

LEGAL FRAME WORK PROTECTING WOMEN

AUTHOR – PARTH SRIVASTAVA, STUDENT AT UNITEDWORLD SCHOOL OF LAW, KARNAVATI UNIVERSITY. E-MAIL- SRIVASTAVAPARTH97@GMAIL.COM

BEST CITATION – PARTH SRIVASTAVA, VIJENDRA ARUMUGAM S & DR. SAJI SIVAN S, LEGAL FRAME WORK PROTECTING WOMEN, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (5) OF 2025, PG. 89-105, APIS – 3920 – 0001 & ISSN – 2583-2344

ABSTRACT

This paper presents an in-depth analysis of the legal framework protecting women's rights in India, with a focus on domestic violence, sexual harassment, dowry-related abuse, and systemic challenges in the enforcement of legal protections. Drawing upon statutory developments, landmark judicial decisions, and scholarly commentary, the study examines how historical, cultural, and socio-legal factors have influenced the evolution of women's rights. Key legislations such as the Protection of Women from Domestic Violence Act, 2005, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, are evaluated in the context of their implementation, accessibility, and real-world efficacy. The research also explores contemporary challenges including underreporting of crimes, societal stigma, and infrastructural deficits. The study underscores the role of judicial activism in expanding protections for women. The methodology is doctrinal, supported by critical review of primary and secondary sources. The objective is not only to assess the current legal protections but also to recommend reforms aimed at closing the gap between legal entitlement and practical enforcement. This work contributes to the ongoing discourse on gender justice and legal empowerment in India.

Key words: Women right , Domestic violence, sexual offences, dowry, sexual harassment

INTRODUCTION

India has an extensive history. Throughout the centuries, all through and adapting as it does to the changing social, and cultural conceptions. Nevertheless, women have been at a disadvantage under law. Sadly, some of the existing laws subsisting for women in India are discriminatory and detrimental. The movement also aimed at reforming Indian law, so that women are treated fairly and with equality. All things considered, this movement has made progress in forcing a great deal of changes. However, a lot of work has still to be done ahead. The intent of this article is to give an overview of women's rights in India and the legals for women in India that are in existence hoping to protect them.

India's women's rights have been marked by a variety of ancient traditions, colonial subjection, and modern legal reforms. Women in India, never less than over the centuries, have fought against all kinds of discrimination and inequality to claim dignity, autonomy, and justice. Today there is integrated framework of law aimed at guaranteeing rights of women, which covers issues such as domestic violence and workplace harassment, sexual assault, property rights etc²²⁰. This chapter gives an extensive account of women's rights in India, its historical evolution and importance of strong legal mechanisms that guarantee justice and equality to women.

²²⁰ Saryal, S. (2014). Women's rights in India: Problems and prospects. *International Research Journal of Social Sciences*, 3(7), 49-53.

literature Review

S.N O	Nature of literature	Name of literature	Covered literature	Research gap	Intended Research
1.	Book	Himabindu, BL, Arora, R & Prashanth, NS (2014) 'Whose problem is it anyway? Crimes against women in India', Global Health Action, 7(1): 23718, [DOI: https://doi.org/10.3402/gha.v7.23718]	The paper discusses general information about rape and its effects on women in India, legal changes, case law perspective, and Indian feminists. They also talk of rape as a societal shame and society letting down the psychological and other needs of those raped. Further it is also discusses the aspects of conviction rate of rape cases in India and role of tradition in the court's decision making.	Off late there is lack of literature in the current literature to explain why Indian women fail to report rape cases. More studies should be conducted to determine the cause for the low reporting rate and how the system that helps rape victims could be more improved. Also, there is no sufficient studies regarding how proposed legal reforms affect the perception of rape as well as the society's attitude towards the problem. Off late there is lack of literature in the current literature to explain why Indian women fail to report rape cases. More studies should be conducted to determine the cause for the low reporting rate and how the system that helps rape victims could be more improved. Also, there is no sufficient studies regarding how	The intended research seeks to fill the above stated research gaps with regards to the factors affecting the reporting of rape cases in India. It is going to explain how all of this—society and culture and the plight of rape victims in general—play an influence on whether or not a rape victim can report the matter. The impacts of legal changes on this sphere including the changes in perceptions of rape and the support system for the victims will also be explored at the study. In so doing, the research will add to the knowledge on the barriers to the reporting of rape cases and explore the possibility of legal changes to respond to them; it will be of use in crafting ways to

				proposed legal reforms affect the perception of rape as well as the society's attitude towards the problem.	address rape and vindicate the rights of women in India.
2	Journal	Ghosh, B. (2013). How does the legal framework protect victims of dowry and domestic violence in India? A critical review. <i>Violence Against Women</i> , 19(4), 457-479.	Primary legislation control on gender-base violence is discussed in the review while highlighting on two major offenses: dowry and domestic violence. The Dowry Prohibition Act, 1961 and the Protection of Women from Domestic Violence Act, 2005(PWDVA) are discussed and compared. Whereas in the dowry law there is an aspect of economic abuse leading to harassment and even leading to death, in PWDVA, the definition of domestic violence adopts another dimension of emotional, physical violence. Analyzing data from the NCRB and collected field data, it has been observed that there is an alarming increase in reported cases of crimes against women but the effectiveness of	Thus it emerged, that legislative reforms do not remove societal and cultural practices which encourage gender violence. Factors such as under reporting, ignorance and delay by the courts hamper their working. Consequently, rural and marginalized women are particularly vulnerable since there are stigmatized by society and lack enough support agencies. Moreover, the low use of the PWDVA relative to other older legislation suggests that awareness of the rights of women and disabled persons as well as institutional implementation capacity are lacking.	It is proposed that future studies should seek to categorize the current socio-cultural factors that hinder the successful implementation of these laws. Research on how geography affects awareness and Legislative representation and caste-class-gender could be applied for improving Legislative outreach. Recommendations will employ legal education, implementation and support structures for the victims.

			curbing such situation remains in its infancy. Limited success is due to general cultural practices, continued male dominance, and inadequate performance from the judiciary.		
3	Article	Saryal, S. (2014). Women's rights in India: Problems and prospects. International Research Journal of Social Sciences, 3(7), 49-53.	The surveyed literature describes violations of women's rights in India in the context of the patriarchal socio-legal system. Some of the areas have to do with Dowry deaths; infanticide of girls; denial of inheritance rights and trafficking in women and girls. Several earlier constitutional and legislative provisions and measures – Articles 14, 15(3), 21 of the Indian Constitution and Dowry Prohibition Act, 1961, the Domestic Violence Act, 2005, have been briefly noted. Somehow, this discourse is also shaped by Millennium Development Goals, especially "Gender Equality and Women Empowerment".	Major gaps that the literature presents include; weak implementation of the laws, cultural barriers and structural barriers, missing intersectionality studies. Issues such as implementation of power for empowering rural and marginalized women, insufficient attention to power for addressing various social prejudices are analysed insufficiently. The conflict of interest between the policy statements and the implementation at the basics has the need for an evaluation model.	The proposed research is employed to evaluate factors of Legal Instruments and women Empowerment in India in its practical contexts. It will look at why there is a lack of implementation and look at caste-class-gender relations. Approaches to improve the effectiveness in policy implementation and promote practice at the grassroots level will also be targeted with the view to eliminating the gap between the enabling policies and the disempowering practices.

			Various government policies and civil society's efforts in promoting women's human rights and women's rights to education and legal justice as forms of empowering women are analyzed at length		
--	--	--	---	--	--

Research Methodology

The research methodology adopted for this dissertation is doctrinal in nature, involving a detailed analysis of primary sources such as statutes, constitutional provisions, and landmark judicial pronouncements. In addition, secondary sources including academic journals, law commission reports, and expert commentaries have been reviewed to provide a comprehensive perspective.

Citation Style: The OSCOLA (Oxford University Standard for the Citation of Legal Authorities) 4th Edition citation style has been followed consistently throughout the dissertation.

Approach: A combination of descriptive and analytical approaches has been employed to examine the historical evolution, effectiveness, and challenges of the legal framework. Case studies have been used to illustrate the practical challenges faced in the implementation of these laws.

Overview of women right

From a cultural and historical perspective India appears to be paradoxical when it comes to women's rights. On the first hand, ancient scriptures and historic accounts portrayed about the status of how women were regarded in the Vedic period as educated and with authority. Then again, centuries of patriarchal

practices and cultural norms have caused a woman to be institutionally oppressed.

• Constitutional provisions-

It is with the adoption of the Indian Constitution in 1950 that the Indian Constitution was one of the first Constitutions to mark a significant turning point in respect to the protection and promotion of women's rights and the protection against discrimination. The Constitution, to its Parts III enshrines Fundamental Rights like equality, non-discrimination and protection to life and personal liberty. Major articles are:

Article 14: Guarantees equality before the law and equal protection of laws.

Article 15: Prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth.

Article 16: Ensures equal opportunity in public employment.

Article 21: Safeguards the right to life and personal liberty, interpreted expansively by the judiciary to include the right to live with dignity.

• Efforts by legislature-

India has introduced many laws for safeguarding women's rights and make sure justice is provided:

The Protection of Women from Domestic Violence Act, 2005²²¹: A set of laws addressing different forms of domestic violence.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (POSH Act): Codified the Vishakha Guidelines to prevent harassment at workplace.

The Dowry Prohibition Act, 1961²²²: makes dowry accepting or giving a punishable offence.

Evolution of women's right

According to some relying on evidence of the Vedic period (c. 1500–500 BCE) women enjoyed a relatively high status in India (education, access to property and participation in religious rites). Gargi and Maitreyi were figures of intellectual and spiritual empowerment. This seems to have changed with the advent of the Manusmriti and the Smriti texts that followed. Child marriage, Sati, enforced widowhood were some of the practices which began to take place and represented erosion of woman's rights and status.

• Colonial era–

Women's rights were at a mixed phase with the arrival of British colonial rule. Although colonial policies often maintained patriarchal norms, they gave social reformers an opportunity to counteract them. And instrumental in its reform were Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar and Jyotirao Phule.

The Abolition of Sati (1829) by Lord William Bentinck, happen because of the campaigns which were led by Raja Ram Mohan Roy, Fight for widow remarriage and women's education by Ishwar Chandra Vidyasagar, Phule's efforts to remove caste and gender-based discrimination with the help of education.

The women's movement for the right to vote also sprang into being in the freedom struggle

in India, including both political rights and social reforms. The participation of women in the Indian National Movement reverberated the quest for the equality.

• Post-Independence–

Post-1947, India saw significant changes in the legal protection of women's rights:

The Hindu Code Bills (1955–1956): ²²³Codified rights relating to marriage, divorce, and inheritance.

The Muslim Personal Law (Shariat) Application Act, 1937²²⁴: Recognized the personal laws of the Muslim community, though often critiqued for gender biases.

Judicial Activism: Landmark judgments such as Vishakha v. State of Rajasthan (1997) established guidelines to fight workplace harassment, showcasing the judiciary's role in advancing women's rights.

The Protection of Women from Domestic Violence Act, 2005 (PWDVA)

• scope and objective–

It is for protection of women who are victims of domestic violence that occur inside the family that the Protection of Women from Domestic Violence Act, 2005 ²²⁵(PWDVA) was enacted. It helped to fill in the blanks before the introduction of this Act, which created the legal remedies for domestic violence that used to be the exception and not the norm. PWDVA is a civil law aiming at the protection of women from abuse and guarantee of rights to violence free life in the domestic sphere.

The Act goes beyond physical violence and outlined that it may include verbal, emotional, sexual, and economic abuse. Unlike other criminal laws, PWDVA focuses on immediate relief for victims rather than penal consequences for perpetrators. The scope encompasses live in relationships of women as

²²¹ Protection of Women from Domestic Violence Act 2005 (India) No. 43 of 2005.

²²² Dowry Prohibition Act 1961 (India) No. 28 of 1961.

²²³ The Hindu Marriage Act 1955 (No. 25 of 1955); The Hindu Succession Act 1956 (No. 30 of 1956); The Hindu Minority and Guardianship Act 1956 (No. 32 of 1956); The Hindu Adoptions and Maintenance Act 1956 (No. 78 of 1956).

²²⁴ Muslim Personal Law (Shariat) Application Act 1937 (No. 26 of 1937).

²²⁵ Protection of Women from Domestic Violence Act 2005 (No. 43 of 2005).

well as women of domestic relationships and recognizes the changing dynamics of India society. The Act also stipulates that victims be granted the rights to be protected from and have access to housing, financial assistance, and other necessary assistance that will assist them to be secure and take care of themselves.²²⁶

• Domestic violence as per the act-
PWDVA provides the definition as:

- (a) Physical abuse: Any action that causes harm to body or endangers a woman's life, limb, or health.
- (b) Sexual abuse: Forced sexual intercourse or actions that demean or violate the dignity of a woman.
- (c) Verbal and emotional abuse: Insults, humiliation, and threats that cause emotional despair.
- (d) Economic abuse: loss of financial resources, disposal of property without consent, and prohibition from accessing funds.

The definition helps to address different forms of violence to which a woman may be subjected overt or subtle. The Act expands the scope of protection available to women by recognizing that economic abuse and emotional violence are identifiable offenses.

• Rights of women under PWDVA-

- (a) Residence order²²⁷- The Act provides that women have the right to reside with other women in a shared household even though she may not have any title or other rights in the property. Courts can issue residence orders preventing the offender dispossessing or disturbing the possession of the house by an offender. This is a significant provision in the provision which prevents women from being evicted from their matrimonial homes, which are often used by men as a tool of coercion.

- (b) Protection order²²⁸- The Act allows courts, to take immediate safety into consideration, to make protection orders that prohibit the abuser from doing such things as committing further acts of violence, contacting the victim and entering certain places he frequents. Those orders were meant as a safety measure to prevent further abuse, and they give the victim legal protection.

- (c) Monetary relief²²⁹- Under PWDVA there are provisions for monetary relief for the medical treatment, for loss of earnings and maintenance to the PWDV victim and her children. This is important for women who are financially dependent of the abusers so as not only to meet their basic needs with no delay but also for the empowerment of women.

- (d) Custody orders²³⁰- As for the Act, it allows the courts to relinquish the temporary custody of children to the victim in order to protect and provide for the children. This provision also stops the abuser from using restraining children to control the victim.

• Protection officer and service provider-
The role of Protection Officers²³¹ and Service Providers is thus crucial in order to facilitate implementation of the Act. The state governments appoint Protection Officers to help victims to file complaints, obtain Protection orders and seek legal aid. In addition, they are also responsible for ensuring that court orders are adhered to and they record the domestic violence cases.

Medical, legal and psychological support to victim are undertaken by Service Providers²³², i.e. Non-Governmental Organizations (NGOs) and other registered organizations. Preparing Domestic Incident Reports (DIR) as well as facilitating victims in accessing shelter homes and medical facilities are some of the things

²²⁶ Ghosh, B. (2013). How does the legal framework protect victims of dowry and domestic violence in India? A critical review. *Violence Against Women*, 19(4), 457-479.

²²⁷ *Protection of Women from Domestic Violence Act 2005*, s 17.

²²⁸ *Protection of Women from Domestic Violence Act 2005*, s 18

²²⁹ *Protection of Women from Domestic Violence Act 2005*, s 20

²³⁰ *Protection of Women from Domestic Violence Act 2005*, s 21.

²³¹ *Protection of Women from Domestic Violence Act 2005*, s 8.

²³² *Protection of Women from Domestic Violence Act 2005*, s 10.

they help in. The aim of the collaboration between Protection Officers and Service Providers is to build a supportive network for victims by simplifying the process of victim legalisation and given assistance at the right time.

- Implementation challenges-

- (a) Society- Consequently, such deep rooted patriarchal norms tend to dissuade women from coming forward with reports of domestic violence. Many victims fear social ostracism and those reliant on the abuser for their income will not file a legal case against him.
- (b) Awareness- PWDVA is largely unknown by many women—especially those living in the countryside. The Act has not been widely disseminated due to inadequate information dissemination and lacking legal literacy programs.
- (c) Infrastructure- The problem comes from the Act's implementation because there is shortage of Protection Officers, insufficient funding of shelter homes and limited accessibility to legal aid services. Unencumbered by a sound and reliable monitoring mechanism, further compounds these challenges with the delay in the processes of justice.
- (d) Judicial delay-Due to their overburdened courts and procedural delays, lots of litigation goes beyond that and impacts victims, causing distress. This is also a result of the absence of bias courts for serving domestic violence cases.
- Case laws-
 - (a) Indra Sarma v. V.K.V. Sarma²³³: This case is historic as the Supreme Court put a definite and definitive meaning on what is considered 'domestic relationship' under PWDVA. The Court said that the protection under the Act should be given to a woman in a live in relationship, which is equivalent to a marriage. This judgment was important in establishing

the right of women beyond the bounds of the traditional use of the family.

- (b) Hiral P. Harsora v. Kusum Narottamdas Harsora²³⁴: The Supreme Court read it broadly, striking down Section 2(q) ban on complaints against male perpetrators. Accordingly, the Court held that women can also be the respondent under PWDVA, which will cover those cases where female ²³⁵relatives abused the person. The Act was made more inclusive and just because with this decision, the protective scope of the Act was widened.

- Statutory improvements-

- (a) awareness program: To achieve that, there are extensive awareness campaigns required to educate women of their rights under PWDVA. NGOs and community leaders can be collaborated for reaching remote areas.
- (b) Enhancement of infrastructure: It is vital for implementation to strengthen the infrastructure such as increasing the number of Protection Officers, funding shelter homes and adequately funding Service Providers.
- (c) Fast-track courts: One way is to set up fast track courts catering exclusively to the domestic violence cases so that delays can be minimized and victims get justice on time.

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

- Vishaka v. state of Rajasthan and Vishaka Guideline

The Sexual Harassment of Women at workplace (prevention, prohibition and redressal) Act, 2013 (originally known as the POSH Act) was enacted to make a work environment free from sexual harassment which is safe and secure for the women. Vishakha v was the landmark judgment of the Supreme Court of India in laying down the foundation for this legislation. Bhanwari Devi, a

²³³ Indra Sarma v VKV Sarma (2013) 15 SCC 755.

²³⁴ Hiral P. Harsora v. Kusum Narottamdas Harsora (2016) 10 SCC 165

social worker from Rajasthan, was gang raped after she was seen attempting to prevent child marriages in her village. This case was filed on that basis. It was the first of several cases in which the absence of a legal framework for dealing with workplace sexual harassment emerged in India.

In that regard, the Supreme Court had issued the Vishakha Guidelines, which it called an interim measure to check the problem until suitable legislation was framed. Sexual harassment was defined in these guidelines, preventive measures were outlined, and compliance Committees were said to be fostered in the workplace. It was a groundbreaking judgment because it recognized sexual harassment as violation of fundamental rights covered under the Articles 14, 15 and 21 of the Indian Constitution, namely the right to equality, equality without discrimination and life with dignity, respectively. Moreover, it also stated that India should adhere to the parameters of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) that India has signed on.

The Vishakha Guidelines were a milestone ahead but were never backed by statute, resulting into ineffective implementation. The POSH Act of 2013 filled this gap by creating a detailed legal framework to take up and counter sexual harassment at workplaces in India.

• Defining Sexual Harassment and Workplaces Covered

The POSH Act covers direct as well as indirect form of sexual harassment. Under Section 2(n)²³⁶ of the Act, sexual harassment would include (direct or implied) any unwelcome act or behavior of any kind such as:

- (a) Physical touch and advances,
- (b) Demand or request for sexual favors,
- (c) Sexually colored remarks,

- (d) Showing pornography,
- (e) Any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature.

This comprehensive definition ensures that both overt and subtle forms of harassment are recognized and addressed.

The Act then defines the word “workplace” in an inclusive fashion. Under section 2(o), “it includes not only the traditional office environment but also unorganized sector, NGO, hospitals, sports institutes and hired domestic worker in households²³⁷”. It was an expansion towards acknowledging the diversity of workplaces in India and protecting women in all such settings. In addition, women visiting workplaces mean even clients, customers, and other third parties come under the purview of the Act.

It also extends protection to a woman working in remote area, out station assignments and any place which is visited by an employee in the course of employment. The intention of the legislature in this holistic approach is to create a conducive working place to women both at the workplace and the workplace per se.

• Internal Complaints Committee (ICC) and Its Role

Given that the POSH Act mandates the creation of an Internal Complaints Committee (ICC) in all organization having ten or more employee, it is one of the most significant provisions of the act. The ICC is empowered to hear complaints of sexual harassment in the organization. As per Section 4 of the Act, the ICC must consist of:

1. “A Presiding Officer who is a woman employed at a senior level,
2. At least two members from among employees committed to the cause of women or with legal knowledge, and

²³⁶ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, s 2(n).

²³⁷ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, s 2(o)

3. One external member from an NGO or association committed to women's cause²³⁸.

This composition is intended to insulate or be fair; sensitive and be impartial when handling complaints. During the process, the ICC can propose actions, can recommend actions, and can ensure that victims are not subjected to additional trauma. It is a mechanism following principles of natural justice to both the complainant and the respondent to present his/her case.

Under the procedural guidelines of the POSH Act, the ICC has to complete the inquiries within 90 days and report to employer within 60 days²³⁹. These timelines aim at quick and speedy redressal to the victims.

In addition, the Act bars victimization of complainants and witnesses and is siloed towards protecting confidentiality during the process. The Act's provisions are not complied with, and this can lead to penalties such as cancellation of business licenses.

- Challenges: Underreporting, Lack of ICCs in Small Establishments, Victim-Blaming

Despite having a comprehensive framework, the POSH Act faces many hurdles in effective implementation:

- (a) lack of case reporting: Reasons for under reporting include social stigma, fear for one's retaliation, or even lack of awareness. Women also fear losing their jobs, having their careers derailed or ones they fear being ostracised at work and report harassment. In a patriarchal society, victims are disbelieved, blamed, victims are rarely believed, and they very rarely come forward to report what has happened.
- (b) ICCs in Small Establishments: Smaller businesses with less than ten individuals working for them are not obliged to

create ICCs. However, for such organizations, the Act requires a Local Complaints Committee (LCC) at the district level, which hardly ever have resources, training or visibility. Moreover, as a lot of small organisations don't know about the Act's requirements, the lower level of compliance stands for a lot of organizations.

- (c) ICCs ineffectiveness: In many cases, senior management is involved in ICCs and they are either non-functional or biased. Some of the organizations are able to get away without audits and oversight mechanisms because they are not subjected to. In addition, ICC members do not have sufficient training and they miss the procedural lapses and lack of sensitivity to victims.

- (d) Awareness and Training: The POSH Act is also unknown by many employees and the existence of ICCs. Generally, the problem of POSH training as a mere compliance exercise instead of an inherent part of the workplace culture is common in organizations. Lack of awareness thus results into inadequate reporting and redressal of cases.

- Case Studies showcasing the Efficiency of the act

- (a) The Tehelka Case ²⁴⁰(2013): The high-profile case of sexual harassment involving the editor-in-chief of *Tehelka* magazine brought significant attention to the POSH Act. The internal committee's findings and the subsequent legal proceedings highlighted the importance of independent and unbiased ICCs. This case underscored the need for organizations to adopt stringent internal policies and ensure impartial investigations.

²³⁸ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, s 4.

²³⁹ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, s 11(4).

²⁴⁰ Shoma Chaudhury v. Tarun Tejpal (2013) Case No. 482/2013, Goa Sessions Court.

(b) The Phaneesh Murthy Case²⁴¹: The case of sexual harassment of the CEO of the company iGate showed how effective internal complaint mechanisms are and how important is organizational accountability. This prompted a corporate governance by instigating prompt action by the company to investigate and terminate the CEO.

(c) State Bank of India (SBI) Incident: A recent case related to SBI saw the ICC promptly taking up a woman employee's complaint of sexual harassment, and recommend proper disciplinary action for the accused. The ICC mechanism was shown to be effective in such big organisations where the background of power can restrain victims to speak out.

Criminal Law Amendments on Sexual Assault in India

Sexual assault is one of the most dastardly crimes that threaten the dignity and the safety of an individual, especially a woman, in India for. At the same time during the years, various legislative amendments have been made in order to enhance the criminal legislation setting in relation to sexual offences as well as contributing to better protection of victims. The Criminal Law (Amendment) Acts of 2013 and 2018 represent those acts, which are special because they consider the sexual violence in an all round manner. This paper analyzes these key amendments in relation to the redefinition of rape under Sections 375 and 376 of the Indian Penal Code (IPC), the debate on marital rape, the analysis of some important case law, and the challenges as well as the recommendations for further reforms.

• 2013 and 2018 Amendments in IPC

(a) The Criminal Law (Amendment) Act, 2013²⁴²: The Criminal Law (Amendment) Act, 2013, was triggered by the brutal gang rape of a young woman (commonly called Nirbhaya

case) in Delhi in 2012, and brought change into the laws aimed at dealing with sexual offences. This amendment was a result of Justice Verma Committee's recommendations. Key changes included:

1. Expansion of the rape definition: The amendment expanded rape to include non-penile vaginal and other sexual acts, thus recognizing a broader range of sexual offenses. Acts such as oral sex, insertion of objects, other forms of sexual assault, and other acts were also incorporated.
2. Enhanced Punishments (Section 376 IPC²⁴³): The rape punishment was made, a bare minimum of 7 years (extendable to life imprisonment). Death penalty was introduced for repeat offenders.
3. Introduction of New Offenses: The amendment criminalised stalking (Section 354D²⁴⁴), voyeurism (Section 354C²⁴⁵), acid attacks (Sections 326A²⁴⁶ and 326B²⁴⁷) and sexual harassment (Section 354A²⁴⁸), providing a complete solution against spectrum of sexual violence.
4. Consent Redefined: Explicit refusal of a claim was defined as unequivocal and voluntary agreement and the burden of proof was shifted in a way best suited to the viewpoint of the victim.

(b) The Criminal Law (Amendment) Act, 2018²⁴⁹: The 2018 amendment was a reaction to the rising concerns regarding sexual crimes against the children, especially after Kathua rape case. Key provisions included:

1. Death Penalty for Child Rape: A rape of girls below 12 years gets the death penalty punishment as per the amendment, while the minimum punishment for rape of girls below 16

²⁴³ Indian Penal Code 1860, s 376.

²⁴⁴ Indian Penal Code 1860, s 354D.

²⁴⁵ Indian Penal Code 1860, s 354C.

²⁴⁶ Indian Penal Code 1860, s 326A.

²⁴⁷ Indian Penal Code 1860, s 326B.

²⁴⁸ Indian Penal Code 1860, s 354A.

²⁴⁹ Criminal Law (Amendment) Act 2013 (No. 13 of 2013).

²⁴¹ Phaneesh Murthy v. iGate Corporation (2002).

²⁴² The Criminal Law (Amendment) Act 2013 (No. 13 of 2013).

years has been increased from 10 years to 20 years, and that too can be life imprisonment.

2. Speedy Justice: To ensure victims did not have to wait long for justice, special courts and short investigation and trial processes were mandated.
3. Enhanced Punishments for Gang Rape: The minimum punishment for gang rape of a girl below 16 years was set at life imprisonment.

The Marital Rape Debate in India

- Legal Position and Controversy:

Despite the progressive amendments, marital rape remains a significant lacuna in Indian criminal law. Exception 2 to Section 375 IPC excludes non-consensual intercourse between a husband and wife, provided the wife is not a minor. This exemption has been widely criticized for violating the constitutional rights of married women, including the right to equality (Article 14) and the right to life and personal liberty (Article 21).

- Arguments For and Against Criminalization

- (a) For Criminalization: Consent is the argument made by the advocates, whether in or out of marriage. Patriarchal norms that find wives as one's property are reinforced through the exemption.
- (b) Against Criminalization: Marital rape is also opposed by opponents who say criminalizing it could negate the institution of marriage and is susceptible to misuse.

- Judicial and Legislative Inertia

This issue has often been referred to courts' deference to the legislature. Yet the 2021 Gujarat High Court's observation that the composition of the marital rape exemption is regressive has reopened the issue. But ill will persists, however, as a result of legislative reluctance due to perceived socio-cultural sensitivities.

Mukesh & Anr. v. State for NCT of Delhi (2017) – The Nirbhaya Case

The Mukesh & Anr. v. State for NCT of Delhi²⁵⁰ case, arising from the 2012 Delhi gang rape, was a watershed moment in India's legal history concerning sexual violence. The Supreme Court upheld the death penalty for the convicts, emphasizing the brutality of the crime and the need for deterrence. Key observations from the judgment included:

1. Recognition of the Victim's Rights: It decided to uphold societal values and to make the dignity of the victim, so it put stress on the punishment to be strict.
2. Impact on Legal Reforms: The Justice Verma Committee recommendations including they were incorporated in the 2013 Criminal Law Amendment which was triggered by this very case.
3. Criticism and Support: While the verdict was widely supported, there were some critics who argued that the focus on capital punishment overshadowed systemic issues like policing and judicial delays.

The Nirbhaya case highlighted the urgent need for reforms not only in law but also in implementation and societal attitudes towards sexual violence.

- Implimentary challenges:

1. Low Conviction Rates: Even though sexual offenses are strictly forbidden by laws yet their conviction rates are low because of inadequate investigations, stigma of the society and victim intimidation.
2. Delayed Justice: Judicial delays undermine the deterrent effect of stringent punishments.
3. Lack of Support Systems: Insufficient support and rehabilitation mechanisms for survivors discourage reporting of sexual offenses.

²⁵⁰ Mukesh & Anr. v. State for NCT of Delhi (2017) 6 SCC 1.

• Recommendations:

1. Criminalization of Marital Rape: The need for legislative action for recognition of marital rape as a crime is to advance the justice for married women.
2. Police and Judicial Reforms: Training of police and courts with fast track for sexual offenses can increase the rate of convictions and reduce delays.
3. Victim-Centric Approach: To encourage reporting, justice requires enhancement of victim compensation schemes, psychological support, and witness protection programs.

The Dowry Prohibition Act, 1961, defines dowry under Section 2²⁵¹ as:

“Any property or valuable security given or agreed to be given either directly or indirectly— (a) by one party to a marriage to the other party to the marriage; or (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties.”

It has nothing to do with voluntary presents or without compulsion and force. Yet another form of con is cash comprising with things such as jewelry and from the property up to. Cranial to this is the fact that the Act has various legal implications since the giving, taking or abetting the dowry is criminalized. First of all, dowry should also be returned by the bride with a set time.

In the end, the Act was a check on dowry demands that can very often become harassment and abuse. Unfortunately however, this law has become ineffective as most of them are undertaken 'gifts' to bypass scrutiny. Rather, it is expansive, defining in all dialects dowry in one type or another, but there is difficulty of interpretation and enforcement precisely because such subpoenas are difficult to prove in court for coercive nature of such transfers.

• Penalties and Loopholes in the Act

(a) Penalties Under the Act: The Dowry Prohibition Act prescribes rigid penalties to deter the practice of dowry. Key provisions include:

1. Section 3²⁵²: Imprisonment for a minimum of five years and a fine not less than ₹15,000 or the amount of dowry, whichever is higher is also penalized in the giving and taking of dowry.
2. Section 4²⁵³: Imprisonment for six months to two years and a fine up to ₹10,000 or with either, in case, of criminalizing of the demand for dowry, directly or indirectly, during or after marriage.
3. Section 8B²⁵⁴: It empowers Dowry Prohibition Officers to prevent dowry practices; collect evidence into cases for prosecution and forward such evidence to senior officers to further prosecute victims of dowry atrocities.

(b) loopholes and Challenges

1. Ambiguity in Definition: This distinction becomes blurred as the crimes deal with dowry vs voluntary gifts – offenders have often managed to escape prosecution by calling dowry gifts.
2. Delayed Justice: The lengthy judicial process and insufficient evidence collection impede timely justice.
3. Inadequate Implementation: A weak Act is due to the lack of awareness and poor enforcement by Dowry Prohibition Officers.

²⁵² Dowry Prohibition Act 1961, s 3.

²⁵³ Dowry Prohibition Act 1961, s 4.

²⁵⁴ Dowry Prohibition Act 1961, s 8B.

²⁵¹ Dowry Prohibition Act 1961, s 2.

Analysis of *Kamesh Panjiyar v. State of Bihar (2005)* – Dowry Death Interpretation

The Supreme Court's judgment in *Kamesh Panjiyar v. State of Bihar* (2005) is a landmark ruling that expanded the interpretation of dowry death under Section 304B of the Indian Penal Code (IPC). The case involved the unnatural death of a woman within seven years of marriage due to continuous harassment for dowry by her husband and in-laws.

Key Aspects of the Judgment:

- Interpretation of Section 304B IPC²⁵⁵: The Court held that for a conviction under dowry death, the prosecution must prove
 1. The woman's death was caused by burns or bodily injury or occurred under abnormal circumstances.
 2. It occurred within seven years of marriage.
 3. She was subjected to cruelty or harassment in connection with dowry demands soon before her death.
- Presumption under Section 113B²⁵⁶ of the Indian Evidence Act: The judgment emphasized that once the prosecution establishes the above conditions, a presumption of dowry death arises against the accused unless proven otherwise.

Impact of the Judgment: The ruling reinforced the legal framework against dowry deaths by clarifying the burden of proof and strengthening the presumption clause. However, critics argue that the mandatory seven-year period is arbitrary and may exclude genuine cases of dowry harassment beyond this duration.

Challenges: Misuse of Law and Societal Acceptance of Dowry

- Misuse of Dowry Laws One of the significant challenges is the alleged misuse of anti-dowry laws. Section 498A of the IPC, which deals with cruelty against women, is often criticized for being misused by some women to settle personal scores, leading to false complaints against husbands and their families. The Supreme Court, in *Rajesh Sharma v. State of UP* (2017), acknowledged this misuse and laid down guidelines to prevent the abuse of the provision.
- Societal Acceptance of Dowry Despite legal prohibitions, dowry continues to be socially accepted across various strata of society. The reasons include:
 - Cultural Norms: Dowry is often seen as a customary practice rather than a crime.
 - Economic Security: Families perceive dowry as a means to secure the bride's future and strengthen social status.
 - Lack of Awareness: Insufficient legal literacy and social pressure deter women from reporting dowry demands.

Efforts to change societal perceptions through education, awareness campaigns, and strict enforcement of the law are crucial for the Act's effectiveness.

Section 304B and 498A IPC – Dowry Death and Cruelty

Dowry, a social evil deeply entrenched in Indian society, has led to numerous instances of cruelty, harassment, and even death of women. The Indian Penal Code (IPC) addresses these issues through Sections 304B and 498A, which deal with dowry death and cruelty by the husband or his relatives, respectively. Additionally, Section 113B of the Indian Evidence Act plays a significant role in presuming dowry deaths in certain circumstances. This section explores the elements of dowry death under Section 304B IPC, the presumption under Section 113B of the Indian Evidence Act, an analysis of the landmark case *Satbir Singh v.*

²⁵⁵ Indian Penal Code 1860, s 304B.

²⁵⁶ Indian Evidence Act 1872, s 113B.

State of Haryana (2021), and recommendations to curb dowry practices effectively.

- Elements of Dowry Death under Section 304B IPC

Section 304B of the IPC was introduced through the Dowry Prohibition (Amendment) Act, 1986, to specifically address the rising cases of dowry deaths. It defines dowry death as the death of a woman caused by burns, bodily injury, or any other abnormal circumstance within seven years of marriage, where it is proven that she was subjected to cruelty or harassment by her husband or his relatives in connection with demands for dowry. The essential elements that constitute an offence under Section 304B IPC are:

- a) Death of a woman: The death must occur under abnormal circumstances, including burns or other physical injuries, and not due to natural causes. The proximity of the death to the marriage plays a critical role, with a statutory period of seven years being set to establish a causal link between dowry demands and the death.
- b) Within seven years of marriage: The section explicitly covers deaths occurring within the first seven years of marriage, recognizing the vulnerability of women during this period to dowry-related violence.
- c) Cruelty or harassment for dowry: It must be proven that the woman was subjected to cruelty or harassment by her husband or his relatives specifically for dowry demands. The nature of harassment must be continuous and severe enough to drive the woman to her death.
- d) Causal connection: There must be a direct link between the cruelty or harassment and the cause of death. Even if the harassment occurred a short time before the death, the courts have

interpreted this as sufficient to invoke Section 304B.

The punishment under Section 304B ranges from a minimum of seven years to life imprisonment, reflecting the seriousness of the offence.

- Role of Presumption under Section 113B of the Indian Evidence Act

To strengthen the legal framework against dowry deaths, Section 113B was introduced in the Indian Evidence Act, 1872. This section provides a statutory presumption of dowry death, shifting the burden of proof to the accused. It states that if it is shown that a woman had been subjected to cruelty or harassment for dowry soon before her death, the court shall presume that such a death was a dowry death.

The term “soon before” has been a subject of judicial interpretation. Courts have clarified that there is no fixed time frame for determining “soon before,” but a reasonable and proximate connection between the cruelty and the death is essential. For instance, in *Kans Raj v. State of Punjab* (2000), the Supreme Court held that the expression “soon before” does not imply an immediate time frame but one that establishes a clear nexus between the cruelty and the death.

The presumption under Section 113B is rebuttable, meaning the accused can present evidence to counter the presumption. However, this provision significantly aids the prosecution by lowering the evidentiary burden, recognizing the challenges in proving dowry deaths due to societal pressures and limited evidence.

Satbir Singh v. State of Haryana (2021)

The Supreme Court’s judgment in *Satbir Singh v. State of Haryana*²⁵⁷ (2021) is a landmark case that reinforced the stringent stance against dowry deaths. In this case, the deceased woman was subjected to continuous harassment and demands for dowry, leading to

²⁵⁷ *Satbir Singh v. State of Haryana* (2021) 6 SCC 1.

her death within seven years of marriage. The trial court and the High Court convicted the husband and his relatives under Sections 304B and 498A IPC.

Key takeaways from the judgment include:

- (a) Interpretation of “soon before her death”: The Supreme Court clarified that the proximity of the harassment to the death must be established with reasonable certainty but does not require a precise timeline. The continuous nature of the harassment and its connection to the cause of death were deemed sufficient.
- (b) Burden of proof: Emphasizing the role of Section 113B of the Indian Evidence Act, the Court reiterated that once the prosecution proves the foundational facts, the burden shifts to the accused to disprove the presumption of dowry death.
- (c) Impact of societal norms: The Court highlighted the need to interpret dowry death provisions in light of prevailing social realities, where victims' families often face pressure to withdraw complaints or settle matters informally.

The judgment in *Satbir Singh* thus reaffirmed the legal provisions aimed at combating dowry deaths and underscored the judiciary's role in ensuring justice for victims.

Conclusion

The protection of women's rights in India has undergone significant transformation, yet numerous challenges persist in bridging the gap between legal frameworks and practical realities. The constitutional mandate for equality, coupled with progressive statutes such as the PWDVA and POSH Act, reflects a strong legal commitment to safeguard women against violence, harassment, and systemic discrimination. However, the persistence of patriarchal norms, societal stigma, and judicial delays often dilute the impact of these laws. Key cases such as *Indra Sarma v. V.K.V. Sarma* and *Satbir Singh v. State of Haryana* reveal the

judiciary's evolving role in interpreting and strengthening statutory protections. Nonetheless, underreporting, infrastructural gaps, and misuse of certain provisions demonstrate the complexities surrounding gender-sensitive legislation. The analysis emphasizes the need for awareness campaigns, institutional accountability, and gender-sensitive training for law enforcement and judicial officers. Fast-track courts, increased funding for shelter and support services, and effective implementation mechanisms are essential to ensure justice is not merely aspirational but accessible. While India's legal framework for protecting women has made commendable progress, sustainable change demands a multifaceted approach combining legal reform, cultural transformation, and institutional commitment. This study reaffirms the importance of continuous evaluation and reinforcement of women's legal rights in both letter and spirit.

Bibliography

- Criminal Law (Amendment) Act 2013 (No. 13 of 2013).
- Dowry Prohibition Act 1961(India) No. 28 of 1961.
- Ghosh, B. (2013). How does the legal framework protect victims of dowry and domestic violence in India? A critical review. *Violence Against Women*, 19(4), 457-479.
- Ghosh, B. (2013). How does the legal framework protect victims of dowry and domestic violence in India? A critical review. *Violence Against Women*, 19(4), 457-479.
- Himabindu, BL, Arora, R & Prashanth, NS (2014) 'Whose problem is it anyway? Crimes against women in India', *Global Health Action*, 7(1): 23718, [DOI: <https://doi.org/10.3402/gha.v7.23718>]
- Hiral P. Harsora v. Kusum Narottamdas Harsora (2016) 10 SCC 165

- Indian Penal Code 1860
- Indra Sarma v VKV Sarma (2013) 15 SCC 755.
- Mukesh & Anr. v. State for NCT of Delhi (2017) 6 SCC 1.
- Muslim Personal Law (Shariat) Application Act 1937 (No. 26 of 1937).
- Phaneesh Murthy v. iGate Corporation (2002).
- Protection of Women from Domestic Violence Act 2005 (India) No. 43 of 2005.
- Protection of Women from Domestic Violence Act 2005 (No. 43 of 2005).
- Saryal, S. (2014). Women's rights in India: Problems and prospects. International Research Journal of Social Sciences, 3(7), 49-53.
- Saryal, S. (2014). Women's rights in India: Problems and prospects. International Research Journal of Social Sciences, 3(7), 49-53.
- Satbir Singh v. State of Haryana (2021) 6 SCC 1.
- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013
- Shoma Chaudhury v. Tarun Tejpal (2013) Case No. 482/2013, Goa Sessions Court.
- The Criminal Law (Amendment) Act 2013 (No. 13 of 2013).
- The Hindu Marriage Act 1955 (No. 25 of 1955); The Hindu Succession Act 1956 (No. 30 of 1956); The Hindu Minority and Guardianship Act 1956 (No. 32 of 1956); The Hindu Adoptions and Maintenance Act 1956 (No. 78 of 1956).