gravity of such crimes and the evolving understanding of consent, dignity, and bodily autonomy.

Section 375 of the Indian Penal Code defines the offence of rape. Initially narrow and based on outdated notions of morality, this provision has undergone significant changes through legislative amendments and judicial interpretation. The Criminal Law (Amendment) Act, 2013, was a watershed moment in redefining rape and broadening its scope. The amendment introduced a more inclusive and comprehensive definition, encompassing

various forms of sexual penetration beyond penile-vaginal intercourse, thus aligning Indian law more closely with contemporary understandings of sexual violence.

Section 376 of the Indian Penal Code prescribes punishment for rape. The minimum sentence is rigorous imprisonment for seven years, extendable to life imprisonment, depending on the gravity of the offence and circumstances. Further *subsections such as 376A, 376B, 376C, and 376D* address specific contexts such as custodial rape, rape by a person in authority, gang rape, and repeat offences each carrying enhanced penalties and reflecting the aggravated nature of the crime.

The CrPC, particularly Sections 154, 164, and 173, outlines procedural safeguards and mandates. Section 154(1) of CrPC, as amended, now requires that information related to sexual offences must be recorded by a woman police officer, and the statement of the victim under Section 164 must be recorded by a Judicial Magistrate as soon as possible to preserve the accuracy of the testimony. The law also mandates time-bound investigation and trial processes, especially in cases involving sexual assault against women and children.

In addition, The Criminal Law (Amendment) Act, 2018, further strengthened the legal framework by introducing stricter punishments for rape of girls below the age of 12 and mandated completion of the investigation and trial within a prescribed time frame, reflecting the State's intention to ensure speedy justice and deterrence.

Despite these provisions, the effectiveness of legal redressal continues to be debated. Conviction rates remain low, trials are often delayed, and the process itself can be traumatic for survivors. This gap between law and justice points to the need for continued reform and sensitivity within the legal system.

Judicial Interpretation of Sexual Offences and Rape Laws

The Indian judiciary has played a critical role in shaping the understanding, scope, and implementation of laws concerning sexual offences. While statutory provisions provide the framework, it is through landmark judgments and interpretative reasoning that these laws have acquired depth and clarity. Courts in India have not only adjudicated cases but have also responded to socio-legal realities by expanding the meaning of consent, reinforcing victim rights, and mandating procedural safeguards.

1. Tukaram v. State of Maharashtra (1979) – The Mathura Rape Case⁷⁷

One of the most controversial and influential judgments in Indian legal history, the Mathura rape case exposed the systemic insensitivity towards rape survivors. In this case, a tribal girl named Mathura was allegedly raped in a police station. The Supreme Court acquitted the accused policemen on the grounds that there was no visible resistance and that the intercourse seemed consensual. The judgment was widely criticized for its narrow understanding of consent.

The public outrage that followed led to nationwide protests and ultimately compelled the government to amend rape laws in 1983. These amendments introduced Sections 376A to 376D in the IPC and placed a greater burden of proof on the accused in custodial rape cases, thus recognizing the abuse of power in such contexts.

2. Bodhisattwa Gautam v. Subhra Chakraborty (1996)⁷⁸

In this case, the Supreme Court recognized rape as a violation of fundamental rights under Article 21 of the Constitution, which guarantees the right to life and personal liberty. The Court held that rape is not only a crime under the IPC but also a breach of the basic human right to live with dignity.

The judgment emphasized the importance of compensation to the survivor, even during the pendency of the trial. It marked a shift from treating rape solely as a criminal offence to viewing it as a matter of constitutional and human rights.

3. State of Punjab v. Gurmit Singh (1996)⁷⁹

In this case, the Supreme Court acknowledged that survivors of sexual violence often face hostility, trauma, and secondary victimization during court proceedings. The Court strongly recommended that:

1. Trials should be conducted in camera (in private)
2. Cross examination must be sensitive
3. Unwarranted delay must be avoided

This judgment highlighted the need for a victim-centric approach in adjudicating sexual offence cases.

⁷⁷ *Tukaram v. State of Maharashtra*, AIR 1979 SC 185.

⁷⁸ *Bodhisattwa Gautam v. Subhra Chakraborty*, AIR 1996 SC 922.

⁷⁹ *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384 (India).

4. Vishaka v. State of Rajasthan (1997)⁸⁰

Though not directly about rape, this case was pivotal in shaping the discourse on sexual harassment at the workplace. The Supreme Court, in the absence of domestic legislation, laid down the **Vishaka Guidelines** to prevent and address sexual harassment which are as follows:-

1. Duty of the Employer or other responsible persons in work places and other institutions: It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.
2. Definition: For this purpose, sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as: a) physical contact and advances; b) a demand or request for sexual favours; c) sexually coloured remarks; d) showing pornography; e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature. Where any of these acts is committed in circumstances whereunder the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in Government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.
3. Preventive Steps: All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:
 - (a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
 - (b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

⁸⁰ Vishaka v. State of Rajasthan, (1997) 6 SCC 241 (India).

(c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. **Criminal Proceedings:** Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.
5. **Disciplinary Action:** Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.
6. **Complaint Mechanism:** Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.
7. **Complaints Committee:** The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counselor or other support service, including the maintenance of confidentiality. The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment. The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them. The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.
8. **Workers' Initiative:** Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum

and it should be affirmatively discussed in Employer-Employee Meetings.

9. Awareness: Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.
10. Third Party Harassment: Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.
11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.
12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

These guidelines treated sexual harassment as a violation of the fundamental right to equality and dignity under Articles 14, 15, and 21.

This judgment laid the groundwork for the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

5. Nirbhaya Case – Mukesh & Ors v. State (NCT of Delhi) (2017)⁸¹

The horrific gang rape and murder of a young woman in Delhi in 2012 shook the nation and catalyzed sweeping reforms. The Supreme Court, while upholding the death penalty for the accused, referred to the crime as "a tsunami of the soul" and noted that the brutality displayed in the act defied all civilized norms.

The case led to the Justice Verma Committee Report, which recommended several legal reforms including:

1. Expanding the definition of rape
2. Criminalizing voyeurism, stalking, and acid attacks
3. Making consent central to the offence
4. Holding public authorities accountable

The Criminal Law (Amendment) Act, 2013, incorporated many of these recommendations.

⁸¹ *Mukesh & Ors v. State (NCT of Delhi)*, (2017) 6 SCC 1

Judicial Interpretation and Evolving Standards⁸²

Judicial interpretation has been a cornerstone in the evolution of sexual offence laws in India. While legislation sets the framework, it is the judiciary that breathes life into legal provisions through its interpretations, ensuring they respond to changing social realities and the need for justice. In the context of rape and sexual assault, Indian courts have played a pivotal role in reshaping outdated notions of consent, victimhood, evidence, and the dignity of survivors.

The Turning Point: Mathura Rape Case and Its Aftermath

One of the most significant turning points in Indian legal history was the *Tukaram v. State of Maharashtra* (1979) judgment, popularly known as the Mathura rape case. In this case, the Supreme Court acquitted two police officers accused of raping a young tribal girl named Mathura in custody, reasoning that her silence implied consent. The verdict was widely criticized for its patriarchal overtones and disregard for custodial power dynamics. It sparked widespread protests and a powerful movement led by women's rights activists and legal scholars. The public outcry led to the Criminal Law Amendment Act, 1983, which introduced vital reforms, including:

1. Legal provisions for custodial rape (Sections 376A to 376D IPC)
2. Reversal of burden of proof in certain custodial situations (Section 114A of the Indian Evidence Act)
3. Provisions for in-camera trials and restrictions on victim identity disclosure (Section 228A IPC)

This marked the first time that public discourse and judicial shortcomings led to direct and swift legislative action in matters of sexual offences.

Redefining Consent: A Shift in Judicial Approach

Over the years, Indian courts have gradually moved away from archaic views of consent that relied on stereotypical assumptions, such as the idea that "real" rape involves violent resistance or visible injuries. In *K.P. Thimmappa Gowda v. State of Karnataka* (2011⁸³), the Karnataka High Court held that absence of resistance does not imply consent, reinforcing the idea that true consent must be voluntary and informed, not inferred from passivity or helplessness. The judgment emphasized that each case must be evaluated

⁸² *Judicial Interpretation & Evolving Standards*, in *Women and Criminology*

⁸³ *K.P. Thimmappa Gowda v. State of Karnataka* AIR 2011 SC 2307

contextually, especially considering the power dynamics, coercion, and vulnerability of the victim.

A more comprehensive and nuanced definition of consent was solidified by the Criminal Law (Amendment) Act, 2013, which incorporated the language of "unequivocal voluntary agreement" under Section 375 of the IPC. This legislative reform was directly inspired by both judicial interpretation and public demand for a survivor-centric approach after the horrific 2012 Delhi gang rape case (Nirbhaya case).

Enhancing the Role of Victim Testimony

Traditionally, courts were hesitant to convict on the sole testimony of the rape survivor, often demanding corroboration even when the survivor's version was credible. However, in the landmark case of *State of Maharashtra v. Chandraprakash Kewalchand Jain* (1990), the Supreme Court clearly stated that the sole testimony of a victim of rape, if found credible, is sufficient to convict the accused, as rape victims are not accomplices but victims of a heinous act.

This view was reiterated in *Rai Sandeep v. State (NCT of Delhi)* (2012),⁸⁴ where the Court coined the term "sterling witness" a witness whose testimony is so cogent and trustworthy that it does not require further corroboration. This principle reinforced judicial trust in survivors and aimed to minimize the secondary trauma caused by excessive skepticism in rape trials.

Progressive Stance Against Gender Insensitivity and Outdated Practices

Indian courts have also taken a firm stance against degrading and insensitive practices in sexual offence trials. In *Lillu Rajesh & Anr v. State of Haryana* (2013)⁸⁵, the Supreme Court categorically banned the "two-finger test", declaring it to be unscientific, irrelevant, and violative of the right to dignity and privacy of the survivor. The Court stated that a woman's sexual history is immaterial to determine whether she was raped and condemned the practice as patriarchal and intrusive.

Similarly, in *State of Punjab v. Gurmit Singh* (1996),⁸⁶ the Supreme Court recognized the trauma and societal pressure faced by rape victims, noting that delays in filing FIRs should not discredit the survivor, especially in the context of a crime that is deeply traumatic and stigmatized in society.

⁸⁴Rai Sandeep v. State (NCT of Delhi) (2012) 8 SCC 21990) 1 SCC 550

⁸⁵Lillu Rajesh & Anr v. State of Haryana (2013) (2013) 14 SCC 643

⁸⁶ State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 (India).

In *State of H.P. v. Raghubir Singh* (1993⁸⁷), the Supreme Court also emphasized that defense counsel should refrain from aggressive cross-examination that aims to humiliate or traumatize the victim, noting that rape trials should not become arenas for character assassination.

7. The Nirbhaya Case: A Watershed Moment

The 2012 Delhi gang rape and murder case shook the conscience of the nation and led to massive legal reform, most of which was guided by the Justice J.S. Verma Committee Report (2013). The report, and the subsequent Criminal Law (Amendment) Act, 2013, were grounded in progressive judicial thinking and brought sweeping changes:

- Expanded definition of rape to include non-penile penetrative acts
- Criminalization of voyeurism, stalking, and acid attacks
- Introduction of minimum sentencing guidelines
- Establishment of fast-track courts and victim support systems

The judiciary played an instrumental role in post-legislation in upholding the spirit of these reforms through strict sentencing, expedited trials, and emphasis on dignified treatment of survivors.

Balancing Justice and Fair Trial: Due Process Concerns

The Indian judiciary has long faced the delicate task of balancing the need for delivering justice to survivors of sexual offences with the fundamental principles of due process and the presumption of innocence. While public sentiment and moral outrage can justifiably demand accountability, courts have consistently maintained that convictions cannot be based solely on emotion or societal pressure. Instead, the rule of law requires that evidence be meticulously examined and legal procedures strictly followed to ensure fairness.

A notable illustration of this principle is *Tathagata Satpathy v. State of Odisha* (2021⁸⁸), in which the Orissa High Court emphasized that the rights of the accused must also be protected even as the law seeks to uphold the rights of survivors. The judgment underscored that every accused is entitled to a fair trial, including access to legal representation, cross-examination of witnesses, and consideration of all relevant evidence. Courts highlighted that while the law rightly recognizes the vulnerability of survivors and the need

⁸⁷ *State of Himachal Pradesh v. Raghubir Singh*, (1993) 4 SCC 260 (India).

⁸⁸ *Tathagata Satpathy & Anr. v. Priyabrata Patnaik*, (2021) 2 Orissa LR 1 (Orissa HC).

to provide them protection, these measures cannot compromise procedural safeguards.

This approach reflects the broader philosophy that justice is not merely about punishing wrongdoers but also about ensuring that the legal process is transparent, impartial, and credible. By insisting on reliable evidence and adherence to due process, the judiciary safeguards the integrity of the criminal justice system. Such measures serve multiple purposes: they prevent miscarriages of justice, maintain public confidence in legal institutions, and ensure that the punishment meted out is legally sound and socially legitimate.

Balancing survivor protection with due process is therefore a core challenge in cases of sexual offences. It requires judicial prudence, sensitivity, and a commitment to both principles of human dignity and the foundational rights of the accused. Only by maintaining this balance can the law ensure that justice is not only delivered but is also perceived as fair and just by society at large.

This balanced approach between victim-centric sensitivity and procedural fairness is critical to maintaining faith in the criminal justice system.

MODERN INTERPRETATION OF RAPE LAW EXTENDED IN INDIA

The Indian judiciary has emerged as both a critic and custodian of women's rights in cases of sexual violence, especially rape. Over the decades, courts have confronted not only legal ambiguities but also deeply ingrained social and cultural attitudes that influence how justice is administered. Through landmark judgments, the judiciary has shaped the meaning of "consent", addressed evidentiary issues, and even highlighted the state's duty to support survivors. However, despite some progressive strides, challenges remain in ensuring justice is both timely and sensitive.

The Mathura Case and Its Aftermath

A major turning point in the judicial approach to rape laws was the infamous *Tukaram v. State of Maharashtra (1979⁸⁹)*, commonly known as the Mathura rape case. In this case, a young tribal girl named Mathura was allegedly raped by two policemen inside a police station. The Supreme Court, however, acquitted the accused, reasoning that Mathura had not raised an alarm and thus appeared to have consented. This reasoning, heavily criticized for its patriarchal undertone, sparked national outrage. Women's organizations across the country mobilized in protest, leading to amendments

⁸⁹ *Tathagata Satpathy & Anr. v. Priyabrata Patnaik*, (2021) 2 Orissa LR 1 (Orissa HC).

in the Indian Penal Code in 1983. These included the addition of custodial rape under Section 376(2), provisions that reversed the burden of proof in certain rape cases, and restrictions on using the survivor's past sexual history as evidence.⁹⁰

The Expansion of “Consent” and Victim-Centric Approaches

A transformative moment in rape jurisprudence came in *State of Punjab v. Gurmit Singh* (1996⁹¹), where the Supreme Court held that the victim's testimony alone can be sufficient for conviction if found credible. The court emphasized the importance of a sensitive approach when adjudicating rape cases, warning against reliance on archaic notions such as the victim's character, sexual history, or delay in filing FIRs. This judgment reiterated that "a woman who is the victim of sexual assault is not an accomplice to the crime," and any presumption to the contrary is both legally and morally unjust.

In *State of Himachal Pradesh v. Shree Kant Shekari* (2004)⁹², the court reaffirmed the same position, noting that the survivor's testimony needs not be corroborated unless there are compelling reasons. These judgments represent a growing acknowledgment of the trauma rape survivors endure and the barriers they face in seeking justice.

Striking Down the “Two-Finger Test” and Restoring Dignity⁹³

The judgment in *Lillu Rajesh & Anr. v. State of Haryana* (2013⁹⁴) explicitly condemned the use of the “two-finger test” during medical examination of rape survivors. The Court held that this practice violates the right to privacy and dignity under Article 21 of the Constitution. This ruling was further echoed in *Nipun Saxena v. Union of India* (2018⁹⁵), where the Supreme Court emphasized that such practices are regressive, unscientific, and harmful.

⁹⁰ Tukaram S. Dighole v. State of Maharashtra, (1979) 3 S.C.C. 532 (India)

⁹¹ State of Punjab v. Gurmit Singh, (1996) 2 S.C.C. 384 (India).

⁹² State of Himachal Pradesh v. Shree Kant Shekari, (2004) 8 SCC 153; AIR 2004 SC 4404.

⁹³ *State of Jharkhand v. Shailendra Kumar Rai @ Pandav Rai*, Crim. App. No. 1441 of 2022, (S.C. Oct. 31, 2022) (Ind.).

⁹⁴ *Lillu @ Rajesh & Anr. v. State of Haryana*, (2013) 14 SCC 643 (India).

⁹⁵ *Nipun Saxena & Anr. v. Union of India*, (2018) 13 SCC 719 (India).

Marital Rape: Progress through Interpretation

While marital rape is still not criminalized in India, the judiciary has made attempts to chip away at the legal immunity surrounding it. In *Independent Thought v. Union of India* (2017),⁹⁶ the Supreme Court held that the Exception 2 to Section 375 IPC which allowed marital sex with minor wives is unconstitutional. This judgment was significant as it recognized the bodily autonomy of married girls and challenged the blanket protection historically granted to husbands.

Additionally, the Court has signaled a shift in understanding sexual autonomy within the marital framework. In *Joseph Shine v. Union of India* (2018)⁹⁷ while dealing with the constitutionality of adultery laws, the Court emphasized the importance of equality and dignity within marriage, rejecting the notion of women as property of their husbands. Though not directly addressing marital rape, these observations lay the constitutional foundation for its future criminalization.

Acknowledging Male and Transgender Survivors

Traditionally, the legal definition of rape in India was limited to acts committed by men against women. However, in recent years, courts have begun acknowledging the rights of other survivors as well. In *National Legal Services Authority v. Union of India* (2014)⁹⁸, the Supreme Court recognized transgender persons as the “third gender” and upheld their constitutional rights, including protection against sexual violence. This ruling has catalyzed discourse around expanding rape laws to be gender-neutral, though statutory reform remains pending.

Sentencing and Aggravating Circumstances

In heinous rape cases such as the *Nirbhaya case (Mukesh & Anr. v. State of NCT of Delhi, 2020)*⁹⁹, the courts have upheld capital punishment based on the “rarest of rare” doctrine. While such sentences reflect public outrage and a need for deterrence, they also raise questions about the effectiveness of punitive justice in curbing sexual violence. Some scholars and activists argue for systemic reforms including faster trials, better policing, and survivor support over harsher punishments.

⁹⁶ *Independent Thought v. Union of India*, (2017) 10 SCC 800 (India).

⁹⁷ *Joseph Shine v. Union of India*, (2019) 3 SCC 39 (India).

⁹⁸ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438 (India).

⁹⁹ *Mukesh & Anr. v. State of NCT of Delhi*, (2017) 6 SCC 1 (India).

Judicial Trends and Challenges

Despite the progressive tone of Supreme Court judgments, challenges persist at the trial court level. Survivors often face delays, insensitive questioning, pressure to “compromise”, and lack of support. The conviction rate in rape cases remains dismally low, partly due to the lack of proper investigation, victim intimidation, and procedural lapses.

Furthermore, the burden of navigating the legal process still falls disproportionately on the survivor. The judiciary has occasionally faltered in ensuring consistent victim-centric justice, as seen in some cases where judges have made problematic remarks about women's character, dress, or behavior. Yet, the overall trend in Supreme Court jurisprudence reveals a slow but meaningful evolution toward recognizing rape as a violation of bodily integrity, personal dignity, and constitutional rights not just a crime against modesty.

Societal Attitudes and Victim-Blaming

While legislation and judicial pronouncements have evolved to recognize sexual violence as a grave crime, society's perception of the offence and more specifically, of the victim has not always kept pace. One of the most persistent and harmful societal responses to sexual violence is victim-blaming, a phenomenon where responsibility for the crime is subtly or overtly shifted from the perpetrator to the survivor.

In India, and in many parts of the world, the question still looms: “What was she wearing?”, “Why was she out so late?”, “Was she drinking?”, “Did she provoke him?”, “Why didn't she scream?”, “Why didn't she run?” These questions, often posed by neighbors, acquaintances, the media, law enforcement, and sometimes even judiciary, are steeped in patriarchal assumptions that scrutinize the woman's behavior rather than the man's actions. This victim-blaming attitude has deep cultural roots. In traditional Indian society, a woman's body is often linked with family honor and societal prestige. When she becomes a victim of sexual violence, the focus tragically shifts from crime to the perceived "dishonor" brought upon the family or community. In some cases, this leads to extreme actions such as forcing the woman to stay silent, marry the rapist, or even pushing her into isolation or suicide. The stigma is such that many victims suffer in silence, choosing not to report the offence for fear of being disbelieved, ridiculed, or worse ostracized by their own loved ones.

This harsh reality is reflected in reporting patterns. Studies and data suggest that a significant number of sexual assault cases in India go unreported. This "dark figure" of crime offences that occur but are never recorded in official

statistics stems not only from fear of retaliation or distrust in the legal system, but also from a deeply ingrained societal shame associated with rape. It is not uncommon for families to discourage victims from pursuing legal action, concerned more about “reputation” than justice.

Furthermore, women who do come forward often face a second layer of trauma during the legal process. The police investigation may be dismissive or humiliating, the medical examination invasive, and the courtroom experience daunting. The cross-examination of victims in rape trials, especially before recent reforms, has been known to resemble character assassinations more than a quest for truth. Defense attorneys have, in the past, used a woman’s sexual history, lifestyle, or even personal choices to discredit her testimony. While the Criminal Law (Amendment) Act, 2013 has tried to address some of these issues by prohibiting the use of past sexual history to determine consent (Section 53A of the Indian Evidence Act), enforcement remains uneven.

The media too plays a double-edged role. On one hand, it can raise awareness, stir public outrage, and push for policy changes as was seen after the 2012 Delhi gang rape. On the other, it can be irresponsible, sensationalizing incidents, revealing victims’ identities, or reinforcing harmful stereotypes. Media trials often amplify victim-blaming narratives, asking what the survivor could have done differently, rather than focusing on the actions of the accused. To truly change societal attitudes, we must recognize that sexual violence is not just a legal issue, it is a social and cultural one. The solution lies not only in harsher laws or faster trials, but also in re-educating society about the meaning of consent, the autonomy of women, and the right to live free from fear and prejudice.

Gender-sensitization must begin at a young age. Schools, colleges, and workplaces need to adopt clear policies and awareness programs about consent, respectful behaviour, and support systems for victims. Religious and community leaders, teachers, public figures, and influencers have a critical role in shaping the narrative, challenging harmful norms, supporting survivors, and speaking out against victim-blaming. In essence, a just and equitable society must believe survivors, support them with empathy, and unlearn the patriarchal reflex to interrogate their choices. Sexual violence is never the victim’s fault and until this truth becomes common knowledge, the journey towards justice will remain incomplete.

Contemporary Legal Safeguards and Challenges

In the evolving legal landscape of India, various legislative and institutional safeguards have been introduced to strengthen the protection offered to women against sexual offences. These include not just penal provisions but

also preventive measures, procedural reforms, and victim-support mechanisms.

The Criminal Law (Amendment) Act of 2013¹⁰⁰, passed in the aftermath of the brutal 2012 Nirbhaya gang rape case, introduced a comprehensive overhaul of existing rape laws. It expanded the definition of rape under Section 375 IPC, included new forms of sexual violence such as stalking, voyeurism, and disrobing, and increased the severity of punishment. These amendments were a significant shift from a limited understanding of sexual offences to a broader, more gender-sensitive framework.

In addition to legal reforms, institutions such as One Stop Centers (OSCs) and Nirbhaya Fund-supported helplines have been created to offer immediate assistance to survivors. These efforts reflect the understanding that justice for victims is not just about punishing the offender but also about restoring the survivor's dignity and supporting her rehabilitation.

However, challenges persist. Conviction rates in sexual offences remain relatively low, often due to delayed reporting, lack of forensic evidence, hostile investigation, or societal pressure on the victim to withdraw. Victim-blaming attitudes within police departments and courtrooms still occur, despite formal procedural reforms. Further, the mental health needs of survivors are often overlooked in legal and policy frameworks. There is also a concern around false accusations, which although statistically rare, have been used by critics to discredit genuine survivors and question the legitimacy of progressive rape laws. It is crucial to maintain a balanced perspective that protects the rights of the accused while ensuring justice for the victim.

Finally, the experience of marginalized women such as Dalit women, tribal women, transgender individuals, and sex workers reveals the layered nature of sexual violence. Their experiences are often silenced or dismissed, and legal protections rarely extend to them in practice. Thus, while legislative strides have undoubtedly improved the legal framework surrounding sexual offences, the journey toward true justice for all women irrespective of class, caste, or sexuality remains incomplete. A combination of legal reform, institutional sensitivity, public education, and intersectional awareness is vital for meaningful change.

Role of Media and Society in Shaping Perceptions of Sexual Offences

Sexual offences against women do not occur in isolation; they are deeply embedded in the cultural, social, and psychological fabric of a society. While the legal system seeks to offer justice post-violation, the media and societal

¹⁰⁰ The Criminal Law (Amendment) Act, No. 13 of 2013, INDIA CODE (2013).

attitudes play a decisive role in influencing both public perception and the treatment of survivors.

1. Media as a Double-Edged Sword

The media, especially in the digital age, has immense power to shape narratives around sexual offences. On one hand, it can function as a force for justice amplifying survivor voices, bringing attention to otherwise ignored cases, and placing pressure on the legal system to act swiftly. On the other hand, it can sensationalize trauma, invade privacy, and perpetuate stereotypes.

The 2012 Nirbhaya case is an example of how the media can mobilize public opinion. The non-stop coverage, nationwide protests, and international focus compelled the Indian state to amend its rape laws swiftly. The Justice Verma Committee was constituted within weeks, and the Criminal Law (Amendment) Act, 2013 introduced harsher penalties and broader definitions for sexual offences. This would likely not have happened with such speed in the absence of overwhelming media and civil society pressure. However, in contrast, there have also been instances where media coverage has revictimized survivors. By publishing names, photos, or personal details, some outlets have compromised the dignity and safety of the survivor. In smaller towns and rural areas, such media intrusion can be devastating, leading to social ostracism, honor-based violence, or even suicides.

2. Societal Norms and Victim-Blaming Culture

A large part of how sexual offences are perceived stems from patriarchal norms deeply entrenched in Indian society. Often, instead of blaming the perpetrator, the survivor is scrutinized by her clothing, character, presence at a particular location, or lifestyle choices are questioned. This victim-blaming culture discourages women from coming forward and reporting crimes. Survivors are also frequently discouraged by family members, not because of lack of support but because of fear of public shame, of not finding a suitable marriage alliance, or of social backlash. In conservative communities, a rape survivor is wrongly seen as someone “tainted” or “spoiled,” as though her worth is defined solely by her sexual purity.

There is also a strong emphasis on honor, especially in rural areas and among traditional communities. Here, the family’s honor is tied to the woman’s body. In such cases, rape is not just seen as a crime against the individual but as a dishonour to the entire family or community. This leads to forced marriages with rapists, withdrawal of complaints, and settlements, which are legally invalid but continue to occur informally.

3. The Intersection of Caste, Class, and Gender

In many cases, Dalit women and women from marginalized castes and tribes face sexual violence not just as a gendered crime, but as a form of caste-based subjugation. The Hathras case (2020), where a Dalit girl was gang-raped and murdered, highlighted how institutional apathy, caste politics, and media silence can work together to deny justice. While the mainstream media was initially slow to pick up the story, social media activists and alternative platforms played a crucial role in bringing it to national attention.

Similarly, working-class women, migrant women, and sex workers often face systemic neglect. When such women are raped or assaulted, their complaints are less likely to be taken seriously by police or media. This reveals a hierarchy of empathy, where society's outrage is selective reserving the strongest reactions for victims who fit a certain profile of "respectability."

4. Progress and the Road Ahead

Despite these challenges, there have been positive shifts in recent years. Feminist journalism and independent media outlets are more sensitive in reporting cases of sexual violence. The use of the word "survivor" instead of "victim" is gaining ground. Campaigns such as #MeToo have challenged the culture of silence and emboldened many women to speak up.

Laws such as the Protection of Children from Sexual Offences Act (POCSO) and guidelines ¹⁰¹ issued by the Ministry of Information and Broadcasting regarding media ethics are steps in the right direction. Yet, enforcement remains uneven, and a cultural shift is still necessary.

To move forward, it is essential that:

1. Media houses adopt gender-sensitive reporting practices.
2. Survivors are protected from public scrutiny and harassment.
3. Society stops equating a woman's worth with sexual purity.
4. Education systems introduce gender sensitization at an early age.
5. Public institutions, from police stations to courts, are trained to respond with empathy and professionalism.

¹⁰¹ The Protection of Children from Sexual Offences Act, No. 32 of 2012, INDIA CODE (2012).

Ministry of Women & Child Development, *POCSO Guidelines for Implementation of the Act* (2019).

Challenges in the Legal Process: Reporting, Investigation, and Trial

While India has made commendable legal reforms in addressing sexual violence, several procedural and systemic challenges continue to undermine the efficacy of these laws. Women who survive sexual offences often face numerous hurdles legal, social, and psychological throughout the criminal justice process, from filing the First Information Report (FIR) to securing a conviction in court. These challenges not only retraumatize the survivor but can also discourage others from coming forward.

I. Underreporting of Sexual Crimes

Sexual offences in India remain vastly underreported due to a range of societal pressures and stigma. Fear of societal ostracization, victim-blaming, pressure from family members to “settle” the matter, and the fear of retaliation by the accused contribute to the survivor’s reluctance to report the crime. In rural areas or smaller towns, survivors may lack access to female police officers, making the reporting process more intimidating and humiliating.

II. Police Apathy and Secondary Victimization

Despite Supreme Court directives and sensitization efforts, police personnel sometimes exhibit indifference or disbelief toward survivors. In some cases, FIRs are not promptly registered, and survivors are forced to recount the traumatic incident multiple times. This practice of secondary victimization where the survivor is subjected to humiliating questions or is judged based on her clothing, character, or behavior adds another layer of trauma to the initial offence.

III. Inadequate Forensic and Medical Infrastructure

Forensic evidence plays a crucial role in corroborating a survivor's testimony. However, many hospitals in India still do not follow standardized protocols for medical examination. In some places, the now-banned “two-finger test” continues despite being ruled unconstitutional and irrelevant. Lack of proper training among medical professionals and inadequate storage and transportation of forensic samples often result in compromised evidence.

IV. Lengthy Judicial Process and Low Conviction Rates

Sexual offence cases often take years to resolve. The burden of proof is high, and the courtroom experience can be extremely adversarial. Defense lawyers may use aggressive cross-examination to malign the survivor's character. The fear of public humiliation during court proceedings may dissuade many from seeking justice. According to National Crime Records Bureau (NCRB) data, despite the rise in the

number of reported sexual offences, the conviction rate remains low due to hostile witnesses, delayed trials, and procedural lapses.

V. Protection of the Accused and Influence of Power

In many high-profile or politically sensitive cases, the accused use their influence to delay proceedings or intimidate witnesses. Survivors, especially from marginalized communities, often lack the legal and financial support needed to sustain long legal battles.

VI. Re-victimization by Media and Society

While the law mandates confidentiality in rape trials (Section 228A IPC), media outlets sometimes flout these norms. Sensationalist reporting can lead to the survivor being identified or stigmatized. Moreover, societal attitudes often shift blame to the survivor, questioning her motives, past relationships, or clothing choices further deterring others from speaking out.

TRANSITION FROM IPC TO BNS

The transition from the **Indian Penal Code (IPC)** to **Bharatiya Nyaya Sanhita (BNS)** represents a conscious effort to modernize criminal law. While the IPC, drafted during the colonial era, provided a general framework for offences and punishments, it often failed to address gender-specific vulnerabilities, digital crimes, and socio-economic contexts affecting women. The BNS introduces:

- **Modern definitions of crime** reflecting contemporary social realities, including cybercrime, financial abuse, and sexual exploitation
- **Explicit gender-sensitive provisions**, ensuring that women victims receive adequate protection and recourse
- **Integration with BNSS**, which ensures procedural fairness, quicker access to justice, and protection of victims' rights

This transition aims to **eliminate gaps in the old system**, particularly the lack of protection against structural and domestic forms of violence, while strengthening preventive and corrective mechanisms.

1. Gender-Neutral and Gender-Sensitive Provisions

A key innovation of the BNS is its approach to gender neutrality while retaining gender sensitivity where required.

- **Gender-neutral provisions** ensure that criminal liability applies equally, regardless of the sex of the perpetrator or victim. For instance, offences like cyber harassment, fraud, or physical abuse are codified without assuming traditional gender roles.

- **Gender-sensitive provisions** recognise that women face unique forms of exploitation—such as domestic violence, sexual harassment, economic abuse, and coercion in family and property matters. These provisions ensure:
 - Enhanced penalties for crimes against women in domestic and intimate settings
 - Special measures for protection of survivors during investigation, trial, and after conviction
 - Recognition of structural inequality, which allows courts to consider context when determining culpability and compensation

By balancing neutrality and sensitivity, the BNS addresses the historical neglect of women’s vulnerability in criminal law, enabling justice that is both equitable and pragmatic.

2. Procedural Safeguards under BNSS

The **Bharatiya Nagarik Suraksha Sanhita (BNSS)** complements the BNS by codifying procedural protections for victims and accused alike. For women-centric crimes, these safeguards are critical:

- **FIR and Reporting:** BNSS ensures easier filing of complaints for women, including online reporting and special reporting cells for sensitive offences like sexual harassment, domestic violence, and cybercrime.
- **Victim Protection Measures:** Provisions for anonymity, witness protection, and confidentiality to prevent social stigma and retaliation
- **Timely Investigation:** Mandated timeframes for police investigation and forensic processing, ensuring that evidence is preserved and justice is not delayed
- **Legal Representation and Aid:** Provision of free legal counsel, access to victim support services, and guidance through the judicial process
- **Special Courts and Fast-Track Procedures:** For women-centric crimes, BNSS promotes dedicated courts or sessions to expedite cases, reducing prolonged trauma for victims

These procedural safeguards aim to create a supportive justice environment, acknowledging the unique barriers women face, from intimidation to social pressure, in pursuing legal remedies.

3. Impact on Women-Centric Crimes

The combined implementation of BNS and BNSS is expected to have a **transformative effect on women-centric crimes**. Key impacts include:

- **Enhanced Accountability:** Perpetrators of domestic violence, sexual harassment, dowry-related offences, and economic exploitation face clearer liability and stricter enforcement
- **Victim-Centered Justice:** Survivors receive legal, social, and financial support, ensuring that justice is meaningful and restorative
- **Deterrence Effect:** The modernised legal framework signals that crimes against women will not be tolerated, promoting societal awareness and behavioral change
- **Reduction of Legal Gaps:** BNS and BNSS address loopholes in the IPC/CrPC, particularly in emerging areas like cyberstalking, online harassment, and transnational exploitation
- **Integration with Social Policies:** These laws allow coordination with welfare programs, NGOs, and rehabilitation services, making criminal justice part of a holistic protection system

From a criminological perspective, the BNS and BNSS framework demonstrates a shift from punitive-only responses to proactive protection and prevention, recognising that social, economic, and gendered dimensions of crime are inseparable from legal remedies.

WAY FORWARD

Judicial interpretation has played a crucial role in evolving the jurisprudence around sexual offences. From early judgments that placed undue emphasis on the victim's character and resistance, the courts have gradually moved towards recognizing the importance of consent, bodily autonomy, and the psychological trauma endured by survivors. However, the legal battle against sexual violence is far from over. Despite the strengthening of legal provisions, survivors still face numerous barriers: social stigma, fear of retaliation, hostile law enforcement attitudes, delayed investigations, and courtroom insensitivity. The low conviction rates in rape cases highlight the systemic gaps that continue to hinder justice. Moreover, the intersectional challenges faced by women belonging to marginalized communities, such as Dalits, Adivasis, and trans women, often go unnoticed and unaddressed within the mainstream legal discourse. To create a truly responsive legal framework, there is a need for multi-pronged reforms. These include not only legal changes but also large-scale sensitization of police, judiciary, medical professionals, and society at large. Rehabilitation services, psychological support, and witness protection programs must be integrated into the criminal justice system to ensure that survivors are not retraumatized during their pursuit of justice.

In conclusion, while laws concerning sexual offences in India have seen considerable progress, the journey toward gender justice remains incomplete. A feminist criminological lens reminds us that rape is not just a legal issue it is a social and political one, reflective of broader power structures and cultural attitudes. The challenge, therefore, is to ensure that the law does not merely exist on paper but becomes a living instrument of empowerment, dignity, and justice for every woman.

CONCLUSION

Sexual offences, particularly rape, represent one of the most heinous forms of gender-based violence, deeply rooted in societal structures of power, control, and patriarchy. The legal system in India has undergone significant changes over the years to address these crimes, shifting from a narrow, procedural focus to a more victim-centric and rights-based approach. The Indian Penal Code (IPC), the Criminal Procedure Code (CrPC), and subsequent amendments especially post the Nirbhaya incident have sought to redefine the legal understanding of consent, enhance punishment, expand the scope of offences, and ensure greater protection for survivors.

Chapter 7

CRIMES WITHOUT BORDERS

Cyber Violence and Digital Insecurity Faced by Women's privacy

“Technology must empower, not endanger; the law must keep pace with the threats of a digital age.”

— **Justice D. Y. Chandrachud**
(Former Chief Justice of India, Supreme Court of India)

INTRODUCTION

The digital revolution has transformed communication, commerce, and education, creating unprecedented opportunities for women. Social media, e-learning platforms, and digital workplaces empower women to engage socially, professionally, and politically. However, the same technologies have created vulnerabilities. Cybercrimes targeting women—such as online harassment, cyberstalking, revenge porn, and data breaches—reflect offline gender inequalities in the virtual world.

These crimes often occur anonymously, cross jurisdictions, and can persist indefinitely online. A single incident can resurface years later, affecting personal, academic, and professional lives. Cybercrimes also impose psychological trauma, social withdrawal, and reputational harm, emphasizing that digital rights are inseparable from human rights.

The chapter examines the legal, social, and technological dimensions of cybercrimes against women, the role of judicial interpretations, law enforcement challenges, and the growing necessity of victim-centric approaches.

PRIVACY AS A FUNDAMENTAL RIGHT

Privacy in India has historically been treated as a subsidiary or implicit right, often inferred from other rights such as freedom of speech, freedom of movement, or protection from unlawful searches and seizures. However, landmark judicial pronouncements in recent decades have established privacy as a fundamental right, particularly under Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty.

CONCEPT AND CONSTITUTIONAL BASIS

Privacy encompasses control over personal information, bodily autonomy, sexual freedom, and digital interactions. In India, it is recognized as an implicit right under:

- Article 21 (Right to Life and Personal Liberty)
- Article 14 (Equality before Law)
- Article 19 (Freedom of Speech and Expression)

Lack of privacy exposes women to cyber harassment, identity theft, and abuse, limiting their digital participation.

WOMEN'S PRIVACY AND BODILY AUTONOMY

Bodily autonomy and privacy are closely intertwined concepts, forming the foundation of gender equality, personal liberty, and human dignity. For women, these rights are central to deciding over their own bodies, health, reproduction, and personal space, as well as to protecting themselves from harassment, exploitation, and digital abuse.

SEXUAL AND REPRODUCTIVE PRIVACY

Women's bodily autonomy includes control over sexual and reproductive choices. Violations online—such as revenge porn, sextortion, and deepfakes—directly threaten this autonomy. These cybercrimes exploit societal notions of honor and morality, often leading to psychological trauma and social ostracization.

Example: In several Indian states, women have faced social exclusion after intimate images were leaked by former partners, even when the images were obtained illegally.

DIGITAL PRIVACY AND ONLINE SPACES

Digital spaces are extensions of personal autonomy. Women often share personal data, photos, or location information online, making them targets of:

- Hacking and phishing attacks
- Cyberstalking and surveillance
- Impersonation and identity theft

Digital violations impact psychological safety, professional life, and offline mobility, as victims fear monitoring or retaliation.

HONOUR, SURVEILLANCE, AND MORAL POLICING

Cultural norms around “honour” often led to moral policing online, where women are blamed for their exposure or presence on digital platforms. This includes:

- Surveillance of online behavior by family, ex-partners, or community members
- Restrictions on posting photos, opinions, or professional achievements
- Victim-blaming in cases of revenge porn or harassment

Moral policing extends digital control over women, curtailing freedom of expression and reinforcing patriarchal authority.

BREACH OF PRIVACY AS A CRIMINAL OFFENCE

Legal recognition of privacy breaches is critical for protecting women online:

- Voyeurism (Section 354C IPC): Watching or recording women without consent.
- Violation of Privacy (Section 66E IT Act): Capturing or transmitting private images without consent.
- Defamation (Section 500 IPC): Spreading false or damaging information online.
- Cyberstalking (Section 354D IPC): Persistent digital monitoring or harassment.

The combination of IPC and IT Act provisions addresses both psychological harm and digital intrusion.

CYBERCRIMES TARGETING WOMEN

Cybercrimes against women have emerged as a significant and growing concern in the digital age. The anonymity, reach, and permanence of the internet have created unique vulnerabilities for women, exposing them to harassment, exploitation, and abuse that extend far beyond the physical world. These crimes are gendered in nature, targeting women disproportionately, and often have long-lasting psychological, social, and professional consequences.

ONLINE HARASSMENT AND ABUSE

Women face unsolicited sexual advances, derogatory messages, hate speech, and threats online. Harassment can escalate into physical threats or

reputational damage. Victims often experience anxiety, depression, and fear of expressing themselves.

Example: Activists like Rana Ayyub have faced coordinated harassment campaigns to silence their voices.

COMMON FORMS OF ONLINE HARASSMENT AGAINST WOMEN

Online harassment manifests in various forms, often overlapping and compounding to create a deeply traumatic experience for the victim. Some of the most prevalent forms include:

- **Cyber Crimes Against Women: Types, Impacts, and Social Dimensions**
- In the modern digital era, women face a wide spectrum of online abuse, ranging from stalking to identity manipulation, which often extends into serious offline consequences. Cyberstalking represents one of the most pervasive threats, involving repeated monitoring of a woman's online and offline activities. Perpetrators may constantly message, track geolocation through applications, or gather private photos to blackmail or intimidate the victim. The escalation from online harassment to physical confrontation is a real danger, as demonstrated by a case in Bengaluru in 2021, where a female student was persistently stalked online for over a year by a former classmate who created multiple fake profiles and tracked her location, and yet the law enforcement machinery initially failed to act, highlighting systemic gaps in protecting women from digital predation.
- **Trolling and threats** form another significant dimension of cyber abuse. Women, particularly those with public voices in journalism, politics, or social activism, are targeted with rape threats, body shaming, and sexist abuse. Figures like Rana Ayyub and Barkha Dutt have faced sustained campaigns of online harassment, including doctored images and violent messages intended to intimidate, silence, or damage their reputations. Such abuse often aims to undermine women's agency, discouraging them from participating fully in public discourse.
- **Morphing and deepfakes** are technologically sophisticated tools of abuse where perpetrators manipulate images or videos, placing a woman's face onto pornographic content or creating AI-generated videos that appear real. The circulation of such content is deeply damaging, both psychologically and socially, as it can lead to ostracization, harassment, and long-term reputational harm.

Similarly, doxxing—the public disclosure of personal information such as addresses, phone numbers, workplaces, or family details—creates real-world physical dangers for women. Activists, feminists, whistleblowers, and LGBTQ+ allies are particularly vulnerable, with exposure often compelling victims to withdraw from online spaces or even alter their lifestyles to avoid harassment.

- **Fake profiles and impersonation** are increasingly used to defame or exploit women, frequently in the context of personal disputes like breakups, divorces, or domestic conflicts. Perpetrators may create accounts using a woman's identity to manipulate others, spread misinformation, or humiliate the victim publicly. Workplace-related cyber harassment has also surged, with women facing inappropriate messages, sexual innuendos on professional platforms, and unsolicited video calls. Such harassment not only affects mental health but also undermines professional growth, with many victims refraining from reporting abuse due to fear of retaliation or societal victim-blaming.

CYBERSTALKING AND SURVEILLANCE

In the digital age, where technology pervades almost every aspect of life, cyberstalking has emerged as a dangerous and persistent threat, especially against women. Cyberstalking refers to the repeated use of the internet, social media, or other electronic communication tools to stalk, harass, intimidate, or threaten an individual. Unlike traditional stalking, which involves physical proximity, cyberstalking takes place remotely but can be equally terrifying and damaging.

Cyberstalking often includes activities such as:

- Sending threatening or unwanted emails and messages repeatedly
- Monitoring the victim's online activity, such as their social media profiles
- Posting defamatory, embarrassing, or private content about the victim
- Hacking into personal accounts or impersonating the victim online
- Using GPS tracking, spyware, or malicious apps to monitor the victim's movements or communications
- Making threats to the safety of the victim or their loved ones

These actions are not always isolated incidents. They often occur over weeks, months, or even years, and can escalate into offline stalking or physical violence.

Cyberstalking involves continuous digital monitoring using:

- Social media tracking
- Fake accounts
- GPS or spyware tools

Example: A Bengaluru student was stalked for over a year via fake social media profiles and location tracking. Cyberstalking can escalate to offline physical threats.

CYBERBULLYING AND TROLLING

Cyberbullying and trolling have become everyday realities for many women navigating digital platforms. Unlike traditional bullying, cyberbullying occurs through digital devices like smartphones, computers, or tablets, and involves sending, posting, or sharing negative, harmful, false, or mean content about someone. Trolling, on the other hand, refers to deliberately provoking or insulting someone online to trigger a reaction, usually through offensive or inflammatory comments.

Women, particularly those who are vocal, opinionated, or visible on public platforms such as activists, journalists, students, or celebrities often face relentless online abuse. This abuse includes derogatory remarks, name-calling, slut-shaming, body shaming, death or rape threats, and even coordinated online attacks. What makes this abuse more harmful is its 24/7 nature and the ease with which it can be amplified through likes, shares, or viral hate campaigns.

Cyberbullies often hide behind anonymous accounts, which gives them a sense of impunity. This anonymity makes it harder for law enforcement agencies to trace the offenders, while victims are left feeling helpless, isolated, and emotionally shattered. Studies have shown that repeated cyberbullying can lead to anxiety, depression, low self-esteem, and even suicidal thoughts, especially among young girls and women. From a legal standpoint, India's laws provide some protection against cyberbullying and trolling. Sections such as 509 (insulting the modesty of a woman), 354A (sexual harassment), and 506 (criminal intimidation) of the Indian Penal Code, along with Sections 66A (now struck down but once used) and 67 of the IT Act, have been invoked in such cases. However, enforcement remains patchy, and victims often find it difficult to lodge complaints due to procedural delays, victim-blaming, or lack of awareness about their rights.

Cyberbullying targets women with offensive comments, threats, and coordinated online attacks. Trolling amplifies these attacks to silence women in public forums.

- Psychological impacts: anxiety, depression, low self-esteem

- **Social impacts:** withdrawal from online platforms and public participation

HACKING AND DATA THEFT

Hackers target women to steal personal or sensitive information, often for blackmail or financial exploitation. Methods include:

contact lists, personal messages, or passwords, without the person's consent. For women, such cyberattacks often have gendered motives, where the intention is to cause humiliation, gain sexual favors through blackmail, or damage their reputation.

Hackers may use various methods for targeting women:

- **Phishing Emails and Fake Login Pages**

Phishing is a common cybercrime technique where the perpetrator sends deceptive emails or creates fake login pages that appear to be from legitimate websites, banks, or social media platforms. The goal is to trick the victim into sharing sensitive information like passwords, credit card numbers, or personal details. Women and youth are often targeted through seemingly urgent messages—claims of account suspension, prize notifications, or security alerts—to provoke panic and prompt immediate action. Once the victim enters their credentials on these fraudulent platforms, the attacker gains access to accounts, which can be exploited for identity theft, financial fraud, or further harassment.

- **Malicious Apps or Software**

Cybercriminals also use malicious software—often disguised as useful applications, games, or media downloads—to infiltrate a device. These apps can secretly record keystrokes, access photos and messages, track location, or even listen through microphones. Women and young people are particularly vulnerable because they frequently use mobile devices for social communication, online learning, or social media engagement. The covert nature of this threat makes it difficult to detect until the damage has already been done, putting the victim's privacy and safety at risk.

- **Exploitation of Public Wi-Fi Networks**

Public Wi-Fi networks, such as those in cafes, airports, or universities, are convenient but insecure. Cybercriminals can exploit these networks to intercept data transmitted by users, including login credentials, personal messages, or financial transactions. Women and youth using public Wi-Fi for social media, online shopping, or academic work may unknowingly expose their information.

Attackers can use techniques like man-in-the-middle attacks to spy on network traffic, potentially gaining access to sensitive accounts or even impersonating the victim online.

- **Social Engineering Techniques**

Social engineering involves manipulating the victim psychologically to reveal confidential information. Instead of exploiting technical weaknesses, perpetrators exploit human behaviour—trust, fear, curiosity, or urgency. For example, an attacker may pose as a friend, authority figure, or technical support to gain personal details, passwords, or banking information. Women and young people are often targeted through friendly messages on social media or dating apps, gaining their trust before coercing them into sharing sensitive data. This method is particularly dangerous because it bypasses traditional security measures, relying entirely on deception and manipulation.

Together, these techniques demonstrate that cyber threats are not only technical but also psychological, targeting human vulnerability. Awareness, scepticism of unsolicited communication, secure device practices, and critical evaluation of online requests are essential for protection against such attacks. In many reported cases, women's cloud accounts have been hacked, and their private photos or videos have been leaked or sold on the dark web. Some women have been locked out of their own email or social media accounts, which were then used by hackers to post obscene or harmful content under their name.

LEGAL FRAMEWORK IN INDIA

India has progressively updated its legal framework to respond to cybercrimes, including hacking, data theft, and related digital offences. The **Information Technology Act, 2000 (IT Act)** is the cornerstone legislation. Section 66 criminalizes hacking, making it punishable when someone intentionally accesses a computer system without authorization. Section 43 deals with unauthorized access to computer systems and the downloading, copying, or extraction of data, including damage caused to the system. Section 66E specifically protects privacy by penalizing the capture, publication, or transmission of images of private areas without consent, addressing breaches of personal dignity and intimate spaces. Sections 67 and 67A target the electronic dissemination of obscene content, including sexually explicit material, which can overlap with cyber harassment or exploitation cases.

The **Indian Penal Code (IPC)** supplements the IT Act, addressing scenarios where hacking and data breaches intersect with criminal intimidation or harassment. For instance, Section 354D criminalizes stalking, which can

include patterns of hacking or surveillance targeting women. Section 507 penalizes criminal intimidation, particularly when a hacker uses stolen data to threaten or extort the victim. These provisions collectively create a dual layer of protection—digital-specific legislation through the IT Act and general criminal law through the IPC.

BHARATIYA NYAYA SANHITA (BNS), AND BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS), 2023

The Bharatiya Nyaya Sanhita (BNS), 2023 and the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 constitute India's new criminal and procedural legal framework, replacing the colonial-era *Indian Penal Code* (IPC) and *Criminal Procedure Code* (CrPC) with modern legislation that more clearly addresses contemporary crimes, including those committed through digital and cyber means.

a) Why BNS and BNSS Matter for Cybercrime and Women's Privacy

Before the enactment of BNS and BNSS (effective from 1 July 2024), cybercrimes were prosecuted under the IPC read with the *Information Technology Act, 2000* (IT Act). However, the IPC was drafted in the 19th century and lacked comprehensive language for modern digital offences, relying heavily on the IT Act for specifics.

The BNS consolidates and modernises substantive criminal law by:

- Reducing the number of sections from 511 to 358, making the law more streamlined and updated for the digital era.
- Explicitly including digital and cyber-related conduct within substantive offences, rather than treating these as ancillary to older provisions.
- Introducing clear definitions and enhanced punishments for stalking, voyeurism, online harassment, and related gender-based crimes that frequently occur online.

The BNSS, on the procedural side, reforms how these offences are investigated and prosecuted. It replaces the CrPC while emphasising victim-centric procedures, faster investigation, and technology-enabled justice delivery. Together, BNS and BNSS create a more cohesive legal ecosystem for cyber offences against women, integrating substantive law, procedure, and digital evidence management.

b) BNS: Substantive Criminal Law Covering Digital and Gendered Crimes

The BNS adapts traditional offences formerly found in the IPC and incorporates them in a way that explicitly covers online and cyber-enabled conduct. Examples relevant to women include:

- **Stalking (Section 78, BNS):** Now expanded to include repeated online monitoring of a woman's digital activities, persistent messaging, or intrusive contact despite clear non-interest, recognising cyberstalking as a threat to privacy and dignity.
- **Voyeurism (Section 77, BNS):** Capturing or disseminating images of a woman in private settings without consent—including through digital devices—recognising the serious invasion of privacy and potential for online spread of such content.
- **Insulting Modesty (Section 79, BNS):** An offence covering words, gestures, or acts intended to insult a woman's dignity, which may include online abuse, sexually offensive comments, or distributing demeaning images or content about a woman.

These provisions preserve the intent of earlier IPC sections (e.g., Sections 354A–D on sexual harassment, voyeurism, and stalking) but reframe them to address digitally mediated harm as primary conduct rather than adjunct offences.

Additionally, the BNS includes more robust definitions for organized and technology-enabled crime—such as Sections on organized cybercrime and digital syndicate activity—which are relevant where online abuse is systematic, coordinated, or part of larger extortion and harassment networks.

c) BNSS: Procedural Safeguards and Modern Investigation Tools

While the BNS defines *what* constitutes a crime, the BNSS outlines *how* these offences are to be processed, investigated, and adjudicated. This is particularly important for cybercrimes, where evidence can be volatile and require technical handling. Key procedural elements include:

- **Technology-enabled reporting and evidence collection:** Electronic FIRs, digital witness examination, and forensic protocols ensure faster and more accurate preservation of digital evidence.
- **Victim-centric procedures:** BNSS prioritises rapid response and protections for victims, potentially including confidentiality, witness protection, and support during investigation—critical in cases of cyber harassment where public exposure worsens trauma.

- **Specialised cybercrime investigation coordination:** BNSS encourages coordination with forensic experts and tech specialists, acknowledging that cyber offences often require technical investigation beyond traditional policing methods.

These procedural reforms aim to reduce delays, preserve digital evidence, and ensure fair trials, limiting the likelihood that cybercrimes—especially those against women—are dismissed due to procedural lapses.

d) Interaction with the Information Technology Act and Digital Evidence

The BNS and BNSS do not replace the Information Technology Act, 2000; rather, they operate in conjunction with it. While the IT Act specifically criminalises many forms of digital misconduct (such as identity theft, data breaches, or transmission of obscene content), the BNS incorporates broader categories of harm—especially where privacy, dignity, and harassment intersect with gender.

Moreover, procedures under the BNSS explicitly support admissibility and handling of electronic evidence, reflecting the practical necessity of digital forensics in prosecuting cyber offences. This alignment between substantive and procedural law creates a stronger legal framework for redressing cybercrime against women.

e) Implications for Women’s Digital Rights and Protections

The introduction of BNS and BNSS represents a significant advance in how Indian criminal law addresses cybercrime and privacy violations. For women in particular, these reforms:

- Strengthen legal definitions of digital intrusions that disproportionately affect women
- Clarify that actions like cyberstalking and non-consensual dissemination of images are harmful even without offline elements
- Prioritise procedural efficiency and victim support, reducing delays that traditionally discouraged reporting

For example, cases of online harassment, such as the Hyderabad cybercrime registration involving abuse against a female student, have already been prosecuted under BNS sections on insulting modesty alongside IT Act provisions, demonstrating the practical application of the new framework.

LAW ENFORCEMENT AND JUDICIAL RESPONSE

The effectiveness of combating cybercrimes against women does not rely solely on the existence of laws but also on the efficiency and responsiveness

of law enforcement and the judiciary. While India has established legal provisions under the Indian Penal Code (IPC), the Information Technology Act, 2000, and emerging frameworks such as the Bharatiya Nyaya Sanhita (BNS/BNSS), practical enforcement often lags behind the rapid advancement of technology. Dedicated cybercrime cells in metropolitan cities, such as the Delhi Police Cyber Crime Cell and the Mumbai Cyber Crime Investigation Unit, have been established to investigate digital offences, preserve electronic evidence, and coordinate with online platforms. These units often collaborate with national agencies like the Central Bureau of Investigation (CBI) and the National Cybercrime Reporting Portal, providing centralized avenues for reporting and tracking complaints. The primary functions of these units include registering First Information Reports (FIRs), collecting digital evidence such as metadata, chat logs, emails, or screenshots, coordinating with social media platforms for content removal, supporting victims with counseling and legal aid, and investigating cross-border offenses through international cooperation.

Despite these mechanisms, law enforcement faces significant challenges. The technical expertise required to trace sophisticated cybercrimes, such as deepfakes, spyware, phishing, or AI-generated harassment, is often lacking. Perpetrators frequently exploit anonymity through fake profiles, VPNs, or proxy servers, making identification and prosecution difficult. Digital evidence is inherently volatile and can be deleted, manipulated, or encrypted, necessitating immediate and meticulous preservation. Additionally, societal attitudes contribute to victim reluctance, as many women fear public shaming or retaliatory actions, resulting in underreporting. To address these issues, Indian authorities are increasingly providing specialized cybercrime training, establishing rapid-response units, and developing gender-sensitive protocols to ensure victims are treated with empathy rather than subjected to victim-blaming.

The judiciary in India has gradually adapted to the challenges of cybercrime, particularly those affecting women. Courts increasingly recognize the profound psychological, social, and reputational harm caused by online harassment, stalking, and voyeurism. Landmark judgments such as **K.S. Puttaswamy v. Union of India (2017)**¹⁰², which affirmed the right to privacy as a fundamental right under Article 21 of the Constitution, provide a constitutional basis for safeguarding women against unauthorized sharing of intimate content and digital surveillance. In **Shreya Singhal v. Union of India (2015)**¹⁰³, the Supreme Court struck down Section 66A of the IT Act, emphasizing the need to balance protection from harassment with the

¹⁰² (2017) 10 SCC 1

¹⁰³ (2015) 5 SCC 1

freedom of speech. In cases like **Lillu @ Rajesh & Anr. v. State of Haryana (2013)**¹⁰⁴, courts have acknowledged the long-term trauma caused by online harassment and the necessity for proactive law enforcement intervention. Judicial mechanisms such as fast-track cyber courts, interim protective orders, and victim-centered approaches have been introduced to ensure speedy justice, safeguard privacy, and mitigate psychological harm. Despite these initiatives, challenges remain, including delayed adjudication due to the technical complexity of cases, jurisdictional issues in cross-border offenses, and limited familiarity with advanced cyber tools among some lower courts. Courts are increasingly relying on digital forensic labs and expert testimony to accurately assess evidence and ensure fair outcomes.

IMPACT ON WOMEN VICTIMS

Cybercrimes against women have deep and lasting effects on psychological, social, and professional aspects of life. Victims often experience anxiety, depression, fear, and loss of confidence due to harassment, cyberstalking, or exposure of personal information. Socially, women may withdraw from online and offline interactions to avoid scrutiny, leading to isolation and stigmatization. Professionally and academically, harassment can disrupt careers or education, as women may resign, change jobs, or avoid public engagement to escape abuse. Public figures and activists face intensified threats, with doctored images, revenge porn, and trolling affecting reputation and credibility. In domestic or matrimonial contexts, cyber abuse often extends emotional and financial control into the digital sphere. The cumulative impact underscores the need for psychological support, digital literacy, legal protection, and societal awareness to ensure safe and empowering online spaces for women.

WAY FORWARD

The growing prevalence of online harassment, cyberstalking, and digital abuse against women calls for a coordinated and gender-sensitive response. Strengthening the enforcement of existing cyber laws, improving technological and gender training for law enforcement, and ensuring swift grievance redressal mechanisms are essential. Greater accountability of social media platforms, along with digital literacy and awareness programmes for women and youth, can help prevent misuse of technology. Most importantly, cybercrime must be recognised as a serious violation of dignity, privacy, and mental well-being, requiring victim-centred legal, institutional, and social interventions to make digital spaces safer and more inclusive.

¹⁰⁴ 14 SCC 643

CONCLUSION

The digital age has opened unprecedented avenues for connection, communication, and empowerment, but it has simultaneously created new avenues for crime, particularly against women. Cybercrimes such as online harassment, cyberstalking, revenge porn, doxxing, and cyberbullying have become serious threats to women's safety, dignity, and privacy in the virtual world. Unlike traditional physical crimes, these offences often go unnoticed for extended periods, are perpetrated anonymously, and can affect victims across geographies and time zones. A single instance of online abuse can persist for years, resurfacing through search engines, shared posts, or circulation by strangers, and can significantly impact a woman's personal, academic, and professional life. The psychological consequences are profound, often manifesting as anxiety, depression, low self-esteem, and fear of engaging in social spaces both online and offline.

While India has introduced certain protections under the Information Technology Act and the Indian Penal Code, there remains an urgent need for more robust laws specifically addressing gendered cybercrimes. Many women hesitate to report such offences due to social stigma, fear of public shaming, or lack of awareness regarding their legal rights. Compounding this problem, law enforcement agencies sometimes lack the specialized training or sensitivity required to handle these cases with the empathy and urgency they demand. Legal reform alone, however, is insufficient. A broader cultural shift is essential to create a digital ecosystem that is safe, respectful, and inclusive. Promoting digital literacy, fostering conversations about consent and online boundaries, holding platforms accountable for content moderation, and empowering women to reclaim their digital spaces are critical steps in achieving this goal.

Chapter 8

WOMEN AS LAWBREAKERS AND CHAINS OF TRAFFICKING & EXPLOITATION

Human Trafficking, Sexual Commerce, and Legal Resistance in Gendered Pathways into Criminal Justice System

*“Human trafficking is a moral outrage that destroys the essence of
humanity.”*

— BAN KI-MOON

(FORMER UN SECRETARY- GENERAL)

INTRODUCTION

Trafficking and exploitation of women is one of the most brutal and complex human rights violations prevalent across the globe, and India is no exception. Trafficking is not merely the illegal movement of people; it is a systematic abuse of power where vulnerable individuals—mostly women and girls—are lured, coerced, or forced into situations of exploitation. In India, the primary purpose of trafficking is often commercial sexual exploitation, forced labour, domestic servitude, and sometimes even organ trade. While this issue is rooted in poverty, illiteracy, and gender inequality, it thrives because of weak law enforcement, corruption, and societal apathy.

The **Immoral Traffic (Prevention) Act, 1956 (ITPA)** is India’s main legislation for addressing trafficking, particularly for sexual exploitation. It criminalises activities such as operating brothels, soliciting clients, procuring or inducing women for prostitution, and detaining a person in any premises for commercial sexual purposes. However, critics have pointed out that the ITPA has historically focused more on penalising women involved in prostitution rather than going after the traffickers and pimps who exploit them. While the Act has seen amendments, it still falls short in addressing the changing dimensions of trafficking in the digital age.

Modern-day trafficking has taken new forms. The rise of social media, messaging platforms, and job websites has made it easier for traffickers to reach victims. Women are often tricked by fake marriage proposals or job

offers, only to find themselves trafficked across borders or into different states within India. In many cases, entire trafficking networks function under the guise of placement agencies or modelling contracts. Traffickers often move victims across multiple cities to avoid detection and make rescue more difficult.

Apart from the ITPA, several other laws indirectly address trafficking and exploitation. The **Indian Penal Code (IPC)** contains relevant provisions, such as Sections 370 and 370A, which criminalise trafficking and exploitation for forced labour or sexual purposes. The **Juvenile Justice (Care and Protection of Children) Act, 2015**¹⁰⁵ and the **Protection of Children from Sexual Offences (POCSO) Act**¹⁰⁶ provide safeguards for children, who are among the most vulnerable. India is also a signatory to several international conventions, such as the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (also known as the Palermo Protocol). Despite legal frameworks, challenges remain. The conviction rate in trafficking cases is low, often due to lack of evidence, poor investigation, or fear among victims to testify. Survivors, even after rescue, often face social stigma, lack of proper rehabilitation, and re-trafficking. There is also the problem of victims being treated as offenders, especially when law enforcement lacks sensitivity and gender training.

This chapter will examine the laws, enforcement mechanisms, and the socio-economic causes of trafficking in India. It will explore landmark court judgments, analyse gaps in the existing system, and propose reforms. The aim is to understand how laws can be both protective and empowering ensuring not only punishment for traffickers but also dignity and justice for survivors. In the larger context, it becomes essential to treat trafficking not just as a criminal issue, but as a violation of fundamental human rights and dignity.

IMMORAL TRAFFIC (PREVENTION) ACT & RELATED LAWS¹⁰⁷

To combat the deeply rooted problem of trafficking and exploitation of women, India has established a legal framework that primarily includes the **Immoral Traffic (Prevention) Act, 1956 (ITPA)** and supplementary provisions under the **Indian Penal Code (IPC)**, along with other special laws. However, legal response to trafficking in India has often been criticized

¹⁰⁵ The Juvenile Justice (Care and Protection of Children) Act, 2015

¹⁰⁶ The Protection of Children from Sexual Offences (POCSO) Act, 2012

¹⁰⁷ The Immoral Traffic (Prevention) Act, 1956, *Act No. 104*, § (define section) (India).

for being fragmented, outdated, and more punitive than protective—especially towards women survivors.

The Immoral Traffic (Prevention) Act, 1956

Originally enacted as the **Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA)** to fulfill India's obligations under the United Nations' Convention for the Suppression of the Traffic in Persons, the Act was later renamed as **ITPA** through a 1986 amendment. The Act seeks to criminalize and regulate prostitution-related activities, especially trafficking for the purpose of commercial sexual exploitation.

Provisions of the Immoral Traffic (Prevention) Act, 1956

The Immoral Traffic (Prevention) Act, 1956, commonly referred to as ITPA, is India's primary legal framework to combat trafficking, sexual exploitation, and forced prostitution. Its provisions focus on penalizing exploiters while providing mechanisms for the rehabilitation of victims. Below is a detailed explanation of its key sections as per the bare Act:

Section 3: Punishment for Operating or Managing a Brothel¹⁰⁸

This section criminalizes running or managing a brothel, whether for profit or otherwise. Anyone who owns, controls, or manages premises used for prostitution can face imprisonment or fines. The intent is to target the systemic infrastructure that sustains commercial sexual exploitation rather than just individual sex workers, focusing legal action on those benefiting from or organizing prostitution.

Section 4: Living on the Earnings of Prostitution¹⁰⁹

Section 4 penalizes individuals who derive financial benefit from the prostitution of others. This includes pimps, guardians, or relatives who exploit women or children for monetary gain. The law acknowledges that traffickers often profit indirectly, and thus it extends liability beyond direct operators to anyone living off the proceeds of another person's exploitation.

¹⁰⁸ Section 3: - Punishment for Operating or Managing a Brothel, Immoral Traffic (Prevention) Act, 1956

¹⁰⁹ Section 4: - Living on the Earnings of Prostitution, The Immoral Traffic (Prevention) Act, 1956

Section 5: Procuring, Inducing, or Taking a Person for Prostitution¹¹⁰

This section criminalizes acts of procuring, enticing, or forcibly taking a person for prostitution. It covers coercion, deception, and manipulation, making it an offence whether the act involves adults or minors. This provision is crucial for tackling human trafficking and forced prostitution, as it directly targets the recruitment process of victims.

Section 6: Detaining Persons in Prostitution Premises¹¹¹

Section 6 prohibits keeping individuals confined in premises used for prostitution. This includes locking them in brothels or restricting their freedom to leave, which is common in cases of trafficking. Violations attract criminal penalties, emphasizing protection of autonomy and bodily liberty for women and children in such situations.

Section 7: Prohibition of Prostitution in or Near Public Places¹¹²

This section forbids engaging in prostitution in public spaces or areas easily accessible to the general public. Its purpose is twofold: to prevent public nuisance and moral harm, and to control solicitation that exposes victims to exploitation in visible spaces. This helps law enforcement regulate locations where prostitution occurs while protecting community interests.

Section 8: Penalizing Solicitation for Prostitution¹¹³

Section 8 criminalizes active solicitation, including approaching potential clients or inducing others to engage in sexual services. The section is designed to disrupt the business mechanisms of prostitution, targeting both the marketing of sexual services and coercive solicitation practices that often involve manipulation or pressure on women.

¹¹⁰ Section 5: - Procuring, Inducing, or Taking a Person for Prostitution, The Immoral Traffic (Prevention) Act, 1956

¹¹¹ Section 6: - Detaining Persons in Prostitution Premises, The Immoral Traffic (Prevention) Act, 1956

¹¹² Section 7: - Prohibition of Prostitution in or Near Public Places, The Immoral Traffic (Prevention) Act, 1956

¹¹³ Section 8: - Penalizing Solicitation for Prostitution, The Immoral Traffic (Prevention) Act, 1956

Section 10A: Detention of Women in Correctional Homes for Rehabilitation¹¹⁴

Section 10A empowers authorities to place women involved in prostitution in correctional or protective homes for rehabilitation. This provision is remedial rather than punitive, aiming to provide shelter, skill development, counselling, and reintegration support. It acknowledges the vulnerability of women in prostitution, treating them as victims in need of social and legal protection rather than merely offenders.

While ITPA aims to curb organized trafficking and sexual exploitation, in practice, it has often ended up punishing the very victims it sought to protect. For instance, sex workers have been arrested under Sections 7 and 8, without adequate attention to whether they were coerced into prostitution. The Act also grants law enforcement wide discretionary powers, which have, at times, led to human rights violations.

Provisions Under the Indian Penal Code for Trafficking and Exploitation

Post the **Criminal Law (Amendment) Act, 2013**, the IPC now has specific anti-trafficking provisions:

- **Section 370:** Defines trafficking of Persons and lists the methods (such as force, coercion, abduction, fraud, abuse of power, etc.) and purposes (including sexual exploitation, slavery, organ removal) that constitute the offence.
- **Section 370A:** Punishes persons who engage trafficked victims for sexual exploitation.

These provisions marked a major shift in Indian criminal law by providing a more comprehensive and gender-neutral definition of trafficking, applicable beyond prostitution. Importantly, they acknowledge both domestic and transnational forms of trafficking.

OTHER RELEVANT LAWS ADDRESSING TRAFFICKING IN INDIA

India's legal framework against trafficking is multi-layered, spanning child protection, labour laws, human rights statutes, and cyber regulations, reflecting the diverse and evolving nature of exploitation. The Protection of Children from Sexual Offences (POCSO) Act, 2012, is a landmark law that specifically safeguards children from sexual abuse, including trafficking. It

¹¹⁴ Section 10A: Detention of Women in Correctional Homes for Rehabilitation, The Immoral Traffic (Prevention) Act, 1956

introduces child-friendly procedures for reporting and recording testimony, while prescribing stringent punishment for offenders, ensuring that the justice system is accessible and sensitive to the needs of minors.

The Juvenile Justice (Care and Protection of Children) Act, 2015, complements POCSO by recognizing trafficked children as “children in need of care and protection.” This law goes beyond punitive measures and provides mechanisms for rehabilitation, including foster care, adoption, and skill development, aiming to reintegrate rescued children into society safely.

The Bonded Labour System (Abolition) Act, 1976, addresses one of the oldest forms of trafficking, where individuals—often women and children—are trapped in debt bondage, effectively working as forced labourers under exploitative conditions. Similarly, the Transplantation of Human Organs Act, 1994, criminalizes trafficking for illegal organ trade, a niche but serious form of exploitation often involving vulnerable populations.

The Information Technology Act, 2000, has emerged as a crucial tool in tackling modern forms of trafficking, particularly those facilitated through digital platforms. It addresses cyber exploitation, online pornography, and the recruitment of victims through social media or other digital channels, reflecting the growing threats posed by technology.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, ensures that women from marginalized communities—who are disproportionately targeted for trafficking—receive additional legal protection. Meanwhile, the Protection of Human Rights Act, 1993, empowers the National and State Human Rights Commissions to intervene in cases where trafficking intersects with broader human rights violations, providing another layer of accountability and oversight.

Together, these laws create a comprehensive legal architecture designed not only to punish traffickers but also to protect and rehabilitate victims, address structural vulnerabilities, and adapt to new forms of exploitation, whether in physical spaces or online environments.

JUDICIAL APPROACH TO HUMAN TRAFFICKING IN INDIA

Indian courts have increasingly begun to treat trafficking not merely as a criminal issue but as a violation of fundamental human rights. This progressive approach recognizes that victims of trafficking are often vulnerable individuals especially women and children forced into exploitation by poverty, coercion, or deception. Two landmark cases, *Gaurav Jain v. Union of India* (1997) and *Bachpan Bachao Andolan v. Union of India* (2011), demonstrate this evolving perspective.

Gaurav Jain v. Union of India (1997¹¹⁵)

In this case, the petitioner, Gaurav Jain, highlighted the plight of women in prostitution and their children who faced neglect, discrimination, and lack of access to education or rehabilitation. The Supreme Court of India took a compassionate stance and held that these children were *innocent victims of circumstances*, not to be stigmatized for their mothers' profession.

The Court directed the Union and State Governments to establish rehabilitation homes for sex workers and their children. These homes were meant to provide education, vocational training, healthcare, and shelter, helping them integrate into mainstream society. The judgment marked a shift from moral policing to a rights-based approach, emphasizing rehabilitation and social reintegration over punishment.

The case also clarified that prostitution in itself is not illegal, but *exploitation and coercion* associated with it are. Hence, instead of criminalizing women, the focus should be on tackling the root causes poverty, trafficking, and exploitation.

Bachpan Bachao Andolan v. Union of India (2011¹¹⁶)

This case was a Public Interest Litigation (PIL) filed by the NGO *Bachpan Bachao Andolan*, founded by Kailash Satyarthi, which works for child rights and against bonded labour and trafficking. The petition brought attention to the large-scale trafficking of children for labour and sexual exploitation.

The Supreme Court, in response, emphasized that the fight against trafficking requires multi-agency coordination between police, NGOs, child welfare committees, and social justice departments. It directed the government to set up Anti-Human Trafficking Units (AHTUs) across districts to handle prevention, rescue, investigation, and rehabilitation systematically.

The Court also instructed the establishment of Protective and Rehabilitation Homes for rescued victims, ensuring they receive counselling, legal aid, vocational skills, and reintegration support. The judgment reinforced that trafficked persons must be treated as victims and survivors, not offenders—a key principle in international human rights law.

Anti-Human Trafficking Units (AHTUs)

AHTUs are specialized task forces set up under the Ministry of Home Affairs to combat human trafficking. They are designed to operate at the district and

¹¹⁵ Gaurav Jain v. Union of India, (1997) 8 S.C.C. 114 (India).

¹¹⁶ Bachpan Bachao Andolan v. Union of India, (2011) 5 S.C.C. 1 (India).

state levels, comprising police officers, social workers, and counsellors. Their duties include rescue operations, filing FIRs, rehabilitation coordination, and monitoring repeat offenses. Despite these directives, many AHTUs still suffer from poor funding, lack of training, and weak inter-agency coordination.

Protective and Rehabilitation Homes

These homes are established to ensure that victims of trafficking and sexual exploitation receive the care they need after being rescued. They provide medical assistance, psychological counselling, education, and employment training to help survivors rebuild their lives. The Supreme Court, in both *Gaurav Jain and Bachpan Bachao Andolan*, directed that such homes must be well-equipped and regularly monitored by state authorities to prevent abuse or re-trafficking.

Persistent Challenges and Gaps

Despite a strong legal framework and judicial activism, implementation remains weak. Victims are still often treated as criminals, especially in prostitution-related cases. Coordination failures between police, judiciary, and welfare departments lead to delayed rescue or poor rehabilitation. Many laws retain a moralistic tone, focusing on suppressing prostitution rather than eliminating exploitation and coercion.

Furthermore, survivors face social stigma, lack of livelihood support, and inadequate legal protection, making them vulnerable to re-trafficking. True justice, as envisioned by the courts, demands not just punishment for traffickers but dignity, autonomy, and reintegration for the survivors.

IMMORAL TRAFFIC (PREVENTION) ACT AND ALLIED LAWS

India's primary legislative response to human trafficking, particularly for the purpose of sexual exploitation, is the **Immoral Traffic (Prevention) Act, 1956 (ITPA¹¹⁷)**. Enacted because of India's ratification of the 1950 UN Convention for the Suppression of the Traffic in Persons, the ITPA was designed to combat commercial sexual exploitation in brothels and to punish those who profit from the prostitution of others. However, over the years, the law has faced both appreciation and criticism for its scope, implementation, and the way it impacts the victims it seeks to protect.

The ITPA does not criminalize prostitution per se but penalizes activities associated with organized sex work, such as maintaining a brothel, soliciting in public, and living off the earnings of a sex worker. The Act seeks to address

¹¹⁷ The Immoral Traffic (Prevention) Act, No. 104 of 1956, INDIA CODE (1956).

trafficking through preventive and punitive measures, such as closing premises used for trafficking, detaining repeat offenders, and rescuing and rehabilitating victims. However, critics argue that its moralistic tone often leads to the further victimization of the women it intends to protect, especially when they are arrested or institutionalized against their will under the guise of "rescue."

Under Section 3 of the ITPA, running or managing a brothel is a punishable offence, carrying rigorous imprisonment of not less than one year. Section 4 of the ITPA penalizes living on the earnings of a prostitute, and Section 5 of the ITPA targets procuring, inducing, or taking a person for the sake of prostitution. Significantly, Section 6 allows the closure of premises used as brothels in proximity to public places like schools or temples, and Section 7 prohibits solicitation in public.

COMPLEMENTARY LEGAL FRAMEWORK STRENGTHENING ANTI-TRAFFICKING EFFORTS IN INDIA

In addition to the **Immoral Traffic (Prevention) Act, 1956 (ITPA)**, India's fight against human trafficking is supported by several other key legislations that address the issue from various angles.

1. Indian Penal Code (IPC), 1860¹¹⁸

Sections 370 and 370A, introduced through the Criminal Law (Amendment) Act, 2013¹¹⁹, provide a modern and comprehensive definition of "trafficking of persons." These provisions criminalize the recruitment, transportation, harbouring, transfer, or receipt of persons through threats, coercion, abduction, fraud, or abuse of power for purposes of exploitation, including sexual exploitation, slavery, or forced labour. The law imposes harsher penalties when women or children are victims and punishes individuals who knowingly use the services of trafficked persons.

2. Protection of Children from Sexual Offences (POCSO) Act, 2012¹²⁰

This legislation is particularly relevant when minors are trafficked for sexual purposes. The Act establishes child-friendly mechanisms for reporting, recording, and trial procedures, ensuring the dignity and protection of child victims. It mandates strict punishment for perpetrators of child sexual abuse and aligns closely with trafficking-related offences involving minors.

¹¹⁸ The Indian Penal Code, No. 45 of 1860, INDIA CODE (1860).

¹¹⁹ The Criminal Law (Amendment) Act, No. 13 of 2013, INDIA CODE (2013).

¹²⁰ The Protection of Children from Sexual Offences Act, No. 32 of 2012, INDIA CODE (2012).

3. Juvenile Justice (Care and Protection of Children) Act, 2015¹²¹ The JJ Act recognizes trafficked children as “children in need of care and protection” and provides for their rescue, rehabilitation, and reintegration into society. It ensures that such children are not criminalized but instead placed in safe environments, such as observation or special homes, where they receive counselling, education, and vocational training.

4. Bonded Labour System (Abolition) Act, 1976 and Child Labour (Prohibition and Regulation) Act, 1986¹²²

These Acts apply in cases where trafficking leads to forced or exploitative labour. The Bonded Labour Act abolishes all forms of debt-based servitude and provides mechanisms for identifying, releasing, and rehabilitating bonded labourers. The Child Labour Act prohibits the employment of children in hazardous occupations and penalizes those who exploit children under the guise of work or apprenticeship.

5. Transgender Persons (Protection of Rights) Act, 2019¹²³

This Act represents a progressive expansion of anti-trafficking protection to include transgender individuals, who are often subjected to forced begging, sexual exploitation, and trafficking. It prohibits discrimination, guarantees the right to live with dignity, and mandates the establishment of rehabilitation and protection centres for transgender victims of trafficking and abuse. India has also ratified international instruments such as the UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons (Palermo Protocol), which obligates the country to take legislative and administrative steps to combat trafficking effectively.

Despite these legal frameworks, the enforcement often remains poor due to corruption, lack of training among law enforcement officers, victim-blaming attitudes, and the deeply embedded social stigmas against sex workers and trafficking survivors. There is an urgent need to make the system more victim-centric, focusing on support, rehabilitation, and protection rather than punitive measures alone.

¹²¹ The Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, INDIA CODE (2016).

¹²² The Bonded Labour System (Abolition) Act, No. 19 of 1976, INDIA CODE (1976).

¹²³ The Transgender Persons (Protection of Rights) Act, No. 40 of 2019, INDIA CODE (2019).

CAUSES AND PATTERNS OF TRAFFICKING: ECONOMIC, SOCIAL, AND CULTURAL FACTORS

Understanding why women and girls are trafficked requires a deep dive into the complex interplay of structural inequalities, socio-economic vulnerabilities, and cultural attitudes. Trafficking is not merely a result of criminal activity—it is a symptom of deeper systemic failures that disproportionately affect women, especially those from marginalized communities.

1. Economic Vulnerabilities

Poverty remains the most significant driver of trafficking in India. Families struggling to survive are often misled by traffickers who promise well-paying jobs, education, or marriage opportunities for their daughters. In many rural and tribal areas, women are trafficked into domestic labour, construction, or the sex trade due to a lack of viable alternatives. Women with limited access to education and job opportunities are more likely to fall prey to these deceptive tactics.

Additionally, the lack of social security systems, especially for single mothers, widows, and abandoned wives, creates an environment in which traffickers can easily exploit desperation. Seasonal migration in search of employment, often without legal protections or oversight, further increases the risk of exploitation.

2. Social and Cultural Practices

Deep-rooted gender inequality and patriarchal norms normalize the commodification of women's bodies. Practices such as child marriage, dowry, and son preference contribute to a lower status for girls in many households, making them more vulnerable to being sold or trafficked.

In some communities, there are even culturally sanctioned forms of trafficking. For instance:

- **Devadasi system:** Though legally abolished, this practice still survives in parts of southern India, where young girls are “dedicated” to a deity and later pushed into sex work.
- **Caste-based exploitation:** Marginalized castes, particularly Dalit and Adivasi women, are more vulnerable to trafficking due to historical oppression, lack of access to land or resources, and institutional discrimination.

Furthermore, the objectification of women in media, pop culture, and pornography contributes to a societal mindset where women's bodies are seen as consumable, normalizing demand for sex trafficking.

3. Conflict and Displacement

Internal displacement due to conflict, insurgency, natural disasters, or communal violence can force families into precarious conditions. Women and girls in refugee camps or temporary shelters often lack protection and become easy targets for traffickers. For example, the displacement caused by insurgency in parts of the Northeast and Central India has contributed to rising cases of trafficking from these regions.

Trafficking is also prevalent in border areas where law enforcement is weak and cross-border movement is common. Women from neighboring countries like Nepal and Bangladesh are frequently trafficked into India due to porous borders and collusion between trafficking networks and corrupt officials.

4. Demand-Driven Nature of Trafficking

The role of demand in perpetuating trafficking cannot be ignored. Whether it is the demand for cheap domestic help, forced marriages, surrogacy, beggary, or sex work, traffickers cater to market needs. The clients, consumers, and end-users rarely face legal consequences, while the women who are trafficked often suffer lifelong stigma and trauma.

Demand also thrives in urban settings where there is an appetite for sexual exploitation, particularly in cities with thriving nightlife or tourism sectors. This commercialization of women's bodies is often masked under legal grey areas or weak regulatory oversight.

In sum, trafficking is a complex social evil driven by multiple push-and-pull factors. Tackling it requires more than policing needs targeted interventions addressing poverty, education, gender norms, and social structures that enable exploitation.

THE ROLE OF TECHNOLOGY IN HUMAN TRAFFICKING

In recent years, technological advancements have drastically transformed the nature and scope of human trafficking, especially that involving women and girls. While technology offers powerful tools for tracking and preventing crime, it has unfortunately also become a facilitator for traffickers to operate with greater anonymity and reach. Social media platforms, online job portals, and messaging apps are increasingly being misused to lure vulnerable women with false promises of employment, education, or marriage.

Recruiters often operate under fake identities and use emotionally manipulative tactics to trap their victims. In many reported cases, women are first approached online, groomed over time, and eventually coerced into exploitative arrangements, including sex trafficking or forced labour. These operations are no longer confined to dark alleys or physical red-light districts; instead, they extend into the digital realm, making detection more difficult.

Moreover, encrypted communications and cryptocurrency payments have made it harder for law enforcement agencies to trace transactions or rescue victims swiftly. Dark web platforms are being used for selling women and girls as commodities in illicit marketplaces. The international nature of these crimes poses additional jurisdictional challenges.

Legal systems in many countries are still trying to catch up with these evolving digital threats, making inter-agency and cross-border cooperation critical.

- To counter this, several law enforcement agencies are now incorporating artificial intelligence and data analytics to monitor suspicious activity online. NGOs and tech companies are also collaborating to develop detection algorithms, create awareness, and strengthen cybersecurity laws. However, the balance between digital privacy and online safety continues to be a contested space.
- The growing involvement of technology in trafficking also brings to light the need for digital literacy among women, especially in rural and economically backward regions. Being able to identify red flags online and understanding one's digital rights is now an essential aspect of women's empowerment.

LEGAL FRAMEWORK: IMMORAL TRAFFIC (PREVENTION) ACT, 1956 AND RELATED LAWS

Human trafficking and sexual exploitation are serious violations of human rights and dignity. To combat these issues, India has enacted specific laws, the most significant of which is the **Immoral Traffic (Prevention) Act, 1956**, commonly referred to as the **ITPA**. This Act, along with other related provisions in the Indian Penal Code and international obligations, forms the legal foundation for addressing trafficking and protecting women from exploitation.

1. Background of ITPA

The Immoral Traffic (Prevention) Act was enacted in 1956, originally as the Suppression of Immoral Traffic in Women and Girls Act (SITA). It was India's response to its international commitment under the UN Convention

for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949). It was later amended and renamed as the Immoral Traffic (Prevention) Act to make it gender-neutral and widen its scope.

However, in practice, the Act has been primarily used to address the trafficking and sexual exploitation of women and girls.

2. Major Legal Provisions of ITPA

Though the Act does not define "trafficking" explicitly in its original text, it addresses the organized exploitation of individuals through brothels, pimping, and prostitution rings. The law focuses more on those who profit from exploitation rather than punishing the victims.

Offences and Punishments under the Immoral Traffic (Prevention) Act, 1956¹²⁴

The **Immoral Traffic (Prevention) Act, 1956 (ITPA)** was enacted to curb human trafficking and the commercial sexual exploitation of women and children. It criminalizes activities that facilitate or profit from prostitution while aiming to protect and rehabilitate victims. Below is a detailed explanation of the offences and their corresponding punishments as per the Act:

1. Running or Managing a Brothel (Section 3)

This section makes it a punishable offence to own, manage, or assist in running a brothel, or to let premises knowingly for prostitution.

- **Punishment:** Imprisonment of not less than one year and up to three years and a fine up to ₹2,000 for the first offence. For subsequent offences, the punishment increases to 2–5 years of imprisonment and a higher fine.

The objective is to dismantle organized trafficking networks that profit by maintaining such establishments.

2. Living on the Earnings of Prostitution (Section 4)

Anyone who knowingly lives wholly or partly on the earnings of prostitution is liable under this section. This often targets pimps, agents, or partners exploiting women financially.

¹²⁴ Immoral Traffic (Prevention) Act, 1956, No. 104, Acts of Parliament, 1956 (India).

- **Punishment:** Imprisonment of up to two years or a fine up to ₹1,000, or both. If the person involved is supporting a child or minor, the punishment can extend to seven years.

3. Procuring, Inducing, or Taking a Person for Prostitution (Section 5)

This section criminalizes all acts of recruitment, coercion, or transport of individuals for prostitution, whether by threat, deception, or abuse of power.

- **Punishment:** Imprisonment of not less than three years and up to seven years, and fine up to ₹2,000. If the person procured is a child or minor, imprisonment may extend to life imprisonment. This provision directly addresses trafficking syndicates and intermediaries who exploit women and minors.

4. Detaining a Person in Premises Where Prostitution Is Carried Out (Section 6)

If any person detains another in a brothel or premises against their will by force, intimidation, or deception they are punishable under this section.

- **Punishment:** Imprisonment of not less than seven years and up to life imprisonment, depending on the circumstances. This aims to safeguard the right to liberty and dignity of women forced into prostitution.

5. Prostitution Near Public Places (Section 7)

The Act prohibits prostitution in or near public areas such as schools, temples, hospitals, or residential neighbourhoods. The intention is to prevent public nuisance and protect vulnerable spaces.

- **Punishment:** Imprisonment of up to three months, and fine up to ₹200, which can be enhanced in cases of repeat offences.

6. Soliciting for the Purpose of Prostitution (Section 8)

This provision targets individuals who publicly solicit clients—through gestures, words, or other means—for prostitution.

- **Punishment:** Imprisonment of **up to six months** for the first offence, and **up to one year** for subsequent offences. This is aimed at controlling the public aspect of sex work, though it has been criticized for penalizing women rather than traffickers.

7. Rehabilitation and Custody of Rescued Persons (Sections 16–21)

These sections focus on the rescue, protection, and rehabilitation of women and children removed from prostitution. They authorize the **Magistrate** to place such individuals in **Protective Homes** or **Corrective Institutions** for a specific period to aid their reintegration into society.

- These provisions reflect the reformatory spirit of the Act—treating victims as individuals in need of care and rehabilitation rather than punishment.

8. Punishment Framework

The ITPA prescribes a graded punishment system, with penalties ranging from one year’s imprisonment for minor offences to life imprisonment for severe crimes such as trafficking or detainment of minors. Repeat offenders and those involved in child trafficking face harsher sentences.

In essence, the **ITPA** seeks to curb the commercial and exploitative aspects of prostitution, focus on the accountability of traffickers and facilitators, and simultaneously ensure that victims receive avenues for rehabilitation and social reintegration. However, critics argue that while the Act was meant to target exploitation, it sometimes ends up criminalizing sex workers themselves rather than addressing the root causes poverty, coercion, and systemic inequality.

PROTECTION-FOCUSED APPROACH

Over the years, the Immoral Traffic (Prevention) Act, 1956 (ITPA) has evolved from a law focused mainly on punishment to one that places greater emphasis on protection, rehabilitation, and reintegration of victims. Earlier, women found in prostitution were often treated as offenders, but modern legal interpretations supported by judicial pronouncements recognize them primarily as victims of coercion, trafficking, or socio-economic vulnerability. The law now directs law enforcement agencies and courts to adopt a humane and victim-sensitive approach. Special Police Officers (SPOs) and Magistrates are empowered to conduct rescue and rehabilitation operations, ensuring that rescued women are placed in protective or corrective homes rather than in prisons. Despite these reforms, the ground-level implementation of these provisions varies widely across states. Critics have noted that, in practice, victims sometimes continue to face criminalization or stigma instead of genuine rehabilitation, reflecting a gap between law and enforcement.

OTHER IMPORTANT LEGAL PROVISIONS

The ITPA is reinforced by several other statutes that collectively form India's anti-trafficking legal framework. Under the Indian Penal Code (IPC), 1860, Section 370 provides a modern and comprehensive definition of human trafficking, covering physical and sexual exploitation, slavery, servitude, and even the removal of organs. Section 366A deals with the procurement of minor girls for illicit purposes, while Sections 372 and 373 criminalize the buying and selling of minors for prostitution. The Protection of Children from Sexual Offences (POCSO) Act, 2012 plays a critical role by providing strong safeguards against sexual abuse of children below 18, which often overlaps with trafficking situations. The Juvenile Justice (Care and Protection of Children) Act, 2015 ensures that child victims are given access to rehabilitation, care homes, and legal aid rather than penal action. Additionally, the Bonded Labour System (Abolition) Act, 1976 is relevant when trafficking occurs for forced or exploitative labour. With the rise of digital crimes, Section 67 of the Information Technology Act, 2000 criminalizes the publication, transmission, or distribution of obscene material, addressing the growing issue of online sexual exploitation and pornography, including content related to trafficking. Together, these provisions reflect India's comprehensive yet fragmented approach to addressing trafficking and related crimes.

INTERNATIONAL COMMITMENTS PROTECTION-FOCUSED APPROACH

India's domestic framework against trafficking is also shaped by its international obligations. The country is a signatory to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), which requires states to criminalize trafficking, protect victims, and promote international cooperation. It has also ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which mandates gender equality and obligates states to combat the exploitation of women. Furthermore, India is a party to the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, reflecting its commitment to regional collaboration in South Asia. These international agreements have guided legislative reforms in India, pushing the government to align its domestic laws with global human rights standards, enhance victim rehabilitation mechanisms, and strengthen cross-border coordination in tackling human trafficking networks.

CHALLENGES IN ENFORCEMENT AND PROSECUTION

Despite the existence of legal frameworks like the Immoral Traffic (Prevention) Act (ITPA), 1956, and various other statutory provisions addressing trafficking and exploitation, enforcement remains a significant hurdle in India. One of the core issues lies in the blurred distinction between voluntary sex work and forced prostitution. Many women engaged in sex work are treated as criminals rather than victims, which leads to revictimization instead of rehabilitation.

Moreover, trafficking cases often involve complex interstate and international networks. The lack of coordination between states, corruption among law enforcement officials, and delays in investigation and trial result in low conviction rates. According to the National Crime Records Bureau (NCRB), despite the number of trafficking cases registered, actual convictions remain dismally low. This gap reflects not just procedural delays but also systemic apathy toward the plight of trafficked women.

Another critical challenge is the lack of victim-centric approaches. Victims are frequently denied proper counseling, rehabilitation, and legal aid. Many are re-trafficked due to the absence of effective support systems post-rescue. Safe homes are often overcrowded and poorly managed, further endangering the safety and dignity of victims.

Furthermore, the digital age has introduced new dimensions to trafficking. Social media and online platforms have become tools for luring and grooming women and girls, making it harder for authorities to trace and prevent such crimes. Yet, cyber capabilities of enforcement agencies remain underdeveloped. Lastly, societal stigma plays a major role. Victims are often ostracized by their communities and families, making reintegration a difficult process. Without addressing these deep-rooted societal attitudes, mere legal reforms may not achieve the desired outcomes in combating trafficking and exploitation.

ROLE OF ORGANIZED CRIME - ECONOMIC VULNERABILITIES IN FUELING TRAFFICKING

Human trafficking, particularly of women and girls, is not a random or isolated crime—it is a highly organized, systemic issue embedded within the structures of transnational and domestic criminal networks. These criminal syndicates treat women not as human beings but as commodities in a multi-billion-dollar illicit market. According to the United Nations Office on Drugs and Crime (UNODC), trafficking in persons is one of the fastest growing and most profitable crimes globally, rivaling the illegal arms trade and drug trafficking in scale and complexity. Organized crime groups play a central

role in the operation and sustenance of trafficking routes. These groups often operate like corporate entities—with clear roles assigned to recruiters, transporters, middlemen, document forgers, pimps, brothel owners, and corrupt officials. The process is not limited to physical movement from one place to another; it involves a complete system designed to recruit, control, and exploit victims for profit. What makes organized trafficking so dangerous is its adaptability—these networks are quick to exploit new technology, shifting borders, or economic crises.

For instance, with the rise of the internet and smartphones, traffickers have moved a large part of their operations online. They use social media platforms, job portals, and dating apps to lure women with the promise of modeling careers, hospitality jobs, or overseas employment. Victims are often unaware that they are being manipulated until it is too late. Once in the clutches of traffickers, many women are forced into commercial sexual exploitation, domestic servitude, begging rackets, or even organ trade.

In India, trafficking networks have been found operating across states, with women and girls being trafficked from poor districts in West Bengal, Jharkhand, Bihar, Chhattisgarh, and Odisha to cities like Delhi, Mumbai, Hyderabad, and Bangalore. In border areas like Nepal and Bangladesh, cross-border trafficking has become alarmingly common, with victims ending up in red-light districts or domestic servitude. The coordination between local agents and international syndicates is often facilitated by corruption and lack of stringent border checks.

Economic vulnerability is the breeding ground for trafficking. In regions plagued by poverty, unemployment, illiteracy, and gender inequality, women become easy targets. Families struggling to survive may be duped into sending their daughters away with traffickers disguised as placement agents. In some tragic cases, family members themselves may sell young girls due to debt or financial desperation. Furthermore, in communities where generational prostitution or bonded labour is normalized, the line between consent and coercion becomes dangerously blurred. Caste-based discrimination and lack of access to justice also deepen vulnerability. Marginalized women—particularly from Dalit and Adivasi communities—are disproportionately targeted. They are often unaware of their rights and lack access to resources that could offer protection or legal recourse. Language barriers, mistrust of police, and societal stigma further isolate them, making it easier for traffickers to operate unchecked.

Natural disasters, civil unrest, and migration also act as accelerators to trafficking. During such crises, governance structures weaken, oversight is minimal, and desperation is high. After the 2004 Indian Ocean tsunami and the 2015 Nepal earthquake, several reports emerged of traffickers preying on

orphaned or displaced children and women. Conflict-ridden zones like Kashmir or certain Northeastern states have also seen a spike in cases where women are trafficked under the pretense of rehabilitation or employment.

Even when survivors escape or are rescued, the trauma and social stigma often push them into re-victimization. Rehabilitation facilities are either overcrowded, underfunded, or lack gender-sensitive psychological care. Many survivors struggle to reintegrate due to shame, fear, or social ostracism. To effectively combat the influence of organized crime in trafficking, there must be a multi-tiered strategy. This includes strengthening inter-agency cooperation between law enforcement, intelligence units, and NGOs; increasing digital surveillance and cyber policing to track trafficking patterns; and engaging in international collaboration to dismantle global networks. At the grassroots level, economic empowerment, vocational training, and community-based awareness programs must be prioritized to reduce vulnerability among at-risk populations.

Moreover, the judicial system must be sensitized to the realities of trafficking. Victim testimonies should not be doubted or dismissed due to inconsistencies stemming from trauma. Law enforcement officials must be trained to identify signs of trafficking and respond with empathy and urgency. India's existing laws, including the Immoral Traffic (Prevention) Act and provisions under the IPC, need to be implemented more stringently, along with better victim compensation and witness protection frameworks. In human trafficking is a deeply entrenched issue that thrives on organized criminal networks and the silent desperation of the economically oppressed. Unless both aspects are tackled simultaneously—with compassion, strategy, and political will—our efforts to dismantle trafficking will remain surface-level, and countless women will continue to suffer in the shadows of exploitation.

IMPACT ON VICTIMS: PSYCHOLOGICAL, PHYSICAL, AND SOCIAL CONSEQUENCES

The consequences of trafficking and exploitation—especially for women—are devastating, multidimensional, and often lifelong. Trafficking is not just a violation of the law; it is a deep assault on a person's body, mind, and dignity. Women who fall prey to traffickers often endure multiple forms of abuse—physical, emotional, economic, and sexual. The trauma begins from the very moment of coercion or deception, and it continues in layered and complex ways long after the actual acts of exploitation have ended.

I. Psychological Consequences

One of the most enduring and painful effects of trafficking is psychological trauma. Most trafficked women suffer from **Post-**

Traumatic Stress Disorder (PTSD), anxiety disorders, depression, and suicidal ideation. These women are often treated as commodities—bought, sold, and used. The feeling of being dehumanized can severely affect their self-worth, confidence, and trust in society. Its abuse is continuous. Victims are manipulated into submission using threats, shame, humiliation, and physical torture. Many trafficked women report experiencing learned helplessness, a state where they feel escape is impossible, and therefore stop resisting. They may even come to identify with their traffickers—a phenomenon known as Stockholm Syndrome—especially if their trafficker offers them basic care or pretends to be affectionate.

Further, women trafficked for sexual exploitation are often subjected to **repeated rape**, sometimes by different men each day. This not only deepens the trauma but causes long-term psychological dissociation, memory loss, or emotional numbness. Many survivors suffer from insomnia, nightmares, flashbacks, and chronic fear—even after being rescued.

II. Physical Health Consequences

Physical abuse is routine in trafficking scenarios. Victims are often beaten, starved, confined, or forced to consume drugs to make them submissive. Women in sex trafficking are particularly vulnerable to sexually transmitted infections (STIs), including HIV/AIDS, due to forced, unprotected sexual encounters. Many are denied access to medical care, or worse, punished for falling ill. Unwanted pregnancies, miscarriages, reproductive system damage, and other gynecological issues are common. Some victims are forced to undergo unsafe abortions, further endangering their health. Those used in forced labor suffer from musculoskeletal injuries, respiratory issues from poor working conditions, and chronic pain. These health issues are often left untreated, compounding over time.

Moreover, the physical consequences are not just injuries or illnesses; they are visible reminders of trauma. Scars, burns, and broken bones often mark the survivors, serving as permanent reminders of the horrors they endured.

- **Social and Economic Consequences**

The social consequences of trafficking are equally damaging. Victims are frequently ostracized by their families and communities, especially in patriarchal societies where honor and shame are culturally embedded. Instead of receiving support and care, many survivors' face stigma, blame, and rejection, especially if they were trafficked for sex work. As a result, they suffer social isolation, making reintegration incredibly difficult.

This isolation affects their ability to find housing, employment, and even form relationships. Many survivors cannot return to their hometowns due to fear of retribution or disgrace. They often have no identity documents, no education, and no support system—making them vulnerable to re-trafficking.

Economically, trafficked women are robbed of years of potential income and education. Many are forced to work without pay, live in subhuman conditions, and accrue debts they never agreed to. Once they escape or are rescued, they are left with no financial stability, few job skills, and in most cases, no access to financial institutions or schemes due to a lack of documentation. For those who had children during or before trafficking, their struggles multiply. Their children may face discrimination, limited access to schooling, or even be taken away by the state. The trauma and poverty endured by the mother thus passes down to the next generation, creating a cycle of exploitation and marginalization.

- **Long-Term Effects and Rehabilitation Challenges**

Even after rescue, the journey of recovery is long and filled with challenges. Rehabilitation requires a multifaceted, trauma-informed approach, involving psychological counseling, physical healthcare, legal aid, and skill development. However, in many regions, such support systems are underdeveloped or poorly coordinated.

Survivors often feel like they are not truly free, as bureaucracy, stigma, and lack of awareness keep them trapped in a limbo. Some are placed in government-run shelter homes, where they are further exposed to violence or exploitation. Without safe, long-term housing, educational opportunities, and dignified employment, many women fall back into the same dangerous environments they tried to escape.

Community attitudes are slow to change. Even well-meaning NGOs or service providers sometimes approach survivors from a position of pity or moral superiority, rather than empathy and empowerment. There is also a lack of legal awareness among survivors, which makes it difficult for them to claim justice or compensation.

LEGAL CHALLENGES AND GAPS IN ENFORCEMENT

Despite the existence of laws such as the Immoral Traffic (Prevention) Act, 1956, and constitutional provisions under Articles 23 and 39, the real-world application of these laws often falls short. One of the most critical issues lies in the enforcement gap — while laws criminalize trafficking, lack of awareness, corruption, under-reporting, and systemic apathy create major roadblocks in ensuring justice for the victims. Law enforcement agencies are

often undertrained in handling trafficking cases, especially when they intersect with issues of migration, caste, poverty, and gender. Victims are frequently treated as offenders, especially in cases where they are forced into sex work. This misidentification results in re-victimization rather than rehabilitation.

The law also struggles to keep up with the evolving nature of trafficking, which now includes cyber trafficking, online grooming, and digital recruitment, making it harder to trace traffickers who often operate across national borders. Organized crime networks use sophisticated technology, fake identities, and encrypted messaging apps to lure, exploit, and traffic women — often promising jobs or modeling opportunities. Furthermore, there are jurisdictional challenges. A victim trafficked from one state to another or across international borders may fall into a legal grey area where law enforcement agencies pass the buck. Lack of coordination between states, or between India and other countries, impedes timely rescue, investigation, and prosecution.

Additionally, the rehabilitation mechanisms in place for survivors are often inadequate. Most shelters are overcrowded, underfunded, and lack mental health and vocational support. Victims are rarely included in decisions about their future, leading to a sense of disempowerment. Another significant legal challenge is the lack of gender sensitivity in the system. Investigating officers and even some judges hold patriarchal biases that reflect in how cases are handled. Victims are often questioned about their morality, behavior, or clothing, which further traumatizes them and discourages reporting.

In cases of bonded labor, domestic servitude, or forced marriages, the line between 'cultural practices' and trafficking becomes blurred, especially in rural areas. This complexity demands a multi-disciplinary approach — involving legal reform, grassroots awareness, active community participation, digital vigilance, and international cooperation. Ultimately, while India has taken steps in aligning its anti-trafficking laws with international conventions, such as the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, the lack of a comprehensive, survivor-centric national policy continues to hinder real progress.

TRENDS AND PATTERNS IN FEMALE OFFENDING

For many years, crime has been largely seen as a male-dominated domain. Courts, police systems, and even criminological theories have primarily focused on men as offenders, with women being viewed mostly as victims or passive participants. However, as society evolves, so too does the role of women in all areas of life—including, unfortunately, the world of crime. While female offenders still make up a smaller percentage of total criminal

cases, their involvement is steadily increasing. This change has led scholars, law enforcement agencies, and policymakers to take a closer look at the nature, reasons, and patterns of female criminality.

1. Rise in Non-Violent and Economic Crimes

A striking feature of female criminality in recent decades is the rise in non-violent and economic crimes. Unlike traditional male-dominated crimes marked by aggression, women are more often involved in offences such as theft, shoplifting, cheque fraud, drug peddling, or cyber scams. These acts frequently stem from economic hardship rather than deliberate criminal intent. Many women, particularly those from low-income backgrounds, engage in theft or small-scale smuggling as a survival strategy to feed their families, pay debts, or escape financial dependence. For instance, women from urban slums or rural areas might act as drug couriers (“mules”) for organized traffickers, often unaware of the full consequences. Others, driven by lack of education or job opportunities, may fall into fraudulent financial activities, including cheque manipulation or online scams. It’s crucial to understand that many such offences are situational and coerced, influenced by poverty, domestic abuse, or manipulation by male partners and criminal networks. Thus, behind most non-violent crimes by women lies a complex web of social disadvantage, emotional vulnerability, and economic desperation, rather than greed or malice.

2. Domestic Environment as a Criminogenic Setting

The domestic environment a space traditionally associated with safety and nurturing can paradoxically become a major criminogenic (crime-producing) setting for women. A large number of crimes committed by women have roots in the home or family context, reflecting years of abuse, neglect, and emotional turmoil. Crimes such as infanticide, child abandonment, and retaliatory violence often emerge from overwhelming social pressure and psychological distress. Unmarried mothers or impoverished women, facing stigma and lack of support, may abandon or harm their infants out of sheer hopelessness. Similarly, victims of domestic violence may eventually retaliate against abusive partners or in-laws, not out of cruelty but as a desperate act of self-defence or accumulated rage. Even custody-related abductions, where mothers kidnap their own children after losing legal custody, reflect emotional breakdown rather than criminal intent. These acts highlight the intersection of gender, mental health, and social injustice, where women, denied legal aid or psychological counselling, act out under unbearable emotional strain. The domestic setting thus becomes both the source of trauma and the stage of crime.

3. Use of Women in Organized Crime and Terror Networks

The modern era has witnessed an unsettling trend the strategic use of women in organized crime and terror networks. Women are increasingly being recruited or coerced into activities such as drug smuggling, weapon transport, money laundering, or human trafficking operations. Organized gangs and extremist groups exploit gender stereotypes, assuming women are less likely to attract suspicion from law enforcement. Some women are used as lures to trap victims or to facilitate criminal transactions. In terror networks, they might be indoctrinated or emotionally manipulated into spreading propaganda or even participating in violent acts. Social isolation, abusive relationships, poverty, or ideological grooming often push women toward such groups. Many are not hardened criminals but victims of manipulation, caught between coercion and survival. Their involvement highlights a grim reality: the line between victimhood and criminal participation can become dangerously blurred when exploitation operates under the guise of trust or ideology.

4. Cyber Crimes and Digital Exploitation

With the expansion of technology and internet access, women's participation in cybercrimes has become an emerging concern. The virtual space offers both anonymity and opportunity, making it easier to commit offences like phishing, online fraud, sextortion, or identity theft. Some women engage in scams such as fake loan offers or fraudulent matrimonial profiles either out of greed, revenge, or social influence. Others may resort to cyber bullying, defamation, or blackmail, especially in personal relationship disputes. A particularly troubling form is sextortion, where offenders exploit explicit images to extort money or Favors. These crimes often start as impulsive acts or pranks but can quickly escalate into serious offences with real-world consequences. In urban centres, young women with access to technology may fall into such patterns due to peer pressure, revenge motives, or financial need. The digital realm, while empowering in many ways, has also created a new frontier of crime, where emotional and economic vulnerabilities are easily exploited.

5. Recidivism Among Female Offenders

While studies show that recidivism, or repeat offending, is lower among women than men, it remains a serious issue due to the lack of effective rehabilitation structures. Once released from prison, many women struggle to reintegrate into society. They face stigma, family rejection, unemployment, and emotional trauma, often worsened by the label of being an “ex-convict.” With limited access to housing, healthcare, or counselling, some women find

themselves drawn back into the same circumstances that led to their initial crimes. For instance, a woman imprisoned for theft may return to stealing if she cannot find stable work after release. Without gender-sensitive rehabilitation programs, including vocational training and social reintegration initiatives, the system inadvertently pushes these women back into a cycle of crime and punishment. This highlights the need for a restorative justice approach one that focuses on healing, education, and economic independence, rather than mere incarceration.

6. Hidden or Underreported Crimes

A significant dimension of female criminality remains hidden or underreported, largely due to social stigma, gender norms, and patriarchal silence. Many women participate in crimes as accessories or facilitators, helping male offenders by concealing evidence, luring victims, or providing logistical support. Such acts often go unnoticed because of the private nature of domestic or relational crime. In other instances, women's involvement in trafficking or prostitution networks is kept secret either out of fear, coercion, or family pressure. In conservative communities, reporting a woman's involvement in any criminal activity is often avoided to protect family honour. Similarly, crimes like financial manipulation within families or illegal adoptions may never reach law enforcement. The result is a distorted picture of female criminality, where only visible offences are counted while covert participation remains buried beneath social shame. This underreporting reflects deep-rooted patriarchal control and fear of social exclusion, emphasizing the need for more open dialogue, community awareness, and gender-sensitive investigative mechanisms to uncover the hidden layers of women's criminal behaviour.

CRIMINOGENIC FACTORS BEHIND FEMALE CRIME

Crime doesn't occur in a vacuum. It is the result of a combination of factors social, economic, psychological, and cultural. For women, these factors often look very different from those affecting male offenders. Female criminality is less about personal gain or aggression and more about survival, coercion, trauma, or deep-rooted inequality. This section explores the key criminogenic (crime-causing) factors that push women into conflict with the law.

1. Economic Dependency and Poverty

Poverty is one of the most powerful motivators behind female crime. Across the globe and particularly in developing countries like India women face limited access to education, employment, and property. They are often dependent on husbands, fathers, or in-laws for basic survival. When these

relationships break down, or when women are widowed, abandoned, or abused, they may find themselves without income or support.

Some turn to petty theft, prostitution, or drug trafficking just to feed themselves or their children. These crimes are not driven by greed but by a lack of choices. In many cases, these women have never had financial independence or legal awareness, making them more vulnerable to both committing crimes and being caught in them.

2. Domestic Violence and Abuse

A large proportion of women who come into conflict with the law share a tragic common thread a history of violence and abuse. Long before they are labelled as offenders, many of them are victims in their own homes. Domestic spaces, which should ideally be safe, often become sites of control, coercion, and suffering. Experiences such as marital rape, intimate partner violence, childhood sexual abuse, and forced prostitution or trafficking leave deep psychological scars that shape both behaviour and decision-making.

For many women, especially those trapped in abusive marriages or patriarchal families, violence becomes a daily reality. Years of being beaten, humiliated, or sexually violated can destroy their sense of self-worth and emotional stability. When the justice system, family, or society fails to protect them, some eventually snap under the weight of accumulated trauma. Crimes committed in such moments such as killing an abusive husband or in-law are often acts of desperation rather than cruelty. These are not planned offences, but eruptions of repressed pain and fear that have gone unheard for too long.

Others, instead of retaliating directly, choose to run away from abusive homes. But in the absence of support networks, financial independence, or safe shelters, these women are vulnerable to exploitation by criminal groups. Gangs or traffickers often lure them in with promises of protection, belonging, or income, only to push them into illegal activities such as drug peddling, theft, or prostitution. What begins as a search for safety can easily turn into another cycle of exploitation.

Psychologically, the effects of prolonged abuse can manifest as post-traumatic stress disorder (PTSD), depression, or emotional numbness. Some women internalize aggression as a defence mechanism projecting the violence once inflicted upon them onto others. For a few, crime becomes a way to reclaim power and agency in a life where control has always been stripped away. When justice feels unreachable, and the law seems to side with their abusers, they create their own form of justice however tragic or unlawful it may appear.

Ultimately, these patterns show that domestic violence and abuse are not just personal or family matters they are criminogenic forces that shape the trajectory of women's lives. To prevent such outcomes, the justice system must see these women not only as offenders but also as survivors of systemic violence who were failed long before they broke the law. Addressing their trauma through counselling, legal aid, and rehabilitation, rather than mere punishment, is the only path toward true justice and reformation.

3. Mental Health Issues and Trauma

Mental illness plays a significant role in female offending. Depression, post-traumatic stress disorder (PTSD), and anxiety disorders are common among women involved in crime. Unfortunately, mental health care for women especially poor or rural women is often non-existent or inaccessible.

Women suffering from untreated psychological conditions may commit crimes impulsively or under emotional distress. They may shoplift, abuse drugs, or engage in prostitution not out of choice but as a response to mental and emotional instability.

4. Substance Addiction and Female Crime

Substance addiction plays a dual and destructive role in women's involvement with crime—it is often both a cause and a consequence of their circumstances. Many women begin using drugs or alcohol as a way to cope with deep emotional pain, trauma, or depression stemming from experiences of abuse, neglect, or loss. For some, addiction is introduced through partners, peers, or criminal groups that normalize substance use as part of survival or belonging. Others fall into addiction after being abandoned by families, forced onto the streets, or trapped in cycles of poverty where drugs offer a temporary escape from reality.

As addiction tightens its grip, survival becomes desperate. To sustain their dependency, many women engage in petty theft, shoplifting, or drug peddling, while some are pushed into sex work to earn quick money. In darker cases, traffickers and smugglers exploit addicted women as drug couriers or “mules,” using their vulnerability to transport illegal substances across regions or borders. Once involved, escaping this life becomes incredibly difficult both because of legal entanglements and the psychological dependence on substances that numb their pain.

This creates a vicious cycle: addiction leads to crime, and crime deepens addiction. Each feeds the other until the woman is trapped between punishment and craving, guilt and dependency. Rehabilitation, therefore, cannot just focus on penal consequences. It must address the root emotional

wounds that fuel addiction the violence, loneliness, and systemic neglect that drive women toward self-destruction. Without such holistic support, the prison or justice system merely replaces one form of captivity with another.

5. Lack of Education and Legal Awareness

Many female offenders have little to no formal education. They may not know what rights they have, what the law prohibits, or how to seek legal protection. This ignorance of the law makes them vulnerable to being manipulated, used as pawns, or taking the fall for crimes committed by others often their male partners.

For instance, a woman may sign documents related to financial fraud without understanding them or help hide stolen items under pressure from family. In the eyes of the law, she becomes an accomplice, even if she was a passive or unaware participant.

6. Social and Cultural Oppression

In patriarchal societies, women are often denied autonomy and agency. They may be forced into marriages, barred from working, or silenced when abused. Over time, this suppression leads to resentment, rebellion, and in some cases criminal behavior

For example:

- A woman might kill a violent husband to protect herself or her children.
- A teenage girl might run away from forced marriage and commit theft to survive.
- A trafficked woman may turn against her captors and end up charged with assault or robbery.

The law often overlooks the context behind such actions, judging them only by the outcome, not the injustice that led there.

7. Influence of Male Criminals or Family Pressure

Many women enter the world of crime not out of choice, but because someone close to them leads them into it.

This could be:

- A husband involved in fraud or theft who uses his wife to hide evidence or collect illegal money
- A brother or boyfriend in a gang who grooms her to participate

- In-laws who coerce her into dowry-related harassment or even violence

In many such cases, women act under emotional pressure, loyalty, or fear. They may not fully understand the criminal consequences until it is too late.

MAJOR CRIMINOGENIC FACTORS BEHIND FEMALE CRIME IN INDIA

Understanding why women commit crimes requires looking beyond legal definitions and into the social, psychological, economic, and cultural forces that shape their lives. Unlike many male offenders whose crimes may arise from assertive aggression or peer influence, female criminality is often deeply rooted in structural inequalities, survival needs, and emotional responses.

Let's explore the key criminogenic (crime-causing) factors that contribute to women engaging in unlawful acts:

- **Socio-Economic Vulnerability and Female Criminality**

Female criminality is deeply intertwined with socio-economic vulnerability. Many women who come into conflict with the law belong to economically weaker sections of society and are often the primary or sole earners for their families. Limited access to education, formal employment, and social mobility leaves survival as the immediate priority. Crimes such as theft, smuggling, drug peddling, or prostitution are frequently driven by necessity rather than malice. For example, a mother stealing food or money to feed her children may technically be an offender under the law, yet her motive stems from survival rather than criminal intent. Understanding female criminality through this lens highlights that socio-economic pressures often shape the choices women make, necessitating context-sensitive approaches in both law enforcement and rehabilitation.

- **Domestic Violence and Abusive Relationships**

Domestic violence is another significant factor influencing female offending. Many women who commit crimes have histories of being victims themselves, experiencing domestic abuse, marital rape, or emotional manipulation. Crimes may be committed in self-defence, retaliation, or under coercion by abusive partners. In India, some women convicted of murder had killed their abusive spouses after enduring years of sustained violence. These instances illustrate the critical need to view female criminal behaviour within the context of lived trauma. Ignoring these circumstances risks misrepresenting motives and perpetuating injustice.

- **Lack of Education and Legal Awareness**

Illiteracy or low educational attainment further compounds women's vulnerability. Many female offenders are unaware of the legal consequences of their actions, their rights under the law, or alternative methods of survival such as welfare schemes or microloans. This ignorance often makes them pawns in larger criminal networks, exploited by partners, relatives, or acquaintances, without full comprehension of their role in criminal activities. Education and legal literacy are therefore pivotal in preventing women's entanglement in crime and enabling informed decision-making.

- **Emotional and Psychological Triggers**

Women's involvement in crime is often driven by strong emotional and psychological factors, contrasting with the more calculated motives typically associated with male offenders. Acts may stem from revenge for betrayal or abuse, impulse reactions to trauma, or mental health conditions such as depression, anxiety, or PTSD. Traditional legal frameworks frequently fail to consider these emotional and psychological contexts, leading to an incomplete understanding of women's criminality.

- **Influence of Male Counterparts**

The role of male counterparts in shaping female offending behaviour cannot be overlooked. Women are often manipulated, threatened, or persuaded by husbands, lovers, or relatives into committing crimes. In drug trafficking or financial offences, women may be used as the "clean face" of operations due to societal assumptions that they are less likely to be suspected or searched. Often, when such crimes are detected, women bear the legal consequences while male collaborators escape accountability.

- **Gender Discrimination and Societal Pressures**

Patriarchal societal norms contribute indirectly but powerfully to criminal behavior among women. Discrimination restricts access to education, property rights, and legal protection, while social expectations demand obedience, submissiveness, and self-sacrifice. Violations of these norms — such as eloping, asserting independence, or choosing unconventional careers — can result in ostracization, marginalization, and vulnerability to exploitation. These pressures may drive women toward desperate measures, reinforcing the complex interplay between societal oppression and criminality.

- **Addiction and Substance Abuse**

Substance abuse functions both as a cause and a consequence of female crime. Women may turn to drugs or alcohol as coping mechanisms for trauma or stress. Addiction can then lead to offences such as robbery, prostitution, or petty theft to sustain their habit. In some cases, women are introduced to substances by intimate partners, which ultimately entangles them in criminal networks, highlighting the need for integrated addiction and rehabilitation programs.

- **Peer Pressure and Gang Culture**

Though less common than among men, peer influence can also contribute to female criminality, especially among adolescents and young women. Many join local gangs or criminal groups for protection, money, or a sense of belonging. Minor roles, such as delivering illicit items, can escalate into deeper involvement in organized crime. In such environments, fear, loyalty, and social pressures often override individual moral judgment or awareness of legal consequences.

- **Rehabilitation and Reintegration of Female Offenders**

Rehabilitation is essential for women convicted of crimes, as incarceration often marks the beginning of a challenging path rather than an endpoint. Gender-sensitive rehabilitation addresses the root causes of crime, including poverty, trauma, addiction, and abuse, while equipping women with skills and support to prevent recidivism. Many female offenders are mothers, making rehabilitation critical not only for their own reintegration but also for the well-being of their children.

- **Gender-Specific Needs in Prisons**

Prison systems frequently fail to accommodate the specific needs of female inmates. Challenges include inadequate menstrual hygiene products, insufficient healthcare, absence of childcare, sexual harassment, and lack of trauma counselling. When these issues remain unaddressed, prisons risk perpetuating cycles of victimization rather than reform.

- **Education, Vocational Training, and Mental Health Support**

Literacy and vocational programs within prisons can transform women's lives, offering pathways to independence and self-sufficiency. Training in areas such as tailoring, handicrafts, computer skills, and cooking, combined with counselling and mental health services, allows women to rebuild their identities, recover from trauma, and prepare for societal reintegration.

- **Community-Based Rehabilitation and NGO Support**

Community-based alternatives, such as probation, parole, halfway homes, and shelter programs, are often more effective than incarceration for non-violent offenders. NGOs play a vital role in providing legal aid, life skills training, counselling, and reintegration support. Their contributions are essential in bridging gaps left by state resources, ensuring women have access to opportunities that prevent reoffending.

- **Gendered Nature of White-Collar Crime**

Even in white-collar crime, women's participation differs from men's in scope and motive. Women are often involved in smaller-scale frauds, falsifying records, misusing reimbursements, or manipulating welfare schemes, typically within lower or mid-level administrative positions. While large-scale financial crimes are more common among men, women's crimes frequently arise from opportunity, coercion, or systemic exploitation, reflecting the interplay between gender, position, and social pressures.

PATTERNS AND TRENDS IN FEMALE CRIMINALITY

While crime is traditionally viewed as a male-dominated domain, recent decades have shown a visible shift in the landscape of female criminality. Though women still constitute a minority of offenders, the nature, frequency, and context of their crimes have evolved significantly. Understanding these patterns is crucial for building an effective and gender-sensitive justice system.

1. Rise in Female Involvement in Crime

There has been a gradual but noticeable increase in the number of women entering the criminal justice system. This can be attributed to a mix of factors such as:

- **Urbanization and migration:** With more women moving to cities for work or due to displacement, they become exposed to new social environments and sometimes to survival pressures.
- **Breakdown of traditional family structures:** Single mothers, widows, or women abandoned by partners are often left without support systems.
- **Economic shifts and unemployment:** Financial instability has pushed some women towards crimes like theft, fraud, or smuggling.

- **Reporting improvements:** More crimes are being recorded today due to better policing and awareness, especially in urban and semi-urban areas.

2. Nature of Crimes Committed by Women

Traditionally, women were mostly involved in non-violent and domestic crimes, but this is slowly changing. Here's how:

- **Earlier trends:** Shoplifting, petty theft, baby-stealing, infanticide, and dowry-related offenses were common.
- **Recent trends:** Now, women are also seen in cases involving:
 - White-collar crimes like banking, fraud and cybercrime
 - Drug trafficking, especially as carriers or “mules”
 - Participation in organized crime rings or gangs
 - Cases involving assault or even murder, often in the context of prolonged abuse

It is important to note that even in serious crimes, many women play **secondary or subordinate roles**, often under pressure or influence from male counterparts.

3. Age and Background of Female Offenders

Most female offenders fall within the 18 to 45-year age group, which also coincides with their reproductive and caregiving years. This demographic detail is vital because:

- Many of these women have dependent children, and their imprisonment affects entire families.
- Many of them come from marginalized communities — poor, rural, uneducated, or minorities.
- Often, they lack previous criminal records, indicating that their offense may be situational rather than habitual.

Women from broken homes, abusive marriages, or communities with poor access to education and employment are particularly vulnerable.

4. Women as First-Time Offenders

A significant proportion of women in conflict with law are first-time offenders. Unlike many male offenders who may have a criminal history, women are often:

- Pulled into crime by external pressures or survival needs

- Unaware of the legal implications of their actions
- Emotionally vulnerable, leading to impulsive behavior

This highlights a crucial fact: many women enter the criminal justice system not as hardened criminals but as victims of circumstances.

5. Women in Custody: Challenges and Conditions

Women prisoners face unique challenges, and these reflect broader trends in the system:

- Lack of access to healthcare, menstrual hygiene, and counseling
- Inadequate facilities for pregnant women or those with children
- Separation from children (especially under 6 years) causes immense trauma
- A shortage of female prison staff, leading to issues of safety and privacy

The fact that many women in custody are undertrial prisoners, meaning they haven't even been convicted yet, adds to the injustice. Long delays in trials and lack of legal aid keep them behind bars unnecessarily.

6. Hidden Crimes and Underreporting

Not all female criminality is captured in official statistics. Crimes involving women often go undetected or unreported due to:

- Societal reluctance to see women as capable of crime
- Family pressure to resolve issues privately (especially in domestic or dowry cases)
- Legal and police systems being male-dominated and unsympathetic

This underreporting distorts our understanding of the **real extent and nature** of female involvement in crime.

Case Studies and Real-Life Examples

Case 1: Embezzlement in Educational Institutions¹²⁵

In a government school in Uttar Pradesh, a female principal was found to have misappropriated funds allocated for the mid-day meal scheme by creating fake student lists and manipulating attendance records. She exploited her position of authority over school administration, taking advantage of

¹²⁵ *Principal of Jajpur Primary School Booked for Misappropriating Mid-Day Meal Funds*, Indian Express (Aug. 15, 2023), <https://indianexpress.com/article/cities/agra-govt-school-principal-held-for-siphoning-off-rs-11-crore-of-midday-meal-scheme-8068168>

minimal oversight and weak auditing procedures at the grassroots level. The primary issue in this case was the breach of public trust and the misuse of administrative power to commit financial fraud. Investigations revealed that the principal systematically siphoned funds over several months, diverting money meant for children's nutrition into her personal accounts. The case highlighted how structural weaknesses in governance, coupled with unchecked authority, can create opportunities for large-scale embezzlement. The court carefully examined financial documents, digital transaction records, and testimonies from school staff to establish her culpability. Ultimately, she was convicted under relevant provisions of criminal breach of trust and corruption laws, receiving a sentence that emphasized the seriousness of exploiting public resources, especially in a sector as sensitive as education. This case also sparked discussions in media and society about the vulnerability of government welfare programs and the necessity for stronger accountability mechanisms at every administrative level. It illustrated that women, like men, can misuse authority in sophisticated ways, and underscored the importance of monitoring systems to prevent exploitation of public trust.

Case 2: Bribery and Real Estate Fraud

In a municipal corporation, a female officer was implicated in accepting bribes and approving unauthorized real estate projects, acting as a link between developers seeking illegal permissions and higher authorities responsible for sanctioning construction. The central issue in this case was corruption and the abuse of official position for personal gain. Investigations revealed a complex network of collusion where the officer received financial incentives in exchange for fast-tracking approvals, bypassing regulations designed to protect public interest. The case exposed the ease with which administrative power could be manipulated to serve private interests, highlighting the systemic vulnerability in urban governance. During the trial, evidence in the form of bank records, recorded communications, and testimonies of co-conspirators was presented to establish her role in the illegal transactions. The court concluded that she had actively participated in corrupt practices and was liable under anti-bribery and misconduct laws. Her sentencing served as a stern reminder that misuse of public office, regardless of gender, undermines trust in civic institutions. Media coverage of this case also generated public debate on the accountability of government officers and the need for transparent procedures in municipal approvals. It demonstrated that women in positions of authority could influence both policy and illegal

activities, emphasizing the necessity for ethical standards and regular audits to deter misuse of power.¹²⁶

Case 3: Cyber-Enabled Ponzi Scheme

In Mumbai, a female entrepreneur orchestrated a crypto investment scheme that promised high returns to attract investors, which eventually turned out to be a digital Ponzi operation. She leveraged social media, online platforms, and persuasive marketing tactics to create an illusion of legitimacy, defrauding hundreds of investors across different parts of the city. The core issues in this case involved cybercrime, financial fraud, and the exploitation of digital technology for illegal financial gain. Authorities investigated the digital footprint of the scheme, analysing online transactions, promotional content, and communication with investors to prove her involvement. The judgment emphasized her deliberate intent to mislead and defraud, holding her liable under provisions related to cheating, fraud, and cyber-enabled financial crimes. This case highlighted the new-age dimension of white-collar offences, showing that technology allows sophisticated schemes that can quickly affect large numbers of people. Media coverage played a critical role in informing the public about the fraud while also sparking debate about investor awareness and regulation of digital financial platforms. It demonstrated that women are active participants in complex financial crimes, challenging the traditional perception that such activities are predominantly male-driven. The case reinforced the need for stringent cyber laws, vigilance in online investments, and media responsibility in reporting technological crimes to prevent mass victimization.¹²⁷

Criminal Justice System and Gender Bias

The justice system's approach towards women offenders in white-collar crimes is not always neutral. There are often gendered assumptions that affect investigation, prosecution, and sentencing.

- **Leniency or moral sympathy:** Courts may assume women were manipulated or acted under emotional distress.

¹²⁶ *Municipal Officer in Vasai-Virar Arrested for Accepting ₹169 Crore in Bribes for Illegal Construction Approvals*, Times of India (Oct. 14, 2025), <https://timesofindia.indiatimes.com/city/mumbai/vasai-virar-ex-civic-chief-key-man-behind-illegal-constructions-got-rs-169-cr-bribes-ed-chargesheet/articleshow/124557346.cms>.

¹²⁷ *Woman Arrested in ₹6,600 Crore Bitcoin Ponzi Scheme in Mumbai*, NDTV (Dec. 19, 2023), <https://www.ndtv.com/india-news/6600-crores-collected-in-bitcoin-ponzi-scheme-woman-arrested-in-mumbai-6-6600-crores-collected-in-bitcoin-ponzi-scheme-woman-arrested-in-mumbai-6>

- **Media portrayal:** Women criminals are often described in moralistic or sensational terms (e.g., "betraying femininity", "unmotherly thief").
- **Judicial hesitation** in imposing harsh sentences due to their role as caregivers or mothers.

This bias can lead to either **undue harshness** or **unwarranted leniency**, both of which impact justice delivery and rehabilitation.

WAY FORWARD

Through this chapter, we have explored how female involvement in crime is often rooted in vulnerability—poverty, domestic abuse, exploitation, lack of education, or emotional coercion. In many cases, women commit crimes out of desperation, under duress, or due to manipulative relationships. Yet, in other cases, women may actively and independently participate in criminal activities, whether in violent offences, property crimes, or white-collar frauds. This diversity in motivation and context challenges the outdated stereotype of the female offender as either a passive victim or a rare anomaly.

We also examined criminogenic factors—such as patriarchal oppression, substance abuse, mental health issues, and exposure to early trauma—which disproportionately affect women and often push them into illegal acts. Moreover, the rise of women in positions of power and the gradual breaking of gender roles have led to an increase in female involvement in previously male-dominated criminal areas, such as organized crime and cybercrime.

However, the justice system's response remains largely gender insensitive. Law enforcement often overlooks the socio-economic context of women's offences, leading to rigid punitive measures instead of reform-oriented solutions. Courts may also exhibit bias either being too harsh or too lenient depending on how femininity is perceived in the courtroom.

CONCLUSION

The chapter "Women in Conflict with Law" presents a critical re-evaluation of how women engage with the criminal justice system—not just as victims, but as active offenders shaped by a wide range of social, economic, psychological, and structural factors. Traditional criminology has long been male dominated, often ignoring the distinct motivations, patterns, and experiences of female offenders. However, as crime trends evolve and more data becomes available, it is becoming increasingly clear that women's criminality cannot be dismissed as marginal or exceptional.

To ensure justice and fairness, there must be a shift towards a balanced approach that recognizes both the agency and the adversity of women in conflict with the law. This includes:

- Gender-sensitive legal frameworks
- Rehabilitation programs tailored to women's specific needs
- Reforms in prison systems to accommodate women's health, family responsibilities, and psychological support
- A focus on restorative justice rather than only retribution

In conclusion, understanding women as offenders requires us to look beyond crime statistics and legal labels, and dive into the lived realities that shape their choices and actions. Only then can the criminal justice system truly deliver equitable justice—by holding women accountable where necessary but also acknowledging and addressing the systemic issues that contribute to their criminal conduct. This balance is essential not just for fair sentencing, but for meaningful reform and reintegration.

Chapter 9

FAMILY, INTIMACY, AND TRANSNATIONAL MATRIMONIAL CRIME

*Live-in relationships, religious family structures, and nri marriages
with transnational matrimonial crimes*

*“Every accused person is a product of society; justice requires
understanding before punishment.”*

— Justice V. R. Krishna Iyer

INTRODUCTION

Family and intimate relationships form the cornerstone of social organisation, offering emotional, economic, and social stability. However, they are also sites where gender inequality, exploitation, and crime intersect, often with women bearing the brunt of structural and interpersonal injustice. Contemporary Indian society is witnessing significant transformations in familial patterns, including the rise of live-in relationships, cross-cultural and NRI marriages, and challenges arising from religious personal laws. These shifts have brought forth unique legal and criminological challenges. Women remain particularly vulnerable to domestic abuse, economic exploitation, abandonment, and transnational matrimonial fraud, with the private domain becoming a site of public concern.

This chapter analyses these contemporary phenomena by examining:

- The evolution of live-in relationships and their legal recognition.
- The interplay between religious personal laws, family structures, and constitutional principles.
- Legal and criminological complexities surrounding NRI marriages and cross-border matrimonial crimes.

Through a feminist criminology lens, the chapter emphasises that private harm—though occurring within intimate spaces—has public consequences, necessitating both legal and societal intervention.

CONCEPT AND EVOLUTION OF LIVE-IN RELATIONSHIPS

Live-in relationships are defined as the cohabitation of two consenting adults without formal marriage. Such arrangements challenge traditional understandings of family, which historically regarded marriage as the only legitimate framework for intimate unions. The rise of live-in relationships in India can be attributed to changing social norms, urbanisation, and the pursuit of autonomy by women and men, along with delayed marriages and prioritisation of careers. Additionally, the recognition of personal liberty under the Indian Constitution has empowered individuals to make choices regarding cohabitation.

Several factors have contributed to their rise in India:

- **Changing social norms and urbanisation**, particularly in metropolitan areas.
- **Increased autonomy** of women and men, allowing them to make personal choices about cohabitation.
- **Delayed marriages** due to education and career priorities, creating opportunities for long-term partnerships outside formal marriage.
- Recognition of **personal liberty and autonomy** under the Indian Constitution, particularly Articles 14, 15, and 21.

From a criminological perspective, live-in relationships occupy a grey area. While they can offer mutual autonomy, flexibility, and testing of compatibility, the absence of formal recognition leaves women and children vulnerable to abandonment, financial exploitation, and domestic abuse. This duality highlights the need for legal clarity, social support, and public awareness.

JUDICIAL RECOGNITION IN INDIA

Indian courts have gradually recognised live-in relationships as legally significant, particularly under the Protection of Women from Domestic Violence Act, 2005, which includes long-term cohabiting partners within its scope. Landmark judgments such as:-

- **D. Velusamy v. D. Patchaiammal (2010):** ¹²⁸Courts defined live-in relationships as “in the nature of marriage” if there is shared household, long-term cohabitation, and mutual intent to live as spouses.

¹²⁸ (2010) 10 SCC 469

- **Indra Sarma v. V.K.V. Sarma (2013)**¹²⁹: Recognition depends on stability, duration, and intent, protecting women from casual liaisons.
- **Vinny Parmar v. State of Gujarat (2018)**¹³⁰: Emphasized children's rights, ensuring custody and inheritance protections.

It emphasises that cohabitation of sufficient duration with mutual intent can qualify as “in the nature of marriage” for legal purposes. Courts have recognised the rights of women in long-term relationships, considering factors such as financial dependence, shared household responsibilities, and the welfare of children. Despite this recognition, legal ambiguities remain regarding inheritance, maintenance, and custodial rights, leaving women partially exposed to economic and domestic vulnerabilities.

APPLICABILITY OF DOMESTIC VIOLENCE LAW

The Protection of Women from Domestic Violence Act, 2005 (DV Act) extends to women in live-in relationships, offering protection against:

- Physical, emotional, sexual, and economic abuse
- Access to protection orders, residence orders, and maintenance claims
- Legal recourse even without formal marital status

Analysis: The DV Act bridges gaps between formal marriage and cohabitation, acknowledging the real-world vulnerabilities of women.

LEGAL RIGHTS OF WOMEN AND CHILDREN

Women in live-in relationships have access to rights that mirror those of married women under certain conditions. Maintenance claims can be filed under

- **Maintenance rights** under DV Act Section 2(f) & Section 3
- **Property rights** if cohabitation generates shared assets
- **Custody and guardianship rights** for children under the **Guardians and Wards Act, 1890**

Children born in these unions are legally entitled to inheritance, financial support, and recognition under personal and constitutional law. Custody and guardianship are governed by the Guardians and Wards Act, 1890, ensuring that children's welfare is protected regardless of the marital status of parents.

¹²⁹ (2013) 15 SCC 755

¹³⁰ (2011) 13 SCC 112

Legal recognition not only protects women's economic interests but also safeguards children's rights, mitigating risks of neglect and exploitation.

1. Inheritance rights
2. Financial support and security
3. Recognition under personal and constitutional law

Legal recognition reduces economic vulnerability and protects child welfare, mitigating risks of exploitation and neglect.

POSITIVE ASPECTS OF LIVE-IN RELATIONSHIPS

When consensual and stable, live-in relationships provide several positive outcomes. They offer autonomy and freedom of choice, enabling individuals to form partnerships without societal or familial coercion. Shared decision-making and domestic responsibilities promote gender equality and mutual respect. By testing compatibility prior to formal commitment, these relationships can reduce divorce rates and foster informed decision-making. Moreover, live-in arrangements accommodate modern urban lifestyles, allowing partners to balance career priorities and personal growth. From a criminological perspective, these positive dimensions reduce domestic conflict, promote negotiation, and prevent coercive control, highlighting the benefits of rights-based relational arrangements.

Live-in relationships offer benefits when consensual and stable:

- **Autonomy and Choice:** Freedom from coercion in forming relationships
- **Gender Equality:** Shared domestic responsibilities and decision-making
- **Testing Compatibility:** Reduces risk of marital breakdown
- **Flexibility:** Adaptation to modern urban lifestyles and career priorities

These arrangements can reduce domestic conflict, promote mutual respect, and prevent coercion, supporting rights-based relationship frameworks.

CRIMINOLOGICAL RISKS AND NEGATIVE CONSEQUENCES

Despite their benefits, live-in relationships pose risks, particularly to women. Abuse and abandonment remain significant threats, with women potentially exploited financially, emotionally, or physically. Legal ambiguity surrounding property, inheritance, and maintenance can exacerbate vulnerabilities. Social stigma attached to live-in relationships may result in moral policing, harassment, or honor-based violence, while unstable

relationships can generate psychological stress for women and children. Many crimes linked to live-in relationships intersect with domestic violence, economic exploitation, and coercion, underscoring the need for legal, social, and institutional intervention.

Despite benefits, live-in relationships pose risks:

- **Abuse and Abandonment:** Women may face financial, emotional, or physical exploitation
- **Legal Uncertainty:** Property, inheritance, and maintenance rights can remain contested
- **Social Stigma:** Moral policing and honor-based harassment are prevalent
- **Psychological Stress:** Women and children may suffer emotional trauma in unstable relationships

Many crimes arising from live-in relationships overlaps with domestic violence, financial exploitation, and coercion, requiring both legal and social interventions.

SOCIAL RESISTANCE AND MORAL POLICING

Even as courts provide recognition, society continues to enforce normative family structures through informal sanctions. Women in live-in or interfaith relationships may face community pressure, familial ostracism, and moral policing by religious or local authorities. Stigmatisation and harassment create social isolation, often discouraging women from asserting legal rights. These dynamics demonstrate that legal protection must be complemented by awareness campaigns, education, and community engagement to ensure effective protection.

Social enforcement of normative family structures manifests as:

- Community pressure and familial ostracism
- Moral policing by religious or local authorities
- Stigmatisation of women asserting legal rights

Such pressures may escalate into harassment or abuse, demonstrating that legal protection alone is insufficient—social awareness and advocacy are essential.

RELIGION, PERSONAL LAWS, AND CONSTITUTIONAL INTERPRETATION

Religious personal laws remain central to family arrangements in India, influencing marriage, divorce, and inheritance rights. Hindu, Muslim,

Christian, and Parsi laws often conflict with constitutional guarantees, included in Indian constitution which ensure equality, non-discrimination, and personal liberty. Landmark cases like the Shah Bano Case (1985) and Daniel Latifi v. Union of India (2001) demonstrate the courts' efforts to harmonise religious norms with constitutional morality. Criminologically, legal pluralism can create vulnerabilities, especially in interfaith or NRI marriages, leaving women exposed to abuse, abandonment, and financial exploitation.

Religious personal laws govern family structures, creating potential conflicts with constitutional guarantees:

- Hindu, Muslim, Christian, and Parsi personal laws often differ in marriage, divorce, and inheritance
- Key constitutional articles:
 - **Article 14:** Equality before law
 - **Article 15:** Prohibition of discrimination
 - **Article 21:** Right to life and personal liberty

Legal pluralism can create vulnerabilities for women, especially in interfaith and NRI marriages.

UNIFORM CIVIL CODE DEBATE: GENDER JUSTICE VS RELIGIOUS FREEDOM

The debate over a Uniform Civil Code (UCC) highlights the tension between gender justice and religious freedom. Advocates argue that a UCC ensures equal rights in inheritance, marriage, and divorce, preventing discrimination against women. Opponents fear intrusion into religious practices. Judicial interpretation seeks to balance personal laws with constitutional rights, while live-in relationships and modern family arrangements underscore the urgency for a gender-neutral, rights-based civil code that safeguards women.

The debate centres on reconciling gender equality with religious autonomy:

- Advocates: A UCC ensures equal inheritance, marriage, and divorce rights
- Opponents: Fear interference with religious practices
- Courts aim to harmonise personal laws with constitutional rights

Live-in relationships and modern family arrangements underscore the urgency for a gender-neutral, rights-based civil code.

NRI Marriages: Concept and Legal Framework

Non-Resident Indian (NRI) marriages introduce additional legal complexities, including marriages conducted abroad, mixed-nationality unions, and differing legal regimes. Indian laws, such as the Hindu Marriage Act or Muslim personal law, often intersect with foreign laws, raising questions of domicile, registration, and recognition of marriage. Women in such marriages may face challenges in asserting maintenance, divorce, or inheritance rights, especially when the marriage crosses jurisdictions.

NRI marriages involve additional legal complexities:

- Conducted abroad or involving foreign nationals
- Application of Indian Marriage Acts and foreign laws
- Issues of domicile, registration, and recognition

These marriages create legal grey zones, particularly for women seeking maintenance, divorce, or inheritance.

Matrimonial Fraud, Desertion, and Exploitation

Women in NRI marriages may be subjected to matrimonial fraud, abandonment, and exploitation. Misrepresentation of financial or marital status constitutes matrimonial fraud, while desertion abroad can leave women without legal recourse. Exploitation may be economic, emotional, or sexual, and these acts often fall under both civil and criminal law, including cheating, bigamy, and abandonment provisions. Criminologically, such acts represent structural and relational harm, requiring both domestic and international legal mechanisms for protection.

Women in NRI marriages may face:

- **Matrimonial fraud:** Misrepresentation of financial or marital status
- **Desertion:** Abandonment abroad without recourse
- **Exploitation:** Economic, emotional, or sexual coercion

These acts are both **civil wrongs and criminal offences**, falling under **cheating, bigamy, and abandonment provisions**.

CRIMINAL OFFENCES IN NRI MARRIAGES

NRI (Non-Resident Indian) marriages, especially those involving cross-border arrangements, expose women to unique vulnerabilities and potential criminal acts. While these offences may appear as civil disputes in some

contexts, many constitute criminal liability under Indian law, particularly when fraud, coercion, or abandonment occurs.

1. Bigamy (Section 494 IPC) Bigamy occurs when a married person enters into another marriage without legally dissolving the first. In NRI contexts, bigamy can arise when a spouse marries abroad or in India while still being legally married elsewhere. Women often discover this only after the marriage has occurred, leaving them legally disadvantaged and socially stigmatized. The law criminalises such conduct to protect marital integrity and women's rights, but enforcement is complex in cross-border scenarios due to jurisdictional limits and differences in legal recognition of marriages. Criminologically, bigamy constitutes a violation of trust and relational security, and it can result in emotional trauma, economic insecurity, and social ostracism for the victim.

2. Cheating and Misrepresentation (Sections 415–420 IPC) Cheating involves deliberate misrepresentation of facts with intent to deceive another party, leading to financial or emotional harm. In NRI marriages, this may include:

- Falsifying marital or financial status
- Hiding prior relationships or legal obligations
- Misrepresenting employment, residency, or citizenship

Such deception not only constitutes a civil wrong but can also lead to criminal prosecution under cheating provisions of the IPC. Women are often financially exploited through false promises of dowry-like arrangements, property transfer, or shared assets, creating structural vulnerability. From a criminological lens, cheating in NRI marriages reflects systemic exploitation facilitated by power imbalances, transnational legal gaps, and patriarchal control.

3. Desertion and Abandonment (Section 498A IPC and related laws)

Desertion refers to the willful abandonment of a spouse without reasonable cause, leaving the abandoned partner to bear financial, social, and emotional burdens. In NRI contexts, women may be abandoned abroad, sometimes in countries where they lack legal status or social support, making enforcement of Indian law challenging. Section 498A IPC, though primarily addressing cruelty, may extend to cases where desertion accompanies emotional, psychological, or economic abuse. Criminologically, desertion is a form of coercive control, stripping women of autonomy and safety, often causing long-term trauma for both the abandoned spouse and children involved.

4. Transnational Harassment and Domestic Violence

Domestic abuse in NRI marriages may cross national boundaries. Women may experience:

- Emotional and psychological harassment via communication tools like phone, email, or social media
- Coercion to remarry, transfer property, or abandon employment
- Sexual abuse, threats, and intimidation remotely or during visits abroad

Such crimes often fall between jurisdictions, as foreign laws may not align with Indian criminal provisions, making investigation, evidence collection, and prosecution extremely complex. Institutional responses require coordination between Indian embassies, local police, and international legal frameworks. Criminological studies indicate that transnational domestic violence is often enabled by legal and social loopholes, exploiting women's lack of knowledge of foreign laws, limited access to legal aid, and social isolation.

Jurisdictional and Enforcement Challenges

Transnational marriages involve multiple legal jurisdictions, complicating registration, filing of complaints, and enforcement of rights. Women face difficulties in accessing courts abroad, limited cooperation from foreign authorities, and delays in legal remedies, which may compromise their safety. Policy reforms, bilateral agreements, and global legal frameworks are necessary to ensure timely protection and justice.

Cross-border marriages complicate enforcement due to:

- Conflicting laws across jurisdictions
- Difficulties in registering complaints or filing FIRs abroad
- Limited cooperation between Indian and foreign authorities
- Time-consuming litigation affecting women's safety

Diplomatic agreements and cross-border legal frameworks are essential to protect women.

Legal Remedies and Institutional Protection

Women can seek relief through Indian courts, maintenance claims under personal laws, protective orders under the DV Act, and support from NGOs or embassies. Effective protection requires combining legal recourse with social, psychological, and institutional support, ensuring women's safety, economic security, and autonomy. Criminological insight suggests that integrating legal, social, and international mechanisms offers holistic protection for vulnerable women in transnational contexts.

- **Indian courts:** Family Courts, Civil Courts, High Courts

- **Maintenance claims:** Under Hindu Marriage Act, Muslim Law, and civil law
- **Protective measures:** DV Act, protection orders, interim custody
- **NGOs and Embassies:** Support for women abroad or in cross-border disputes

Combining legal recourse with social and institutional support ensures holistic protection.

CONCLUSION

Family and intimate relationships have evolved beyond traditional boundaries. Live-in relationships, religious family structures, and NRI marriages highlight the interplay between autonomy, law, and crime. The key lessons are:

- Legal recognition of women's rights in diverse relationships is essential for gender justice.
- Criminal law must protect women from exploitation without enforcing moral policing.
- Structural reforms, public awareness, and international cooperation are critical for preventing transnational matrimonial crimes.
- Criminology must expand to include relational, economic, and social dimensions of harm, recognising that private spaces can have profound public consequences.

Ultimately, this chapter demonstrates that family and intimacy are critical sites where law, morality, and crime intersect, requiring a rights-based, gender-sensitive legal framework combined with institutional vigilance to protect women in evolving marital and family structures.

Chapter 10

WHEN PROTECTION BECOMES PUNITIVE

Misuse of Women-Centric Laws and Legal Dilemmas

“A law remains just only when its protection cannot be misused and its misuse cannot be ignored.”

-Justice H.R Khanna

INTRODUCTION

India’s legal system has undergone significant transformation over the years to address the structural inequalities and social injustices faced by women, particularly within the realm of marriage and family life. Laws like ***Section 498A of the Indian Penal Code (IPC)***, ***the Dowry Prohibition Act, 1961***, and ***the Protection of Women from Domestic Violence Act, 2005***, were framed with the noble intention of shielding women from cruelty, harassment, and domestic violence. These laws mark a progressive step toward empowering women to seek redress and protection. However, their application has also opened a parallel and controversial discourse — the growing concern around the misuse of such protective legislation.

Section 498A of the Indian Penal Code (IPC), enacted in 1983, criminalizes cruelty by a husband or his relatives towards a woman. The law is non-bailable and cognizable, meaning that the police can arrest the accused without prior investigation or a court warrant. Although it was introduced to counter dowry-related cruelty and deaths, over the years, it has been increasingly criticized for being misused as a tool of harassment rather than protection. Several instances have emerged where women have allegedly filed false or exaggerated complaints against their husbands and in-laws, sometimes implicating elderly parents, distant relatives, and even minor children. This misuse is not only a distortion of justice but also an abuse of the very legal machinery meant to protect genuine victims.

The issue of misuse does not imply that violence against women is not real or prevalent. Domestic violence, dowry deaths, and mental and physical cruelty are grim realities in India. However, it is equally important to recognize that the blanket criminalization of matrimonial discord can lead to

unintended consequences. In numerous cases, courts have observed that complaints were lodged out of vengeance, personal grudges, or to pressure husbands in divorce or custody battles. The misuse of laws dilutes the seriousness of genuine cases and casts a shadow of doubt on all complaints, even the authentic ones.

Judicial observations have repeatedly highlighted this issue. The Supreme Court *in Preeti Gupta v. State of Jharkhand and Rajesh Sharma v. State of UP*¹³¹ acknowledged that Section 498A had become a tool of legal terrorism. The National Crime Records Bureau (NCRB) data has also shown that a significant number of cases filed under this provision end in acquittal, raising questions about the quality and intention behind such complaints.

This chapter explores how laws that were once hailed as protective shields are, at times, turned into weapons of vengeance. It delves into statistical trends, judicial pronouncements, real-life case studies, and expert commentary to understand the extent and nature of misuse. Importantly, the chapter also examines the need for legal reform — not to weaken women’s rights, but to strengthen the integrity of the law through checks and balances that discourage false complaints and ensure fair trials. The aim is to strike a delicate balance — protecting genuine victims while preventing the harassment of innocent individuals. Justice, after all, must be blind not only to gender but also to malice.

UNDERSTANDING SECTION 498A IPC ¹³² AND ITS ORIGINAL INTENT

Section 498A of the Indian Penal Code was introduced through an amendment in 1983 with a clear purpose to address and deter the rising incidents of cruelty and dowry-related violence against married women. At the time, the country was witnessing a disturbing surge in cases where women were tortured, abused, and even driven to suicide by their husbands and in-laws for not bringing enough dowry. In response, lawmakers introduced this provision to criminalize such cruelty and provide women with legal protection against domestic abuse.

The law defines “cruelty” broadly including both physical and mental harassment. It covers demands for dowry and recognizes emotional abuse, mental harassment, and threats as serious offenses. Importantly, *Section 498A of the Indian Penal Code (IPC)* is a non-bailable, cognizable, and non-compoundable offense. This means that police can arrest the accused without

¹³¹ Preeti Gupta & Anr. v. State of Jharkhand & Anr., (2010) 7 SCC (Cr) 473.

¹³² Indian Penal Code, 1860, § 498A (India) (criminalizing cruelty by husband or relatives of husband).

a warrant, bail is not a matter of right, and the case cannot be settled between the parties without court approval. Initially, this law was seen as a strong deterrent against marital violence. Women's rights groups welcomed it as a progressive move that could empower women to break the silence and hold perpetrators accountable. It acted as a shield, ensuring that the legal system took domestic violence seriously rather than dismissing it as a "family matter."

However, the very strength of Section 498A its swift and strict enforcement has become the reason for its criticism. Over time, the provision has come under scrutiny for being prone to misuse. In numerous cases, complaints have been lodged with the intent of harassing the husband and his family or gaining an upper hand in matrimonial disputes, such as divorce, child custody, or property matters. Courts across the country have taken note of this issue. For instance, in the landmark case of *Sushil Kumar Sharma v. Union of India (2005)*¹³³ the Supreme Court observed that the provision is sometimes used as a "weapon rather than a shield." The Court emphasized that while protecting women is essential, false accusations must be discouraged, as they not only destroy innocent lives but also bring disrepute to the genuine grievances of women.

Further, the *Mali math Committee Report (2003)*¹³⁴ which reviewed the criminal justice system also recommended making Section 498A a bailable and compoundable offense to prevent its misuse. Despite these observations, the law remains stringent in its form, and its application continues to spark debate.

In the next section, we will explore the trends, case studies, and data that reveal how often Section 498A is misused, how courts have responded, and what reforms have been proposed to strike a balance between protecting women and preventing injustice.

RELEVANT CASE LAWS AND TRENDS: EXAMINING THE MISUSE OF SECTION 498A IPC

While *Section 498A of the Indian Penal Code (IPC)* was created with noble intentions, over the years, a growing number of judicial observations, law commission reports, and police records have indicated a trend of its misuse, particularly in urban areas and in cases of marital discord. Below are some key case laws and data points that reveal the extent of this issue:

¹³³ Sushil Kumar Sharma v. Union of India, (2005) 6 SCC 281

¹³⁴ Malimath Committee on Reforms of Criminal Justice System, Report (2003), Ministry of Home Affairs, Government of India.

Sushil Kumar Sharma v. Union of India (2005)¹³⁵ In this landmark case of *Sushil Kumar Sharma v. Union of India*, the Supreme Court addressed the growing concern over the misuse of Section 498A of the Indian Penal Code, which was originally intended to protect married women from cruelty. The facts revealed that a significant number of complaints were being filed with the primary intent of harassing the husband and his relatives, including elderly in-laws, siblings, and other family members. The core issue was the tension between protecting women's rights and preventing abuse of legal provisions for personal vendettas. The Court observed that the provision must act as a shield and not as an assassin's weapon, emphasizing that unjustified arrests without proper investigation were leading to severe social and psychological consequences for innocent individuals. The judgment highlighted the necessity of balancing legal protection with safeguards against misuse, signalling the beginning of judicial scrutiny over automatic arrests and hasty police action under Section 498A.

Preeti Gupta v. State of Jharkhand (2010)¹³⁶

In *Preeti Gupta v. State of Jharkhand*, the Supreme Court reinforced concerns regarding exaggeration and false allegations in complaints filed under Section 498A. The case involved complaints that were found to be overstated, raising questions about the misuse of legal provisions intended for protecting women. The primary issue revolved around the potential for harassment of husbands and their family members based on unverified or inflated claims. The Court explicitly noted that it is a matter of common knowledge that false or exaggerated allegations are often made in such cases. The judgment urged lawmakers to revisit the framework of Section 498A, recommending procedural safeguards such as preliminary inquiries before arrest and mechanisms for conciliation between parties. This ruling underscored the importance of ensuring that protective laws do not become instruments of injustice for innocent family members, while still safeguarding women's rights against genuine cruelty.

Arnesh Kumar v. State of Bihar (2014)¹³⁷

Arnesh Kumar v. State of Bihar is considered one of the most significant Supreme Court rulings addressing the misuse of Section 498A. The case arose from a series of complaints under the provision, where automatic arrests were being made without proper inquiry, causing undue hardship for the

¹³⁵ *Sushil Kumar Sharma v. Union of India*, (2005) 6 SCC 281 (India).

¹³⁶ *Preeti Gupta v. State of Jharkhand*, (2010) 7 SCC 667 (India).

¹³⁷ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273 (India).

accused and their families. The Supreme Court laid down clear guidelines to prevent arbitrary arrests, mandating that police officers conduct a preliminary inquiry before making any arrest under Section 498A. Additionally, magistrates were instructed to ensure that due process is followed before remanding an accused to custody. The case led to substantial procedural reforms in handling Section 498A complaints and is now cited extensively in bail hearings under the provision. The ruling highlighted the need for careful investigation and judicial oversight, emphasizing the delicate balance between protecting women and preventing harassment of innocent parties.

STATISTICAL INDICATORS OF MISUSE

The misuse of *Section 498A of the Indian Penal Code (IPC)* has been reflected in statistical trends over the years. According to NCRB data from 2021, approximately 1.2 lakh cases were registered under the provision, yet only about 14 percent of these cases resulted in conviction. This discrepancy between the number of cases filed and successful convictions has frequently been cited as evidence of overuse or misuse of the law. In several states, police forces have identified Section 498A as one of the most abused provisions, noting that many complaints are eventually withdrawn, settled, or found baseless. These statistics underline the necessity of procedural safeguards and preliminary inquiries to prevent misuse while maintaining genuine protections for women who face real instances of cruelty.

REASONS BEHIND MISUSE

1. Emotional retaliation: In cases of divorce, infidelity, or breakdown of marriage, some women file 498A cases to take revenge or exert pressure.
2. Property and custody battles: Allegations under 498A are often used as leverage in settling matrimonial property disputes or child custody.
3. Family vendetta: Sometimes, extended family members are falsely implicated, resulting in arrests of elderly parents, siblings, or even distant relatives.
4. Lack of penal consequences for false complaints: There are limited provisions for punishing those who file deliberately false cases, which makes the law prone to abuse.

MISUSE OF WOMEN-CENTRIC LAWS

Women-centric criminal laws were enacted to address deep-rooted gender inequality, systemic violence, and historical neglect of women's rights within the criminal justice system. Provisions relating to dowry harassment, domestic violence, sexual offences, and workplace harassment aim to offer protection, deterrence, and access to justice for women. However, concerns have emerged regarding the alleged misuse of these laws in certain cases, particularly in matrimonial disputes. Misuse occurs when legal provisions are invoked with malicious intent, personal vendetta, or to exert pressure unrelated to genuine victimisation. From a criminological perspective, misuse does not undermine the legitimacy of the law itself but highlights the complexities of enforcement in private and emotionally charged relationships. Courts have repeatedly cautioned against both blanket disbelief of complainants and indiscriminate arrests, emphasising the need for careful investigation, procedural fairness, and contextual evaluation of each case.

LEGAL MISUSE VS FALSE COMPLAINTS: A CRIMINOLOGICAL DISTINCTION

It is crucial to distinguish between legal misuse and false complaints, as the two are often conflated in public discourse. Legal misuse refers to the strategic or excessive invocation of lawful provisions to gain leverage in civil or matrimonial conflicts, even where some degree of dispute exists. In contrast, a false complaint involves the deliberate fabrication of facts, allegations, or evidence with knowledge of their falsity. Criminologically, false complaints constitute an offence in themselves and attract penal consequences, whereas misuse may involve procedural abuse without necessarily negating the occurrence of underlying conflict or harm. Importantly, delayed reporting, lack of corroborative evidence, or withdrawal of complaints should not automatically be equated with falsity, especially in gender-based crimes where fear, stigma, and power imbalance influence reporting. A nuanced approach is essential to prevent wrongful prosecution while safeguarding genuine victims from secondary victimisation.

MISUSE OF DOWRY, DOMESTIC VIOLENCE, AND SEXUAL OFFENCE LAWS

Allegations of misuse are most frequently associated with dowry-related offences, domestic violence legislation, and certain sexual offence provisions. In dowry and domestic violence cases, disputes over property, maintenance, custody, or marital breakdown may escalate into criminal litigation, sometimes resulting in the implication of extended family members. Judicial observations have noted instances where arrests were

made mechanically, leading to harassment of elderly parents or distant relatives. Similarly, in sexual offence cases, concerns arise when allegations are made in the context of consensual relationships turning sour or to settle personal scores. However, empirical studies consistently show that the rate of false reporting in sexual offences is relatively low, and exaggerated narratives of misuse often contribute to victim-blaming and underreporting. The challenge lies in ensuring rigorous investigation, sensitivity in handling complaints, and accountability mechanisms that penalise proven abuse of law without diluting the protective purpose of women-centric legislation.

IMPACT OF MISUSE ON GENUINE VICTIMS AND THE CRIMINAL JUSTICE SYSTEM

While the misuse of protective laws like Section 498A IPC and Dowry Prohibition Act is a matter of concern, it is equally important to understand how this misuse affects not just the accused, but also genuine victims of domestic violence and dowry harassment.

MISUSE OF WOMEN'S PROTECTION LAWS: CHALLENGES AND THE NEED FOR BALANCED REFORMS

The misuse of legal provisions intended to protect women, such as Section 498A of the Indian Penal Code, has far-reaching consequences that extend beyond the immediate case. One significant impact is the erosion of credibility for genuine victims. When false or exaggerated complaints come to light, law enforcement, the judiciary, and even society begin to approach all allegations with suspicion. This climate of doubt can discourage women who are genuinely suffering from domestic abuse or harassment from reporting their experiences, fearing disbelief, stigma, or social ostracization.

Another serious consequence is the damage inflicted on innocent family members of the accused. In many cases, parents, siblings, and even children of the husband are named in FIRs or subjected to legal harassment. This not only causes immense mental trauma and social stigma but can also lead to financial loss and the breakdown of family relationships. Entire families can find themselves entangled in the legal system due to complaints that are later proven baseless, sometimes leaving irreversible scars on social and emotional life.

The misuse of such laws also places a considerable burden on the judiciary and police. Courts already grappling with heavy caseloads must devote time and resources to cases that are eventually dismissed, delaying justice for other genuine litigants. Similarly, the police machinery is overextended, diverting attention from serious criminal cases. Beyond procedural strain, each instance

of misuse undermines the authority of the law itself. Critics often point to these cases as justification for weakening or repealing women's protection laws, which could ultimately harm those who genuinely need legal recourse.

To address these challenges, experts advocate for balanced reforms rather than the removal of protective legislation. Suggested measures include mandatory pre-FIR counselling or mediation in marital disputes, careful scrutiny by family welfare committees before arrests are made, and penal provisions for filing false complaints under Section 182 IPC. While implementation remains inconsistent, these safeguards aim to protect both women's rights and the rights of those wrongly implicated, ensuring that the legal system serves justice fairly and equitably.

LEGAL AND POLICY REFORMS: STRIKING A BALANCE BETWEEN PROTECTION AND PREVENTION OF MISUSE

The misuse of legal provisions intended to protect women—particularly Section 498A IPC (which deals with cruelty by husband or relatives of husband) and the Dowry Prohibition Act, 1961—has sparked intense debate in Indian society. While the original intent behind these laws was to address deeply entrenched patriarchal violence and societal evils like dowry harassment, increasing misuse in some cases has led to significant calls for reform. The challenge lies in striking the right balance between protecting genuine victims and preventing the exploitation of these laws for ulterior motives.

1. Judicial Interventions: Creating Guardrails Against Misuse

Indian courts have played a pivotal role in shaping the practical application of laws like Section 498A. Over the past two decades, several judgments have acknowledged the misuse of these provisions while reaffirming their necessity in combating genuine domestic abuse.

Rajesh Sharma & Ors v. State of Uttar Pradesh (2017)¹³⁸

In *Rajesh Sharma & Ors v. State of Uttar Pradesh*, the Supreme Court explored additional safeguards to prevent the misuse of Section 498A. The Court suggested the creation of Family Welfare Committees (FWCs) that could examine the veracity of complaints before registration of a First Information Report. The idea was to provide a mechanism for preliminary assessment, ensuring that only substantiated complaints move forward while minimizing harassment of the accused. Although the recommendation was

¹³⁸ *Rajesh Sharma & Ors. v. State of Uttar Pradesh*, (2017) 8 SCC 821.

later diluted by the Social Action Forum for Manav Adhikar v. Union of India (2018), the case sparked an important conversation on the need for procedural checks and the role of family counselling in resolving marital disputes. The judgment reflected judicial recognition that preventive mechanisms, rather than reactive punitive action, could reduce unnecessary legal conflict and protect both parties' rights.

2. Emerging Trends in Lower Courts

Recent trends in lower courts have further demonstrated a cautious approach in handling Section 498A complaints. Courts have increasingly shown reluctance to grant immediate custody or remand when there is a possibility of reconciliation between the parties or when complaints appear to stem from temporary marital disagreements rather than sustained cruelty. This shift reflects the influence of higher court guidelines, particularly from Arnesh Kumar and Rajesh Sharma, emphasizing mediation, preliminary inquiry, and proportionality in judicial response. It also highlights an evolving understanding that the law must protect women from genuine abuse while preventing unnecessary harassment of innocent family members, balancing justice with social and familial realities.

3. Legislative and Executive Responses

Governments at both central and state levels have acknowledged the need for better implementation of protective laws:

- Guidelines have been issued to police officers to avoid knee-jerk arrests in dowry and domestic violence cases.
- Law enforcement personnel are being trained in sensitivity and gender-balanced investigation techniques, so that neither genuine victims are disbelieved nor are innocents unnecessarily criminalized.
- Some states have introduced special cells for women and family disputes, often involving social workers and counselors to assess the situation before escalating the matter to the criminal justice system.

4. The Debate Over Gender-Neutrality

There is a growing legal and academic discourse around making certain laws, especially those dealing with domestic abuse and harassment, gender neutral. Although this is controversial and resisted by many women's rights groups (who fear it may dilute the impact of existing laws), the proposal rests on increasing evidence of men and their families being falsely implicated in matrimonial disputes

Proponents argue:

- Equality before the law should apply to both genders.
- Laws must punish the act, not the gender.
- Same-sex couples and non-binary individuals also face domestic abuse, which current laws don't always address.

Opponents warn:

- Gender neutrality might divert focus from systemic gender oppression.
- Women are still overwhelmingly the victims in cases of domestic violence and dowry-related cruelty.
- Misuse exists, but it should be handled through procedural reforms, not dilution of laws.

5. Penal Action for Frivolous or False Complaints

Section 182 and Section 211 of the Indian Penal Code provide for punishment if someone gives false information to a public servant or institutes false criminal proceedings. However, these provisions are seldom invoked against women who file false 498A cases. This is partly due to:

- Social and political sensitivities,
- Fear of discouraging genuine victims from coming forward,
- Lack of initiative from law enforcement to pursue perjury charges.

Legal scholars have proposed either stringent guidelines for prosecution of false cases or the introduction of a neutral third-party review mechanism before a charge sheet is filed in sensitive matrimonial disputes.

6. Counseling, Mediation, and Non-Punitive Alternatives

Family disputes, especially those involving young couples, often arise out of communication breakdowns, ego clashes, and family interference rather than sustained cruelty or violence. Recognizing this, many courts now push for:

- Pre-litigation mediation, especially in urban family courts,
- Marriage counseling, both before and after litigation,
- Cooling-off periods, especially in divorce and Section 498A cases.

This humanized approach has shown positive results in many cities, with several couples withdrawing complaints and opting for peaceful settlement.

7. Public Perception and Societal Impact

One of the greatest casualties of misuse is public trust in protective laws. When laws meant to safeguard women are seen as tools for personal vengeance or extortion, they lose credibility. This not only harms falsely accused men and their families but also makes it harder for genuine victims to get justice, as police and judges become wary of every complaint.

It also polarizes public opinion—where one section views all female complainants with suspicion, while another insists that no woman would file such complaints unless severely provoked. Both extremes are dangerous. A nuanced, balanced view is needed.

BALANCING PROTECTION AND ACCOUNTABILITY IN LEGAL PROVISIONS ON MISUSE OF LAWS

Laws are enacted to protect the rights of individuals and uphold justice, yet their misuse can undermine the very purpose they are intended to serve. Balancing protection and accountability involve ensuring that legal provisions remain accessible and effective for genuine victims while simultaneously discouraging frivolous or malicious exploitation. This requires a combination of clear legal definitions, procedural safeguards, and judicial oversight to prevent misuse without deterring legitimate grievances.

Judicial interventions, such as stricter evidentiary requirements, preliminary inquiries, and proportional penalties for false complaints, can act as effective deterrents. At the same time, law enforcement agencies and courts must adopt a sensitive and gender-responsive approach, particularly in cases involving vulnerable groups, to prevent misuse from compromising protection. Public awareness and legal literacy are equally critical, enabling citizens to understand both their rights and the consequences of misuse.

Striking this balance ensures that laws function as instruments of justice rather than tools for harassment or intimidation. By maintaining the dual focus on protection for genuine victims and accountability for misuse, the legal system can uphold fairness, reinforce public trust, and preserve the integrity of justice.

REMEDIES AND RECOMMENDATIONS

- **Strengthening Legal Safeguards:** Laws prone to misuse should include clear guidelines and safeguards to prevent exploitation while protecting genuine complainants. For instance, procedural checks, verification of evidence, and preliminary inquiry mechanisms can reduce frivolous or malicious cases.

- **Judicial Oversight:** Courts should actively monitor cases where allegations appear fabricated or exaggerated, ensuring that misuse does not compromise justice for genuine victims.
- **Awareness and Education:** Citizens, law enforcement, and legal practitioners must be educated about the intended scope of laws, their proper application, and consequences of misuse to reduce false complaints or harassment through legal provisions.
- **Alternative Dispute Resolution:** Encouraging mediation and counselling in suitable cases can prevent over-reliance on punitive legal measures and reduce instances of misuse.
- **Accountability Measures:** Misuse of laws should be addressed through proportional penalties for false complaints, without discouraging legitimate grievances.

WAY FORWARD

Addressing the misuse of laws requires a balanced approach that safeguards the rights of both complainants and the accused. Legal reforms should clarify the intent and scope of statutes while creating mechanisms for swift redressal and protection against frivolous allegations. Enhanced training for police, prosecutors, and judges in detecting misuse, coupled with public awareness campaigns, can create a system that is both fair and deterrent. Moreover, fostering a culture of responsibility, ethics, and legal literacy is crucial to ensure that laws serve justice rather than become instruments of harassment.

CONCLUSION

The misuse of laws poses a serious challenge to the credibility and effectiveness of the justice system. While laws are designed to protect rights and ensure social justice, their exploitation can undermine public trust, victim rights, and the rule of law. Several judicial pronouncements have acknowledged the problem of misuse and have attempted to lay down safeguards to prevent arbitrary arrests and blanket criminalization of entire families. However, the real challenge lies beyond the courtroom—in the police stations, family counseling centers, and homes where such disputes originate. Policymakers, judges, law enforcement agencies, and civil society must work together to build a more accountable, transparent, and humane framework—one that is swift in providing justice to genuine victims but equally cautious in shielding innocents from the trauma of false accusations.

In the end, the integrity of any legal system rests not only on its ability to punish the guilty but also on its commitment to protect the innocent. For a society striving toward gender justice, the misuse of protective laws is not

just a legal issue, it is a moral and institutional test. One that we, as a progressive democracy, must confront with honesty, compassion, and the courage to evolve.

Chapter 11

LAW AS A TOOL OF TRANSFORMATION

Protective Legislations and the Quest for Gender Justice

“Gender justice is not achieved by enacting laws alone—it is achieved when those laws transform realities.”

- DR. B.R AMBEDKAR

(Jurist and former Minister of Law and Justice of India)

INTRODUCTION

The pursuit of gender justice is not a recent phenomenon it is a continuous journey that runs parallel to the evolution of society itself. Across generations, women in India have faced structural discrimination, both inside the home and in public spaces. From being denied education and property rights to being conditioned into silence against abuse, the lived experiences of women have long reflected deep-rooted inequality. In such a context, law has served both as a mirror of societal attitudes and as a potential instrument of change.

In a country as diverse and complex as India, the legal system has gradually moved towards recognizing the need to protect and empower women. The framers of the Constitution embedded within it the core principles of equality, non-discrimination, and dignity, which today form the backbone of gender justice. Yet constitutional ideals alone are not enough. They must be translated into practical, enforceable laws that can respond to the specific forms of injustice women face in everyday life whether it be dowry harassment, sexual violence, workplace discrimination, or denial of maternity rights.

Over the decades, the Indian legislature has enacted several protective laws designed specifically to address these gender-based challenges. The ***Dowry Prohibition Act (1961)*** aimed to combat a practice that led to widespread violence and deaths of young brides. The ***Domestic Violence Act (2005)*** was a landmark step that went beyond physical abuse to legally recognize verbal, emotional, and financial abuse within homes. The Sexual Harassment of

Women at Workplace (POSH) Act (2013) brought attention to the safety and dignity of working women, while the Maternity Benefit Act ensured that motherhood would not become a barrier to employment or economic participation. Each of these laws represents a hard-won victory by women's rights advocates and reflects society's slow but steady movement towards gender sensitivity.

However, the mere presence of protective laws does not guarantee protection. There remains a vast gap between law in theory and justice. Many women are unaware of their rights. Others are hesitant to speak out due to fear of stigma, loss of family support, or retaliation at the workplace. Police apathy, delayed trials, weak implementation, and social biases often turn the promise of legal protection into a hollow shield. Even well-intentioned laws, like Section 498A of the IPC, have come under scrutiny for alleged misuse, sparking debates about the need for balance between protection and fairness.

This chapter critically explores this dynamic relationship between protective legislation and gender justice. It begins by tracing the constitutional framework that underpins women's rights in India. It then delves into major statutory protection, examining both their strengths and the real-world challenges in their application. Judicial interpretations which have often played a transformative role in expanding the scope of gender justice are also discussed. Finally, the chapter evaluates persistent gaps in implementation and suggests a way forward towards creating a legal system that is not only protective in letter but empowering in spirit.

The purpose of this chapter is not just to list laws it is to question whether these laws truly reach the women they are meant to protect. It invites the reader to reflect on the broader goals of justice: not just punishment for wrongdoers, but restoration of dignity, equal opportunity, and the assurance that the legal system stands beside those who need it most.

UNDERSTANDING GENDER JUSTICE

The term gender justice goes far beyond the idea of men and women being treated the same. It is rooted in the belief that everyone regardless of their gender deserves to live a life of dignity, freedom, and equality, both in public and private spheres. In societies where patriarchy has dictated norms for centuries, achieving gender justice means correcting deep imbalances, not just creating equal laws on paper.

WHAT IS GENDER JUSTICE?

At its core, gender justice is about creating a world where a person's gender does not determine their access to rights, resources, safety, or opportunities.

It does not mean that men and women must always be treated identically, but rather that they must be treated fairly with recognition of the historical disadvantages and unique challenges faced by each.

In the Indian context, gender justice involves both protection and empowerment. It calls for laws that defend women against violence and discrimination, and at the same time, policies that promote their inclusion in education, employment, leadership, and decision-making. It also acknowledges that justice cannot be one-size-fits-all different women experience different forms of injustice depending on their caste, class, religion, rural or urban background, or disability. Hence, gender justice must also be intersectional understanding of how various forms of oppression combine and reinforce each other.

WHY IS GENDER JUSTICE ESSENTIAL IN LAW?

The legal system plays a critical role in shaping and reflecting social values. When the law is silent or neutral in the face of inequality, it becomes complicit in injustice. That's why gender-blind laws are not gender-just laws. Protective legal provisions are essential because:

- **Historical exclusion:** Women were historically denied access to legal rights and remedies. Special protections help correct this imbalance.
- **Unequal social power:** In many situations be it in marriage, the workplace, or family women still lack the power to resist abuse or assert their rights without legal backing.
- **Structural violence:** Discrimination, harassment, and marginalization are often built into systems whether it's how police handle complaints, how courts judge survivors, or how employers treat pregnant employees. Law must challenge this structure.
- **Accountability and deterrence:** Gender-just laws create mechanisms for holding perpetrators accountable and act as a deterrent against repeated harm.

Gender justice ensures that women are not just protected from harm, but also have equal opportunity to thrive, assert their autonomy, and participate meaningfully in society.

CONSTITUTIONAL PHILOSOPHY BEHIND GENDER JUSTICE IN INDIA¹³⁹

The idea of gender justice is deeply embedded in the Constitution of India, which enshrines equality as a fundamental right:

- **Article 14** ensures equality before the law and equal protection of the laws.
- **Article 15(1)** prohibits discrimination based on sex.
- **Article 15(3)** allows the State to make special provisions for women and children recognizing that equal treatment may sometimes require unequal measures.
- **Article 16** guarantees equal opportunities in public employment.
- **Article 21**, interpreted by courts to include the right to live with dignity, forms the moral spine of many judgments on women's rights.¹⁴⁰

These constitutional provisions are not symbolic. They have been the legal foundation for numerous reforms aimed at promoting gender justice from striking down triple talaq to legalizing abortion rights and punishing sexual harassment.

MAJOR PROTECTIVE LW FOR WOMEN IN INDIA

India has enacted several special laws over the years to address the various forms of violence, exploitation, and discrimination faced by women. These laws aim to protect, empower, and uplift women across domestic, social, and professional spaces. Below is a detailed look at some of the most important protective laws, their purpose, scope, and real-world application.

- **Dowry Prohibition Act, 1961**

The *Dowry Prohibition Act of 1961*¹⁴¹ was enacted as a legislative attempt to curb one of the most entrenched social evils in India: the practice of dowry. Despite constitutional guarantees of equality and decades of legal intervention, dowry has continued to play a significant role in shaping marital relations, often becoming a trigger for harassment, cruelty, and even violence against women. The Act criminalizes the giving, taking, or demanding of dowry, whether directly or indirectly, and it extends liability to both the bride's and the groom's families. This dual accountability underscores the

¹³⁹ Adultery law (Section 497 IPC) struck down, reinforcing equality, dignity, autonomy.

¹⁴⁰ Constitution of India, arts. 14, 15(1), 15(3), 16, 21 (as amended 1950).

¹⁴¹ Dowry Prohibition Act, No. 28, Acts of Parliament, 1961 (India).

recognition that dowry is not merely a transactional practice but a systemic social problem that involves multiple actors. The punishment prescribed under the Act includes imprisonment of up to five years and monetary fines, reflecting the seriousness with which the legislature views this offense.

However, the reality on the ground paints a more complex picture. In many parts of India, particularly rural areas and among conservative communities, the dowry system continues to persist in subtle and overt forms. Families often find ways to circumvent the law, disguising demands as gifts or contributions towards wedding expenses. This persistence of dowry has direct and devastating consequences for women. Reports of harassment, physical abuse, and even dowry-related deaths, including “bride burnings,” remain alarmingly frequent. Often, these crimes go unreported because women and their families face immense social pressure, fear of stigma, and lack of support from law enforcement. In many cases, women who attempt to resist or seek legal remedy find themselves isolated, further victimized, and sometimes coerced into compromise to “protect the family’s honour.” The Act, though strong in its intent, is therefore only one part of a larger battle against a deeply rooted social norm, highlighting the gap between legislative intent and societal practice.

- **Protection of Women from Domestic Violence Act (PWDVA), 2005**

While the *Dowry Prohibition Act* addressed one facet of marital cruelty, the Protection of Women from *Domestic Violence Act, 2005*, represented a broader, more progressive understanding of violence against women. This law recognized that abuse within domestic settings is not limited to physical harm; it encompasses emotional, verbal, sexual, and economic dimensions as well. By doing so, the Act shifted the discourse from isolated incidents of assault to a systemic recognition of the ways in which women are often subjugated and controlled within households. It applies not only to married women but also to those in live-in relationships or other domestic arrangements, reflecting an inclusive approach that adapts to contemporary realities of domestic life.

The PWDVA empowers women to seek immediate relief through a variety of legal mechanisms. Protection orders can prevent the abuser from entering the home or contacting the survivor, while residence orders guarantee a woman the right to remain in her shared household, even if she lacks ownership of the property. Monetary relief and compensation are available to ensure financial

independence, and provisions for custody of children recognize the intertwined nature of domestic abuse and family welfare. Magistrates are vested with the authority to pass urgent orders for protection, ensuring that legal remedies can be implemented swiftly. Additionally, Protection Officers are appointed to assist survivors, facilitating access to courts, filing complaints, and coordinating with law enforcement and social services.

Despite its progressive framework, implementation of the PWDVA faces significant challenges at the ground level. Many women remain unaware of their rights under the Act, either due to lack of legal literacy or societal conditioning that discourages women from seeking justice. Protection Officers, who are central to the functioning of the Act, are often overburdened, undertrained, or unable to provide timely assistance. In conservative or patriarchal communities, women may be pressured to remain silent in the face of abuse, with cultural expectations of protecting family honour outweighing their personal rights and safety. Even when women attempt to assert their legal rights, systemic inefficiencies, social stigma, and fear of retaliation can act as formidable barriers.

Taken together, both the Dowry Prohibition Act and the PWDVA reveal the layered complexity of protecting women in India. While the former targets a specific, historically entrenched social evil, the latter recognizes the multifaceted and often invisible nature of domestic abuse. Both laws signify important legal commitments to women's safety and dignity, yet their effectiveness is contingent not only on judicial enforcement but also on societal awareness, proactive implementation, and the willingness of communities to challenge patriarchal norms. The challenge lies in bridging the gap between legislative intent and lived reality, ensuring that these laws serve as instruments of empowerment rather than remain symbolic declarations of women's rights.

- **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) POSH Act of 2013** ¹⁴² was born out of the Supreme Court's landmark Vishaka Guidelines of 1997, which recognised the urgent need to address sexual harassment at the workplace and the absence of adequate legal protection for women employees. The Act provides a comprehensive framework to prevent, prohibit, and redress incidents of sexual harassment in both public and private sector workplaces. One of the key provisions mandates that every workplace must constitute an Internal

¹⁴² Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14, Acts of Parliament, 2013 (India).

Complaints Committee (ICC), responsible for receiving complaints, conducting investigations, and recommending corrective measures within strict timelines. The law also obligates organizations to conduct awareness programs and sensitization workshops to educate employees about their rights and responsibilities under the Act.

However, the ground reality often falls short of legislative intent. Many organizations, particularly in the informal or unorganized sectors, fail to constitute ICCs, leaving women without access to proper grievance mechanisms. Fear of retaliation, loss of employment, or social stigma often discourages victims from coming forward, resulting in significant underreporting. Additionally, a lack of gender sensitization in workplaces perpetuates hostile environments where harassment can occur unchecked. While the POSH Act provides a robust legal remedy on paper, its practical effectiveness depends heavily on employer compliance, active enforcement, and a broader cultural shift towards workplace respect and gender equality.

- **Maternity Benefit Act, 1961 (Amended 2017)¹⁴³**

The Maternity Benefit Act is another crucial legislation aimed at protecting women's rights in employment, particularly during maternity. The Act ensures that women are entitled to fully paid leave during pregnancy, thereby safeguarding their employment and financial security. The 2017 amendment significantly enhanced these protections, extending paid maternity leave to twenty-six weeks for the first two children and requiring establishments with fifty or more employees to provide crèche facilities. The law also prohibits the dismissal of a woman during her maternity leave, reinforcing the principle that women should not face workplace discrimination for reproductive reasons.

Despite these legal safeguards, practical barriers continue to limit the Act's impact. Many employers, particularly in the private sector, prefer hiring men to avoid potential maternity-related costs, thereby indirectly discriminating against women. Women working in the informal sector or in start-ups frequently do not receive these benefits, highlighting a gap between law and practice. Moreover, enforcement in private establishments is often weak, and women may lack awareness of their entitlements. While the Act represents an important step towards economic security and gender equality, the persistence of workplace bias and inadequate monitoring mechanisms undermines its full potential.

¹⁴³ Maternity Benefit Act, No. 53, Acts of Parliament, 1961 (India), amended by Maternity Benefit (Amendment) Act, No. 7, Acts of Parliament, 2017 (India).

- **Prohibition of Child Marriage Act, 2006**

The *Prohibition of Child Marriage Act, enacted in 2006*, seeks to prevent the practice of child marriage, which continues to exist in many parts of India, especially among underprivileged communities. The law prescribes the minimum legal age for marriage as eighteen years for girls and twenty-one years for boys. It also makes child marriages voidable at the discretion of the minor and imposes penalties on those who arrange, promote, or perform such unions. The Act is intended to protect children from early marital responsibilities that can compromise education, health, and personal development, and to uphold the broader principles of child rights. Nevertheless, child marriage persists due to deeply entrenched social and cultural norms. In many cases, these marriages are disguised as religious or traditional customs, making enforcement difficult. Rural areas and economically disadvantaged communities face particularly weak implementation, where authorities may be unaware of cases, reluctant to intervene, or unable to challenge local social pressures. As a result, despite the law's clear provisions, child marriage remains a significant issue in India, demonstrating that legislative measures alone cannot eradicate practices rooted in societal attitudes. Education, community awareness, and vigilant enforcement are essential to bridge the gap between legal protections and reality.

- **Section 498A of the Indian Penal Code (IPC) Cruelty by Husband or His Relatives**

Section 498A of the Indian Penal Code was enacted to address the serious problem of cruelty toward married women by their husbands or in-laws. The law criminalizes both physical and mental cruelty, offering immediate legal protection to women who face harassment, threats, or coercion, often in conjunction with dowry demands. Section 498A is a cognizable and non-bailable offense, which means that law enforcement can register complaints and make arrests without prior approval from a magistrate. Its intent was to provide a quick and effective remedy for women in distress, recognizing that domestic abuse often takes place behind closed doors where timely intervention is critical.

However, the provision has also sparked controversy due to allegations of misuse. Some women have been accused of filing complaints with ulterior motives, leading to public debates about reforming the law. Courts have increasingly acknowledged these concerns, emphasizing the importance of preliminary inquiries, mediation, and counselling before arrests are made. Judicial pronouncements have sought to balance the protection of genuine victims with safeguards against harassment of innocent family

members. Despite the controversy, Section 498A ¹⁴⁴remains a cornerstone of legal protection for women, reflecting the delicate balance between preventing domestic abuse and avoiding unwarranted persecution of the accused.

- **Medical Termination of Pregnancy (MTP) Act, 1971 (Amended 2021)**¹⁴⁵

The Medical Termination of Pregnancy Act, originally enacted in 1971 and amended in 2021, establishes a legal framework to ensure safe and accessible abortion services under specific conditions. The 2021 amendments increased the upper limit for termination from twenty to twenty-four weeks for certain categories of women, including survivors of rape and cases involving substantial feta abnormalities. Importantly, the Act also guarantees the privacy of women seeking abortion services and extends the right to unmarried women under the same conditions applicable to married women.

This law is crucial for reinforcing bodily autonomy and reproductive rights, empowering women to make decisions about their health and family planning. It also plays a vital public health role by reducing unsafe and illegal abortions, which have historically led to significant morbidity and mortality among women. The MTP Act demonstrates the intersection of law and healthcare, illustrating how legislative intervention can protect women's rights while ensuring medical safety and ethical standards in reproductive care.

- **Equal Remuneration Act, 1976**

The Equal Remuneration Act of 1976 was enacted to eliminate gender-based wage discrimination and ensure that women receive equal pay for work of equal value. Beyond remuneration, the Act prohibits discriminatory practices in hiring, promotion, or training opportunities based solely on gender. Its objective is to foster workplace equality and encourage female participation in all sectors of employment.

Despite the clear legal mandate, implementation remains a challenge. The gender wage gap persists in both formal and informal sectors, and women continue to be underrepresented in high-paying roles and leadership positions. Social biases, cultural expectations, and organizational practices often limit the effective application of the law. Nevertheless, the Equal Remuneration Act provides a legal foundation for challenging wage discrimination, reinforcing the

¹⁴⁴ Indian Penal Code, § 498A (India).

¹⁴⁵ MTP Act, 1971, amended 2021 (India).

principle that economic independence and equality are integral to women's empowerment.

ROLE OF JUDICIARY IN ADVANCING GENDER JUSTICE

While laws provide the foundation, it is the judiciary that breathes life into them. Courts in India have not only interpreted existing legal provisions in progressive ways but have also laid down new principles that have expanded the scope of gender justice. Especially in situations where legislative action was missing or delayed, the Indian judiciary stepped in as a guardian of women's rights.

Over the years, constitutional courts particularly the Supreme Court of India and various High Courts have given several landmark judgments that reflect sensitivity towards gender equality, dignity, and protection from exploitation.

CHALLENGES AND GROUND REALITIES IN ACHIEVING GENDER JUSTICE

India's legal landscape may seem progressive on paper, with numerous protective laws tailored for women's safety, dignity, and equality. But a closer look at the ground reveals a harsh truth, there remains a significant gap between the law as written and the law as experienced. Despite formal legal protections, many women continue to face discrimination, harassment, violence, and systemic neglect.

This section addresses the key challenges that hinder the effective implementation of protective laws and examines why the promise of gender justice often fails to translate into reality.

1. Lack of Legal Awareness Among Women

One of the most persistent barriers to justice is that a vast majority of women are unaware of their legal rights.

- Many women, especially in rural and semi-urban areas, do not know about laws like the Domestic Violence Act, the POSH Act, or even their right to maternity benefits.
- Legal aid services are often inaccessible or poorly managed.
- Misinformation, illiteracy, and lack of exposure worsen the problem.

2. Social Stigma and Fear of Backlash

Even when women are aware of their rights, social pressures and cultural expectations often prevent them from seeking help.

- Victims of sexual assault or domestic abuse are often blamed, shamed, or silenced by family members or society.

- Women fear loss of reputation, ostracization, or violent retaliation.
- In workplace harassment cases, survivors fear losing their jobs, being branded as “troublemakers”, or being isolated by colleagues.

3. Police Apathy and Institutional Insensitivity

The first point of contact for women in distress is often the police but unfortunately, this is where many cases begin to collapse.

- Police often refuse to register FIRs, especially in domestic violence, dowry, or sexual harassment cases.
- Victims are sometimes mocked, blamed, or pressured into compromise.
- Gender sensitization in police training remains inadequate.
- Legal procedures are slow, intimidating, and often unfriendly to victims.

4. Delayed Justice and Weak Enforcement

Justice delayed is justice denied and nowhere is this truer than in gender-based crimes.

- Court cases drag on for years.
- Witnesses turn hostile.
- Bail is easily granted even in serious offences.
- Protection orders are often not enforced properly by local authorities.

Even when women win in court, the emotional, financial, and social toll can be exhausting.

5. Gender Stereotypes in Courtrooms

Judges and lawyers often bring personal biases into legal proceedings.

- Survivors of rape or harassment are asked about their past sexual history, clothing, or “character.”
- Domestic violence is sometimes brushed aside as a “private family matter.”
- There are instances where judges have suggested marriage between a rapist and the survivor reflecting patriarchal thinking.

Such biases are not just offensive they weaken faith in the entire legal process.

6. Inadequate Infrastructure and Support Systems

Even when women manage to report crimes, the support systems meant to help them are overburdened or absent.

- Protection officers, legal aid lawyers, and shelter homes are understaffed and poorly funded.

- Fast-track courts are too few to handle the volume of cases.
- In many rural areas, there are no proper legal aid centers or trained counselors.
- There is no uniform national mechanism to monitor the effectiveness of protective laws.

7. Misuse of Laws and the Pushback

While protective laws are essential, there have been instances where certain provisions, especially Section 498A (cruelty by husband), have been allegedly misused.

- False or exaggerated complaints can lead to loss of credibility, even for genuine victims.
- Courts have responded by adding safeguards, like mandatory mediation before arrest.
- However, the debate around misuse is often politicized or exaggerated, which risks undermining the core purpose of these laws.

We must strike a balance: address misuse without diluting genuine protection.

NEED FOR GENDER-RESPONSIVE BUDGETING AND POLICYMAKING

Laws require more than just intention; they require resource allocation. Gender justice cannot be achieved without ensuring that government budgets and schemes are designed keeping women's real needs in mind.

- The government must adopt Gender-Responsive Budgeting (GRB) across all ministries meaning that funds must be earmarked specifically for women's welfare in education, health, employment, and justice.
- For example, budgets must provide more one-stop crisis centers, legal aid clinics, helplines, and mobile grievance redressal vans in remote areas.
- Allocation should also be made for the rehabilitation of survivors of domestic violence, skilling of women prisoners, and economic assistance to single mothers.

Policymaking should not be gender neutral. It should be gender-intentional, addressing the diverse needs of women especially those belonging to marginalized groups like Dalit, Adivasi, disabled, and LGBTQ+ communities.

1. Use of Technology for Legal Empowerment

In the digital age, technology can be a game-changer in bridging the gap between protective laws and the people.

- Develop and promote legal tech platforms where women can file complaints, track cases, or seek legal advice anonymously and safely.
- Apps like "SHE-Box" (Sexual Harassment e-Box) by the Ministry of Women & Child Development are a great start, but they need to be scaled up and made user-friendly.
- Online legal literacy modules, vernacular videos, AI-powered helplines, and SMS-based updates for legal proceedings can make justice more accessible.
- Encourage digital evidence preservation tools for cyber-crimes like revenge porn or online stalking helping women preserve and submit digital proof securely.

Digital empowerment must become a core part of gender justice strategies especially for the younger generation and urban poor.

2. Rehabilitative and Restorative Justice Models

Justice must not be confined to punishment alone. Survivors of violence often need healing, support, and a pathway to rebuild their lives.

- The justice system should promote rehabilitation-based responses such as compensation, mental health counseling, housing, vocational training, and educational access.
- Restorative justice models, where appropriate and voluntary, should allow for community-based dispute resolution and survivor-centric healing especially in less serious offences.
- Legal aid must include emotional and psychological support, as law alone cannot undo trauma.
- Encourage the State to fund safe houses, job placement programs, and emergency shelters for survivors of abuse, trafficking, and harassment.

3. Reforming Masculinity and Involving Men

Gender justice cannot succeed unless men become allies in the process.

- Encourage programs that focus on redefining masculinity moving away from aggression, dominance, and emotional suppression.
- Train male police officers, judges, and bureaucrats in empathetic engagement.

- Include men and boys in school and college-based awareness programs on consent, equality, and respect.
- Promote positive male role models in media and popular culture who stand for women's dignity and rights.

Changing mindsets is not a women-only responsibility men must also unlearn patriarchy and participate in change.

4. Gender Justice as a Shared National Duty

India stands at a crossroads with some of the strongest gender laws in the developing world, yet some of the worst statistics of violence against women. This contradiction must force us to ask: are we only legalizing gender justice, or are we living it?

Protective laws must become living tools of change not just rules in a statute book, but lifelines that actually reach and uplift real women in real situations. This requires collective action.

- The State must legislate and implement with commitment.
- The Judiciary must interpret and guide with empathy.
- The Police must act with urgency and humanity.
- The Media must inform without bias or sensationalism.
- And we as citizens must question and correct our own biases in homes, workplaces, schools, and relationships.

Gender justice is not just a feminist goal it is a constitutional promise and a national obligation. A society where women live free from fear, inequality, and silence is a society that is truly just, democratic, and civilized.

Only when we match our protective laws with protective actions, inclusive thinking, and courageous reforms, will India become not only a country with progressive laws but one with real, lived, and meaningful gender justice for every woman.

THE WAY FORWARD: BRIDGING THE GAP BETWEEN LAW AND JUSTICE

Over the years, India has undoubtedly made significant legal progress in addressing gender-based discrimination and violence. But as we've seen, the existence of laws alone does not ensure justice. The core issue lies not in the absence of protective laws, but in the absence of a supportive legal, institutional, and social environment that enables women to access and benefit from those laws. Therefore, the need of the hour is to focus on bridging the gap between legal provisions and real-world impact.

This requires a multi-pronged strategy where legal reforms, institutional strengthening, social awareness, and attitudinal change go hand in hand.

1. Strengthening Implementation Mechanisms

Even the best laws are ineffective without proper enforcement. To ensure gender justice reaches the grassroots:

- Proper training and accountability of law enforcement is essential. Police officers, protection officers, medical professionals, and legal aid workers must be regularly trained on handling gender-sensitive cases with empathy and professionalism.
- Monitoring bodies should be created at the state and district levels to oversee the implementation of laws like the POSH Act, Domestic Violence Act, etc., and report lapses.
- Appointing more female officers and judges can improve sensitivity and trust in the justice system, especially in handling crimes like sexual violence and domestic abuse.

2. Legal Literacy and Grassroots Awareness

Laws are meaningless if women don't know about them. Legal awareness campaigns must reach rural areas, slums, tribal regions, and minority communities where the problem is most severe.

- NGOs, legal aid clinics, schools, and self-help groups should collaborate to conduct regular workshops in local languages.
- Simplified handbooks, mobile apps, helplines, and audio-visual tools can be used to explain rights and procedures.
- Gender education must be included in school curricula, teaching both boys and girls about equality, consent, and respect from a young age.

3. Gender Sensitization at All Levels

Changing legal outcomes is impossible without changing attitudes. The persistence of patriarchal mindsets among judges, police, lawyers, and bureaucrats remains one of the biggest roadblocks.

- Mandatory gender sensitization modules must be part of training for judiciary, police, government officials, and educators.
- Sensitization should go beyond legal provisions and touch upon the sociological and emotional realities of women's experiences.
- Media houses and content creators should be encouraged to portray women responsibly, avoid victim-blaming, and highlight legal remedies and success stories.

4. Institutional Reforms and Infrastructure

Most protective laws fail not because of bad drafting, but because of poor support systems:

- Fast-track courts for gender-based violence cases should be increased and made truly “fast” with strict timelines and dedicated judges.
- Shelter homes, counseling centers, medical aid units, and legal clinics need urgent upgrades in both quality and quantity.
- There should be regular audits of Internal Complaints Committees under the POSH Act to ensure compliance and effectiveness.
- Digitization of FIRs, tracking of complaints, and feedback systems can improve transparency and accountability.

5. Balancing Protection with Fairness

While strong laws are essential for women’s safety and dignity, their misuse must also be acknowledged and addressed fairly without harming the spirit of the law.

- Courts must adopt a balanced approach: ensuring quick relief for genuine victims while safeguarding the rights of the accused from false implications.
- Mediation, counselling, and family courts should be strengthened to resolve civil issues with sensitivity, especially in matrimonial disputes.
- But any reform in protective laws should not dilute their effectiveness the solution is better investigation and verification, not weakening protections.

6. Promoting Representation and Participation

Women’s meaningful participation in law-making, law enforcement, and law interpretation is critical.

- Appoint more women as judges, police officers, prosecutors, and legislators.
- Create forums for women to give feedback on how laws affect them.
- Encourage law schools and universities to take up gender justice research, legal aid work, and awareness drives.

CONCLUSION

India stands at a crossroads with some of the strongest gender laws in the developing world, yet some of the worst statistics of violence against women. This contradiction must force us to ask: are we only legalizing gender justice, or are we living it?

Protective laws must become living tools of change not just rules in a statute book, but lifelines that actually reach and uplift real women in real situations. This requires collective action.

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Chapter 12

BEYOND INCARCERATION

Rehabilitation, Reformation, and the Lived Realities of Women Prisoners

“Reformation begins where society chooses to see a woman beyond her crime and law chooses to offer her a future”

- Justice R.C Lahoti

(Former Chief Justice of India, Supreme Court of India)

INTRODUCTION

The concept of justice has evolved over time. From the primitive focus on retribution to the more progressive emphasis on reform, societies across the world have realized that crime cannot be eradicated merely through punishment. This shift is particularly relevant when it comes to women offenders, who often end up in conflict with the law due to a complex web of socio-economic, psychological, and structural factors. For these women, justice is not only about the completion of a sentence but also about getting a genuine chance at rehabilitation, restoration, and reintegration into society.

In India, the criminal justice system has traditionally been designed by men, for men, which leaves limited space for addressing the unique needs of incarcerated women. Female prisoners constitute a small percentage of the total prison population, yet their issues are disproportionately serious. Many of them are mothers, caregivers, or survivors of abuse. Their offences are often non-violent and stem from extreme poverty, abandonment, or coercion. When such women enter the prison system, they face a setting that is not only punitive but often ill-equipped to support their reformation.

The Indian legal system does provide for mechanisms that go beyond incarceration. Correctional homes, probation, and parole are meant to function as reformatory tools. These are not just alternatives to imprisonment, but instruments that aim to rebuild the lives of offenders by offering psychological support, skill development, and community integration. However, in practice, these tools are either underused or poorly implemented, especially in the case of women.

The condition of women's prisons in India raises serious concerns. Issues such as overcrowding, poor hygiene, lack of medical care, inadequate nutrition, absence of mental health counseling, and minimal vocational training are widespread. Pregnant inmates, mothers with children, and undertrial women who often wait years for a verdict face even graver hardships. These conditions do little to reform and instead perpetuate cycles of trauma and social exclusion. Probation and parole, which are meant to ease reintegration, are rarely granted to women. Prejudices around morality, motherhood, and the fear of social stigma often influence such decisions. There is a lack of trained probation officers, and most parole systems fail to provide a support network to help women rebuild their lives outside prison walls.

This chapter aims to critically examine the reformative and rehabilitative mechanisms available to women prisoners in India. It will explore the legal provisions, institutional realities, and the broader philosophical shift needed in how we treat women in conflict with the law. Instead of treating imprisonment as the destination, the system must begin to view it as a temporary phase one that must lead to transformation, not just containment.

Ultimately, a justice system that prioritizes reformation over punishment, especially for women, does not just serve the offender it serves society at large. Because when a woman is reformed and empowered, the benefits ripple through her family, community, and future generations.

WOMEN'S PRISONS IN INDIA: REALITIES AND REFORMS

Prisons are not merely spaces of confinement, they are mirrors of a society's understanding of justice, punishment, and human dignity. When it comes to women's prisons, the challenges are not just legal or administrative but deeply gendered. Female prisoners in India face a unique set of problems that go far beyond the basic idea of serving a sentence. These challenges arise not only because they are women, but also because the prison system was historically designed without considering the specific needs of women.

FEMALE INCARCERATION IN NUMBERS

As per the *National Crime Records Bureau (NCRB) 2023*, women constitute about 4-5% of the total prison population in India. Although numerically small, this population demands urgent attention because their needs are very different from those of male inmates. A large portion of women prisoners are undertrials meaning they have not yet been convicted but are still confined for months or even years due to delay in legal proceedings.

Further, a considerable number of female prisoners are mothers, and many of them are accompanied by their young children inside jail premises. This creates an entirely separate layer of responsibility on the system to ensure that punishment to the mother does not mean emotional or physical suffering for the child.

LIVING CONDITIONS IN WOMEN'S PRISONS IN INDIA

Despite the presence of legal safeguards and guidelines meant to protect female inmates, the reality in most women's prisons across India remains grim, highlighting a serious gap between policy and practice. One of the most pressing concerns is overcrowding and lack of space. Very few states have standalone women's prisons, so female inmates are often lodged within separate enclosures in male prisons. This arrangement not only compromises their privacy and security but also exposes them to heightened risks of harassment and violence. Overcrowding further aggravates hygiene issues, increases the risk of infectious diseases, and has a severe impact on mental health, with many women experiencing stress, anxiety, and feelings of dehumanization.

Another critical issue is the lack of medical and psychiatric support. Most prisons do not employ full-time gynaecologists or psychologists, despite the fact that female inmates frequently suffer from reproductive health problems, trauma, and mental health conditions such as depression, anxiety, or post-traumatic stress disorder. Without access to adequate medical care, these conditions often worsen, leaving inmates physically and mentally vulnerable.

- **Sanitation and menstrual hygiene** are also major challenges. In many jails, access to clean toilets, safe drinking water, and sanitary napkins is inconsistent or entirely absent. For women, this basic necessity often becomes a daily struggle, stripping them of dignity and exposing them to health risks like infections.
- **Nutrition and living standards** remain poor. Pregnant women, lactating mothers, and undernourished inmates rarely receive diet plans tailored to their needs. The standard prison diet is inadequate for gender-specific requirements, affecting both the health of women and, in the case of pregnant or nursing mothers, the health of their children.

Speaking of children, many women in prison are mothers, and Indian prison rules allow children to stay with their mothers up to the age of six. However, facilities for these children are often wholly insufficient. Crèche services, proper schooling, recreational activities, and medical care are largely absent, meaning that these children grow up in a constrained and stressful environment, with long-term psychological and social repercussions.

Overall, while legal frameworks recognize the special needs of women prisoners, the ground reality exposes severe deficiencies in infrastructure, healthcare, hygiene, and child care. These conditions not only affect the women's well-being but also hinder rehabilitation, making prison a place of further marginalization rather than reform. Addressing these issues requires dedicated women-centric policies, adequate funding, trained staff, and consistent monitoring to ensure that incarceration does not become an additional form of punishment for women and their children.

LEGAL PROVISIONS AND GUIDELINES FOR WOMEN

India has established a range of laws, policies, and international commitments to protect the rights of women in prison, recognizing that female inmates face unique vulnerabilities that require tailored attention. The **Prison Act of 1894**¹⁴⁶ provides the foundational legal framework for managing prisons in India, and the **Model Prison Manual of 2016**¹⁴⁷ expands on this by including specific provisions for the safety, health, and welfare of women prisoners. These provisions address issues such as separate housing for women, access to healthcare and sanitation, and the need for gender-sensitive prison administration. The Model Manual emphasizes rehabilitation through skill-building programs, counselling, and education, reflecting a shift from purely punitive incarceration toward correctional and reformative goals.

In addition to domestic regulations, the judiciary has also played an important role in shaping women's prison conditions. In multiple judgments, the Supreme Court of India has underscored the need for separate female wardens, privacy in medical examinations, and access to counselling services to address the psychological impact of incarceration. The Court has repeatedly highlighted that women prisoners cannot be treated as an afterthought in a system designed largely for men, and that adherence to minimum standards is not optional but a constitutional obligation under Articles 14, 21, and 39 of Indian Constitution.

Internationally, India has committed to the **United Nations Bangkok Rules (2010)**¹⁴⁸, which set out global standards for the treatment of women prisoners. These rules focus on ensuring dignity, access to healthcare, gender-sensitive rehabilitation, and the maintenance of family and social contacts during incarceration. They highlight the importance of non-discrimination, the special needs of pregnant and nursing inmates, and measures to prevent violence and abuse within prison facilities. As a signatory, India has a moral

¹⁴⁶ Prison Act, 1894, No. 9 (India).

¹⁴⁷ Model Prison Manual, 2016 (India).

¹⁴⁸ N Bangkok Rules, UN Doc. A/RES/65/229 (2010)

and legal responsibility to implement these standards in its domestic prison system.

Despite this robust framework, the biggest challenge lies in implementation. Many state governments have not updated their prison manuals to align with the 2016 Model Prison Manual or integrate the Bangkok Rules, leaving female inmates vulnerable to systemic neglect. Overcrowding, lack of female staff, inadequate healthcare, and insufficient rehabilitation programs continue to plague women's prisons across the country. While the legal provisions exist on paper, their inconsistent enforcement reflects a broader issue of administrative inertia and societal indifference, underscoring the gap between legislative intent, international obligations, and lived reality.

INSTITUTIONAL DISCRIMINATION AND SOCIAL NEGLECT

Women in prisons often suffer from double punishment one from the system, and one from society.

- Women offenders are judged more harshly, especially if their crimes go against gender roles (like infanticide, sex work, or drug trafficking).
- They often face abandonment by their families, making reintegration after release extremely difficult.
- There is little emotional or psychological support available, and prison staff are rarely trained in gender-sensitive handling.

REFORMS AND RECOMMENDATIONS

While India has legal frameworks and guidelines to protect women prisoners, the reality on the ground shows that the system is often ill-equipped to ensure their safety, dignity, and rehabilitation. To create a prison system that genuinely supports reform and reintegration, several targeted reforms are necessary.

- **Infrastructure Reform** is the first critical step. Many states still house women in facilities designed for men, leading to overcrowding, inadequate privacy, and unsafe conditions. Establishing dedicated women's prisons with sufficient space, proper security, and sanitary facilities is essential. In addition, prisons should include child-friendly spaces for young children of incarcerated mothers, allowing them to grow in a safe and nurturing environment rather than being exposed to the harsh realities of prison life.
- **Healthcare access** is Equally important in women healthcare access. Women prisoners have distinct medical and psychological needs,

from pregnancy care and maternal health to mental health support. Appointing full-time female doctors, psychologists, and social workers in all women's prisons can address these needs systematically. Regular screening for mental health issues, nutritional deficiencies, and reproductive health concerns should be mandatory to ensure that incarceration does not exacerbate existing vulnerabilities.

- **Education and vocational training** form the backbone of rehabilitation. Most women prisoners come from marginalized backgrounds with limited formal education or employment opportunities. Introducing programs in literacy, digital skills, and vocational training equips inmates with practical skills for life post-release. Certificates or recognition for these programs can provide a tangible benefit, increase employability and aid societal reintegration.

CORRECTIONAL HOMES AND THEIR ROLE IN REFORMATION

Correctional homes, also known as reformatories or reformatory institutions, are facilities designed not just to detain offenders but to rehabilitate and reintegrate them into mainstream society. Unlike regular prisons, where the focus is on security and discipline, correctional homes focus on:

- Changing behavior
- Developing life skills
- Providing counselling and education
- Addressing emotional, psychological, and social needs

These institutions aim to treat offenders as reformable human beings rather than permanent criminals. For women, especially, correctional homes serve as safe spaces where they can heal from trauma, learn skills, and begin life anew with dignity and hope.¹⁴⁹

GOVERNING CORRECTIONAL HOMES IN INDIA

The concept of correctional treatment for offenders in India is grounded in a mix of laws and guidelines that emphasize rehabilitation over mere punishment, especially for women and young offenders. The Juvenile Justice (Care and Protection of Children) Act, 2015, for instance, provides for specialized facilities like Observation Homes and Special Homes for juvenile girls. These institutions are intended not only to confine but also to

¹⁴⁹ National Crime Records Bureau, *Prison Statistics India 2021*, ch. 5, available at <https://ncrb.gov.in>

rehabilitate, offering education, counselling, and structured routines that address the developmental and emotional needs of young female offenders.

Similarly, the Probation of Offenders Act, 1958, promotes correctional alternatives for first-time or minor offenders. It recognizes that imprisonment may not always be the best solution and that supervised probation can allow women to maintain family responsibilities, continue working, and gradually reintegrate into society without the stigma and trauma of incarceration.

The Model Prison Manual of 2016 further emphasizes a gender-sensitive approach, recommending separate correctional facilities for women that include dedicated training, educational, and counselling units. This reflects a shift toward understanding that women's rehabilitation requires specialized attention to psychological, social, and vocational needs, which are often distinct from male inmates.

State Prison Rules across India vary, but many contain provisions for vocational programs, recreational activities, and spiritual or moral development. These rules aim to create an environment that supports personal growth, skill-building, and social reintegration, aligning with the broader rehabilitative goals of the correctional system.

Despite these legal and policy frameworks, the reality on the ground is often starkly different. Only a few states have established functioning correctional homes exclusively for women. In most cases, reformatory functions are expected to be carried out within the regular women's prison, where overcrowding, limited resources, and a lack of specialized staff can severely constrain the effectiveness of rehabilitation programs. Consequently, while the law and policy envision a supportive, reform-oriented environment for women offenders, actual implementation often falls short, leaving many women without access to the full spectrum of correctional services intended for their social and psychological rehabilitation.

WHY ARE CORRECTIONAL HOMES IMPORTANT FOR WOMEN OFFENDERS?

Most women who enter the prison system in India are not hardened criminals. Many are victims of circumstance, abuse, poverty, or coercion. Correctional homes become essential for such women because:

- They help break the cycle of trauma and crime.
- They offer non-violent, therapeutic environments.
- They provide opportunities to gain education or vocational skills.
- They create space for introspection, reform, and personal growth.

In many cases, women prisoners also deal with guilt, depression, anxiety, and post-traumatic stress. Correctional homes, with their focus on mental health and emotional support, are better suited to handle these challenges than standard prisons.

SERVICES TYPICALLY OFFERED IN WOMEN'S CORRECTIONAL HOMES

Correctional homes for women are designed not just as custodial spaces but as centres of rehabilitation and personal growth. A well-functioning facility focuses on addressing the social, emotional, educational, and vocational needs of inmates, aiming to prepare them for a smooth reintegration into society.

- **Counselling** is a cornerstone of rehabilitation. Women receive both individual and group sessions with trained psychologists to help them process trauma, cope with emotional stress, and develop healthy coping mechanisms. This is particularly important because many inmates have histories of domestic violence, abuse, or neglect, which contribute to their criminal behaviour.
- **Skill development programs** are offered to help women gain practical abilities that can support their economic independence post-release. Courses may include tailoring, baking, handicrafts, basic nursing assistance, or other vocational skills. These programs not only provide potential income sources but also foster confidence, discipline, and a sense of purpose.
- **Basic and adult education classes** ensure that women who are illiterate or semi-literate have an opportunity to learn fundamental skills like reading, writing, and arithmetic. Education is crucial because it directly impacts employability and self-reliance, giving women the tools to navigate life outside prison.
- **Yoga, meditation, and spiritual sessions** are integrated to promote emotional balance, stress management, and mental well-being. These activities can help women cultivate mindfulness, reduce aggression or anxiety, and develop a sense of inner calm that supports rehabilitation.
- **Rehabilitation planning** is a critical service that bridges incarceration and life after release. This includes assistance with job placement, finding safe housing, connecting with social support networks, and counselling on reintegration challenges. Structured post-release planning reduces the risk of recidivism and ensures that women are not left vulnerable once they leave the correctional facility.

- **Recreational activities** such as art, music, theatre, and storytelling serve multiple purposes. They provide a creative outlet, help develop social skills, build self-esteem, and create a more humane and engaging environment within the home. These activities also encourage teamwork, communication, and emotional expression.

Finally, health checkups and gynaecological care are essential, as many female inmates have neglected health issues or reproductive health concerns. Regular medical attention ensures that women remain physically healthy, prevents the spread of illness, and addresses specific needs related to pregnancy, menstruation, or chronic conditions.

However, in most Indian states, these services are either non-existent or extremely underdeveloped due to lack of staff, budget, or priority.

REAL-WORLD CHALLENGES IN WOMEN'S CORRECTIONAL HOMES

Correctional homes for women are intended to be spaces of rehabilitation, offering education, skill-building, counselling, and a structured environment to help offenders reintegrate into society. In principle, these facilities reflect a progressive approach to criminal justice, recognizing that punishment alone is not sufficient and that women have unique social, psychological, and economic needs. In reality, however, multiple obstacles hinder their effectiveness.

One of the most pressing issues is lack of funding. Correctional programs are often low on the priority list for state budgets, making it difficult to provide adequate infrastructure, resources, or programs for inmates. This underfunding affects everything from basic facilities to vocational training and mental health support.

- **Inadequate staffing** compounds the problem. There are too few trained counsellors, social workers, and instructors capable of understanding and addressing the trauma, addiction, or social pressures that many female offenders face. Without proper guidance, rehabilitation programs cannot be implemented effectively.
- Another critical barrier is overcrowding. Many women's correctional facilities operate beyond capacity, which diminishes the quality of care, reduces individualized attention, and creates environments that are stressful and sometimes unsafe. Overcrowding also makes it nearly impossible to implement structured rehabilitation programs consistently.
- **Gender bias** is another underlying challenge. The criminal justice system and society at large often perceive women offenders as

“morally deviant” or “disgraced,” assuming they are beyond reform. This patriarchal mindset affects staff attitudes, program design, and even judicial approaches, resulting in fewer opportunities for women to participate in meaningful rehabilitation compared to male inmates.

Finally, poor monitoring and lack of data hinder progress. There is very little systematic research or evaluation on how many women benefit from correctional programs, how effectively they are reintegrated into society, or what reforms could improve outcomes. Without this information, policies remain reactive and fragmented rather than evidence-based and impactful.

REHABILITATION AND REFORMATION CHALLENGES

Unlike violent crime offenders, white-collar female offenders may not require the same kind of correctional interventions. However, the challenges they face include:

- **Stigma and joblessness** post-conviction, especially in corporate or public employment sectors.
- **Social rejection** particularly harsher in traditional or conservative communities.
- **Mental health struggles**, including anxiety, shame, or identity loss.
- **Lack of financial independence** post-release, leading to reoffending in some cases.

Hence, there is a need for specialized rehabilitation programs, such as:

- Financial literacy and legal awareness
- Skill training in ethical entrepreneurship
- Gender-sensitive counselling and reintegration support

THE WAY FORWARD: STRENGTHENING CORRECTIONAL INSTITUTIONS FOR WOMEN

If India is serious about gender-just reform, correctional homes must be treated not as optional add-ons but as core components of the justice system. Some key steps include:

- Create dedicated correctional homes for women in every state and district.
- Recruit female reform officers, psychologists, and vocational trainers.
- Collaborate with NGOs, mental health organizations, and corporate CSR programs to run skill-training workshops.

- Set up monitoring and reporting systems to track outcomes, reintegration success, and feedback from inmates.
- Involve community-based organizations in post-release support and rehabilitation planning.

CONCLUSION

Rehabilitation and reformation are not just lofty ideals of criminal jurisprudence they are necessary responses to the human condition behind every crime. In a justice system where most correctional mechanisms are designed around male offenders, the needs, vulnerabilities, and realities of women in conflict with the law often go unnoticed, under-addressed, or worse ignored. This chapter has explored how the experience of incarceration for women is uniquely shaped by factors such as gender-based violence, social abandonment, economic dependency, and motherhood. Most women in Indian prisons are not habitual criminals but are often first-time offenders, undertrials, or individuals who have committed crimes under pressure, poverty, or provocation. For such women, a purely punitive approach does not bring justice it only deepens marginalization. The condition of women's prisons across India continues to be concerning. Despite legal mandates, basic needs like healthcare, privacy, sanitation, and nutrition remain unmet. Children growing up behind bars, mentally ill inmates without treatment, and women suffering in silence within overcrowded cells reflect a system more focused on control than care. The very institutions that are meant to "correct" often end up perpetuating emotional and physical trauma. Correctional homes, when functional and properly resourced, offer a glimmer of hope. These institutions acknowledge the power of education, counselling, and vocational training in shaping behavior and restoring dignity. However, the gap between intention and implementation remains vast. Most correctional facilities either lack infrastructure or trained staff, leaving women without the support they need to transform.

Chapter 13

JUSTICE BEYOND PRISON WALLS

Probation, Parole, and Community-Based Rehabilitation of Women

"The measure of a society is found in how it treats its weakest members"

– Mahatma Gandhi

(Indian lawyer, Anti - Colonial Nationalist and Political Thinker)

UNDERSTANDING PROBATION AND PAROLE

In the landscape of criminal justice, probation and parole are alternative mechanisms to incarceration that aim to reform the offender without isolating them completely from society. These tools are essential for women offenders who often come from deeply vulnerable and marginalized backgrounds, and who may benefit more from community-based correction than from imprisonment.

- **Probation** allows the offender to remain in the community under supervision, instead of serving time in prison. It is usually granted at the time of sentencing.
- **Parole**, on the other hand, is a form of conditional release after a part of the sentence has been served in prison. It gives the inmate a chance to re-enter society under certain conditions and continue their rehabilitation outside.

Both options are rooted in the idea that crime and punishment must be balanced with reformation and reintegration, especially when the offender does not pose a serious risk to society.

LEGAL FRAMEWORK FOR PROBATION AND PAROLE IN INDIA

India's criminal justice system recognizes that imprisonment is not always the most effective solution, particularly for minor offences or first-time offenders. To address this, laws such as the **Probation of Offenders Act**,

1958¹⁵⁰ empower courts to release certain offenders on probation of good conduct, allowing them to remain within the community under supervision rather than being confined to prison. This approach is particularly significant for women, who often face additional social, economic, and familial vulnerabilities when incarcerated. The Act emphasizes reformation over retribution, encouraging courts to consider alternatives to imprisonment that prioritize rehabilitation and social reintegration. Courts are required to evaluate factors such as the offender's age, character, and the circumstances surrounding the offence, ensuring that the response is tailored and humane rather than mechanical.

The **Criminal Procedure Code (CrPC), 1973**, complements this framework. Sections such as 360 CrPC empower courts to suspend sentencing and release offenders on probation, often mandating conditions like reporting to a probation officer, refraining from criminal activity, or undertaking community service. However, in practice, the application of probation provisions has been inconsistent, and there is often little consideration of gender-specific circumstances. For women offenders, this can mean missed opportunities for diversion from incarceration, despite the law's intention to favor rehabilitation over punishment where appropriate.

Parole and furlough provisions, which allow temporary release from prison under supervision, are governed by state-specific rules in India. Each state maintains its own manuals and eligibility criteria, resulting in significant disparities in access to parole across the country. Some states provide relatively easy access for women inmates, while others impose restrictive conditions that limit the practical utility of these provisions. The absence of a uniform national policy on parole underscores a critical gap in India's correctional system, particularly in ensuring fair and consistent treatment for women prisoners.

Together, these laws form the backbone of India's efforts to humanize criminal justice, emphasizing rehabilitation, social reintegration, and tailored interventions for offenders. For women, in particular, they offer a pathway to avoid the harsh realities of incarceration, provided that courts, prison authorities, and policymakers implement the provisions with sensitivity, awareness, and consistency.

IMPORTANCE OF PROBATION AND PAROLE FOR WOMEN

Women offenders in India often face unique social and economic vulnerabilities. Many are the sole caregivers of children or elderly family members, financially dependent on others, first-time or minor offenders, or

¹⁵⁰ Probation of Offenders Act, No. 20 of 1958, Acts of Parliament, 1958 (India).

survivors of violence and abandonment. In such circumstances, incarceration can inflict more harm than good, not only on the women themselves but also on their dependents. Probation and parole provide humane alternatives that balance the goals of justice with compassion. Probation allows women to continue fulfilling family responsibilities, maintain economic independence through work, and undergo supervised reform in an environment that reduces social stigma. Parole, on the other hand, facilitates reintegration into society after long periods of confinement, enabling women to adjust gradually under structured support while accessing opportunities for education, employment, and counselling. Together, these measures recognize the gendered realities of female offenders and promote rehabilitation over punishment, ultimately fostering safer families and more inclusive communities.

Probation and parole do more than simply release a woman from custody they open a complex chapter of re-entry into a society that may have already judged and excluded her. While freedom from prison is a relief, mental and emotional burdens remain heavy. Most women prisoners come from vulnerable backgrounds survivors of domestic violence, single mothers, or those abandoned by their families. Their release is often met with social stigma, family rejection, or even homelessness. Feelings of shame, guilt, anxiety, and fear of re-offending are common. In the absence of structured post-release mental health care, many women struggle with identity loss, depression, and PTSD.

This makes it essential to pair probation and parole with rehabilitative counselling, support groups, and trauma-informed care, ensuring that women not only stay out of prison but truly recover from their past

ROLE OF NGOS, LEGISLATIVE REFORM, AND INTERNATIONAL BEST PRACTICES IN ENHANCING PROBATION AND PAROLE FOR WOMEN

The reintegration of women into society after incarceration is one of the most challenging aspects of the criminal justice system in India. While the law provides mechanisms such as probation and parole, their effectiveness is often limited by structural gaps, gender-insensitive policies, and lack of adequate support systems. In this context, non-governmental organizations and civil society emerge as crucial actors bridging the divide between the legal framework and the lived realities of women offenders. Across India, NGOs provide a spectrum of support services that address both immediate and long-term needs. Shelter homes offer safe spaces for women to stay after release, vocational training equips them with employable skills, and legal guidance ensures they understand their rights. Some organizations, like Prayas, a field action project by TISS Mumbai, actively work with women

ex-inmates to help them secure employment, housing, and reintegrate into their families and communities. Partnerships between these NGOs and government institutions can significantly enhance the efficacy of parole and probation by ensuring that women are not left to navigate a complex system alone.

Despite these efforts, the existing legal framework for probation and parole in India remains scattered, outdated, and largely gender-neutral. There is no uniform national policy, leaving parole boards at the state level with wide discretion that often results in inconsistent or biased decisions. The lack of gender-sensitive guidelines means that critical factors—such as single motherhood, prior experiences of domestic abuse, pregnancy, or mental health needs—are frequently overlooked. Comprehensive legislative reform is therefore urgently needed to establish a national framework for parole and probation that incorporates women-specific provisions. Such reforms should mandate mental health assessments, housing support, counselling, vocational training, and post-release supervision, transforming parole from a mere administrative decision into a holistic process of rehabilitation, empowerment, and dignity.

International experiences offer valuable lessons for India. Scandinavian countries like Norway and Finland emphasize restorative justice, combining parole with structured reintegration plans, continuous mental health support, and guidance from social workers. In Australia, transitional housing units allow women to live in supportive environments while receiving therapy, education, and job training. The United Kingdom runs Women's Community Justice Centres that integrate therapy, trauma recovery programs, parenting support, and educational opportunities in one location. These models show that parole is most effective when it is not merely conditional freedom but a structured, supportive, and dignified process aimed at rehabilitation.

For India, adapting these models to its socio-legal context could bridge the existing gaps in the justice system. By combining legislative reform, proactive involvement of NGOs and civil society, and lessons from international best practices, India can create a probation and parole system that not only reduces recidivism but also ensures that women offenders are treated with fairness, compassion, and respect for their dignity. This approach would ultimately promote social reintegration, protect the rights of women, and make the criminal justice system more responsive to the unique challenges faced by women in conflict with the law.

BEST PRACTICES IN ENHANCING PROBATION AND PAROLE FOR WOMEN

Probation and parole are vital components of the criminal justice system that aim to rehabilitate offenders while promoting social reintegration. For women, these practices assume particular importance, as female offenders often face unique social, economic, and familial challenges that affect their rehabilitation. Enhancing probation and parole for women requires a gender-sensitive approach that recognises these distinct needs.

Effective practices include individualised rehabilitation plans that consider the offender's background, education, and caregiving responsibilities. Counselling services, skill development programmes, and vocational training are essential to equip women with tools for economic independence and social reintegration. Family support, community involvement, and mentorship programs also play a critical role in reducing recidivism and facilitating adjustment back into society.

Legal frameworks and supervisory mechanisms must ensure that probation and parole are applied consistently and fairly, avoiding gender bias while addressing safety concerns. Specialised probation officers trained in women-centric issues can monitor compliance and provide ongoing support, fostering both accountability and empowerment. Additionally, integrating health services, mental health support, and legal aid strengthens the rehabilitative process. Overall, enhancing probation and parole for women requires a holistic approach that combines legal oversight, social support, and rehabilitative interventions. When implemented effectively, these practices not only reduce re-offending but also contribute to the broader goals of social justice, dignity, and gender-sensitive criminal justice.

LEGAL SAFEGUARDS AND RIGHTS OF WOMEN ON PROBATION OR PAROLE

Women on probation or parole are entitled to legal protection and fair treatment, ensuring their rights and dignity are preserved throughout the process. Key safeguards include:

1. **Right to Fair Treatment:** Women must receive unbiased supervision, free from discrimination, harassment, or abuse by authorities.
2. **Confidentiality and Privacy:** Personal and case-related information should be protected, particularly in sensitive cases involving sexual offences or family disputes.

3. **Access to Legal Aid:** Women on probation or parole must have access to legal counsel and guidance regarding their rights and obligations.
4. **Protection from Retaliation:** Mechanisms should exist to safeguard women from threats, intimidation, or social ostracism related to their probation or parole status.
5. **Right to Rehabilitation Services:** Women are entitled to counselling, vocational training, and social support to facilitate successful reintegration.
6. **Judicial Oversight:** Courts must ensure probation conditions are reasonable, proportionate, and in line with constitutional principles of equality and dignity.
7. **Monitoring Mechanisms:** Independent bodies should oversee implementation to prevent misuse of authority or procedural lapses.

By combining legal safeguards with gender-responsive probation policies, the criminal justice system can ensure protection, empowerment, and successful reintegration of women offenders while maintaining accountability and fairness.

CHALLENGES IN IMPLEMENTATION OF PROBATION AND PAROLE FOR WOMEN

Although the laws providing for probation and parole exist in India, their implementation remains uneven and often biased against women. Gender bias frequently plays a role in granting relief, with women being judged more harshly on moral or social grounds. Institutional prejudice and societal stigma can result in denial of probation or parole, even in cases where women offenders are eligible. A critical structural issue is the shortage of trained probation officers, particularly female officers who are better equipped to understand the emotional and social realities of women in conflict with the law. Additionally, a lack of legal awareness means that many women, especially those from rural areas or without access to legal aid, remain unaware that probation or parole is an available option. Even when released on parole, women often face the absence of essential support systems such as housing, counselling, and employment opportunities, increasing the risk of returning to cycles of crime or vulnerability.

Strengthening community-based reform is essential to make probation and parole effective tools for rehabilitation. A gender-sensitive probation system should include the appointment of more female officers and trauma-informed training for existing staff. Community involvement is also crucial; partnerships with NGOs, legal aid organizations, and women's shelters can create a network of support, while district-level social rehabilitation boards

can provide oversight. Legal awareness campaigns within prisons and trial courts can help women seek probation or parole as a right rather than a favor. Finally, regular monitoring and review through independent committees, along with the use of technology for check-ins, mental health tracking, and feedback, can ensure accountability and promote successful reintegration into society.

POLICY RECOMMENDATIONS FOR ENHANCING WOMEN-CENTRIC PROBATION SYSTEM

Enhancing probation systems for women requires a holistic, gender-sensitive approach that addresses the social, economic, and psychological challenges female offenders face. Key policy recommendations include:

1. **Specialised Training for Probation Officers:** Officers should be trained in women-centric issues, trauma-informed care, and gender-sensitive supervision techniques.
2. **Individualised Rehabilitation Plans:** Probation strategies must consider family responsibilities, education, mental health, and vocational needs to facilitate reintegration.
3. **Community and NGO Involvement:** Collaborations with local organisations can provide mentoring, counselling, and support networks for women on probation.
4. **Vocational and Skill Development:** Structured training programmes increase employability and reduce recidivism, supporting long-term social integration.
5. **Monitoring and Evaluation:** Regular assessment of probation programmes ensures effectiveness, identifies gaps, and strengthens accountability.
6. **Integration of Health and Social Services:** Access to mental health support, healthcare, and social welfare programs is crucial for rehabilitation.
7. **Awareness and Legal Literacy:** Women should be educated about their rights, duties, and available legal and social support mechanisms.

These recommendations aim to transform probation from a mere supervisory mechanism into a rehabilitative, empowering, and socially reintegrative tool for women offenders.

TECHNOLOGICAL PRACTICES INCLUDE:

1. **Electronic Monitoring:** GPS-enabled devices or ankle bracelets can help track compliance with probation conditions, particularly for high-risk cases, without being intrusive.
2. **Digital Reporting Platforms:** Secure online portals and mobile applications allow women on probation to report progress, attend counselling sessions virtually, and communicate with probation officers efficiently.
3. **Tele-Counselling and Support Services:** Technology facilitates access to psychological counselling, legal guidance, and mentorship, particularly for women in remote or underserved areas.
4. **Data-Driven Supervision:** Use of data analytics can identify patterns, assess risk factors, and tailor supervision plans to individual needs, improving rehabilitation outcomes.
5. **Training and Capacity Building:** Technology enables online training modules for probation officers on gender-sensitive supervision, legal updates, and trauma-informed practices.

While technology offers many benefits, it is essential to ensure data privacy, informed consent, and non-intrusive monitoring, avoiding any practices that could compromise the dignity or autonomy of women. When applied thoughtfully, technology can transform probation from a purely supervisory mechanism into a supportive, empowering, and rehabilitative tool, promoting successful reintegration and reducing recidivism

ROLE OF PROBATION OFFICERS IN WOMEN-CENTRIC REHABILITATION

Probation officers play a pivotal role in ensuring that women offenders are rehabilitated, reintegrated, and supported throughout their probation period. Their work goes beyond supervision to include counselling, guidance, and facilitating access to social, legal, and vocational resources tailored to the unique needs of women.

Major Responsibilities and Practices:

1. **Individualised Assessment and Planning:**
Probation officers evaluate each woman's personal, social, and economic circumstances to create tailored rehabilitation plans, considering factors like family responsibilities, education, mental health, and prior trauma.

2. **Counselling and Emotional Support:**

Providing psychological counselling, mentorship, and emotional guidance helps women cope with the stigma of criminalisation and fosters personal development.

3. **Facilitating Skill Development and Education:**

Officers connect women with vocational training, educational programs, and employment opportunities to promote economic independence and reduce recidivism.

4. **Legal and Social Assistance:**

They assist women in understanding their legal rights, accessing social welfare benefits, and navigating the criminal justice system effectively.

5. **Monitoring Compliance:**

Probation officers ensure adherence to probation conditions while maintaining a supportive, non-punitive approach that respects dignity and autonomy.

6. **Coordination with Community and NGOs:**

By liaising with community organisations, NGOs, and support groups, probation officers extend a network of care that strengthens reintegration and social support.

A well-trained, gender-sensitive probation officer acts as a bridge between the criminal justice system and society, transforming probation from a mere supervisory tool into a rehabilitative, empowering process. Their role is crucial in addressing the structural challenges women face and in promoting social reintegration, personal growth, and long-term prevention of re-offending.

THE WAY FORWARD: STRENGTHENING PROBATION AND PAROLE FOR WOMEN

To make probation and parole truly effective for women offenders, a comprehensive, gender-sensitive approach is needed.

- First, the probation system itself must be restructured to address women's unique needs. This includes appointing more female probation officers and training all staff in trauma-informed supervision that recognizes the social and emotional realities of women.
- Second, community involvement is crucial. Partnerships with NGOs, legal aid organizations, women's shelters, and local social rehabilitation boards can provide the support network necessary for successful reintegration.

- Third, legal awareness campaigns should be conducted within prisons and courts to inform women that probation and parole are rights, not privileges, enabling them to actively seek these options.
- Fourth, systematic monitoring and review are necessary. Independent committees should regularly assess the progress of women on probation or parole, using technology to track check-ins, mental health, and overall reintegration outcomes

By combining these strategies, India can move towards a rehabilitation model that prioritizes dignity, opportunity, and long-term societal reintegration for women offenders.

CONCLUSION.

In this context, probation and parole emerge as meaningful tools for restorative justice. They offer a second chance a path where reformation can take place within the community, without breaking family ties or pushing women into permanent social exclusion. But for these systems to succeed, they must go beyond just paperwork and court orders. They must come with mental health care, social support, housing, legal aid, and most importantly societal acceptance.

A rehabilitative justice system cannot succeed unless society also reforms. Women released on probation or parole often face rejection from families, stigma from neighbors, and a lack of economic opportunities. Reformation, therefore, is not just a government responsibility it is a collective task that requires participation from communities, NGOs, policymakers, and civil society.

Chapter 14

COURTS OF PUBLIC OPINION

Media, Society, and the Construction of Women in Crime Narratives

“Media holds the pen that shapes public opinion; justice depends on how responsibly that pen is used”

-WALTER LIPPMANN

INTRODUCTION

The media has become an inseparable part of modern life, influencing how people think, speak, and form opinions about social and legal matters. In every democratic society, it serves as a bridge between the public and the justice system by providing information, spreading awareness, and shaping collective perceptions. However, the same power that allows media to inform can also distort reality when facts are sensationalized for attention or profit. The role of media, particularly in criminal cases involving women, exposes the tension between responsible journalism and the pursuit of public fascination. When women appear in news narratives, whether as victims or as offenders, the portrayal often reflects deep-seated gender biases and societal expectations rather than objective truth.

In recent decades, India has witnessed a surge in media trials where television debates, online platforms, and newspapers begin to function like courts. Public opinion is formed not based on evidence but on emotional storytelling and selective coverage. This practice challenges the very foundation of the justice system which is built on fairness, impartiality, and the presumption of innocence. Media trials have often led to the character assassination of women accused of crimes or to the overexposure of victims, causing psychological and social harm. The problem is not only about what the media reports but also about how society consumes and interprets these stories.

The portrayal of women in crime-related news highlights broader questions about gender roles and morality. Female offenders are frequently demonized as unnatural or heartless, while female victims are either glorified as symbols of purity or blamed for their suffering. These portrayals reveal how media representation mirrors societal prejudices and reinforce stereotypes about

women's behaviour and worth. The relationship between media and society, therefore, becomes circular: the media reflects public attitudes while also shaping them in return.

This chapter explores how media trials and portrayals of women in criminal contexts affect both justice and public perception. It examines the ethical responsibilities of journalism, the societal consequences of biased representation, and the urgent need for sensitivity and fairness in reporting stories that involve women.

MEDIA TRIALS AND THEIR IMPACT ON WOMEN

Media trials refer to situations where television channels, newspapers, and online platforms begin to act like informal courts by investigating, accusing, and even passing judgments long before a real court delivers its verdict. In the name of freedom of expression and the public's right to know, the media often crosses the thin line between reporting facts and influencing opinions. This phenomenon has become more pronounced in India with the growth of 24-hour news channels and social media platforms that compete fiercely for public attention.

A media trial usually begins with a high-profile case involving emotion, mystery, or social tension. Once the story captures public curiosity, the media begins to cover every detail, from the accused person's background to their family, lifestyle, and personal habits. The focus shifts from legal evidence to drama and moral judgment. In the process, facts are often presented in fragments, witnesses are interviewed in ways that compromise their credibility, and the accused are portrayed as guilty before any court has even heard their defence. This practice violates the principle of natural justice and weakens public trust in the legal system.

In cases involving women, media trials become even more problematic because of the gendered nature of reporting. Female offenders are not just judged for their alleged crimes but for their failure to fit into the image of a "good woman." The coverage becomes personal and intrusive, exploring their clothes, relationships, and behaviour as if these were evidence of guilt. On the other hand, when women are victims, the media sometimes exposes sensitive details that endanger their privacy and dignity. Even though laws such as Section 228A¹⁵¹ of the Indian Penal Code prohibit the disclosure of a rape victim's identity, violations still occur in subtle forms. The competitive environment of breaking news often makes reporters forget that behind every

¹⁵¹ Indian Penal Code, § 228A (India).

story there is a human being whose life can be permanently affected by irresponsible coverage.

The danger of media trials lies not only in public prejudice but also in their potential to affect judicial proceedings. Judges and investigators, though trained to remain neutral, cannot remain completely untouched by public opinion, especially in cases that draw national attention. This creates an invisible pressure on the justice system. For example, in the Aarushi Talwar murder case, the media coverage became so intense that it shaped the collective imagination of guilt and innocence even before the trial concluded. Similarly, in the Jessica Lal and Sushant Singh Rajput cases, media narratives dominated discussions more than judicial findings did. These instances show that media trials may begin with good intentions of seeking justice but often end up obstructing it by replacing facts with assumptions.

Another critical aspect is the effect of media trials on the accused person's right to reputation and fair hearing. The Supreme Court of India has repeatedly emphasized that freedom of the press must coexist with the right to a fair trial under *Article 21 of the Indian Constitution*. In **R. K. Anand v. Delhi High Court (2009)**¹⁵², the Court observed that while the media plays an essential role in informing the public, it must exercise restraint so that reporting does not influence the administration of justice. However, the boundaries between reporting and judging have become increasingly blurred. Sensational headlines, hashtags, and panel debates have turned crime reporting into public entertainment, where viewers participate as jurors without knowing the full facts.

At the same time, it is important to acknowledge that media trials are not entirely negative. In certain cases, media coverage has helped reopen investigations, expose corruption, and push authorities to act. The Jessica Lal case, for instance, might not have received justice without persistent media pressure. The problem arises when activism turns into aggression and responsibility gives way to popularity. The balance between exposing injustice and respecting due process is delicate, and once that balance is lost, justice itself is at risk.

The issue of media trials ultimately raises a moral question about the role of journalism in a democratic society. Should the media act as a watchdog that alerts the public to wrongdoing, or as an emotional theatre that satisfies curiosity at the cost of truth? The answer lies in responsible reporting that prioritizes verification over speed, dignity over drama, and fairness over

¹⁵² R. K. Anand v. Delhi High Court, 8 SCC 106 (2009).

fame. If the media truly wishes to serve justice, it must learn to inform without inflaming, and to question without condemning.

MEDIA REPRESENTATION OF WOMEN OFFENDERS IN CRIME

The way female offenders are depicted in the media reveals societal discomfort with women stepping outside traditional roles. Unlike male criminals, women are often judged morally and socially, with coverage focusing on their personality, relationships, and appearance rather than the facts of the crime. Labels such as “cold-blooded” or “heartless” are frequently applied to women, while male offenders are described neutrally as “accused” or “suspect.” This gendered framing amplifies stereotypes and obscures structural influences like poverty, domestic violence, and lack of education, which can contribute to criminal behaviours.

Media sensationalism is also influenced by class and social status. Crimes committed by urban or educated women attract heightened attention because they contradict societal expectations, whereas similar acts by marginalized women are largely ignored. Such portrayals create lasting stigma, complicating reintegration even after legal penalties are served. Furthermore, pervasive media narratives can subtly shape public and judicial perception, occasionally influencing sentencing and reinforcing gendered biases. Balanced reporting, which contextualizes the socio-economic and psychological factors behind female criminality, is essential to shift focus from moral judgment to informed understanding.

CHALLENGES FACED IN REPORTING FEMALE VICTIMS

Women victims of crime face similar challenges in media representation. Reporting often emphasizes their appearance, lifestyle, or actions rather than the crime itself, perpetuating victim-blaming narratives. This focus diverts attention from perpetrators and contributes to psychological trauma, social humiliation, and re-victimization. Despite laws like Section 228A of the Indian Penal Code, which protects the identity of sexual assault survivors, indirect disclosures and sensational coverage continue to expose victims to harm.

Media attention is often selective, prioritizing urban, middle-class cases, such as the Nirbhaya case of 2012, while crimes against women in rural or marginalized communities remain largely invisible. This creates an inequitable hierarchy of empathy and visibility. Ethical and gender-sensitive journalism requires consent, fact-checking, and responsible storytelling that portrays victims as individuals with agency, emotions, and rights, rather than as objects of pity or public spectacle.

Dual Responsibility of Media and Society

The relationship between media and society is not one-sided. It is an exchange of influence, expectation, and responsibility. The media reflects the mindset of the society it serves, while society, in turn, shapes the media through its demand for certain kinds of stories. This interdependence creates both opportunity and risk. When the media performs responsibly, it can educate, inform, and reform. But when it prioritizes sensationalism over truth, it strengthens social biases instead of challenging them. Understanding this dual responsibility is essential for maintaining a healthy balance between freedom of expression and ethical accountability.

The media acts as a mirror of society, showing what people believe, fear, and value. Yet, it is not a passive mirror. It also has the power to guide public thought. Every news report, editorial, or image can influence how people see justice, morality, and gender. When the media reports on women involved in crimes, it does more than narrate events it helps define what society considers acceptable or shameful. Therefore, the way media chooses to frame a story can either challenge stereotypes or reinforce them. For example, when a news outlet focuses on the courage of a survivor rather than her suffering, it empowers others to speak up. But when it focuses on her clothing or behaviour, it reinforces victim-blaming attitudes that silence women further.

Society, too, carries equal responsibility in this equation. The media industry operates on public attention and profit. The kind of news that attracts more viewers or readers tends to dominate headlines. If the audience rewards drama and scandal with higher engagement, the media naturally produces more of it. Thus, blaming journalists alone for insensitivity overlooks the larger truth that sensationalism survives because it finds an eager audience. The public must learn to consume information critically, question what they read or watch, and recognize the difference between awareness and voyeurism. Responsible journalism can exist only when supported by responsible viewership.

The dual responsibility also extends to protecting fundamental rights. The media must respect the right to privacy and the right to a fair trial, while society must defend the right of journalists to report freely without political or corporate pressure. Freedom of the press is essential for democracy, but like all freedoms, it comes with limits shaped by ethics and law. The Indian Constitution guarantees freedom of speech under Article 19(1)(a), yet this right is not absolute. It must coexist with the rights of others, including the right to dignity, reputation, and fair hearing. This balance ensures that freedom does not become exploitation.

When it comes to reporting on women and crime, this balance becomes even more delicate. The media has a moral duty to avoid perpetuating harmful stereotypes and to report with empathy and accuracy. The Press Council of India and other bodies have provided clear guidelines encouraging sensitivity while covering sexual offences or cases involving minors. These include avoiding language that trivializes violence, respecting confidentiality, and focusing on facts rather than emotions. However, guidelines alone are not enough unless media professionals internalize them as part of their moral framework. Similarly, audiences must hold media accountable by rejecting exploitative content and supporting truthful, balanced reporting.

SOCIAL AND JUDICIAL IMPLICATIONS

Media representation of female offenders and victims has significant implications for public perception and the justice system. Sensationalized reporting can reinforce stereotypes, influence societal attitudes, and occasionally affect judicial decision-making. Women who have been publicly stigmatized struggle with social reintegration, while selective coverage of victims may shape societal priorities and legal reforms in uneven ways.

Responsible media, however, can serve as a catalyst for awareness and change. By presenting crime with empathy, context, and factual accuracy, the press can highlight systemic issues, such as abuse, poverty, and mental health challenges, and inspire meaningful reforms. Society and media audiences share the responsibility to demand ethical, balanced reporting, which prioritizes justice and dignity over sensationalism and spectacle.

The rise of digital and social media has further blurred the line between journalist and audience. Every individual with a smartphone can now record, share, and comment on events instantly. This democratization of information has both empowered and complicated the notion of responsibility. On one hand, it allows citizens to expose injustice and demand accountability. On the other, it increases the spread of misinformation, gossip, and defamation. In such a world, both media organizations and ordinary users must act with caution and integrity. Society can no longer afford to see responsibility as the media's job alone. It has become a collective duty.

This shared responsibility also involves promoting education about media literacy. People should be taught to recognize bias, verify sources, and differentiate between factual reporting and opinion. Schools and universities can play a crucial role in building critical thinking skills so that young audiences grow into informed citizens who value truth over noise. Only when the public learns to question narratives intelligently can the media be motivated to raise its own standards. The media's power to shape perception is immense, and with that power comes a duty to act as a guardian of truth,

not as a trader of stories. Society, in return, must support journalism that is honest, fair, and courageous rather than rewarding those who exploit tragedy for attention. Both must work together to build an environment where the dignity of women is protected, justice is not compromised, and news serves its true purpose — to enlighten rather than to entertain.

The relationship between media and society is, therefore, not merely professional but moral. It defines the character of democracy itself. When both sides act responsibly, truth flourishes. When fails, injustice gains ground. The way women are represented in stories of crime and justice is a direct reflection of how evolved a society is in its understanding of equality, empathy, and humanity.

ROLE OF MEDIA ETHICS AND SOCIETY IN GENDERED CRIME REPORTING

In the contemporary era, the influence of media has expanded far beyond traditional newspapers and television channels. Digital platforms, social media, blogs, and instant messaging applications now serve as primary sources of news for millions of people. While this democratization of information offers opportunities for transparency and accountability, it also magnifies the risks of distortion and prejudice. Women, whether as victims or offenders, are particularly vulnerable to these biases, as every post, tweet, or viral video can sway public opinion, spread rumours, and even indirectly influence judicial processes.

- **Ethical Challenges in Reporting Female Victims** are multifaceted. Exposure of personal details can lead to secondary victimization, emotional trauma, social ostracization, threats to safety, and long-term stigma. In rural and semi-urban areas, conservative societal attitudes may exacerbate these consequences, affecting family honour, marriages, or educational opportunities. Even in urban centers, the permanence of digital records ensures that once a story is public, it is difficult to fully control, creating enduring vulnerability for survivors.
- **Media Portrayal of Female Offenders** often exaggerates perceived deviations from societal norms. Crimes committed by women are interpreted not only legally but morally, with disproportionate focus on appearance, relationships, education, and hobbies. This overemphasis transforms women into symbolic figures, reducing them to objects of scandal while overlooking the factual circumstances of their actions. The psychological impact is profound, leading to social isolation, harassment, and lasting reputational damage, even after exoneration.

The rise of 24-hour news channels and algorithm-driven social media feeds has intensified sensationalism. Viral videos, leaked audio recordings, and speculative analyses frequently dominate headlines, creating a climate where public perception is shaped more by emotion than by evidence. Both victims and accused women are often stripped of individuality, reduced to caricatures representing either innocence or guilt. This amplification of social biases and stereotypes further influences societal understanding of justice.

The influence on legal outcomes and policymaking is significant. Public opinion, shaped by sensational media narratives, can pressure law enforcement, prosecutors, and judges, potentially accelerating trials, influencing sentencing, or creating perceptions of guilt before legal conclusions are drawn. While judicial systems are designed to remain impartial, the impact of societal discourse cannot be ignored, and such pressures can compromise both fairness and equality before the law.

- **Shared responsibility of media and society** is crucial in addressing these issues. Ethical journalism demands accuracy, fairness, and sensitivity, while society must cultivate critical engagement and media literacy to evaluate sources, question narratives, and recognize bias. Education plays a pivotal role in shaping informed audiences, and journalism training should emphasize gender-sensitive reporting and the societal consequences of media coverage.
- **Intersectionality and selective empathy** is equally important. Women's experiences are influenced by age, socio-economic status, caste, religion, and geography. Urban, educated women often receive sympathetic coverage, whereas rural or marginalized women may be overlooked or blamed for their victimization. Ethical media can address these disparities by highlighting underrepresented voices and ensuring that all victims are treated with dignity.
- **long-term societal consequences** of biased reporting cannot be underestimated. Repeated portrayals of women as helpless victims or deviant offenders reinforce rigid gender roles and limit women's agency. Young audiences internalize these stereotypes, shaping future attitudes toward gender, crime, and morality. Ethical and balanced reporting that portrays women as multidimensional, capable of resilience, reasoning, and moral choice can contribute to a more egalitarian society, demonstrating that justice is not merely a legal outcome but a social principle upheld when media and society together maintain dignity, fairness, and equality.

Media and Society in Gendered Crime Reporting

In today's digital era, media—including social platforms, blogs, and instant messaging—plays a powerful role in shaping public perception of women in crime. Female offenders are often judged morally and socially, with attention on their appearance, relationships, or background rather than the facts, while victims are frequently portrayed as either helpless or partially responsible. Sensationalism, amplified by 24-hour news cycles and viral content, strips women of individuality, reinforces stereotypes, and can influence judicial outcomes, social attitudes, and long-term reputational damage.

The ethical challenges are compounded by the permanence of digital records, societal biases, and selective coverage, which favors urban or privileged women while marginalizing rural or underrepresented groups. Responsible journalism demands accuracy, sensitivity, and gender-aware reporting, while society must cultivate media literacy to critically evaluate information. Highlighting context, socio-economic factors, and intersectional experiences can shift focus from moral judgment to understanding, empathy, and justice.

Ultimately, media and society together shape how women are perceived and treated in both legal and social contexts. Ethical reporting that portrays women as multidimensional individuals—not merely victims or offenders—can promote equality, reduce stigma, and reinforce the principle that justice is both a legal and social responsibility.

REFORMS AND SOLUTIONS: ENHANCING MEDIA RESPONSIBILITY AND SOCIETAL AWARENESS

Addressing the challenges posed by media trials and biased portrayals of women in crime reporting requires a two-pronged approach: reform within the media industry and increased societal awareness. Media organizations, journalists, regulators, and audiences all have a role to play in creating a culture of ethical reporting that respects both legal processes and human dignity. These reforms are not merely theoretical; they have practical implications for justice, social cohesion, and gender equality.

The first and most direct step is the enforcement of strict ethical standards within media institutions. Professional journalism is guided by principles of truthfulness, accuracy, fairness, and impartiality, but in practice, these principles are often overshadowed by competition for ratings, readership, and digital engagement. Media houses must prioritize investigative rigor over sensationalism, ensuring that every report is fact-checked and contextualized. For cases involving women, especially victims of sexual or domestic crimes, coverage must respect privacy, avoid sensationalized imagery, and refrain from publishing details that could lead to social ostracization or harassment.

Media professionals must be trained in gender-sensitive reporting, understanding the social implications of every headline, photo, or interview.

Regulatory frameworks also play a crucial role. Bodies such as the Press Council of India and the News Broadcasting Standards Authority provide guidelines on ethical reporting, but enforcement has historically been inconsistent. Stronger oversight, including penalties for violations and accountability mechanisms for repeated offenses, is necessary. Legal reforms could also support ethical reporting by clarifying boundaries between public interest and voyeurism. For example, stricter enforcement of Section 228A of the Indian Penal Code, which protects the identity of sexual assault victims, would prevent indirect exposure through subtle or coded reporting. In addition, social media platforms, where much of modern news circulates, must develop clear policies to prevent the spread of unverified or harmful content. Algorithms that reward engagement over accuracy should be reevaluated, and platforms should be incentivized to promote verified, responsible reporting.

Societal awareness is the second critical dimension of reform. Audiences must recognize that their consumption patterns influence media behaviour. When viewers or readers favor sensational stories that demean or exploit women, media outlets respond by producing more of the same content. Education and media literacy programs are essential tools for transforming audience behaviour. By teaching individuals to critically assess news sources, verify facts, and question the framing of stories, society can reduce the demand for sensationalism. Schools, universities, and community organizations can play an active role in fostering critical thinking skills, empowering citizens to differentiate between responsible journalism and manipulative reporting.

Another important solution involves public advocacy and accountability. Civil society organizations, women's rights groups, and professional associations can act as watchdogs, monitoring media coverage and calling out instances of bias or misinformation. Such interventions not only protect individual women but also encourage systemic changes within newsrooms. Social campaigns that highlight positive examples of ethical reporting can create incentives for media outlets to adopt better practices. Public recognition and awards for responsible journalism can reinforce the idea that accurate, empathetic reporting is both valuable and prestigious.

Furthermore, media reform must incorporate intersectional sensitivity. Reporting should consider how socio-economic status, caste, religion, geography, and other social factors affect women's experiences with crime and justice. Marginalized women are disproportionately underrepresented in media narratives, and when they are covered, the framing often perpetuates

stereotypes. Ethical reporting requires a commitment to inclusion, ensuring that all voices are heard and all victims are treated with equal dignity. By portraying the full complexity of women's lives, media can educate society about structural inequalities that contribute to crime and vulnerability.

Finally, reforms must address the psychological and social impact of media narratives. Journalists should recognize that their work has long-term consequences for the individuals involved, their families, and society at large. Media coverage should aim to inform and empower rather than humiliate or sensationalize. At the same time, audiences must internalize the principle that justice is a societal responsibility, not a source of entertainment. Responsible journalism combined with informed viewership can create a culture where women's dignity is protected, victims are heard, and offenders are judged fairly, without gendered distortion.

WAY FORWARD

The role of media and society in shaping perceptions of crime, justice, and gender is deeply intertwined. Both have the power to either strengthen democratic values or distort them through prejudice and sensationalism. Throughout history, the media has been recognized as the fourth pillar of democracy, entrusted with the task of informing citizens and holding power accountable. Yet, this noble function often weakens when competition for ratings and popularity replaces truth and responsibility. The portrayal of female criminals and victims, and the growing trend of media trials, reveal how fragile this balance can become when ethical boundaries are ignored.

Media trials have turned complex legal processes into public spectacles, where guilt and innocence are decided not by evidence but by emotion. This practice damages the very foundation of justice by interfering with the principle that every accused is presumed innocent until proven guilty. The constant repetition of images, the dramatization of events, and the moral commentary that accompanies such coverage create a collective bias that is difficult to undo. The harm does not end with the accused; it extends to victims and their families, who often face renewed trauma and social judgment because of relentless publicity.

When it comes to women, media narratives become even more layered with bias. Female offenders are treated as moral anomalies, their personal lives dissected as explanations for their actions. Female victims, on the other hand, are often stripped of privacy and dignity in the name of public interest. The same society that demands justice for women also consumes their stories in a way that objectifies and dehumanizes them. This contradiction shows how cultural attitudes toward gender still shape modern journalism. The language,

images, and focus of news coverage all reveal whether a society views women as equal participants in justice or as symbols to be pitied or punished.

CONCLUSION

The solution lies in collective reflection and reform. The media must return to its primary duty of reporting truthfully and sensitively, recognizing that every story it tells has human consequences. Ethical journalism should be rooted in empathy, accuracy, and fairness. It should question systems of power while protecting individual dignity. Editors and reporters must resist the temptation to sensationalize pain and instead aim to illuminate the realities of gender-based violence, discrimination, and inequality. Laws and professional codes of conduct can provide structure, but genuine reform begins with conscience. Ultimately, the role of media and society in addressing the portrayal of female criminals and victims is not only about fairness in reporting but about humanity itself. The way women's stories are told reflects how deeply a nation values justice, equality, and compassion. A responsible media and a thoughtful society together can create narratives that uplift rather than degrade, clarify rather than confuse, and heal rather than harm. When both work in harmony, justice is not only served in courts but also understood and respected in public conscience. That is when democracy fulfils its promise not merely as a system of laws but as a community of empathy, truth, and moral responsibility.

Chapter 15

MODERN CHALLENGES AND FUTURE EVOLVING JURISPRUDENCE

Contemporary Judicial Trends and Future Pathways for Women's Rights and Protective Legislation

*“The law is not an abstract system of rules but a living instrument, which
must respond to the changing needs of society.”*

— Justice M. Fathima Beevi

INTRODUCTION

The trajectory of criminal legislation on women in India has dramatically altered in the last few decades. The legislators have enacted a suite of statutory protections to address the vulnerabilities faced by women in private and public spheres as the nation continues to grapple with deeply entrenched patterns of gender-based violence, social subordination, and institutional discrimination. Yet the judicial system, which operationalizes such legislative safeguards, has been tasked with negotiating a much more challenging issue: how to preserve the essential protective character of these laws while preventing their strategic or improper invocation. As accusations of misuse have arisen from time to time, especially against the offence dealing with matrimonial cruelty, dowry harassment, and domestic violence the courts have been obliged to fashion a jurisprudence that harmonizes the imperatives of fairness, accountability, and gender justice.

This chapter explores these developments through the organizing principle of *stare decisis*, recognizing that precedent plays a vital role in securing legal standards in the face of changing social realities. Judicial decisions rendered by the Supreme Court of India and various High Courts contain an arguable balance between two distinct yet interrelated trends. One line of precedents indicates an attempt on the part of the judiciary to revisit the application of women-specific criminal laws in cases where procedural excesses, inflated allegations, or constitutional rights violations have been claimed. Decisions on Section 498A of the Indian Penal Code, the Dowry Prohibition Act, and the Protection of Women from Domestic Violence Act show how courts have

altered investigation procedures, inserted checks against arbitrary detentions, and underscored proportionality in the application of these statutes.

MODERN CHALLENGES AND FUTURE EVOLVING JURISPRUDENCE

Modern jurisprudence faces significant challenges arising from rapid technological advancement, globalization, and changing social realities. Issues such as artificial intelligence, cybercrime, digital privacy, transnational human rights violations, and environmental degradation have exposed the limitations of traditional legal doctrines rooted in territoriality and rigid legal positivism. At the same time, growing demands for gender justice, social inclusion, and substantive equality require jurisprudence to move beyond formal neutrality and address structural inequalities within society.

In response to these challenges, future jurisprudence is evolving toward a value-oriented, interdisciplinary, and rights-based framework. There is a noticeable shift from purely retributive justice to restorative and reformative approaches, particularly within criminal law. Courts increasingly rely on constitutional morality, purposive interpretation, and human rights principles to ensure justice in a complex modern world. Thus, evolving jurisprudence seeks to transform law into a dynamic instrument that not only regulates conduct but also promotes human dignity, social justice, and sustainable development.

1. Digital Technologies, Surveillance, and the Right to Privacy

The rapid expansion of digital technologies has fundamentally altered the relationship between the individual and the state, particularly in the realm of surveillance and crime control. Tools such as CCTV networks, biometric identification systems, facial recognition technologies, and large-scale data collection mechanisms have strengthened law enforcement capabilities but simultaneously raised serious concerns regarding privacy, consent, and misuse of power. From a criminological perspective, excessive surveillance risks transforming preventive justice into pre-emptive control, where suspicion replaces due process.

Women and marginalised groups are particularly vulnerable to surveillance-based harms. Digital monitoring of personal communication, online behaviour, and location data often results in gendered consequences, including stalking, online harassment, reputational harm, and state intrusion into intimate spaces. Judicial recognition of privacy as a fundamental right has reinforced the need to balance crime prevention with constitutional safeguards. Future criminology must therefore address surveillance not

merely as a technical tool, but as a socio-legal phenomenon requiring **accountability, transparency, and proportionality.**

2. Artificial Intelligence, Policing, and the Transformation of Criminal Justice

Artificial Intelligence is increasingly being deployed in policing, judicial administration, and criminal investigation through predictive policing, risk assessment tools, automated surveillance, and algorithm-driven decision-making. While AI promises efficiency, accuracy, and reduction of human bias, it also introduces new forms of structural discrimination embedded within data and algorithms. Criminological studies reveal that AI systems often replicate existing social inequalities, disproportionately targeting women, minorities, and economically disadvantaged communities.

The use of AI in criminal justice raises critical questions regarding accountability, explainability, and human oversight. Decisions influenced by opaque algorithms challenge traditional legal principles such as reasoned judgment, fair trial, and presumption of innocence. From a gender perspective, AI systems trained on patriarchal data may reinforce stereotypes in policing sexual offences, domestic violence cases, and online abuse. A future-oriented criminology must therefore advocate for ethical AI frameworks, judicial scrutiny, and human-centred decision-making within criminal justice institutions.

3. Imperative of Gender-Inclusive and Rights-Based Criminal Reforms

Despite significant legal reforms, criminal law continues to reflect gender biases in both its structure and implementation. Women's experiences of crime—particularly domestic violence, sexual offences, economic abuse, and cyber harassment—are often trivialised or inadequately addressed by formal legal mechanisms. Gender-inclusive criminal reform requires moving beyond symbolic protection towards substantive equality in investigation, prosecution, and adjudication.

Criminology must engage with feminist theory to expose how law itself can become a site of violence when institutional responses fail to reflect lived realities. Future reforms must integrate gender justice as a foundational principle rather than a peripheral concern.

4. Towards a Humane, Constitutional, and People-Centric Criminology

The future of criminology lies in its ability to humanise criminal justice by aligning legal responses with constitutional morality and social justice. Traditional punitive models have increasingly proven ineffective in addressing complex social harms rooted in inequality, exclusion, and power

imbalance. A people-centric criminology emphasises prevention over punishment, rehabilitation over retribution, and rights over control.

Such a framework demands an interdisciplinary approach, combining law, sociology, psychology, and human rights. It calls for criminal justice policies that are responsive to social change, sensitive to vulnerable populations, and grounded in constitutional values of dignity, equality, and liberty. Ultimately, evolving criminology must redefine crime not only as a violation of law, but as a symptom of deeper structural injustice—requiring holistic, humane, and inclusive solutions.

5. Judicial Activism, Restraint, and Democratic Balance

A key jurisprudential challenge is maintaining equilibrium between judicial creativity and democratic legitimacy. While courts play a vital role in protecting rights and filling legislative gaps, excessive judicial overreach risks undermining separation of powers. The future jurisprudence must articulate clear limits of judicial interpretation while remaining responsive to social change.

6. Criminal Justice Reform and Over-Criminalization

Modern societies face crises of mass incarceration, custodial violence, misuse of penal laws, and delayed justice. Traditional retributive models are increasingly questioned for their effectiveness. Evolving jurisprudence must prioritize rehabilitation, victim-centric approaches, restorative justice, and proportional sentencing, reshaping the philosophy of punishment in line with constitutional morality.

7. Human Rights in a Globalized Legal Order

Globalization has blurred territorial boundaries, giving rise to transnational crimes, cross-border human rights violations, and international criminal accountability. Domestic legal systems increasingly interact with international norms, treaties, and judicial bodies. Modern jurisprudence must reconcile state sovereignty with universal human rights, paving the way for a more harmonized and cooperative global legal framework.

IMPORTANT CASE LAWS DEALING CURRENT SCENARIO

Running parallel is another stream of jurisprudence that testifies to the persistent effort of the judiciary to strengthen legal protection for women who continue to be structurally marginalized. These judgments have expanded the interpretive frames for domestic violence, sexual assault, mental cruelty, and economic deprivation. Courts have acknowledged novel forms of injury, imposed new burdens of institutional responsiveness, and interpreted statutory provisions in a manner likely to achieve substantive rather than mere formal equality. This double movement—restraining misuse on one hand and

deepening protection on the other-speaks to the judiciary's recognition of the ways in which the axes of gendered harms, complexly layered and often intersectional, cut across each other.

Situating these developments within the frame of *stare decisis*, the chapter demonstrates how precedent gives coherence to a justice system confronting competing narratives of victimization, misuse, and systemic inequity. The doctrine not only stabilizes legal outcomes but also guides the judiciary's interpretive discretion in domains where social expectations and legal norms are in rapid evolution. The chapter charts, through an analysis of landmark holdings, how courts navigate the tension between the preservation of individual freedoms against ongoing patriarchal forms of violence and discrimination that women endure.

The judgements below finally contend the emergent jurisprudence relating to women's criminal laws in India has wider ramifications in criminology. Judicial reasoning increasingly shapes public conceptions of agency, culpability, power dynamics, and structural disadvantage. In analyzing these shifts, the chapter contributes to a deeper understanding of how legal doctrine interacts with criminological theory and how precedent-driven adjudication influences both the enforcement landscape and the broader architecture of gender justice in contemporary India by the following recent judgement which are as follows: -

1. **Arnesh Kumar v. State of Bihar** ¹⁵³

The Supreme Court examined the widespread misuse of police arrest powers, particularly in prosecutions initiated under Section 498-A of the IPC and Section 4 of the Dowry Prohibition Act—both classified as cognizable and non-bailable offences. Observing a significant escalation in matrimonial litigation, the Court noted that although Section 498-A was originally introduced to safeguard women from cruelty and dowry-related abuse, it had increasingly become a tool for indiscriminate arrests of husbands and their family members. The Court relied on data from the National Crime Records Bureau to highlight how arrests were often made, even of elderly relatives, without any meaningful inquiry into the allegations.

To correct this practice, Hon'ble Supreme Court insisted on strict adherence to the framework laid down in Section 41 CrPC. It underscored that arrest is permissible only when clearly justified by necessity and supported by recorded reasons. Police officers were required to document the grounds for arrest, and magistrates were directed to examine whether those reasons satisfied the statutory

¹⁵³ (2014) 8 SCC 273

requirements before authorising detention. Through these directions, the Court sought to curtail mechanical arrests and reinforce the principles of proportionality and judicial supervision in the exercise of arrest powers.

2. **Social Action Forum for Manav Adhikar v. Union of India**¹⁵⁴

After reviewing these directions, the Supreme Court held that certain parts of the Rajesh Sharma judgment had crossed judicial limits by entering legislative or policy-making domains. Specifically, it found that mandating FWCs and prohibiting arrest until committee reports were received interfered with statutory powers of police under CrPC and were therefore impermissible. While acknowledging misuse, the Court emphasized that curbing the abuse of a penal provision cannot result in judicial dilution of legislative intent, particularly when the provision aims to protect women from serious violence

The judiciary cannot dilute, modify, or suspend the operation of a penal statute such as Section 498-A IPC by issuing directions that intrude into the legislative field or restrict statutory powers of investigation and arrest vested in police under the Criminal Procedure Code. Any perceived misuse of Section 498-A must be addressed through strict compliance with CrPC safeguards (as laid down in **Arnesh Kumar**¹⁵⁵), rather than through extra-statutory mechanisms like Family Welfare Committees.

3. **Attorney General for India v. Satish and Another (Skin-to-Skin Judgement)**¹⁵⁶

This is a landmark decision in Indian criminal jurisprudence pronounced by the Three – Judges led bench comprising of Justice Uday Umesh Lalit, Justice S. Ravindra Bhat, Justice Bela M. Trivedi which laid guidelines serving as both a powerful corrective and a clear directive for the future. By systematically dismantling a flawed and dangerous interpretation of law, the Court has fortified the protective shield that the POCSO Act provides for children.

The primary implications of this seminal judgment are clear and far-reaching:

- a) It establishes that the interpretation of the POCSO Act must be purposive and contextual, always advancing the Act's primary objective of protecting children from sexual abuse.

¹⁵⁴ (2018) 10 SCC 443

¹⁵⁵ (2014) 8 SCC 273

¹⁵⁶ 2021 SCC OnLine SC 42

- b) It firmly rejects any interpretation, such as the 'skin-to-skin' rule, that creates legal loopholes allowing offenders to "sneak out of the meshes of law."

It clarifies that 'sexual intent' is the determinative element in the offense of sexual assault, which, when supported by the Act's statutory presumptions, forms the core of the prosecutorial case.

- c) It serves as binding precedent for all lower courts, ensuring a consistent, robust, and child-centric application of the law across the country.

4. **Rousanara Begum v. S.K. Salahuddin @ SK Salauddin & Anr.**¹⁵⁷

A bench of **Justices Sanjay Karol** and **N Kotiswar Singh** overturned a Calcutta High Court decision that had rejected a divorced Muslim woman's claim for Rs. 7 lakh and gold ornaments mentioned in the marriage register (qabilnama) as gifts from her father to her ex-husband.

The Court observed, "*The Section quoted above deals with mehr/dower and/or other properties given to a woman at the time of her marriage-clearing the way for the woman to set up a claim against her husband in the above situations, or claim back from her husband properties given, as the case may be.*"

The Court added that the provision must be interpreted in line with the right to dignity and autonomy of a woman guaranteed under Article 21 of the Constitution.

"The Constitution of India prescribes an aspiration for all, i.e. equality which is, obviously, yet to be achieved. Courts, in doing their bit to this end must ground their reasoning in social justice adjudication.

To put it in context, the scope and object of 1986 Act is concerned with securing the dignity and financial protection of a Muslim women post her divorce which aligns with the rights of a women under Article 21 of the Constitution of India. The construction of this Act, therefore, must keep at the forefront equality, dignity and autonomy and must be done in the light of lived experiences of women where particularly in smaller towns and rural areas, inherent patriarchal discrimination is still the order of the day.", the Court observed.

Accordingly, the appeal was allowed, with a direction to the Respondent to remit the amount directly to the wife's bank account, the non-compliance of which would attract interest at 9% per annum.

¹⁵⁷ 2025 LiveLaw (SC) 1160

5. **State of U.P. v. Ajmal Beg etc.**

A bench comprising **Justice Sanjay Karol** and **Justice NK Singh** passed a slew of directions, including a direction to all High Courts to take a stock of the pending dowry death and cruelty cases for earliest disposal, due appointment of Dowry Prohibition Officers in all States, and appropriate training to police and judicial officers to teach them about the social and psychological implications of such cases.

The directions:

- a) It is directed that States and even the Union Government consider changes as are necessary to the educational curriculum across levels, reinforcing the constitutional position that parties to a marriage are equal to one another and one is not subservient to the other as is sought to be established by giving and taking of money and or articles at the time of marriage.
- b) The law provides for the appointment of Dowry Prohibition Officers in States. It is to be ensured that these officers are duly deputed, aware of their responsibilities and given the necessary wherewithal to carry out the duties entrusted to them.
- c) The contact details (name, official phone number and email ID) of such an officer designated to this position are disseminated adequately by the local authorities ensuring awareness of citizens of the area;
- d) The police officials, as also the judicial officers dealing with such cases, should periodically be given training, equipping them to fully appreciate the social and psychological implications which are often at the forefront of these cases. This would also ensure a sensitivity of the concerned officials towards genuine cases versus those which are frivolous and abusive of the process of law;
- e) The High Courts are requested to take stock of the situation, ascertain the number of cases pending dealing with Section 304-B, 498-A from the earliest to the latest for expeditious disposal: "it is not lost on us that the instant case began in 2001 and could only be concluded 24 years later by way of this judgment. It is but obvious that there would be many such similar cases."

The Bench also recognized that many people today are/have been outside the education fold, and that it is equally, if not more so, important to reach them and make accessible and comprehensible, the relevant information regarding the act of giving or taking of dowry as also other acts sometimes associated therewith, other times

independent thereof (mental and physical cruelty) is an offence in law.

The District Administration along with the District Legal Services Authorities, by engaging and involving civil society groups and dedicated social activists, is requested to conduct workshops/awareness programs at regular intervals. This is to ensure change at the grassroot level.

6. **Dhruv Kapoor v. Alka Yadav**¹⁵⁸

In a recent **Delhi High Court** judgement delivered by **Justice Swarana Kanta Sharma**, the Court observed that, the claim for maintenance must be assessed with reference to a wife's present earning capacity and ability to sustain herself in the standard of living she was accustomed to during her marriage, and not on the financial status of her natal family.

The Court also underscored that the potential or theoretical capacity to earn cannot substitute for real financial independence. It added that an able-bodied husband is presumed capable of earning sufficiently to maintain his dependents, and it is for him to place credible material before the Court to show genuine inability to discharge the said obligation.

“This Court notes that the respondent-wife's educational qualifications or notional earning potential cannot, by itself, constitute a valid ground to deny her interim maintenance. What is relevant for consideration is whether her actual income, if any, is sufficient to sustain herself in a manner befitting the status and lifestyle she was accustomed to during the marriage,” the Court said. Justice Sharma dismissed a husband's plea challenging a trial court order directing him to pay monthly Rs. 50,000 interim maintenance to the wife.

The Court observed that the husband was living a lifestyle wholly inconsistent with the financial hardship claimed by him, which clearly contradicted his plea of unemployment. It rejected his reliance upon the wife's inherited, family-gifted assets and the background of her parents to contend that she possessed sufficient independent means and was disentitled to maintenance.

The Court concluded that the wife's standard of living during the marriage was evidently high, and she cannot be expected to

¹⁵⁸ CRL.REV. P. 51/2025, CRL.M.A. 3555/2025 & CRL.M.A.29426/2025, High Court of Delhi, New Delhi

compromise her standard of living merely because the husband sought to downplay or obscure his own financial capacity.

7. **Shiksha Kumari vs. Santosh Kumar**¹⁵⁹

The **Delhi High Court** has held that the statutory one-year separation, prior to filing the initial petition for mutual consent divorce under Section 13B(1) of the Hindu Marriage Act, is only directory and not mandatory and can be dispensed with in favourable circumstances. A Full Bench headed by **Justice Navin Chawla**, **Justice Anup Jairam Bhambhani**, and **Justice Renu Bhatnagar** ruled that such dispensation is permissible through invocation of the proviso to Section 14(1) of the said Act.

The Court clarified that a waiver of the one-year separation period under Section 13B(1) itself does not inexorably foreclose consideration of dispensation of the six-month “cooling-off” period envisaged for the second motion under Section 13B(2). Both statutory periods run independently of each other and must be decided on their respective merits. Where the court is satisfied that both periods deserve to be waived, the operative date of the divorce decree need not be delayed, and thus the decree can take immediate effect.

The reference before the Full Bench had arisen from a Division Bench which felt the need to explain the statutory timelines governing mutual consent divorce petitions. While dealing with the reference, the Court in express terms overruled the earlier opinions of some Single Benches which had construed Section 13B as a self-contained code and had held that the proviso to Section 14(1) would not apply to petitions under Section 13B. This interpretation, held the Full Bench, was not correct. The Court, therefore, came to the conclusion that the procedural flexibility accorded by the proviso to Section 14(1) can be extended to proceedings under Section 13B(1). Where the case so warrants, the courts can entertain the first motion before one year has expired from the date of marriage, especially in cases where continuing the marital tie would only be an exercise in futility and prolong a relation which is beyond repair. This discretionary authority, nevertheless, must be invoked after due satisfaction of the guidelines laid down by the precedents already decided, including Pooja Gupta.

The Bench further held that where the parties jointly state that they have been living separately for the statutory period, such an assertion would, in usual course, be sufficient to satisfy the requirement of the statute under Section 13-B(1). The exception could be only if the marriage itself was less than one year old. In all other situations, the

¹⁵⁹ MAT.APP.(F.C.) 111/2025

mutual statement of the spouses regarding separation should not be looked at with undue suspicion. With this, the practical implementation of the one-year separation requirement becomes, for the most part, theoretical. While recognizing the social relevance accorded to the institution of marriage, the Court held that when both spouses unmistakably consent to the view that their marital relationship should be dissolved, forcing them to maintain a dead marriage in the interest of social morality constitutes an affront to individual autonomy and personal dignity. This would not be just or humane if the need to maintain social appearances is prioritized over the lived realities of the couple in such circumstances.

8. **Rajdhari And Another vs. Sadhna Devi**¹⁶⁰

The **Allahabad High Court** has ruled that a Hindu marriage performed under the Hindu Marriage Act, 1955 cannot be annulled at a belated stage at the instance of the in-laws on the ground that the wife was underage at the time of solemnization. While analyzing the statutory schema, the Court has made it clear that clause (iii) of Section 5, which prescribes the minimum ages as 21 years for the groom and 18 years for the bride, is not a ground for declaring a marriage void under Section 11 of the Act.

Section 11 restricts the grounds on which a marriage is deemed void to non-compliance with clauses (i), (ii) and (iv) of Section 5, notably excluding clause (iii) explicitly. The Division Bench, consisting of **Justice Arindam Sinha** and **Justice Satya Veer Singh**, held that this seems an deliberate omission and expresses legislative intent. In further explanation, the Bench opined that the right provided by Section 11 to seek a declaration of nullity lies only with the spouses to the marriage and not with third parties. And the appellants, being the parents of the deceased husband, had no locus standi to question the validity of the marriage.

The Court also observed that Section 12, dealing with voidable marriages, does not make non-compliance with the age requirement under clause (iii) of Section 5 a reason for declaring the marriage void. Hence, even in regard to the regime of voidable marriages, the factum of an underage marriage does not make the marital relationship vulnerable to being declared null and void by a court of law.

The dispute arose in the course of protracted litigation between a war widow and her in-laws concerning entitlement to benefits payable to the dependents of a deceased Army officer. The woman claiming to be the lawful wife of the deceased thus approached the Family Court in

¹⁶⁰ FIRST APPEAL No. - 493 of 2025, Allahabad High Court

Uttar Pradesh and filed an application seeking a formal declaration on the validity of her marriage, which the Family Court duly granted.

The in-laws moved the High Court in appeal and argued that the appellant was a minor at the time of marriage and, as such, the marriage was void. They supported their contention with an identity document according to which she was roughly two months short of attaining 18 years of age on the date of the marriage. The High Court held that even assuming the fact to be so, it was not a legally tenable ground for declaring the marriage void under Section 11, especially when the marriage was so belatedly assailed. The plea was also not raised in any earlier judicial proceedings nor pleaded in the written statement before the Family Court. The Court, repeating that only the parties to the marriage could apply for a declaration of nullity, dismissed the appeal and thereby confirmed the Family Court's declaration of the marriage.

9. **X vs The Principal Secretary Health and Family Welfare Department Govt. of NCT of Delhi**¹⁶¹

In its interim directions, the **Supreme Court of India** led by the bench of Justice D.Y. Chandrachud, altered the decision of the **Delhi High Court** and allowed the appellant to undergo medical termination of pregnancy in accordance with the Medical Termination of Pregnancy Act, subject to the assessment of the Medical Board constituted at the All India Institute of Medical Sciences (AIIMS). The permission was conditional upon the Board certifying that the procedure would not pose any risk to the appellant's life.

Subsequently, in its final judgment, the Court conclusively held that unmarried women are entitled to seek termination of pregnancy between 20 and 24 weeks under Rule 3B of the MTP Rules. The Court interpreted the expression "change in marital status" in an expansive manner, observing that it cannot be narrowly confined to only widowhood or divorce. The Court clarified that these categories are illustrative rather than exhaustive.

The Court further noted that the 2021 amendment to the MTP Act reflected a clear legislative intent to broaden the scope of the law to include unmarried and single women. This intent was evident from the substitution of the term "married woman" with "any woman" and the replacement of the word "husband" with "partner" in Explanation I to Section 3(2), thereby removing the marital limitation previously embedded in the statute.

Additionally, the Court identified a legislative inconsistency: although Section 3 of the MTP Act is not restricted to marital relationships, Rule

¹⁶¹ Special Leave Petition (Civil) No 12612 of 2022

3B of the MTP Rules does not expressly refer to unmarried women. Despite this omission, the Court held that excluding unmarried women from the benefit of pregnancy termination would violate the constitutional guarantee of equality, especially when similar rights are available to other categories of women, including widows, divorcees, minors, women with disabilities or mental illness, and survivors of sexual assault or rape.

Reinforcing the constitutional framework, the Court emphasized that the MTP Act is rooted in the protection of a woman's fundamental rights to reproductive autonomy, bodily integrity, and decisional freedom under Article 21 of the Constitution. These rights, the Court clarified, are not contingent upon marital status and extend equally to both married and unmarried women.

10. **In Re: Alleged Rape And Murder Incident of a Trainee Doctor in R.G. Kar Medical College and Hospital, Kolkata and Related Issues**¹⁶²

On 9 August 2024, a thirty-one-year-old postgraduate medical trainee, who had been continuously on duty for approximately thirty-six hours, was found murdered and was allegedly sexually assaulted inside a seminar room at RG Kar Medical College and Hospital, Kolkata. The incident triggered nationwide shock and condemnation. Disturbingly, the identity of the deceased and graphic visuals related to the crime were extensively circulated across social media platforms.

Multiple writ petitions were instituted before the Calcutta High Court seeking a court-supervised probe into the incident, including scrutiny of the conduct of the hospital administration and the principal of the medical college. Initially, the victim's parents were informed that the death was a suicide. However, the police later registered a First Information Report treating the matter as a case of homicide. In view of serious apprehensions regarding the initial response of the hospital authorities and the state police machinery, the Calcutta High Court transferred the investigation to the Central Bureau of Investigation (CBI).

In the aftermath of the incident, on the night of 15 August 2024, a large group of individuals vandalised the emergency ward of the same hospital. This episode further escalated tensions within the medical community, prompting the Indian Medical Association to announce a nationwide twenty-four-hour strike by medical professionals, with the exception of emergency services.

¹⁶² 2024 INSC 613

The central issue concerned that whether the absence of adequate institutional safeguards for doctors and healthcare workers within hospitals warrants intervention by the Supreme Court, and if so, the nature and scope of directions that the Court ought to issue.

Taking cognisance of the gravity of the situation, the Supreme Court of India constituted a nine-member National Task Force mandated to develop a comprehensive national framework aimed at ensuring the safety of doctors and healthcare professionals across the country. The Task Force was directed to prepare actionable recommendations addressing issues related to workplace safety, service conditions, mental and physical well-being, and allied concerns. Broadly, its mandate was divided into two core objectives: first, preventing all forms of violence, including gender-based violence, against healthcare workers; and second, formulating an enforceable nationwide protocol guaranteeing dignified and secure working environments for interns, residents, senior residents, nurses, doctors, and other medical personnel.

The Apex Court further directed the CBI to submit a progress report on the investigation by 22 August 2024. Simultaneously, the State of West Bengal was required to place on record a status report detailing the steps taken in relation to the acts of vandalism at the hospital following the incident.

The Court observed that medical personnel, while discharging their professional obligations, have increasingly become targets of physical and psychological violence. Hospitals operate on a continuous basis, requiring doctors, nurses, and paramedical staff to work at all hours. The absence of regulated access controls within hospital premises exposes healthcare workers to heightened risks. In many instances, distressed relatives of patients hastily attribute adverse medical outcomes to alleged negligence, which often culminates in violent conduct directed at healthcare staff.

The Apex Court drew attention to the glaring inadequacies in safety infrastructure across healthcare institutions. It noted that doctors assigned to night duties are frequently denied proper resting facilities and are compelled to rest in patient wards or other public areas. Interns, residents, and senior residents are routinely subjected to prolonged duty hours—often extending to thirty-six hours—without access to minimum standards of sanitation, nutrition, hygiene, or adequate rest. The absence of a uniform, nationwide safety and workplace protocol was identified as a systemic failure. The shortage of security personnel in hospitals, the lack of sufficient and accessible sanitation facilities for staff, and the absence of institutional transport arrangements for

healthcare workers commuting during late hours. It also observed that many hospitals lack functional surveillance systems, such as CCTV cameras, to monitor entry and exit points or to regulate access to sensitive zones within hospital premises.

The Court acknowledged that women medical professionals are particularly vulnerable to both sexual and non-sexual violence. Deep-rooted patriarchal mindsets often result in female doctors being questioned, challenged, or undermined more readily than their male counterparts. In addition to external threats, women healthcare workers also face harassment and sexual misconduct within institutional hierarchies, including from colleagues, seniors, and individuals in positions of authority.

The Supreme Court expressed serious concern over the absence of comprehensive institutional mechanisms to prevent and respond to violence—especially sexual violence—against medical professionals within healthcare establishments. The Court clarified that the protective measures contemplated in its directions were not confined solely to doctors. The safety, dignity, and welfare of all healthcare providers constitute a matter of national importance. As increasing numbers of women enter advanced fields of science, medicine, and technology, the State has a compelling obligation to ensure that all professionals are afforded secure, respectful, and equitable working environments.

11. **In Re: Right to Privacy of Adolescents**¹⁶³

On 20th May 2018, the mother of a fourteen-year-old girl lodged a missing person complaint after her daughter failed to return home. Subsequent inquiries revealed that the minor was residing with a twenty-five-year-old man. Despite repeated efforts by her mother to secure her return, the girl continued to live with the accused and later gave birth to a child.

Based on the complaint filed by the victim's mother, the accused was tried and convicted by a Special Court. He was found guilty under Section 6 of the POCSO Act for aggravated penetrative sexual assault resulting in pregnancy, Sections 376(3) and 376(2)(n) of the IPC for repeated rape of a minor, and Sections 363 and 366 of the IPC for kidnapping and compelling marriage. The Special Judge imposed a sentence of twenty years' rigorous imprisonment.

¹⁶³ 2023 LiveLaw SCC Online SC 154

The accused challenged the conviction before the Calcutta High Court, arguing that the relationship with the minor was voluntary and that the victim continued to reside with him of her own choice. By its judgment dated 18 October 2023, the High Court set aside the conviction under Sections 363 and 366 of the IPC, holding that the victim had left her home willingly and that no coercion or inducement had been exercised by the accused. While acknowledging that the statutory ingredients of the offence under Section 6 of the POCSO Act stood established due to the victim's age, the High Court nevertheless invoked its extraordinary jurisdiction under Article 226 of the Constitution read with Section 482 Cr.P.C. to quash the convictions under the POCSO Act and Sections 376(3) and 376(2)(n) of the IPC. The Court reasoned that the sexual relationship was consensual, non-exploitative, and that the accused had provided care and support to the victim.

Additionally, the High Court made broader observations regarding the increasing prevalence of consensual sexual relationships among adolescents, attributing such conduct to social influences such as peer pressure, social media exposure, easy access to explicit content, and increased interaction between genders. It went on to caution adolescent girls to restrain their sexual impulses, suggesting that they would otherwise bear the consequences of their actions.

Finding these observations to be inappropriate and legally untenable, the Supreme Court took suo motu cognisance of the matter on 7 December 2023. The State Government also preferred an appeal challenging the acquittal granted by the High Court.

A Division Bench of the Supreme Court of India led by **Justice Abhay S. Oka and Justice Ujjal Bhuyan** held the accused guilty of offences under Sections 376(3) and 376(2)(n) of the IPC and Section 6 of the POCSO Act, thereby restoring the conviction for rape and aggravated penetrative sexual assault. However, the Court affirmed the High Court's decision acquitting the accused of the charges relating to kidnapping and abduction under the IPC. The judgment was authored by Justice Oka.

The Court categorically held that consensual sexual relationships cannot operate as an exception to statutory offences under the POCSO Act. It further clarified that High Courts cannot exercise their inherent or constitutional powers to quash prosecutions or convictions in cases where serious offences are proved, even if the parties claim to have reached a settlement.

The Court also directed the State Government to constitute a multidisciplinary committee comprising a clinical psychologist and a social scientist to assess the victim's circumstances and assist her in

making informed decisions. Additionally, the Secretaries of all States and Union Territories were instructed to ensure strict implementation of the POCSO Act and allied child welfare legislations.

The Supreme Court strongly disapproved of the High Court's reliance on the notion of "non-exploitative sexual conduct" involving "older adolescents." It observed that neither Section 376 of the IPC nor Section 6 of the POCSO Act recognises such a classification or provides any exemption based on the perceived maturity of the minor. The Court reiterated that any sexual activity involving a person below eighteen years of age constitutes rape under the IPC and aggravated sexual assault under the POCSO Act. Once the age of the victim is established, the existence of a romantic or consensual relationship is immaterial. Courts must apply the law as enacted and cannot dilute statutory offences through judicial discretion.

The Court held that the High Court's exercise of powers under Section 482 Cr.P.C. and Article 226 of the Constitution to overturn a confirmed conviction was legally unsustainable. It emphasised that the POCSO Act was enacted to address grave crimes of sexual abuse and exploitation of children, in alignment with India's obligations under international child rights conventions. In cases involving serious offences where culpability has been judicially established, courts are precluded from invoking inherent powers to nullify prosecutions or convictions, irrespective of subsequent settlements between the parties.

The Court further noted that the State had failed to provide adequate care and protection to the victim as mandated under law. Victims of sexual offences must be treated as children in need of care and protection under the Juvenile Justice Act, 2015, which prescribes specific mechanisms for their rehabilitation and social reintegration. The Child Welfare Committee is statutorily entrusted with ensuring such rehabilitation, and the State's lack of oversight and support had resulted in serious lapses in safeguarding the victim's welfare.

Lastly, the Court criticised the High Court's judgment for incorporating personal views, moral commentary, and unsolicited advice directed at adolescents and the legislature. It reiterated that appellate judgments must be confined to legal analysis, supported by clear findings and reasoned conclusions on guilt and sentencing. Judicial opinions should be expressed in clear and restrained language, devoid of personal moral perspectives or extraneous observations. The High Court, the Supreme Court held, had strayed from its adjudicatory role by including irrelevant and prejudicial commentary instead of focusing on the legal determination of the offences.

12. **Ram Charan & Ors. Vs Sukhram & Ors.**¹⁶⁴

A Division Bench of Supreme Court of India comprising of **Justices Sanjay Karol** and **Joymalya Bagchi** considered a dispute in which the appellants, as legal heirs of a Scheduled Tribe woman named Dhaiya, claimed a share in the ancestral property of her maternal grandfather. The claim was resisted by the male members of the family, who contended that, according to tribal customs, women were not entitled to inherit property. Rejecting this argument, the Court held that the exclusion of women from inheritance solely on the basis of gender is arbitrary and discriminatory, and affirmed that women in tribal communities are entitled to the same succession rights as men.

The Court clarified that although the Hindu Succession Act does not extend to Scheduled Tribes, this exclusion does not automatically result in tribal women being deprived of inheritance rights. What must instead be examined is whether there exists a valid and established custom that expressly bars women from succeeding to ancestral property. In the present case, the respondents failed to demonstrate the existence of any such customary prohibition. The Court further observed that even if a restrictive custom were shown to exist, it cannot be treated as immutable. Customs, like statutory law, must adapt to constitutional values, and cannot be invoked as a shield to deny individuals their fundamental rights.

Emphasising constitutional guarantees, the Court held that denying inheritance to women on the basis of sex violates Article 14 of the Constitution, which ensures equality before the law. It found no reasonable justification for confining inheritance rights exclusively to male heirs. The trial court, the first appellate court, and the High Court had all dismissed the appellants' claim on the ground that they failed to prove a custom permitting female inheritance which the Apex Court found this approach legally flawed.

Setting aside the concurrent findings of the lower courts, the judgment authored by Justice Karol underscored that where no prohibitory custom is established, the principle of equality must govern succession. The Court held that depriving a tribal woman, or her successors, of a share in property solely due to her gender is unconstitutional. It further noted that the lower courts erred in placing the burden on the appellants to prove a custom allowing women to inherit, rather than requiring the opposing parties to establish a custom that excluded women. The Court observed that denying inheritance rights merely because custom is

¹⁶⁴ 2025 LiveLaw (SC) 717

silent would amount to perpetuating discrimination, something the Constitution does not permit.

The Court further reasoned that while the appellants may not have been able to establish a positive custom recognising female succession, the respondents were equally unable to show the existence of any contrary custom prohibiting it. In such circumstances, denying Dhaiya a share in her father's property, or denying her legal heirs parity with male relatives, would infringe the constitutional guarantee of equality.

Addressing the issue through the lens of Article 15, the Court held that exclusion of women from succession in the absence of a prohibitory custom also amounts to discrimination on grounds of sex. It observed that there is no rational or intelligible basis for granting succession rights only to men while excluding women, particularly where no legally recognised custom mandates such exclusion. Read together with Articles 38 and 46, Article 15 reflects the constitutional commitment to eliminating gender-based discrimination and advancing substantive equality.

In view of these findings, the Supreme Court allowed the appeal and held that the appellants, as Dhaiya's legal heirs, were entitled to an equal share in the disputed property.

13. **Rinku Baheti Vs Sandesh Sharda**¹⁶⁵

While granting a decree of divorce on the ground of irretrievable breakdown of marriage, a Division Bench comprising **Justice B.V. Nagarathna** and **Justice Pankaj Mithal** made significant observations regarding the misuse of criminal law provisions in matrimonial disputes. The Court noted that although criminal statutes are enacted to safeguard and empower women, there are instances where such provisions are invoked for purposes beyond their intended scope. In recent years, the routine practice of invoking multiple serious offences—such as Sections 498A, 376, 377, and 506 of the Indian Penal Code—together in matrimonial complaints has been repeatedly deprecated by the Court.

The Bench observed that in certain cases, criminal proceedings are employed by the wife and her family not merely as a means of seeking justice, but as a bargaining tool to exert pressure on the husband and his relatives, often to extract monetary or other concessions. Such complaints may arise either impulsively, driven by emotional distress, or as part of a calculated strategy. The Court further remarked that the situation is frequently aggravated by the involvement of external actors and intermediaries, who may

¹⁶⁵ 2024 LiveLaw (SC) 1021

encourage the adoption of coercive tactics for personal or ulterior interests.

The Court expressed concern that law enforcement authorities, in some instances, act with undue haste by arresting not only the husband but also his family members, including elderly parents and infirm relatives. Compounding the problem, trial courts at times adopt a rigid approach in denying bail. As a result, relatively minor matrimonial disagreements escalate into prolonged and bitter legal battles marked by personal animosity, public humiliation, and erosion of trust. Such developments ultimately destroy any remaining possibility of reconciliation or resumption of marital life.

The Bench cautioned that women must exercise restraint and responsibility while invoking stringent criminal provisions. It reiterated that these laws are welfare-oriented measures designed to protect women from genuine abuse and oppression, and not instruments to intimidate, coerce, dominate, or extort from their spouses.

The Court further reiterated the constitutional commitment to gender equality, observing that there can be no reasonable justification for legal regimes that discriminate against women without a valid basis. Article 15(1) of the Constitution expressly prohibits discrimination on grounds including sex, and when read alongside Articles 38 and 46, reflects a broader constitutional mandate to eliminate structural inequalities and ensure substantive equality for women. In light of these considerations, the Court allowed the appeal and granted appropriate relief in favour of the appellants, affirming their entitlement to equal treatment under the law.

14. **XYZ vs. State of Gujrat**¹⁶⁶

The Supreme Court Bench comprising of **Justice B.V. Nagarathna** and **Justice Ujjal Bhuyan** expressed strong disapproval of what was described as a purportedly “clarificatory” order issued by the Gujarat High Court. Justice B.V. Nagarathna conveyed clear dissatisfaction with the approach adopted by the High Court and questioned the propriety of issuing such an order in response to directions passed by the Supreme Court. She remarked that it was inappropriate for a High Court to issue what appeared to be a retaliatory or justificatory response to orders of a superior court. According to her, there was no requirement for a High Court judge to defend or rationalise an earlier decision by passing a subsequent order, and attempts to dilute or bypass the Supreme Court’s directions were unacceptable.

¹⁶⁶ 2023 LiveLaw (SC) 680

Justice Ujjal Bhuyan echoed these concerns and expressed surprise over the necessity of the High Court initiating a suo motu order on 19 August. He observed that judicial discipline does not require judges to justify their decisions through follow-up orders. He further criticised the imposition of an unreasonable condition on a survivor of sexual assault, noting that compelling her to continue an unwanted pregnancy was fundamentally unjust. He stated that such an approach ran contrary to the core values underlying the Constitution, questioning how the legal system could perpetuate unfair conditions by forcing a rape survivor to carry a pregnancy to term.

The Bench observed that while pregnancy within marriage is generally associated with happiness, pregnancy arising outside marriage—particularly as a consequence of sexual violence—can have severe and damaging effects on a woman’s mental health. Taking this into account, along with the medical report certifying that the woman was medically fit to undergo the procedure, the Supreme Court allowed her request for termination of pregnancy. The Court directed that she be present at the hospital either on the same day or by 9 a.m. the following morning, depending on her convenience, so that the termination could be carried out without delay.

The Court further directed that if, following the procedure, the foetus was found to be alive, the hospital must provide all necessary medical support, including incubation facilities, to ensure the foetus’s survival. Thereafter, the responsibility would rest with the State to take appropriate steps to facilitate adoption of the child in accordance with applicable law.

With regard to the manner in which the single judge of the Gujarat High Court had passed the order dated 19 August, the Supreme Court consciously chose not to make any adverse observations. The Bench stated that it was exercising restraint and would refrain from commenting on the said order passed by the High Court pursuant to the Supreme Court’s directions issued on the same date.

15. **Yogamaya M.G. vs Union of India and Ors.**¹⁶⁷

A bench of **Chief Justice of India Justice Surya Kant** and **Justice Joymalya Bagchi** was hearing a batch of pleas for directions in relation to extending the effect of the Court’s earlier mandate on women’s reservation in State Bar Council elections to the Bar Council of Telangana. The Supreme Court in its earlier directions had mandated that in State Bar Councils where elections had not been

¹⁶⁷ SCC Online SC 2387

notified yet, women advocates must constitute 30% of its membership.

In respect of the current election cycle, the Court has clarified that 20% of the seats are to be elected through the election of female candidates, whereas the remaining 10% would be secured through the process of co-option. It was also clarified by the Bench that in circumstances wherein there were inadequate female candidates, a motion for co-option should be put before the Court.

During the course of the hearing, the Bench noted that there was an error that needed to be corrected in paragraph 4 of the earlier order dated the 8th of December. Accordingly, it was ordered that the Bar Councils of the States of Telangana and Andhra Pradesh be deleted from paragraph 4 and that they be regulated under paragraphs 6 and 7 of the said order. Paragraph 6 of the directions of the 8th of December provides that in respect of the remaining State Bar Councils, *“30% of the total number of seats shall be reserved for the women members of the Bar Associations. Of which 20% shall be elected and 10% shall be co-opted.”* However, it is also provided that *“if the women advocates do not come forward to contest the requisite number of seats, the remaining shall be co-opted so that the stipulated 30% of the members may be attained.”*

The Bench was also informed about the lack of cooperation on the part of certain members of the Bar Council. Accordingly, the Chief Justice stressed the need to give recognition to the efforts of elected women members. He advised the Bar Council of India, along with their Chairperson, to hold a national felicitation ceremony to honor women elected as representatives of the State Bar Councils. It was also observed that elections to State Bar Councils are being organized in five different phases by the Supreme Court based on the new schedule which is as follows:-

- The first phase pertaining to Uttar Pradesh and Telangana has to be completed by 31 January 2026.
- The second phase involving Andhra Pradesh, Delhi, Tripura, and Puducherry has to be concluded on or before 28 February 2026.
- The third phase involving states like Rajasthan, Punjab and Haryana, Jharkhand, West Bengal, Karnataka, and Gujarat has to be concluded on or before 15 March 2026.
- Meghalaya and Maharashtra are included in the fourth phase and have to be finalized on or before 31 March 2026.

- Lastly, states like Tamil Nadu, Kerala, and Assam are in the fifth and final phase to be concluded on or before 30 April 2026.
16. **Kavitha Anand C. The State of Tamil Nadu and Others**¹⁶⁸

While upholding the ceiling on age for women fixed under the Assisted Reproductive Technology (Regulation) Act, 2021, the **Madras High Court** has recently held that a woman intending to undergo ART owes a continuing duty of care over the child born to her till the child attains majority. The Court thus held that this acquired right implies the woman shall have both biological and economic capability to look after the child for at least eighteen years.

The Court noted that anyone opting for assisted reproductive procedures must be in a position to ensure the child's upbringing and welfare through adolescence and into adulthood. The Court emphasized that, since India's statutory retirement age is sixty, serious questions arise regarding whether a woman or commissioning couple who conceives after fifty is able to provide continuous financial and emotional support throughout the full eighteen-year span. A single bench led by **Justice S. Sounthar** also highlighted that the medical risk in pregnancy is much higher at an advanced age. In view of the far serious health hazards to mother and fetus after fifty, the Court found that the upper age limit imposed by the legislature for accessing ART is justified. The judgment emphasized that maternal health risks increase with age, and the complications related to pregnancy are significantly higher in women above the age of fifty. In light of the above facts, the age restrictions enforced by law were not considered arbitrary or unreasonable.

The Court looked at how the Act should be interpreted; while the general definition clause does not expressly place an upper age limit, Section 21(g) provides a restrictive interpretation. It held that when a specific provision narrows or broadens a term's meaning, that specific interpretation takes precedence over the broad definition elsewhere in the statute. Based on this principle of statutory construction, the Court concluded the Act's age limits were legally valid. Finding nothing wrong with the Secretary's decision or with the ART statutory framework, the High Court dismissed the petition challenging the age restriction.

¹⁶⁸ 2025 LiveLaw (Mad) 111

17. **Ajith Pillai v State of Kerala**¹⁶⁹

The **Kerala High Court** has held that the offense of voyeurism under Section 354C of the Indian Penal Code does not arise in cases where photographs of a woman are taken while she stands outside her residence in full public view, absent any concealment or expectation of privacy. Interpreting Section 354C of the Indian Penal Code, the court held that it operates only when a woman is watched or captured while doing a “private act” as specifically contemplated by the statute.

A single Judge bench comprising of **Justice A. Badharudeen** elucidated that Section 354C criminalizes watching or capturing the image of a woman only when such act amounts to a private act done in a place which the woman would usually expect privacy. Support was drawn from the explanation appended to the provision, which defines a “private act” narrowly to include situations where the woman’s private parts, that is, her genitals, posterior or breasts are exposed or covered with undergarments, or she is using a toilet, or is engaging in a sexual act which she would not normally do in public.

Applying this statutory framework, the Court found that the allegations against the accused did not satisfy the ingredients of voyeurism. Because the images were allegedly captured while the complainant was standing outside her house in an open area and without any element of secrecy, the Court found that the act did not amount to an invasion of her body privacy in the manner contemplated under Section 354C. Consequently, the criminal proceedings for voyeurism were quashed.

The Court further clarified that the offense under Section 354C would apply only in cases where the woman has a reasonable expectation of privacy since her private acts or any part of her body would not be observed or recorded. When a woman is out in a public or semi-public area and is not indulging in any private act, mere observation or clicking photographs of her, without exposure of private body parts or private acts, would not amount to voyeurism under the Code. The High Court, however, clarified that the trial court, at the stage of framing charges, is free to consider whether the alleged conduct of the accused may attract the offense of sexual harassment under Section 354A of the IPC. The Court also granted permission to the prosecution to pursue the charge under Section 509 of the IPC.

¹⁶⁹ 2024 LiveLaw (Ker) 692

18. Bhaskar Janardhan Mane vs. State of Maharashtra¹⁷⁰

The Bombay High Court, while confirming the husband's conviction under Section 498A IPC, held that forcing a wife to have sexual relations with other men as a precondition for consummation of marriage would amount to cruelty. Justice Sadhana Jadhav observed that such pressure leads to deep mental anguish and unmistakably falls within the ambit of matrimonial cruelty as envisaged by the statute.

The Court said that the factually undisputed testimony of the complainant, who was examined as the star prosecution witness, related in clear terms that the husband refused to consummate the marriage and on three occasions forced her to have sex with three different men. Even if there wasn't explicit proof that this demand was framed as a prerequisite for consummation, the allegation itself was enough to constitute mental harassment of the wife. Having regard to the inordinate delay of almost two decades in disposal of the appeal, the Court granted leniency to the appellant by limiting the punishment to the period of incarceration already undergone by the appellant.

The judgment also recorded the following personal circumstances of the complainant: she was physically disabled because of having suffered polio, with impairment in one leg; and she was a distant relative of the accused, with both the families knowing each other well before the marriage.

In February 1994, the woman went to the police and filed a complaint that her marriage had not been consummated. She alleged that her husband repeatedly demanded that she have sexual relations with three other men, a fact she had also confided in her father. When she refused, the accused allegedly forced an unidentified substance into her mouth. After she cried out for help, her father-in-law and brother-in-law took her to a hospital. After a holistic review of the evidence, the High Court concluded that the conduct attributed to the accused clearly satisfied the cruelty elements under Section 498A, IPC, and, accordingly, affirmed the conviction.

19. Inclusion Foundation v Union of India¹⁷¹

The Supreme Court reaffirmed the mandatory directions earlier issued in **Aureliano Fernandes v. State of Goa (Civil Appeal No. 2482 of 2014)** concerning the constitution of Internal Complaints

¹⁷⁰ Criminal Appeal No. 456 of 1994

¹⁷¹ SCC Online SC 1637

Committees. The Court reiterated that institutions such as hospitals, nursing homes, sports institutes, stadiums, sports complexes, and venues for sporting events and competitions are obligated to put in place functional internal mechanisms for addressing complaints of sexual harassment.

Beyond reiterating these obligations, the Court significantly expanded the scope of compliance. In paragraph 77(iii) of the judgment, it directed that a comparable exercise must be carried out by all statutory professional bodies operating at both the national and state levels. It is noteworthy that the decision in *Aureliano Fernandes* itself arose from complaints made by university students rather than employees, underscoring that the protective framework is not confined to conventional employer–employee relationships.

The Court’s reasoning reinforces the principle that the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act must be interpreted expansively. Its protections are intended to extend to all women who enter or interact with a workplace environment and who may be exposed to the risk of sexual harassment by individuals present or permitted to operate within that space, irrespective of their formal employment status.

20. **All India Democratic Women’s Association (AIDWA) vs. Union of India**¹⁷²

The matter came up for hearing after written submissions had been filed by the petitioners, the RIT Foundation and the All-India Democratic Women’s Association (AIDWA), before a Bench comprising **Justice Rajiv Shakti** and **Justice C. Hari Shankar**. In this regard, the Court was in a position to evaluate the statutory basis of the marital exemption under Section 375 of the Indian Penal Code—which exempted sexual intercourse between a husband and wife from its definition of rape.

The Bench explained that, *prima facie*, there seemed to be a certain qualitative difference between rape within marriage and outside of marriage. It suggested that the perceived distinction has persuaded the legislature to enact the existing exception in Section 375 IPC.

Non-governmental organisations, such as the RIT Foundation and AIDWA, have filed the challenge to the marital rape exception, along with two individual petitioners. It was submitted that married women often do not report such abuse, even to female health workers, for fear of social stigma. The submissions further argued that, while the criminal justice system necessarily faces problems of wrongful

¹⁷² Writ Petition No. 6024 of 2017

acquittals and wrongful convictions, there is no empirical evidence to indicate that allegations of rape or sexual assault between parties who have a past sexual relationship are used any more falsely than allegations of other criminal offences. It was also stressed that only a tiny percentage of cases of marital rape are reported and, of that small number, incidents of false complaints or unfair convictions are statistically insignificant.