



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

LEGAL PROTECTION OF WOMEN IN INDIA

-Jayashree Raman

ABSTRACT

Legal protection of women is an essential aspect of ensuring gender equality, justice, and human dignity in India. The Indian Constitution guarantees equality before the law and prohibits discrimination on the grounds of sex, while also empowering the State to adopt special measures for the protection of women. Various laws have been enacted to address issues such as domestic violence, sexual harassment, dowry-related offences, child marriage, and crimes against women. Important legislations, including the Protection of Women from Domestic Violence Act, 2005, the Dowry Prohibition Act, 1961, and the Sexual Harassment of Women at Workplace Act, 2013, provide legal remedies and safeguards. Despite these measures, challenges such as lack of awareness, social stigma, delayed justice, and ineffective implementation continue to affect women's access to justice.

This research paper examines the constitutional provisions, statutory frameworks, and judicial decisions relating to the legal protection of women in India. It also analyses the effectiveness of existing laws and identifies the gaps that hinder their proper implementation. The study aims to highlight the importance of legal awareness, institutional accountability, and gender-sensitive justice mechanisms. Ultimately, effective enforcement of laws and continued social reform are essential to ensuring the safety, equality, and empowerment of women in India.

INTRODUCTION

Women make up nearly half of India's population, yet their legal and social position has historically been marked by exclusion from property, education, public life and decisions about their own bodies. Practices such as sati, child marriage, dowry and denial of inheritance were deep in social and legal custom for centuries. Colonial legislation, including the

abolition of sati in 1829 and the Hindu Widows Remarriage Act 1856, came as a reform, though it was selective and often shaped by colonial priorities.

After independence, the Constitution of India made equality between the sexes important. From past few decades, the Parliament and the judiciary built a layered body of protection. Landmark judgements came into being like: the Mathura rape case and the anti-rape movement of the late 1970s and early 1980s, the Shah Bano controversy of 1985, the Vishaka judgment of 1997, and the Delhi gang rape of December 2012, which led to major criminal law reform.

CONSTITUTIONAL FRAMEWORK

- **Equality and non-discrimination**

Article 14 guarantees equality before the law and equal protection of the laws. Article 15(1) prohibits discrimination by the State on grounds including sex, while Article 15(3) permits the State to make special provisions for women and children. Article 16 guarantees equality of opportunity in public employment, and Article 16(2) bars discrimination on grounds of sex.

In *Anuj Garg v. Hotel Association of India*, the Supreme Court struck down a statutory ban on women working in establishments serving liquor, holding that protective discrimination premised on paternalistic assumptions about women's vulnerability violates equality (*Anuj Garg*, 2008). This marks a clear judicial move from "protection" to "empowerment."

- **Life, liberty and dignity**

Article 21 has been the most productive source of women's rights. The Supreme Court has read into it the right to live with dignity, privacy, bodily autonomy and reproductive choice. In *Suchita Srivastava v. Chandigarh Administration*, the Court recognised a woman's reproductive choice as part of personal liberty under Article 21 (*Suchita Srivastava*, 2009). In *Justice K.S. Puttaswamy v. Union of India*, the nine-judge bench affirmed privacy as a fundamental right, strengthening arguments about decisional autonomy in matters of intimacy and procreation (*Puttaswamy*, 2017).

- **Political participation**

The 73rd and 74th Constitutional Amendments (1992) reserved not less than one-third of seats in panchayats and municipalities for women, which has brought over a million women

into local governance. The Constitution (One Hundred and Sixth Amendment) Act 2023, the Nari Shakti Vandan Adhiniyam, extends one-third reservation to the Lok Sabha and State Legislative Assemblies, though its operation is tied to a future delimitation exercise following the first census conducted after its commencement (Constitution (106th Amendment) Act, 2023).

CRIMINAL LAW PROTECTION

- **From the Indian Penal Code to the Bharatiya Nyaya Sanhita**

Until 2024, offences against women were primarily governed by the Indian Penal Code 1860. The Bharatiya Nyaya Sanhita 2023 (BNS), together with the Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS) and the Bharatiya Sakshya Adhiniyam 2023, replaced the IPC, the Code of Criminal Procedure and the Evidence Act with effect from 1 July 2024. The BNS largely carries forward earlier offences, with some restructuring. Rape is now dealt with in sections 63 to 70, dowry death in section 80, and cruelty by a husband or his relatives in section 85, which corresponds to the former section 498A IPC (Bharatiya Nyaya Sanhita, 2023). The BNS also introduced a specific offence of sexual intercourse by deceitful means, including false promise of marriage (section 69), and added provisions on gang rape of women under eighteen.

- **Sexual offences and the post-Nirbhaya reforms**

The law on sexual violence has been shaped by public protest. In *Tukaram v. State of Maharashtra* (the Mathura case), the Supreme Court acquitted police personnel accused of raping a young tribal girl in custody, reasoning that absence of resistance implied consent (Tukaram, 1979). The decision provoked national outrage and led to the Criminal Law (Amendment) Act 1983, which introduced custodial rape provisions and shifted the burden of proof on consent in certain cases.

The December 2012 gang rape in Delhi led to the Justice J.S. Verma Committee, which reported in January 2013 with recommendations on sexual offences, police reform and gender sensitisation (Verma Committee, 2013). The Criminal Law (Amendment) Act 2013 followed. It broadened the definition of rape beyond penile-vaginal penetration, created new offences including acid attacks, stalking, voyeurism and sexual harassment, and raised minimum punishments. The 2018 amendment further introduced the death penalty for rape of girls below twelve years and increased minimum sentences for other categories.

Procedural reforms accompanied these changes. A first information report must be registered when information discloses a cognisable offence (*Lalita Kumari v. Government of Uttar Pradesh*, 2014). Statements of rape survivors are to be recorded by women police officers where possible, and the identity of survivors is protected from publication.

- **Cruelty, dowry and domestic violence under criminal law**

Section 498A IPC, now section 85 BNS, criminalises cruelty by a husband or his relatives. It was designed to address dowry harassment, which was not adequately captured by existing offences. Dowry death, defined in section 304B IPC (now section 80 BNS), carries a minimum sentence of seven years and is supported by a statutory presumption against the accused under section 113B of the Evidence Act, now carried into the *Bharatiya Sakshya Adhiniyam*.

The provision has also generated controversy over alleged misuse. In *Arnesh Kumar v. State of Bihar*, the Supreme Court directed that arrests should not be automatic in such cases and that police must satisfy themselves of the necessity of arrest (*Arnesh Kumar*, 2014). In *Rajesh Sharma v. State of Uttar Pradesh*, the Court issued guidelines including family welfare committees, but these were substantially modified in *Social Action Forum for Manav Adhikar v. Union of India*, which restored the ordinary criminal process with safeguards (*Rajesh Sharma*, 2017; *Social Action Forum*, 2018). These cases show the judiciary attempting to balance protection of women against fears of abuse of process. It is worth noting that claims of widespread misuse are contested, since low conviction rates may reflect investigative and evidentiary weaknesses rather than false complaints.

- **The marital rape exception**

A major unresolved issue is the marital rape exception. Exception 2 to section 63 BNS, like its IPC predecessor, provides that sexual intercourse by a man with his wife, not being under eighteen years of age, is not rape. In *Independent Thought v. Union of India*, the Supreme Court read down the exception to protect wives aged between fifteen and eighteen, holding that sexual intercourse with a wife below eighteen is rape (*Independent Thought*, 2017). For adult wives, the exception remains. In May 2022, a Division Bench of the Delhi High Court delivered a split verdict in *RIT Foundation v. Union of India*, with one judge holding the exception unconstitutional and the other upholding it, and the question has been pending

before the Supreme Court (RIT Foundation, 2022). Readers should check the current status of this litigation, since it may have progressed.

Those defending the exception cite the sanctity of marriage, evidentiary difficulty and availability of remedies under the domestic violence and cruelty laws. Critics respond that it violates Articles 14 and 21 by denying married women the bodily autonomy afforded to all others, a view supported by the Verma Committee (Verma Committee, 2013).

DOMESTIC VIOLENCE AND FAMILY LAW

- **The Protection of Women from Domestic Violence Act 2005**

The Protection of Women from Domestic Violence Act 2005 (PWDVA) is a civil law designed to give women quick and practical relief. It defines domestic violence broadly to include physical, sexual, verbal, emotional and economic abuse, and it extends to women in a "relationship in the nature of marriage," although not to marriage alone. Remedies include protection orders, residence orders, monetary relief, custody orders and compensation, with provision for Protection Officers and service providers (Protection of Women from Domestic Violence Act, 2005).

The Supreme Court has interpreted the Act generously. In *S.R. Batra v. Taruna Batra*, the Court had earlier limited a wife's claim to a shared household to property in which the husband had a right, but *Satish Chandra Ahuja v. Sneha Ahuja* overruled that restrictive view and held that the shared household includes the home where the woman lived, even if owned by in-laws, subject to the statutory scheme (*S.R. Batra*, 2007; *Satish Chandra Ahuja*, 2020). In *Hiral P. Harsora v. Kusum Narottamdas Harsora*, the Court struck down the words "adult male" in the definition of respondent, so that women relatives may also be respondents (*Hiral Harsora*, 2016).

- **Dowry**

The Dowry Prohibition Act 1961 prohibits giving, taking or abetting dowry. Despite amendments in 1984 and 1986, enforcement has been weak. Dowry transactions are rarely reported because both giver and taker are liable, and social acceptance remains high. Dowry-related deaths continue to appear in official statistics every year.

- **Marriage, divorce and maintenance**

India has a plural system of personal laws, with Hindu, Muslim, Christian, Parsi and secular statutes operating in parallel. Women's rights in marriage, divorce and maintenance thus depend on religion. The Hindu Marriage Act 1955 provides for monogamy and grounds for divorce, while the Special Marriage Act 1954 offers a secular option. Section 125 of the Code of Criminal Procedure, now section 144 BNSS, provides a secular remedy of maintenance for wives, children and parents, available to women of all religions.

The Muslim personal law context produced the most prominent controversy. In *Mohd. Ahmed Khan v. Shah Bano Begum*, the Supreme Court held that a divorced Muslim woman could claim maintenance under section 125 CrPC (Shah Bano, 1985). Parliament responded with the Muslim Women (Protection of Rights on Divorce) Act 1986, which the Court in *Danial Latifi v. Union of India* read in a manner that preserved a fair and reasonable provision for the divorced wife (Danial Latifi, 2001). In *Shayara Bano v. Union of India*, a majority of the Court held instant triple talaq (talaq-e-biddat) unconstitutional (Shayara Bano, 2017). Parliament then enacted the Muslim Women (Protection of Rights on Marriage) Act 2019, which makes the practice an offence. Critics argue that criminalisation may be counterproductive, while supporters regard it as an appropriate deterrent.

In 2024, the Supreme Court in *Mohd. Abdul Samad v. State of Telangana* confirmed that a divorced Muslim woman can seek maintenance under section 125 CrPC, regardless of the 1986 Act (Mohd. Abdul Samad, 2024).

The Uniform Civil Code, envisaged in Article 44, remains an unrealised directive. Debate continues between those who see it as necessary for gender equality and those who warn about majoritarian imposition and the loss of community autonomy. A more incremental reform of each personal law, with gender justice as the common standard, is frequently proposed as an alternative.

- **Property and inheritance**

Inheritance was long a domain of discrimination. The Hindu Succession Act 1956 gave daughters limited rights, with the Mitakshara coparcenary excluding them. The Hindu Succession (Amendment) Act 2005 made daughters coparceners by birth with the same rights as sons. In *Vineeta Sharma v. Rakesh Sharma*, the Supreme Court held that this right is not dependent on the father being alive on 9 September 2005, since coparcenary rights arise by

birth (Vineeta Sharma, 2020). In *Mary Roy v. State of Kerala*, the Court held that the Travancore Christian Succession Act did not apply after integration, so that Syrian Christian women in Kerala came under the Indian Succession Act (Mary Roy, 1986).

Despite these developments, women's actual ownership of land and property remains low, a gap attributed to social norms, family pressure and lack of awareness.

WORKPLACE AND ECONOMIC RIGHTS

- **Sexual harassment at the workplace**

In *Vishaka v. State of Rajasthan*, a social worker named Bhanwari Devi had been gang raped in retaliation for opposing child marriage, and the petition sought enforcement of women's rights to safe working conditions. In the absence of legislation, the Supreme Court laid down guidelines, drawing on Articles 14, 15, 19(1)(g) and 21 and on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), as law until Parliament acted (*Vishaka*, 1997). The Court later affirmed in *Apparel Export Promotion Council v. A.K. Chopra* that sexual harassment is a violation of dignity and that the guidelines were to be interpreted broadly (*Apparel Export Promotion Council*, 1999).

Parliament enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (POSH Act). It requires employers with ten or more employees to constitute an Internal Committee, mandates Local Committees at district level for smaller or informal workplaces, prescribes inquiry procedures and time limits, and imposes penalties for non-compliance (*Sexual Harassment of Women at Workplace Act*, 2013). In *Medha Kotwal Lele v. Union of India*, the Court directed that the Vishaka guidelines be implemented in substance and that committees be properly constituted (*Medha Kotwal Lele*, 2013).

Implementation remains patchy. Many organisations, especially in the unorganised sector, which employs the majority of women workers, lack functioning committees. Fear of retaliation, stigma and uncertain conciliation processes discourage complaints.

- **Maternity and equal pay**

The Maternity Benefit Act 1961, as amended in 2017, increased paid maternity leave to twenty-six weeks for the first two children, required creches in establishments with fifty or more employees, and permitted work from home where feasible (*Maternity Benefit (Amendment) Act*, 2017). Critics note that it covers only the formal sector and may

unintentionally discourage employers from hiring women, since the cost falls entirely on them.

The Equal Remuneration Act 1976 gave effect to Article 39(d). Its provisions have since been subsumed in the Code on Wages 2019, which prohibits discrimination in wages and recruitment on the ground of gender (Code on Wages, 2019). The gender pay gap and the low female labour force participation rate nevertheless remain significant concerns.

- **Women in the armed forces**

Judicial intervention has opened careers previously closed to women. In *Secretary, Ministry of Defence v. Babita Puniya*, the Court directed that women Short Service Commission officers in the Army be granted permanent commission and command appointments, rejecting stereotypes about physical limitations and social conditions (Babita Puniya, 2020).

REPRODUCTIVE RIGHTS AND AUTONOMY

The Medical Termination of Pregnancy Act 1971 was amended in 2021 to extend the upper gestational limit to twenty-four weeks for specified categories of women and to remove the limit where a medical board diagnoses substantial foetal abnormalities. In *X v. Principal Secretary, Health and Family Welfare Department*, the Supreme Court held in 2022 that unmarried women are entitled to the same access to safe abortion up to twenty-four weeks as married women, and observed that the term "marital rape" should be understood to include non-consensual intercourse within marriage for the limited purpose of the Act (*X v. Principal Secretary*, 2022). This reasoning expands reproductive autonomy and indicates openness to rethinking the marital rape exception.

INSTITUTIONAL MECHANISMS

The National Commission for Women, established under the National Commission for Women Act 1990, investigates violations, recommends legislative changes and takes up individual complaints, but has only recommendatory powers (National Commission for Women Act, 1990). State Commissions, One Stop Centres, women's helplines, fast-track courts and women police stations supplement it. Legal aid under the Legal Services Authorities Act 1987 is available to women regardless of income. Programmes such as *Beti Bachao Beti Padhao* and the *Mission Shakti* scheme seek to address the social dimensions of discrimination. These institutions are often under-resourced. Protection Officers under the

PWDVA, for example, are frequently assigned additional duties or are vacant, and Internal Committees lack training.

GAPS BETWEEN LAW AND PRACTICE

- **Under-Reporting**

The National Crime Records Bureau recorded more than 4.4 lakh cases of crime against women in 2022, with cruelty by husband or relatives and assault on women with intent to outrage modesty among the most common categories (NCRB, 2022). The National Family Health Survey 2019-21 (NFHS-5) found that about 29 per cent of ever-married women aged 18 to 49 had experienced spousal violence, and that only a small proportion sought help (IIPS & ICF, 2021). The contrast between survey estimates and police-reported figures suggests significant under-reporting.

- **Barriers to justice**

Several factors weaken enforcement. Police may discourage or delay registration of complaints, particularly in domestic matters, and may promote "compromise." Medical and forensic procedures can be insensitive, although the Supreme Court has prohibited the "two-finger test" as it violates dignity (*Lillu v. State of Haryana*, 2013). Trials are slow, survivors face hostile cross-examination, and conviction rates in rape cases are low. Women from marginalised groups, including Dalit, Adivasi, Muslim, disabled and transgender persons, face compounded barriers (Intersectional discrimination remains inadequately addressed in the legal framework).

- **Personal law and patriarchal norms**

Plural personal laws produce unequal outcomes depending on religion, and the codified laws themselves retain provisions that reflect patriarchal assumptions, such as the position of the father as natural guardian under section 6 of the Hindu Minority and Guardianship Act 1956, although courts have moderated this in practice. Social attitudes, including son preference, honour and dependence on family, undermine even progressive statutory entitlements.

- **Criminalisation**

Legislative responses have often relied on harsher punishment, including the death penalty for certain rapes. The Verma Committee itself did not recommend capital punishment, and evidence suggests that certainty of punishment rather than severity deters crime. Harsh

penalties may also reduce reporting where the accused is a family member and may increase the risk to victims.

RECOMMENDATIONS

1. **Resolve the marital rape question:** Parliament or the Supreme Court should remove the exception for adult wives, with safeguards consistent with ordinary criminal procedure, to ensure equal protection under Articles 14 and 21.
2. **Strengthen investigation and victim support:** Gender-sensitive police training, specialised investigation units, victim and witness protection, and trauma-informed medico-legal practices should be funded and monitored.
3. **Enforce the POSH Act and extend it to the informal sector:** Annual compliance audits, public reporting by employers, and properly resourced Local Committees are needed.
4. **Reform personal laws on a gender-justice basis:** Whether through a Uniform Civil Code or consultative, community-by-community reform, the shared standard should be equality in marriage, divorce, guardianship and inheritance.
5. **Improve data and evaluation:** Disaggregated data by caste, religion, disability and region will allow targeted interventions.
6. **Invest in prevention:** Education, community engagement and economic empowerment address root causes that law alone cannot.

CONCLUSION

India's legal protection of women is wide in scope, it is a constitution that guarantees equality and permits special measures, criminal laws that have expanded the definition of sexual and domestic violence, civil statutes that offer practical remedies, and a judiciary that has repeatedly interpreted Article 21 to protect dignity and autonomy. The trajectory from Tukaram to Vishaka, from Shah Bano to Shayara Bano, and from restrictive inheritance rules to Vineeta Sharma shows a steady movement toward substantive equality.

Yet legislation has not been matched by implementation. Under-reporting, procedural delay, weak institutions, fragmented personal laws and entrenched social norms keep many guarantees from reaching the women who need them. Unresolved issues such as marital rape

show that formal equality is still incomplete. The next stage of reform should therefore focus less on new offences and more on making existing rights enforceable, accessible and socially accepted. Law can set the standard, but a durable change in women's position also depends on institutions and attitudes that treat that standard as ordinary.

REFERENCES

❖ CONSTITUTION

- Constitution of India, 1950, arts. 14, 15, 16, 21, 39, 42, 44, 51A.
- Constitution (Seventy-third Amendment) Act, 1992; Constitution (Seventy-fourth Amendment) Act, 1992.
- Constitution (One Hundred and Sixth Amendment) Act, 2023.
- Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023; Bharatiya Sakshya Adhiniyam, 2023.
- Indian Penal Code, 1860 (repealed); Code of Criminal Procedure, 1973 (repealed).
- Criminal Law (Amendment) Act, 1983; Criminal Law (Amendment) Act, 2013; Criminal Law (Amendment) Act, 2018.
- Dowry Prohibition Act, 1961.
- Hindu Marriage Act, 1955; Hindu Succession Act, 1956; Hindu Succession (Amendment) Act, 2005; Hindu Minority and Guardianship Act, 1956; Special Marriage Act, 1954.
- Immoral Traffic (Prevention) Act, 1956; Indecent Representation of Women (Prohibition) Act, 1986.
- Maternity Benefit Act, 1961; Maternity Benefit (Amendment) Act, 2017.
- Medical Termination of Pregnancy Act, 1971; Medical Termination of Pregnancy (Amendment) Act, 2021.
- Muslim Women (Protection of Rights on Divorce) Act, 1986; Muslim Women (Protection of Rights on Marriage) Act, 2019.
- National Commission for Women Act, 1990.

- Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994.
- Prohibition of Child Marriage Act, 2006.
- Protection of Children from Sexual Offences Act, 2012.
- Protection of Women from Domestic Violence Act, 2005.
- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- Code on Wages, 2019; Equal Remuneration Act, 1976 (subsumed).
- Legal Services Authorities Act, 1987.

❖ CASES

- *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1.
- *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759.
- *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.
- *Danial Latifi v. Union of India*, (2001) 7 SCC 740.
- *Hiral P. Harsora v. Kusum Narottamdas Harsora*, (2016) 10 SCC 165.
- *Independent Thought v. Union of India*, (2017) 10 SCC 800.
- *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.
- *Lalita Kumari v. Government of Uttar Pradesh*, (2014) 2 SCC 1.
- *Lillu v. State of Haryana*, (2013) 14 SCC 643.
- *Mary Roy v. State of Kerala*, (1986) 2 SCC 209.
- *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 297.
- *Mohd. Abdul Samad v. State of Telangana*, 2024 SCC OnLine SC 1686.
- *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556.
- *Rajesh Sharma v. State of Uttar Pradesh*, (2018) 10 SCC 472.
- *RIT Foundation v. Union of India*, 2022 SCC OnLine Del 1404 (split verdict).

- *S.R. Batra v. Taruna Batra*, (2007) 3 SCC 169.
- *Satish Chandra Ahuja v. Sneha Ahuja*, (2021) 1 SCC 414.
- *Secretary, Ministry of Defence v. Babita Puniya*, (2020) 7 SCC 469.
- *Shayara Bano v. Union of India*, (2017) 9 SCC 1.
- *Social Action Forum for Manav Adhikar v. Union of India*, (2018) 10 SCC 443.
- *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.
- *Tukaram v. State of Maharashtra*, (1979) 2 SCC 143.
- *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1.
- *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.
- *X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi*, 2022 SCC OnLine SC 1321.

❖ REPORTS AND DATA

- International Institute for Population Sciences (IIPS) and ICF (2021). *National Family Health Survey (NFHS-5), 2019-21: India*. Mumbai: IIPS.
- National Crime Records Bureau (2023). *Crime in India 2022*. New Delhi: Ministry of Home Affairs.
- Committee on Amendments to Criminal Law (Justice J.S. Verma Committee) (2013). *Report of the Committee on Amendments to Criminal Law*. Government of India.
- Committee on the Status of Women in India (1974). *Towards Equality*. Government of India.

❖ CONVENTION

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979; ratified by India in 1993.