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Gender Justice in the 21st Century: Evaluating Progress in Laws Against Gender-Based Violence (India)

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ABSTRACT

Gender justice is an essential pillar of human rights and constitutional democracy. The 21st century has witnessed remarkable progress in global awareness and legal activism against gender-based violence (GBV), yet the persistence of such violence reveals deep-rooted structural and cultural inequalities. This paper critically examines India's legal and judicial responses to GBV in the contemporary era, assessing the effectiveness of legislative reforms, judicial interventions, and policy initiatives in advancing gender justice. Drawing from constitutional principles, statutory developments, and international conventions such as CEDAW, the paper explores how India's legal system has evolved to protect women and marginalized genders from violence. However, despite progressive legislation, the gap between law and enforcement remains substantial due to social stigma, institutional apathy, and patriarchal norms. The study concludes that achieving gender justice in India requires not only strong laws but also transformative social change supported by education, accountability, and inclusive policymaking.

KEYWORDS

Gender Justice, Gender-Based Violence, Women's Rights, Indian Constitution, CEDAW, Feminist Jurisprudence, Legal Reform

INTRODUCTION

Gender justice represents the legal and moral pursuit of equality, fairness, and protection against discrimination on the basis of gender. In the 21st century, it encompasses a multidimensional struggle — legal, social, and political — to eliminate systemic oppression and gender-based violence (GBV). GBV refers to any act of violence directed at an individual based on gender identity or roles, including domestic

violence, sexual assault, harassment, trafficking, and cyber abuse. The United Nations defines GBV¹ as a violation of human rights and a manifestation of unequal power relations between men and women.

India, with its constitutional commitment to equality under Articles 14, 15, and 21, stands as a critical case study in the global discourse on gender justice. The Indian Constitution guarantees equality before the law and prohibits discrimination based on sex. Over the decades, India has enacted several laws addressing gender-based crimes — from the Dowry Prohibition Act, 1961, to the Protection of Women from Domestic Violence Act, 2005, and the Criminal Law (Amendment) Act, 2013, which emerged in the aftermath of the Nirbhaya case. These statutes, complemented by progressive judicial interpretations, reflect an evolving jurisprudence of gender equality.

However, gender justice in India continues to face formidable challenges. Despite an extensive legal framework, implementation remains weak. According to National Crime Records Bureau (NCRB) data (2023), crimes against women increased by over 10% from the previous year, revealing that legislative reform alone is insufficient to deter gender-based violence. Social conditioning, victim-blaming, and institutional inertia undermine the justice delivery process.

This paper seeks to evaluate the progress India has made in achieving gender justice through the legal system, focusing particularly on gender-based violence. It examines constitutional principles, legislative developments, landmark judgments, and India's obligations under international law. Further, it identifies the persistent challenges in enforcing gender-sensitive laws and suggests reforms to bridge the gap between legal ideals and societal realities.

HISTORICAL BACKGROUND AND EVOLUTION OF GENDER JUSTICE IN INDIA

The pursuit of gender justice in India cannot be understood without tracing its historical trajectory — from pre-colonial practices and colonial codification to post-independence constitutionalism. Gender inequality in India has historically been reinforced by patriarchal traditions, religious norms, and socio-economic hierarchies. However, movements for women's rights, both before and after independence, gradually laid the foundation for modern legislative and judicial reforms.²

• *Pre-Independence Period*

In pre-colonial Indian society, women's status varied across regions and communities. While ancient texts such as the Rigveda mention

¹ https://eige.europa.eu/gender-based-violence/what-is-gender-based-violence?language_content_entity=en

² <https://sleepyclasses.com/gender-equality-in-india-a-historical-perspective-and-modern-realities/>

women scholars like Gargi and Maitreyi, later social practices reflected regression — including sati, child marriage, and the denial of education and inheritance rights. Reform movements during the 19th century, led by figures like Raja Ram Mohan Roy and Ishwar Chandra Vidyasagar, were instrumental in challenging these practices. Legislative reforms such as the Abolition of Sati (1829) and the Widow Remarriage Act (1856) marked the beginning of state intervention for women's rights under colonial rule.

The Indian Penal Code, 1860 (IPC)³ introduced legal categories for crimes against women, such as rape (§375), kidnapping (§366), and outraging modesty (§354). However, these laws largely reflected the patriarchal morality of the British era, focusing on protecting women's "chastity" rather than recognizing their bodily autonomy. Women's organizations like the All India Women's Conference (AIWC) and the Women's Indian Association (WIA), established in the early 20th century, demanded greater participation in public life, equal political rights, and gender-sensitive legislation.

• ***Post-Independence Constitutional Vision***

The adoption of the Constitution of India in 1950 was a transformative moment for gender justice. The Constituent Assembly, influenced by both liberal and socialist ideals, embedded equality and non-discrimination as fundamental principles. The framers, particularly Dr. B.R. Ambedkar, emphasized that true democracy could not exist without the emancipation of women.

Key constitutional provisions include:

- Article 14: Equality before the law and equal protection of laws.
- Article 15(1) and (3): Prohibition of discrimination based on sex, while empowering the State to make special provisions for women and children.
- Article 21: Protection of life and personal liberty, which the judiciary has interpreted expansively to include dignity and bodily autonomy.
- Directive Principles (Articles 39, 42, 51A(e)): Direct the State to ensure equal pay for equal work, just conditions of maternity relief, and to renounce practices derogatory to the dignity of women.

EVOLUTION THROUGH LEGISLATIVE AND JUDICIAL DEVELOPMENTS

The decades following independence saw a gradual strengthening of the legal framework for gender justice. The Hindu Marriage Act, 1955, Dowry Prohibition Act, 1961, and Equal Remuneration Act, 1976 were

³ <https://www.indiacode.nic.in/bitstream/123456789/4219/1/THE-INDIAN-PENAL-CODE-1860.pdf>

early efforts to institutionalize equality. However, it was the feminist movements of the 1970s and 1980s — triggered by incidents like the Mathura rape case, *Tukaram v State of Maharashtra*⁴ — that catalyzed major reforms.

The Mathura case, where the Supreme Court acquitted police officers accused of raping a young tribal girl in custody, sparked national outrage. Feminist activists argued that the judgment reflected patriarchal bias and insensitivity towards victims. In response, the Criminal Law (Amendment) Act, 1983 introduced provisions to criminalize custodial rape and shifted the burden of proof in certain rape cases, marking a turning point in India's gender justice jurisprudence.

FEMINIST JURISPRUDENCE AND EXPANDING JUDICIAL INTERPRETATION

From the 1990s onwards, Indian courts began to interpret constitutional provisions progressively to advance women's rights. Landmark cases include:

- *Vishaka v State of Rajasthan*⁵, where the Supreme Court, relying on CEDAW, laid down guidelines against workplace sexual harassment.
- *Laxmi v Union of India*⁶, which directed the regulation of acid sales and compensation for acid attack survivors.
- *Independent Thought v Union of India*⁷, where the Court criminalized marital rape of minors by reading down the exception in §375 IPC.

These judicial interventions reflect a dynamic interpretation of gender justice — one that aligns domestic law with international human rights norms.

21ST CENTURY DEVELOPMENTS

The early 21st century marked a period of legislative activism. The Protection of Women from Domestic Violence Act, 2005, introduced a civil remedy for victims of domestic abuse, recognizing both physical and emotional violence. The Criminal Law (Amendment) Act, 2013, enacted after the Nirbhaya gang rape, redefined sexual offences, broadened the definition of rape, introduced stalking and voyeurism as crimes, and strengthened sentencing provisions. Furthermore, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 institutionalized the Vishaka guidelines, mandating Internal Complaints Committees in workplaces. These reforms collectively signify India's ongoing journey toward realizing

⁴ *Tukaram v State of Maharashtra* [1979] 2 SCC 143.

⁵ *Vishaka v State of Rajasthan* [1997] 6 SCC 241.

⁶ *Laxmi v Union of India* [2014] 4 SCC 427.

⁷ *Independent Thought v Union of India* [2017] 10 SCC 800.

substantive gender equality through legal intervention.

CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK ADDRESSING GENDER-BASED VIOLENCE IN INDIA

Gender-based violence (GBV) in India constitutes a direct violation of the constitutional guarantee of equality, dignity, and personal liberty. The Indian legal system recognizes GBV not merely as a crime but as a manifestation of structural inequality and patriarchal domination. Over the years, the legislature and judiciary have progressively expanded the legal architecture to address the diverse manifestations of such violence — from domestic and sexual violence to workplace harassment and cyber abuse.

Constitutional Foundations

The Indian Constitution provides the normative basis for gender justice. Articles 14, 15, and 21 collectively enshrine the principles of equality and dignity. The judiciary has consistently interpreted these provisions to recognize gender-based violence as a violation of fundamental rights. In *Vishaka v State of Rajasthan*⁸, the Supreme Court explicitly linked sexual harassment to violations of Articles 14, 15, and 21, holding that gender equality includes protection from sexual harassment at the workplace. Similarly, in *Bodhisattwa Gautam v Subhra Chakraborty*⁹, the Court declared rape to be a violation of a woman's fundamental right to life and liberty under Article 21, emphasizing that it "destroys the soul of the woman."

The Directive Principles of State Policy (DPSPs) reinforce this constitutional vision. Article 39(a) directs the State to ensure equal right to livelihood, Article 39(d) mandates equal pay for equal work, and Article 42 requires just and humane conditions of work and maternity relief. Moreover, Article 51A(e) imposes a fundamental duty on every citizen to renounce practices derogatory to the dignity of women — underscoring the constitutional integration of both rights and responsibilities in the pursuit of gender justice.

The Indian Penal Code (IPC), 1860

The IPC serves as the primary criminal law instrument addressing GBV. Its provisions, though originally colonial, have undergone multiple amendments to reflect contemporary realities.

Key provisions include:

- Section 354: Criminalizes assault or use of criminal force with intent to outrage a woman's modesty.
- Section 354A: Defines sexual harassment and prescribes punishment up to three years imprisonment.

⁸ *Id.* at 4.

⁹ *Bodhisattwa Gautam v Subhra Chakraborty* [1996] 1 SCC 490.

- Section 354C: Addresses voyeurism; Section 354D covers stalking.
- Section 375 and 376: Define and penalize rape. The Criminal Law (Amendment) Act, 2013 expanded the definition of rape to include non-penile penetration and increased penalties for aggravated forms.
- Section 509: Punishes acts intended to insult the modesty of a woman.

Post-2013, rape was redefined to recognize consent as a central element, aligning Indian law with international human rights standards. However, the continued existence of the marital rape exception (Exception 2 to §375) remains a major gap in India's gender justice framework, as it effectively legitimizes sexual violence within marriage.

The Criminal Law (Amendment) Act, 2018, further introduced the death penalty for rape of girls below 12 years and expedited investigation procedures. While intended to deter heinous crimes, scholars argue that such punitive populism may not address systemic causes of violence or ensure better conviction rates.

The Protection of Women from Domestic Violence Act, 2005¹⁰

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) represents a milestone in India's response to GBV. Unlike the IPC, which criminalizes specific acts, this legislation adopts a civil law framework focused on protection, relief, and rehabilitation. Section 3 of the Act provides a comprehensive definition of domestic violence, encompassing physical, sexual, verbal, emotional, and economic abuse. It recognizes relationships beyond marriage — including live-in partners — thus reflecting a progressive understanding of domestic relationships. Under the Act, Magistrates can issue protection orders, residence orders, monetary relief, custody orders, and compensation orders. The inclusion of Protection Officers and Service Providers reflects the State's responsibility to create a support infrastructure for victims. Judicial interpretation has strengthened the Act's reach. In *Hiral P. Harsora v Kusum Narottamdas Harsora*¹¹, the Supreme Court struck down the restrictive definition of "respondent," allowing complaints against any adult, male or female, expanding protection for women within extended families.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Following the Vishaka guidelines, the POSH Act, 2013 institutionalized the right to a safe working environment. It applies to both organized and unorganized sectors, mandating every employer to establish an Internal Complaints Committee (ICC) to address complaints of sexual harassment. Section 3(2) of the Act defines sexual harassment broadly

¹⁰ The Protection of Women from Domestic Violence Act, 2005.

¹¹ *P. Harsora v Kusum Narottamdas Harsora* [2016] 10 SCC 165.

— including unwelcome physical contact, demands for sexual favours, sexually coloured remarks, showing pornography, and any other unwelcome conduct. The Act's preventive, prohibitive, and redressal mechanisms align with CEDAW General Recommendation No. 19, which recognizes sexual harassment as discrimination.

However, practical challenges persist. Many institutions fail to constitute ICCs, and victims often fear retaliation or stigma. Recent cases, such as *Vikas Aggarwal v State of Haryana* (2023), highlight ongoing judicial scrutiny of institutional compliance.

The Protection of Children from Sexual Offences (POCSO) Act, 2012

The POCSO Act, 2012 addresses sexual offences against children, ensuring gender-neutral protection. It defines a wide range of offences and mandates child-friendly procedures for reporting and trial. In *Alakh Alok Srivastava v Union of India* [2018], the Supreme Court emphasized strict implementation and sensitivity in handling cases under the Act. However, challenges such as misuse allegations, delays in investigation, and poor conviction rates continue to undermine the law's effectiveness.

The Information Technology Act, 2000 (as amended)

The rise of digital violence has introduced new challenges to gender justice. The IT Act, particularly Sections 66E, 67, and 67A, criminalizes the transmission of obscene material and invasion of privacy. Cyber harassment, non-consensual sharing of intimate images, and online stalking have emerged as modern manifestations of GBV. In *Shreya Singhal v Union of India*¹², the Supreme Court struck down Section 66A for being vague and unconstitutional but reaffirmed the importance of combating online harassment through constitutionally sound measures. The judiciary continues to evolve jurisprudence balancing freedom of speech (Article 19(1)(a)) and protection against gendered cyber abuse.

The Criminal Law (Amendment) Act, 2013 — The Nirbhaya Turning Point¹³

The Nirbhaya case (*Mukesh v State (NCT of Delhi)*) marked a watershed moment. The Justice J.S. Verma Committee Report (2013) recommended comprehensive reforms to ensure gender-sensitive policing, fast-track courts, and accountability. The subsequent amendment act expanded the definition of rape, introduced new offences (acid attack, stalking, voyeurism), and enhanced penalties.

While the law reflected public outrage and reformist zeal, the implementation deficit persists — evident in low conviction rates and delayed trials. The Verma Committee's more progressive suggestions,

¹² *Shreya Singhal v Union of India* [2015] 5 SCC 1.

¹³ <https://blog.ipleaders.in/criminal-law-amendment-act-2013/>

including the criminalization of marital rape and police accountability mechanisms, remain largely unimplemented.

EVALUATION OF LEGISLATIVE PROGRESS

India's legal framework for addressing GBV has expanded considerably, reflecting a shift from moralistic protectionism to rights-based empowerment. Yet, the persistence of violence suggests that formal equality has not translated into substantive justice. Enforcement remains inconsistent, particularly in rural and marginalized communities. The judiciary, while progressive in several landmark judgments, has at times reinforced patriarchal norms, such as in cases where mediation or compromise was encouraged in rape trials. Achieving gender justice, therefore, demands a holistic transformation — combining robust legislation, institutional accountability, and societal re-education.

THE JUDICIARY AS A CATALYST FOR GENDER JUSTICE

Indian courts have consistently emphasized that gender equality is intrinsic to the constitutional guarantee of Articles 14, 15, and 21. The judiciary's approach has evolved from merely protecting women to empowering them as equal citizens. This interpretative evolution is evident in landmark rulings that have expanded the scope of rights related to bodily integrity, workplace safety, reproductive autonomy, and protection from violence.

The Court's jurisprudence since the 1990s has become increasingly rights-oriented and influenced by international law. Through a purposive reading of the Constitution, the judiciary has transformed abstract principles into actionable rights, giving new meaning to the concept of gender justice in the Indian legal system.

***Bodhisattwa Gautam v Subhra Chakraborty*¹⁴**

In this landmark case, the Supreme Court declared rape a violation of the fundamental right to life and personal liberty under Article 21, describing it as “a crime not only against the person of a woman but against society at large.” The Court ordered interim compensation to the victim even before conviction, introducing the principle of victim compensation into Indian jurisprudence. This progressive interpretation expanded the scope of criminal justice beyond punishment to include reparation and rehabilitation for victims.

***Laxmi v Union of India*¹⁵**

This case was a landmark in addressing acid attacks, an extreme form of gender-based violence. The Supreme Court directed the government to regulate the sale of acid, ensure free medical treatment for victims, and provide adequate compensation. It also recognized the right to live

¹⁴ Shri Bodhisattwa Gautam vs. Miss Subhra Chakraborty [1996] 1 SCC 490.

¹⁵ Laxmi vs. Union of India and Others [2014] 4 SCC 427.

with dignity as an integral part of Article 21. The ruling led to the Criminal Law (Amendment) Act, 2013, which introduced Sections 326A and 326B IPC, specifically penalizing acid attacks.

***Nirbhaya Case — Mukesh v State (NCT of Delhi)*¹⁶**

The Nirbhaya case represents a watershed moment in India's criminal jurisprudence on gender-based violence. The brutal gang rape and murder of a young woman in Delhi (2012) ignited nationwide protests, forcing the State to re-evaluate its approach to sexual violence.

The Supreme Court, affirming the death sentences of the convicts, declared that such crimes shock the collective conscience of society. While the decision reaffirmed the judiciary's role in delivering retributive justice, it also sparked debate on whether capital punishment serves as an effective deterrent to GBV. The broader legacy of Nirbhaya lies in its catalyzation of the Justice J.S. Verma Committee Report (2013) and the subsequent Criminal Law (Amendment) Act, 2013, which overhauled India's sexual offence laws.

CONCLUSION

Gender justice in India represents both an enduring challenge and a remarkable journey of progress. The country's legal landscape — rooted in constitutional guarantees of equality, non-discrimination, and dignity — has evolved substantially since independence. Landmark judicial pronouncements and progressive legislation, such as the Protection of Women from Domestic Violence Act, 2005, and the Criminal Law (Amendment) Act, 2013, illustrate the State's attempt to transition from formal to substantive equality.

However, the persistence of gender-based violence, workplace harassment, and systemic discrimination underscores that the realization of gender justice requires more than statutory reform. The gap between law and practice — exacerbated by social stigma, underreporting, institutional apathy, and patriarchal attitudes — continues to impede progress. True gender justice demands a transformation in societal consciousness, institutional accountability, and gender-sensitive law enforcement.

The judiciary has played a transformative role in expanding the meaning of rights under Articles 14, 15, and 21 of the Constitution. Yet, sustained change also requires proactive executive measures, community participation, and education to dismantle entrenched gender hierarchies. As India aspires to be a global leader in human rights and democracy, ensuring the safety, equality, and dignity of women must remain at the heart of its national agenda.

The future of gender justice in India thus lies in creating a culture of equality — where law is not merely a tool for protection but an

¹⁶ *Ukesh & Anr. v. State (NCT of Delhi) & Ors.* [2017] 6 SCC 1.

instrument for empowerment. A multidimensional strategy involving legal reform, gender education, and international cooperation under frameworks like CEDAW is imperative. Only when gender justice becomes a lived reality for every woman — in both public and private spheres — can India truly claim to have fulfilled the promise of its Constitution