



Legal Framework for Gender Based Violence in India: Challenges and Responses

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Abstract:

Gender-based violence remains a pervasive and entrenched issue in Indian society, deeply rooted in patriarchal structures and cultural norms that marginalize women and perpetuate their subjugation. Despite the presence of a robust legal framework designed to combat such violence, implementation and enforcement continue to face significant challenges, including social attitudes, institutional biases, and resource limitations. This paper examines the multifaceted dimensions of Gender-based violence in India, including domestic abuse, sexual violence, dowry-related crimes, honor killings, and the unique vulnerabilities faced by women from marginalized communities, such as Dalit and tribal groups, due to intersecting forms of discrimination. The normalization of violence against women is analyzed as a systemic issue with profound implications for public health, human rights, and socioeconomic development. By exploring the interplay of legal, social, and cultural factors, this study underscores the urgent need for transformative societal change and effective policy interventions to ensure justice, equality, and safety for women in India.

Keywords: gender-based violence, legal framework, legal challenges, women rights.

Introduction

Gender-based violence remains a persistent and pervasive issue in Indian society, with women facing various forms of abuse and oppression on a daily basis. The patriarchal structures and cultural norms that have historically marginalized women have resulted in a climate of normalized violence, where women are often viewed as subordinate to men and denied basic rights and freedoms.¹ Despite the existence of a robust legal framework to combat gender-based violence, the implementation and enforcement of these laws have been plagued by various challenges, including social attitudes, institutional biases, and resource constraints.² Gender-based violence in India takes on various forms, including domestic abuse, sexual assault, honor killings, dowry-related violence, and

¹ Sharma, B. R. (2005). Social etiology of violence against women in India. In *The Social Science Journal* (Vol. 42, Issue 3, p. 375). Taylor & Francis. <https://doi.org/10.1016/j.soscij.2005.06.009>

² Wies, J., & Haldane, H. J. (2018). Structures of Violence Throughout the Life Course: Cross-Cultural Perspectives of Gender-Based Violence. In *International handbooks of population* (p. 329). Springer Nature (Netherlands). https://doi.org/10.1007/978-94-024-1290-1_22

more.³ Women from marginalized communities, such as Dalit and tribal women, often face disproportionate levels of violence due to the intersection of gender, caste, and class-based discrimination.⁴ The normalization of violence against women is deeply rooted in the social and cultural fabric of Indian society, with women frequently being seen as subservient to men and lacking in agency and autonomy.

Gender-based violence is a significant and pervasive issue in India, with serious implications for public health, human rights, and socioeconomic development. Women in India face various forms of violence throughout their lives, including domestic violence, sexual assault, and other forms of physical, emotional, and psychological abuse.⁵ These acts of violence are often rooted in deeply entrenched social and cultural norms that perpetuate gender inequalities and discriminate against women.⁶

Studies have shown that violence against women is a widespread problem in India, affecting women across all socioeconomic and demographic groups. Domestic violence, which is the most common form of gender-based violence in India, is often perpetrated by intimate partners or family members, in settings where women are supposed to feel safe and secure.⁷ Furthermore, the issue of sexual violence, including rape, has gained significant attention in recent years, particularly after high-profile cases that have sparked nationwide protests and a renewed focus on the need for stronger legal and social protections for women.

Legal Framework to combat Gender Based Violence

India has a well-built legal framework to combat gender-based violence. Apart from Indian Constitution's provisions, the Indian government has enacted a number of laws and policies to address the issue of gender-based violence, including the Domestic Violence Act, the Protection of Children from Sexual Offences Act, and the Criminal Law Act⁸. These laws have aimed to provide legal recourse for victims, establish support services, and mandate stronger penalties for perpetrators. Some of the notable legislations are discussed hereunder:

Constitution of India:

The Indian Constitution, as the foundational document of the world's largest democracy, has played a pivotal role in shaping the nation's approach to addressing gender-based violence. Article 14 guarantees the fundamental right to equality before the law and equal protection under the law, regardless of gender. Article 15 further prohibits discrimination on the basis of sex, while Article 16 ensures equal opportunities in matters of public employment.⁹ The Constitution also includes provisions to address specific forms of violence, such as Article 39(a), which directs

³Habiba, U. (1970). Persecution of Indian Women: An Analysis on The Most Heinous Cases of Rape and Sexual Abuse of Women. In *Journal of Advanced Research in Social Sciences* (Vol. 3, Issue 1, p. 1). <https://doi.org/10.33422/jarss.v3i1.290>

⁴ Wies, J., & Haldane, H. J. (2018). Structures of Violence Throughout the Life Course: Cross-Cultural Perspectives of Gender-Based Violence. In *International handbooks of population* (p. 329). Springer Nature (Netherlands). https://doi.org/10.1007/978-94-024-1290-1_22

⁵ Habiba, U. (1970). Persecution of Indian Women: An Analysis on The Most Heinous Cases of Rape and Sexual Abuse of Women. In *Journal of Advanced Research in Social Sciences* (Vol. 3, Issue 1, p. 1). <https://doi.org/10.33422/jarss.v3i1.290>

⁶ *ibid*

⁷ Dalal, K., & Lindqvist, K. (2010). A National Study of the Prevalence and Correlates of Domestic Violence Among Women in India. In *Asia Pacific Journal of Public Health* (Vol. 24, Issue 2, p. 265). SAGE Publishing. <https://doi.org/10.1177/1010539510384499>

⁸ Kumari, S., & Siotra, V. (2023). Indian females in the twenty-first century: how they have fared? An analysis using geospatial techniques. In *GeoJournal* (Vol. 88, Issue 4, p. 4279). Springer Science+Business Media. <https://doi.org/10.1007/s10708-023-10865-y>

⁹ Fredman, S., & Goldblatt, B. (2015). Gender Equality and Human Rights. In Discussion paper. United Nations. <https://doi.org/10.18356/e50499ba-en>

the state to ensure equal rights and opportunities for men and women, and Article 51A(e), which lists the fundamental duty to renounce practices derogatory to the dignity of women. These constitutional safeguards have paved the way for the enactment of laws and the development of legal processes to address gender-based violence in India¹⁰.

IPC vs. BNS, 2023:

The Indian Penal Code of 1860 has long been the primary legal instrument for addressing crimes against women in India. It criminalizes various forms of gender-based violence, including domestic abuse, sexual assault, and trafficking. However, the code has been criticized for its limited scope and ineffective implementation.¹¹ The code's provisions often fall short in providing comprehensive protection and justice for victims, as evidenced by the persistent high rates of gender-based violence in the country.

Table 1: IPC Provisions at glance

Sections	Provisions
Section 292-294	Obscenity
Section 354	Outraging Modesty of Woman
Section 354A	Sexual Harassment
Section 354B	Disrobing Woman
Section 354C	Voyeurism
Section 354D	Stalking
Section 503-508	Criminal Intimidation
Section 509	Insult the modesty of woman
Section 375-376E	Sexual Offences

Bhartiya Nyaya Samhita 2023:

Chapter V, "Of Offences Against Woman and Child Of Sexual Offenses," is added by the new BNS. Previously dispersed throughout multiple chapters and sections, all offenses pertaining to women and children are now grouped into a single chapter at the start of the Code.

With a focus on law and order and severe punishments for offenders, BNS 2023 imposes harsher penalties, particularly for crimes against women and children. In India, BNS 2023 greatly improves women's protections. A wider spectrum of harassment and abuse are now covered by BNS thanks to the expansion of sections like 354 and 375 of the IPC. By strengthening the definitions and enacting harsher sanctions, the BNS improves on the present law.

¹⁰ ibid

¹¹ Bhattacharya, S., & Bhattacharya, S. (2014). Battered and shattered: will they get justice? A study of domestic violence against women in India based on National Family Health Survey, 2005. In *The Journal of Adult Protection* (Vol. 16, Issue 4, p. 244). Emerald Publishing Limited. <https://doi.org/10.1108/jap-07-2013-0032>

The IPC defines rape in Section 375 and criminal force against women in Section 354. By offering more thorough definitions that cover a range of harassment types, the BNS expands on these and makes sure that no abuse is left unpunished.¹²

Gang rape is expressly addressed in Section 70(1) of the BNS, while gang rape against women under the age of 18 is addressed in Section 70(2). Strict punishments are established to further the legal system's zero-tolerance policy against such horrific offenses. This provision makes it clear that gang rape will not be acceptable and that those who commit it will suffer severe consequences. False marriage vows made purely to take advantage of victims are illegal under Section 69 of the BNS and carry a maximum sentence of 10 years in the prison.

Additional sections of the BNS address issues such as repeated harassment and stalking, ensuring that perpetrators of ongoing abuse are held accountable to the law. This emphasis on ongoing forms of violence aids in shielding victims from long-term trauma.

With harsher punishments for individuals found guilty of repeated crimes against women and children, the BNS's strategy for dealing with repeat offenders further enhances its deterrent effect. In order to avoid recidivism and prioritize social safety, the law makes a distinction between first-time and repeat offenders.

Domestic Violence Act:

The landmark Protection of Women from Domestic Violence Act was enacted in 2005, which provides a comprehensive legal framework to address domestic violence and offer protection and support to victims.

Under this Act, domestic violence includes the following¹³:

Physical abuse – It means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force.

Sexual abuse – It includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of a woman.

Verbal and emotional abuse – It includes

Insults, ridicule, humiliation, name-calling and insults or ridicule specially with regard to not having a child or a male child; and

Repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

Economic abuse – It includes activities such as not providing money for maintaining the woman or her children, not providing food, clothes, medicines, etc., deprivation of all or any economic or financial resources, forcing the woman out of the house, preventing from accessing or using any part of the house, preventing or obstructing one from carrying on employment, etc.,

Sexual Harassment at workplace:

¹² Adv. Surya, Impact of BNS 2023 on Women's Rights and Protection, accessed at <https://bnblegal.com/article/impact-of-bns-2023-on-womens-rights-and-protection/>

¹³ Section 3 of the Act

In 2013, India introduced the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal), popularly known as POSH Act. This Act recognizes that sexual harassment violates the fundamental rights of women and their right to a life with dignity. Such workplace harassment creates environment which is insecure and hostile in nature and discourages participation of women at work. This Act provides measures to protect women from sexual harassment at place of work. It ensures that women are protected against sexual harassment at both work places public and private. It contributes to realization of dream to gender equality and women empowerment. The sense of security at the workplace created by this law is hoped to improve women's participation in work, resulting in their economic empowerment and inclusive growth.

POCSO Act:

The POCSO Act was enacted to protect children from sexual offence. The Act has been enacted to protect children from offences of sexual assault, sexual harassment and pornography¹⁴ and provide for the establishment of Special Courts for the trial of such offences and related matters and incidents. The Act was amended in 2019, to make provisions for enhancement of punishments for various offences so as to deter the perpetrators and ensure safety, security and dignified childhood for a child.

The Indian government has taken several measures to combat gender-based violence and protect the rights of women. Additionally, the Criminal Law Act of 2013 introduced stricter penalties for sexual offenses, including rape, acid attacks, and stalking.¹⁵

Despite these legal and policy initiatives, significant challenges remain in the effective implementation and enforcement of these laws.¹⁶ While the enactment of laws is an important first step, deeper social and cultural transformations are needed to address the root causes of gender-based violence and empower women within Indian society.¹⁷

Judicial Advent in combating Gender Based Violence

While the Indian government has enacted various laws and policies to address this problem, the role of the judiciary, particularly the Supreme Court, has been instrumental in driving legal reform and ensuring effective implementation.¹⁸

Through a number of significant judgments in an array of legal fields, the Indian judiciary has continuously promoted gender justice. A leading instance of the judiciary's role in extending the protection of women's rights is the landmark ruling in *Vishakha v. State of Rajasthan*¹⁹, which acknowledged the right to a workplace free from

¹⁴ Section 3-15 provides for offences against children

¹⁵ Habiba, U. (1970). Persecution of Indian Women: An Analysis on The Most Heinous Cases of Rape and Sexual Abuse of Women. In Journal of Advanced Research in Social Sciences (Vol. 3, Issue 1, p. 1). <https://doi.org/10.33422/jarss.v3i1.290>

¹⁶ Sharma, B. R. (2005). Social etiology of violence against women in India. In The Social Science Journal (Vol. 42, Issue 3, p. 375). Taylor & Francis. <https://doi.org/10.1016/j.soscij.2005.06.009>

¹⁷ Gram, L., Chakraborty, P., Daruwalla, N., & Osrin, D. (2020). Social and Psychological Readiness to Take Collective Action Against Violence Against Women: A Mixed Methods Study of Informal Settlements in Mumbai, India. In Violence Against Women (Vol. 27, Issue 15, p. 3176). SAGE Publishing. <https://doi.org/10.1177/1077801220971360>

¹⁸ Bhat, M. M. A., Bajaj, V., & Kumar, S. A. (2020). The crime vanishes: Mob lynching, hate crime, and police discretion in India. In Jindal Global Law Review (Vol. 11, Issue 1, p. 33). Springer Science+Business Media. <https://doi.org/10.1007/s41020-020-00115-4>

¹⁹ AIR 1997 SC 3011

sexual harassment and supreme court laid down guidelines to address sexual harassment in the workplace²⁰. The Court recognized the need for a comprehensive legal framework to protect women's rights and dignity, paving the way for the subsequent enactment of the Sexual Harassment of Women at Workplace Act, 2013²¹. A more inclusive approach to gender justice has also been facilitated by the Supreme Court's decision in *NALSA v. Union of India*²², which upheld the rights of transgender people.

The judiciary has also been proactive in addressing the issue of honour killings, a form of gender-based violence rooted in patriarchal societal norms. In the case of *Lata Singh v. State of U.P.*²³, the Court categorically stated that "honour killings" are "illegal" and "barbaric."

The court upheld a woman's fundamental right to reproductive autonomy in *Suchita Srivastava and Others v. Chandigarh Administration*²⁴, highlighting the right to make decisions about one's body and contesting the requirement for pre-abortion consent. In the same way, the court invalidated Section 497 IPC in *Joseph Shine v. Union of India*²⁵, recognizing that it violated women's autonomy and dignity and highlighting their equality in marriage. In *Federation of Obstetric and Gynecological Societies of India (FOGSI) v. Union of India and Others*²⁶, the judiciary demonstrated its dedication to correcting imbalanced sex ratios and fighting gender-based discrimination by upholding the Pre-conception and Prenatal Diagnostic Techniques (PNDT) Act.

Furthermore, recent rulings such as *Arunachala Gounder (Dead) by LRs v. Ponnusamy and Others*²⁷ and *Prabha Tyagi v. Kamlesh Tyagi*²⁸ emphasized women's rights in inheritance and domestic relationships, respectively, guaranteeing legal protections for women in a variety of areas of life. The judiciary's progressive approach to protecting women's rights and promoting gender equality was demonstrated by its support of unmarried women's right to terminate pregnancy in *X v. The Principal Secretary Health and Family Welfare Department, Delhi NCT Government and Others*²⁹ and its advocacy for a safe workplace in *Aureliano Fernandes v. State of Goa and Others*³⁰. Together, these varied rulings signal a more inclusive and equitable legal system by highlighting the judiciary's steadfast commitment to promoting gender justice and defending women's rights in all spheres of Indian society. The need for updated legal frameworks that are considerate of women's needs and realities was highlighted by the judiciary's denunciation of antiquated practices like the two-finger test in *State of Jharkhand v. Shailendra Kumar Rai and Others*³¹ and its affirmation of statutory rights like maternity leave in *Deepika Singh v. Central Administrative Tribunal*³².

²⁰ ibid

²¹ Sharma, B. R. (2005). Social etiology of violence against women in India. In *The Social Science Journal* (Vol. 42, Issue 3, p. 375). Taylor & Francis. <https://doi.org/10.1016/j.soscij.2005.06.009>

²² AIR 2014 SC 1863

²³ (2006) 5 SCC 475

²⁴ 2009 14 SCR 989

²⁵ 2018 11 SCR 765

²⁶ 2019 7 SCC 1

²⁷ 2022 1 SCC 72

²⁸ 2022 5 SCR 970

²⁹ 2022 SCC online SC 1321

³⁰ 2023 7 SCR 772

³¹ 2022 SCC online SC 1494

³² 2022 7 SCR 557

Challenges and Barriers

One of the key challenges in combating gender-based violence in India is the persistence of deeply entrenched social and cultural norms that perpetuate gender inequality and discrimination against women. Many women face significant social stigma and victim-blaming attitudes when they attempt to report or seek help for acts of violence, which can deter them from accessing the legal and social support systems available to them.

Furthermore, the lack of access to education, economic opportunities, and decision-making power for women in many parts of India can contribute to their vulnerability to violence and limit their ability to seek justice. The criminal justice system itself has also been criticized for its slow and unresponsive handling of cases of gender-based violence, with many victims facing significant barriers in navigating the legal process. While the enactment of laws is an important step, addressing the deep-rooted social and cultural issues that perpetuate gender-based violence in India will require a multi-pronged approach that combines legal reforms, social awareness campaigns, and efforts to empower women and promote gender equality at all levels of society.³³

Conclusion

In conclusion, addressing gender-based violence in India will require a multi-faceted approach that tackles the deep-rooted social, cultural, and structural issues that enable and perpetuate such violence. While the Indian government has taken important steps to enact laws and policies to protect women's rights, the effective implementation and enforcement of these measures remains a significant challenge.

Addressing gender-based violence in India will require a concerted effort to transform social and cultural norms, empower women, and provide comprehensive support services for victims. This must be coupled with reforms to the criminal justice system to ensure that women can access justice and hold perpetrators accountable. Ultimately, combating gender-based violence in India will require a sustained, long-term commitment to promoting gender equality and addressing the root causes of this pervasive issue.

By addressing the root causes of gender-based violence and strengthening the legal and social support systems available to victims, India can work towards creating a more just, equitable, and safe society for all its citizens.³⁴

³³ Mitra, A. (2019). Policing Violence against Women: The Indian Scenario. In *Monatsschrift für Kriminologie und Strafrechtsreform* (Vol. 102, Issue 3, p. 217). Carl Heymanns Verlag. <https://doi.org/10.1515/mks-2019-2019>

³⁴ Dalal, K., & Lindqvist, K. (2010). A National Study of the Prevalence and Correlates of Domestic Violence Among Women in India. In *Asia Pacific Journal of Public Health* (Vol. 24, Issue 2, p. 265). SAGE Publishing. <https://doi.org/10.1177/1010539510384499>