



WOMEN'S RIGHTS AND GENDER JUSTICE UNDER THE INDIAN LEGAL SYSTEM

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ABSTRACT

Gender justice is one of the most timeless areas of concern for the Indian legal system, ranging from constitutional provisions, criminal law, personal law, labour law and political representation. In this paper, the author 'where from' examines the evolution of the legal framework relating to women's rights in India, starting with the equality and non-discrimination provisions of the Constitution and the statutory measures taken to address discrimination in marriage, workplace and the Bill of Rights against violence faced by women. The paper is structured around five short thematic headings, with each one setting out the applicable law in point form: constitutional framework for gender justice, criminal law protections against violence, marriage and succession rights, workplace rights and political rights and emerging challenges. A special chapter then examines ten pivotal cases that have informed the understanding and implementation of these guarantees, such as *Vishaka v. State of Rajasthan*, *Shayara Bano v. Union of India* and *Vineeta Sharma v. Rakesh Sharma*. While the country has a relatively strong stock of gender-justice laws and progressive judicial precedents, the paper identifies the continuing shortcomings in implementation, social opposition, the unfinished debate on uniform personal laws and inadequate political representation as the causes of the lack of substantive equality for women in practice. It ends with suggestions to improve the enforcement system, operationalise the *Nari Shakti Vandan Adhiniyam, 2023* and rectify the remaining discriminatory provisions, e.g. marital rape exception.

KEYWORDS

Gender Justice; Women's Rights; Constitution of India; Domestic Violence; Sexual Harassment; Personal Law; Hindu Succession Act; Uniform Civil Code; Political Representation; Judicial Interpretation.

INTRODUCTION

It is important to note that the new Constitution of India, which came into force in 1950, had pledged the country to the vision of gender equality as a reality when Indian women's everyday experiences were deeply influenced by entrenched patriarchal social norms, unequal personal laws and their exclusion from the public and economic sphere. Since then, over seven decades, Indian law has been seeking to bridge the divide between formal equality and substantive gender justice via constitutional guarantees, targeted legislation and the interpretation of laws by the judiciary. However, the continued existence of domestic violence, workplace



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harassment, unequal inheritance, child marriage, female foeticide and the significant lack of female participation in legislatures shows that this is an unfinished business.

Gender justice is rooted in Indian constitutional law. Gender justice is underpinned by the vocabulary in Indian constitutional law. The right to equality in the face of the law is guaranteed in Article 14, Article 15(1) prohibits discrimination based on sex and Article 15(3) gives the State the power to make special provisions for women, which is the basis for affirmative action. Article 16 guarantees equality of opportunity in public employment, as Article 21 has been judicially expanded to include the right to live with dignity, bodily autonomy and freedom from violence. The guarantees are further supported by the Directive Principles enshrined in Articles 39 and 42 that call on the State to ensure equal treatment and a decent standard of work and Article 51A(e) of the Constitution that places a duty upon citizens to reject practices that are harmful to the dignity of women (Rubio-Marín, 2005).

On this constitutional structure, Parliament has passed a sizeable amount of protective and remedial legislation, including the Protection of Women from Domestic Violence Act, 2005, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the Criminal Law (Amendment) Act, 2013, passed in the wake of the 2012 Delhi gang rape case and, more recently, the Nari Shakti Vandan Adhiniyam, 2023, which reserved one-third of seats in the Lok Sabha and State legislatures for women. In Vishaka, the court gave guidelines against sexual harassment at the workplace, a practice that came before the legislation and in Shayara Bano, the court struck down the instant triple talaq from the law, which was a precursor to the legislation. This paper is divided into five succinct thematic Parts where the relevant law pertaining to gender justice is presented in point form: Part I: Constitutional framework for gender justice; Part II: Criminal law protections against violence; Part III: Marriage, divorce and succession rights; Part IV: Workplace, economic and political rights; and Part V: Emerging issues such as cyber crimes against women, the marital rape exception and the ongoing Uniform Civil Code debate. Ten of the most important judicial decisions are then summarized under five headings in part VI, followed by a discussion of the current state of the system and suggestions for its improvement in part VII. Methodologically, the paper is based on a doctrinal legal analysis of the primary sources such as the Constitution, key statutes and reported cases of the Supreme Court of India with additional secondary academic commentary. While "important" such as the scope of State-specific legislation and practice of personal law by smaller religious and customary communities and empirical or sociological data on the outcomes of implementation are not ignored, they are outside the scope of the paper and are referred to only when directly relevant to interpreting the statutory or constitutional text to which they refer.

I. CONSTITUTIONAL FRAMEWORK FOR GENDER JUSTICE

The Indian Constitution in terms of gender justice is based on the equality, liberty, dignity, non-discrimination and social justice. Justice for gender is not just about equal treatment of



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women and men, it is about doing things differently, eliminating the disadvantages women have been facing historically, socially, economically and institutionally, which have hindered them in exercising their rights on an equal basis. The Constitution thus has enforceable Fundamental Rights coupled with affirmative action provisions, Directive Principles of State policy and Fundamental Duties. These provisions combine negative and positive obligations for the State, which includes the obligation to not discriminate against women in its treatment, as well as the obligation to take “appropriate legislative, administrative and welfare measures” to remove any structural inequalities against women. (Agnes, 1999)

1. The Preamble and the Constitutional Vision of Gender Justice

The Preamble sets the philosophical underpinnings of gender justice as it promises social, economic and political justice, liberty, equality of status and opportunity and dignity of the individual. While the Preamble itself does not provide a specific remedy which is binding in law, it does shape the interpretation of Fundamental Rights and other provisions of the Constitution. Equality of status means that the law must acknowledge women as independent and equal rights-holders, not as the dependent of their fathers, husbands or families. Equality of opportunity means equal access to education, employment, political decision making, health and public services. The constitutional principle of gender justice, therefore, goes further than legal equality and aims at changing the social situation that perpetuates women's oppression (Austin, 1999).

2. Equality before Law under Article 14

All persons are guaranteed equality before the law and equal protection of the laws in Article 14. The guarantee does not require that citizens be different from non-citizens; it does not require that the State act rationally; and it does not require that the State act in an arbitrary way. With respect to women, Article 14 calls for laws, policies and administrative decisions to build the equality of women as persons with independent dignity, agency and constitutional rights. A gender based classification must have a constitutionally valid basis and should not be based on traditional notions of weakness, dependence or inability of women to undertake certain roles in society or in the labour market. Article 14 has evolved from merely forbidding unreasonable classification to providing a more comprehensive protection against arbitrariness and stereotyping and structural discrimination (Jain, 2018).

While formal equality calls for an equal treatment for similarly situated persons, gender justice may call for substantive equality. Substantive equality acknowledges that seemingly neutral laws can impact women more harshly due to historical disadvantage, unequal domestic burden, poverty, caste, disability or limited access to resources. The constitutional question is thus more than just whether a law employs a gender neutral language, but also its actual social and economic impact. An equal approach can be discriminatory if it perpetuates the same process of exclusion. However, if there is a disadvantage for women and the measure provides extra protection or support, the measure can be constitutionally sound (Fredman, 2016).



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3. Prohibition of Sex Discrimination under Article 15

According to this Article 15(1) of the Constitution of India, the State shall not discriminate against any citizen on the basis of religion, race, caste, sex or place of birth. Rules against discrimination on access to shops, public restaurants, hotels, places of public entertainment, wells, tanks, roads and other places of public use are contained in Article 15(2). These provisions are significant for women because women frequently are subject to discrimination not just at the legislative level, but also by denial of access to public spaces, school, jobs and social services. The meaning of the term “sex” has also increasingly been seen in relation to gender identity, sexual orientation and discriminatory gender stereotypes, which has endowed Article 15 with a more anti-subordination character (Kannabiran, 2012).

Article 15(3) specifically allows for special provisions for women and children. It is neither equality nor non-discrimination, but rather an instrument of the constitution set aside for purposes of substantive equality. Based on this, the State can take action like maternity benefits, workplace protections, reservations in local government institutions, shelter, legal assistance and welfare programmes. But special measures can only be implemented in the interests of equality for women and not grounded on paternalistic assumptions that limit women's freedom under the guise of protecting their rights. The difference between affirmative action and protectionism must therefore be evaluated by evaluating the measure's impact on women's choices and participation and whether it reinforces women's dependency and exclusion (Kapur & Cossman, 1996).

4. Equality of Opportunity in Public Employment under Article 16

Article 16 assures equality of opportunity in the field of public office and that discrimination is prohibited in connection with public office, among other things, on the basis of sex. It safeguards women from discriminatory recruitment criteria, different service conditions, from being arbitrarily promoted or excluded from certain jobs just because of their gender. The constitutional guarantee demands that the State assess women on the basis of the relevant professional criteria and not on the basis of stereotype notions about their ability to perform physically, about their household duties and/or their capacity to lead. Institutional conditions to facilitate meaningful participation in public employment also include fair promotion opportunities, maternity protection, safe working environments and freedom from sexual harassment (Parashar, 1992). The Supreme Court in its judgement in Secretary, Ministry of Defence v. Babita Puniya, (2020) 7 SCC 469, did not agree with the stereotypical arguments about the physiological make-up and the inability of women to suffer the strains of military service and their domestic duties. It had pledged to consider the issue of Permanent Commission of women officers in the Indian Army as eligible. The Court determined that any assumptions about the role of women in the family cannot be used to justify institutional exclusion. This was further illustrated in the case of Lt. Col. Nitisha v. Union of India (2021) 15 SCC 125, where the Court explained that seemingly neutral standards, which



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disproportionately discriminate against women, because they are standards formulated to align with the career path of men, may be cases of indirect discrimination, arising from earlier institutional exclusion of women (Chandra, 2021).

5. Life, Liberty and Dignity under Article 21

Article 21 states that everyone has the right to life and personal liberty cannot be taken away from a person except from a lawful procedure. Judicial interpretation has expanded this provision to include the rights to dignity, privacy, bodily integrity, health, reproductive autonomy, shelter and freedom from violence. Article 21 guarantees women the right to make basic choices in matters of marriage, sex, reproduction, pregnancy, family life and relationships.

Therefore in the context of gender justice as mentioned in Article 21, women must be recognized as autonomous individuals who are able to make choices over their bodies as well as their lives without the pressure of the State, family and community (Menon, 2012). In *Suchita Srivastava v. Chandigarh Administration* (2009) 9 SCC 1, Supreme Court had declared reproductive choice as a part of the right to personal liberty guaranteed by Article 21. Justice K.S. Puttaswamy (Retd.) in *Justice K.S. Puttaswamy (Retd.) v Union of India*, (2017) 10 SCC 1, considered privacy as a fundamental right that relates to dignity, autonomy and control over personal information. Likewise, in *Joseph Shine v Union of India*, (2019) 3 SCC 39, the Court struck down the definition of the offence of adultery in Section 497 of the Indian Penal Code of 1860 as it did not give sexual and decisional autonomy to a married woman and treated her as an asset of her husband. These judgments have laid the foundation of the acceptance of the constitutional protection which cannot be grounded on the patriarchal ideas of honour, guardianship and marital control (Kothari, 2023).

6. Freedom of Speech, Expression, Movement and Profession

Important freedom guaranteed under Article 19 of the Constitution of India is freedom of speech and expression, peaceful assembly, movement, residence and profession. These freedoms are vital to women's full and equal participation in political, economic and social life. The restrictions on women's dress, movement, work and digital expression and access to public areas may accordingly have constitutional implications. Gender-based violence and harassment also impact these freedoms, as a woman who is unable to travel, work, speak or take part in public life does not have the same liberty.

It is therefore not only the State's duty to refrain from directly restricting the exercise of women's constitutional rights, it must also put in place conditions that enable women to exercise their constitutional rights without fear of violence and discrimination (Baxi, 2000). In *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1, the Supreme Court struck down a provision in the statute, banning women from working in premises with liquor outlets.

The Court ruled that it was impossible to ban women from work on the basis of traditional notions of their vulnerability. The State was to ensure safe working conditions, rather than



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limiting women's choices. The decision was important because it laid down the anti-stereotyping principle, which is a law cannot discriminate against women or limit their freedom based on underlying notions of morality, security and appropriate gender roles (Sivaramayya, 2008).

7. Protection against Exploitation

Article 23 and 24 guarantees the protection of persons against trafficking and hazardous child labour, forced labour. Article 23 is especially relevant for women and girls who are at risk of being trafficked for sexual exploitation, domestic servitude, forced marriage or other forms of forced labour. The constitutional prohibition can be enforced not only against the State, but also against private individuals and organisations.

It requires the government to prevent exploitation, prosecute the offenders, rescue victims and offer effective rehabilitation. But it is important to implement it with gender sensitivity as victims might also have multiple disadvantages based on their gender, poverty, caste, migration status, disability or age (Sarkar, 1984).

8. Directive Principles of State Policy

The Directive Principles of State Policy are not directly applicable like Fundamental Rights but they provide fundamental directions to the State for law making and governance. Article 38 calls upon the State to establish a social order based on justice and reduce inequalities in its occurrence. Under Article 39(a) there needs to be sufficient means of living for both men and women and under Article 39(d) men and women are entitled to equal pay for equal work. Article 39(e) mandates the protection of the health and strength of workers and Article 39A lays down the principle of equal justice and free legal aid. It is acknowledged that without the access to economic resources, equal opportunities in employment, access to health, justice institutions, women's legal equality is rendered useless (Basu, 2015). The State is obliged under Article 42 to ensure "just and humane conditions of work" and "maternity relief". It offers the constitutional framework for laws on maternity benefits and workplace welfare and employment protection. The role of a mother cannot legally be made the sole personal responsibility and the reason for excluding women from work. Pregnancy and caring responsibilities must be addressed through suitable institutional mechanisms in order to ensure constitutional gender justice. Yet, the protection of the mothers cannot be solely maternity-focused, since a truly equal system should provide for shared responsibilities of both parents and caregivers (Rao, 2012).

9. Fundamental Duties and the Renunciation of Practices Derogatory to Women

Article 51A(e) has explicitly stated that it is a fundamental duty of every citizen to denounce any practice which is derogatory to the dignity of women. Basic Duties are not directly enforceable through independent legal actions, but have an interpretative and educative value. Article 51A(e) recognizes that gender justice does not only require state action, but also people, families, communities and institutions need to stop practices that lead to and uphold violence,



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humiliation, objectification and discrimination. The provision backs laws and judicial action on dowry, domestic and workplace harassment, trafficking and other practices that negatively impact women's dignity (Dhagamwar, 1992).

10. Political Representation and Democratic Participation

The Constitution of India has laid a significant emphasis on the empowerment of women in democratic governance by reservation of seats and chairperson for women in Panchayats and Municipalities (not less than one-third of the strength) inclusive of reservation for women belonging to the Scheduled Castes and Scheduled Tribes in accordance with Article 243D and 243T of the Constitution of India. These measures have helped involve women in local governance and provided women with opportunities for involvement in public decision-making. Political Reservation is not just about numbers, it is about redistribution of institutional power and participation of women in policies relating to education, health, sanitation, welfare, violence and local development (Rai, 2011). The Constitution (One Hundred and Sixth Amendment) Act, 2023, popularly referred to as the Nari Shakti Vandan Adhiniyam, provided for the reservation of about one-third of seats in the Lok Sabha, State Legislative Assemblies and Legislative Assembly of the National Capital Territory of Delhi for women. Its implementation is related to the requirements for delimitation and census as stated in the Constitution. The amendment is a significant constitutional acknowledgment that “equal citizenship” requires more than just the right to vote and participate in elections: it demands meaningful representation in the processes of law-making (Rai & Spary, 2019).

11. Judicial Development of Gender Justice

The Supreme Court has made a tremendous contribution to the agenda of making constitutional guarantees into standards of gender justice. In *Vishaka v. State of Rajasthan*, 1997 6 SCC 241, it observed that harassment in the workplace is a violation of the rights of women under the constitution of India, Articles 14, 15, 19 and 21 and gave guidelines under the absence of law. The triple talaq was declared invalid in the case of *Shayara Bano v. Union of India*, (2017) 9 SCC 1. The law on adultery was unconstitutionalised in *Joseph Shine v. Union of India* (2019) since it was held that it was perpetuating the patriarchy; and, in *Babita Puniya* (2020) and *Lt. Col. Nitisha* (2021), substantive equality was secured and institutional stereotypes were overcome. These decisions reflect that constitutional interpretation will also have to consider how facially neutral rules can maintain male-dominated structures and impede women's agency (Kapur, 2005).

12. Constitutional Significance of Gender Justice

The Indian constitution is not a gender justice mandate but a gender justice project. The equality, freedom, dignity and autonomy are guaranteed by Articles 14, 15, 16, 19 and 21, while Articles 38, 39, 39A and 42 mandate the implementation of positive measures for social and economic justice. Art 51A(e) strengthens the social obligation to disapprove of practices degrading women and constitutional terms regarding political reservation encourage women's



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involvement in democratic bodies. However, its effectiveness relies on implementation, available remedies, gender sensitive policing and adjudication, institutional accountability and the eradication of stereotyping in both the public and private domain. Constitutional gender justice, however, requires substantive equality in the lives of women to be realised from the formal rights (MacKinnon, 2006).

II. CRIMINAL LAW PROTECTIONS AGAINST VIOLENCE

Protection against violence in the criminal law is an integral part of the right to equality, dignity, the body and personal security guaranteed under Article 14, 15 and 21 of the Indian Constitution. Violence against women does not stop at physical violence, it encompasses sexual violence, domestic violence, psychological violence, economic violence, stalking, voyeurism, acid attacks, dowry violence, trafficking and technology-mediated violence. Indian criminal law aims at preventing such behaviour, imposing punishment on the offenders and ensuring procedural protection for the victims. The present framework is mainly the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and a few special Acts like the Protection of Women from Domestic Violence Act, 2005, Dowry Prohibition Act, 1961, Protection of Children from Sexual Offences Act, 2012 and the Sexual Harassment of Women at Workplace Act, 2013 (Gaur, 2024).

1. Sexual Offences under the Bharatiya Nyaya Sanhita, 2023

The BNS has specific offences against women and children in Chapter V. Section 63 outlines the meaning of 'rape' and Sections 64 to 71 outline penalties for rape and aggravated sexual violence, such as rape of minors, rape causing death or a persistent vegetative state, rape by certain persons in positions of authority, gang rape and repeat rape. Section 69 is an exception that considers sexual intercourse that is procured through deceitful behavior or a false promise to marry, but is not committed with the intent to marry, to be a crime if it does not qualify as rape. These provisions acknowledge that freedom of sex is an act of free consent and that where there is fear, deception and/or coercion and/or misuse of authority there is no free consent (Pillai, 2024). Consent means a clear and unmistakable agreement made by a person that they wish to engage in a certain sexual activity, freely expressed in words, gestures or through any verbal or non-verbal means. Consent does not mean the absence of physical resistance. This is significant because survivors might not be able to resist because they are afraid, shocked, physically restrained, or intoxicated, or they have unequal power. Consent has to be for the act and must remain during the act. However, Exception 2 of Section 63 does not include sexual intercourse with a wife, where she is not under eighteen years of age, in the definition of rape and thus marital rape remains unsolved in the Indian criminal law.

In *Independent Thought v Union of India*, (2017) 10 SCC 800, the Supreme Court interpreted this marital-rape exception under the former IPC and concluded that sexual intercourse with a wife under 18 years of age would be a rape. The Court made an attempt to harmonise the criminal law with the law of children protection and made it clear that marriage shall not



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extinguish the right of a girl child in relation to her body, dignity and the law of children protection. The decision was however, limited to minor wives and not affected the marital exception in respect of married women of adult age (Choudhry, 2017).

2. Sexual Harassment, Voyeurism and Stalking

The BNS acknowledges that there are several types of gender-based violence that can happen that are not penetrative sexual assault. Section 74 covers assault or use of criminal force against a woman with the purpose of outraging the modesty of the woman and Section 75 criminalises sexual harassment, such as making sexual advances, physical contact and sexual remarks, even when not actually unwanted, sexual showing of pornography without consent and requests for sexual favours. Section 76 is about assault or criminal force to the effect of disrobing a female. These provisions acknowledge that unwanted sexual behaviour is a violation of dignity and bodily autonomy, even if it does not necessarily constitute rape under the law (Rege, 2013).

Section 77 of the BNS outlaws voyeurism, which refers to the observing and/or recording of an image of a woman practising a private act and sharing of such an image without her consent. Notably, “consent” to be photographed does not imply “consent” to be published. Section 78 covers stalking which includes persistent contact and following a woman online using internet, e-mail or other electronic communication. Section 79 also provides a criminal penalty for words, actions or gestures which are meant to denigrate a woman's modesty or invade her privacy. The provisions also apply to digital environments and can be parallel to Sections 66E, 67 and 67A of the Information Technology Act, 2000, in the case of intimate images or sexually explicit materials being electronically captured or circulated (Halder & Jaishankar, 2011).

3. Domestic Violence and Cruelty within the Family

Domestic violence is defined as physical, sexual, verbal, emotional and economic abuse that occurs in a domestic relationship. The Protection of Women from Domestic Violence Act, 2005 covers a wide-spectrum of protection beyond conventional criminal prosecution. It allows for the aggrieved woman to apply for protection order, residence order, monetary relief, temporary custody, compensation, interim relief and ex parte relief. It also acknowledges the right of a woman to live in the shared household regardless of her legal ownership and/or legal title. The main thrust of the Act is remedial and protective, but violation of a protection order is a criminal offence under Section 31 (Jaising, 2009). A husband or family member who commits acts of cruelty is dealt with in sections 85 and 86 of the BNS. Cruelty means willful acts that are likely to cause great bodily harm or danger to the life, limb or physical or mental health of a woman, or to her making an attempt to end her own life. It also encompasses harassment that is used to induce her/his family to comply with an illegal property or security demand. These provisions can be used in conjunction with the Domestic Violence Act, since the two pieces of legislation contain complementary remedies, the BNS does not offer



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immediate protection, while the Domestic Violence Act does offer immediate protection as well as custody and compensation (Singh, 2013) which is equated with money.

In *Hiral P. Harsora v. Kusum Narottamdas Harsora* (2016) 10 SCC 165, the Supreme Court did away with the statutory restriction which prevented the respondent under the Domestic Violence Act from being limited to an “adult male.” The ruling paved the way for action to be taken against female family members and others who might be involved in domestic violence in the same household. However, in *Satish Chander Ahuja v. Sneha Ahuja*, (2021) 1 SCC 414, the Court had a wider vision of the term “shared household” and held that a woman's residential protection does not require a woman to have ownership or tenancy rights in the property (Lawson, 2018).

4. Dowry-Related Violence and Dowry Death

The Dowry Prohibition Act, 1961 is an Act that bans dowry giving, accepting and demanding. Dowry harassment could also lead to Sections 85 and 86 of the BNS involving cruelty. When a woman dies due to dowry death, under the BNS, it means that she is burnt or otherwise injured than normal within seven years of marriage and it could be proved that she was subjected to some kind of cruelty or harassment shortly before her death in relation to a dowry demand. After the basic facts have been established, the rules of evidence for dowry death allows the court to make the legally allowed presumption against the accused, which is to be proven and rebutted as per the law (Menski, 1998).

The Supreme Court in *Satbir Singh v. State of Haryana* (2021) 6 SCC 1 clarified that the word “soon” before her death is not to be understood in a literal sense. It must be demonstrated that there was a close and current relationship between the cruelty and the woman's abnormal death caused by the husband and his relatives with respect to the dowry. The courts are required to consider all of the circumstances and not interpret the law in a way that defeats the purpose of the protection it provides. Concurrently, it is essential that the criminal liability of the accused be decided individually based on prima facie evidence (Sharma, 2022).

5. Acid Attacks and Grievous Gender-Based Violence

Voluntarily causing a grievous hurt by use of acid and attempting to throw or administer acid are specifically mentioned in Section 124 of the BNS. Acid attacks are frequently inflicted for the purposes of mutilation, revenge or punishment against women and may result in permanent injury, blindness, psychological harm and social isolation. Emergency medical treatment, reconstructive surgery, rehabilitation, compensation and long-term social assistance are often necessary when dealing with a criminal charge. The law thus works alongside the victim compensation schemes, medical-treatment requirements and judicial directions governing acid sales (Kalantry, 2017).

In *Laxmi v Union of India* (2014) 4 SCC 427, Supreme Court gave directions regarding regulation of retail sale of acid, identification of the buyer, ban on sale to minors, medical treatment/care of the survivors and compensation to the survivors. The judgment



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acknowledged that prevention of attacks is as important as prosecution following an attack, as well as the need for regulation and institutional support. This case in turn, widened the legal response from punishment of the individual to wider State's responsibility for prevention, treatment and rehabilitation (Bhat, 2015).

6. Honour-Based Violence and Forced Marriage

Honour based violence is a threat, assault or killing of a woman or her selected marriage partner for marrying or entering an honour based relationship that is contrary to a family or community's honour. This is not lawful since adult people have the constitutional right to select their partners. Depending on the facts the perpetrators may be prosecuted under the BNS provisions relating to murder, attempt to murder, hurt, kidnapping, wrongful confinement, criminal intimidation, conspiracy and unlawful assembly (Chowdhry 2007).

In *Shakti Vahini v. Union of India*, (2018) 7 SCC 192, the Supreme Court said that assemblies or khap panchayats have no jurisdiction in the matter of marital decisions of consenting adults. The Court gave directions to stop the threats to the couples on the basis of inter-caste or inter-community relationship and given directions to rectify and punish the couples for the threats. The Court also held in *Lata Singh v. State of Uttar Pradesh* (2006) 5 SCC 475 that an adult woman was not required to adhere to the wishes of her parents and could freely marry someone of her choice and ordered the actions of the authorities to be taken against those who threatened or harassed such couples. (Mody, 2008)

7. Trafficking and Sexual Exploitation

Trafficking in persons is defined in section 143 of the BNS as the recruitment, transportation, transfer, harbouring, or reception of persons for the purpose of exploitation, by means of a threat, force or threat, coercion, abduction, fraud or deception, abuse of power or inducement. The violation can encompass sexual exploitation, trafficking in persons, slavery, servitude, forced labour and/or organ trafficking. Where the prohibited means and the exploitative purpose is established, the victim's consent is not legally relevant. The exploitation of a trafficked person is dealt with in Section 144 separately. These provisions are in addition to the Immoral Traffic (Prevention) Act, 1956 and the child protection laws in case of the involvement of minors (Kotiswaran, 2011). To successfully eradicate trafficking, it is essential to differentiate trafficking from consensual adult sex work and to develop a gender-just response. Supreme Court in *Budhadev Karmaskar v. State of West Bengal* had said that sex workers have the right to dignity and equal treatment under the law and cannot be harassed solely on the basis of their profession. Violence, coercion and exploitation must be the focus of law-enforcement measures and legal and constitutional rights must be respected for adult individuals (Sahni & Shankar, 2013).

III. MARRIAGE, DIVORCE AND SUCCESSION RIGHTS

Marriage, divorce and succession rights form a central part of women's legal status because they determine personal autonomy, family relationships, economic security and control over



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property. In India, these matters are governed by a plural system of personal laws applicable to different religious communities, together with secular legislation such as the Special Marriage Act, 1954. Although these laws have undergone significant reforms, inequalities remain in relation to matrimonial property, maintenance, unilateral dissolution, guardianship and inheritance. Gender justice therefore requires that personal laws be interpreted consistently with the constitutional guarantees of equality, non-discrimination, dignity and personal liberty under Articles 14, 15 and 21 (Subramanian, 2014).

1. Right to Marry and Choose a Spouse

The right of an adult person to choose whether, when and whom to marry is an aspect of dignity, privacy and personal liberty under Article 21 of the Constitution. Marriage must be founded upon free and informed consent and cannot lawfully be imposed through family pressure, caste restrictions, community commands or threats of violence. In *Shafin Jahan v. Asokan K.M.*, (2018) 16 SCC 368, the Supreme Court affirmed that the choice of a partner lies within the exclusive domain of the individual. Similarly, in *Lata Singh v. State of Uttar Pradesh*, (2006) 5 SCC 475, the Court held that an adult woman is free to marry a person of her choice and directed authorities to protect inter-caste couples from harassment (Saxena, 2022). The legal validity of a marriage depends upon the statute governing the parties. The Hindu Marriage Act, 1955 applies to Hindus, Buddhists, Jains and Sikhs and prescribes conditions relating to monogamy, mental capacity, minimum age and prohibited relationships. The Special Marriage Act, 1954 provides a civil form of marriage irrespective of the parties' religions. Muslim marriages are primarily governed by Muslim personal law, while Christian and Parsi marriages are regulated by their respective statutory frameworks. Despite these differences, coercion, fraud, minority and absence of legally meaningful consent may affect the validity of a marriage or provide grounds for annulment (Diwan, 2013).

2. Hindu Marriage and Matrimonial Rights

The Hindu Marriage Act, 1955 transformed Hindu marriage from a largely indissoluble religious institution into a legally regulated relationship containing enforceable rights and remedies. Section 5 prescribes the conditions of a valid marriage, including the requirement that neither party should have a living spouse at the time of marriage. The Act recognises restitution of conjugal rights, judicial separation, nullity and divorce. It also enables either spouse to claim interim maintenance and litigation expenses under Section 24 and permanent alimony under Section 25. Although its provisions are formally gender-neutral, women may experience greater economic vulnerability because of unpaid domestic labour, interrupted employment and unequal ownership of matrimonial assets (Derrett, 1963).

A marriage contravening the rule of monogamy or falling within prohibited degrees may be void under Section 11, subject to recognised customs. A marriage may be voidable under Section 12 on grounds including impotence, absence of valid consent resulting from specified mental conditions, consent obtained through force or fraud, or pregnancy by another person at



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the time of marriage, subject to statutory requirements. The distinction is important because a void marriage is treated as legally invalid, whereas a voidable marriage remains valid until annulled by a competent court. The rights and status of children born from void and voidable marriages receive statutory protection under Section 16 (Kusum, 2012).

3. The Special Marriage Act, 1954

The Special Marriage Act, 1954 provides a secular legal framework through which two persons may marry without being governed by a religion-specific form of solemnisation. It is particularly important for inter-faith and inter-caste couples. Section 4 prescribes conditions relating to monogamy, mental capacity, age and prohibited relationships. The Act also contains provisions relating to registration, judicial separation, nullity, divorce, maintenance and custody of children. Its larger constitutional significance lies in protecting individual choice and enabling marriage independent of religious conversion or community approval (Basu, 2015).

However, the statutory notice and publication procedure under the Special Marriage Act has raised privacy and safety concerns for couples facing family or community hostility. Public disclosure of an intended marriage may expose couples to surveillance, coercion and honour-based violence. Courts have increasingly examined such procedural requirements in light of the constitutional rights to privacy, dignity and decisional autonomy. A gender-sensitive interpretation must ensure that administrative formalities do not become instruments through which families or community organisations interfere with the free marital choices of consenting adults (Chakraborty, 2020).

4. Muslim Marriage and Women's Rights

Under Muslim personal law, marriage is generally understood as a civil contract creating reciprocal rights and obligations. Consent is essential and the *mehr* or dower constitutes a legal obligation owed by the husband to the wife rather than a payment made to purchase the marriage. A Muslim woman may seek dissolution under the Dissolution of Muslim Marriages Act, 1939 on grounds including the husband's disappearance, failure to provide maintenance, imprisonment, failure to perform marital obligations, impotence, insanity, cruelty and certain other circumstances recognised by law (Fyzee, 2008).

In *Shayara Bano v. Union of India*, (2017) 9 SCC 1, the Supreme Court invalidated the practice of *talaq-e-biddat*, or instantaneous and irrevocable triple talaq. Parliament subsequently enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019, which declares the pronouncement of instantaneous triple talaq void and illegal and prescribes criminal consequences. The legislation also enables the affected woman to claim subsistence allowance and custody of minor children. The development reflects an attempt to protect married Muslim women against arbitrary unilateral dissolution, although the use of criminal punishment in a matrimonial context continues to be debated (Mahmood, 2019).



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5. Christian and Parsi Marriage Laws

Christian marriages are regulated principally by the Indian Christian Marriage Act, 1872, while divorce and matrimonial remedies are governed by the Divorce Act, 1869. Legislative amendments have removed several earlier inequalities and made grounds of divorce more substantially equal for husbands and wives. The law recognises grounds such as adultery, conversion, unsoundness of mind, communicable venereal disease, renunciation, disappearance, failure to comply with a decree for restitution of conjugal rights, cruelty and desertion, along with divorce by mutual consent (Phillips, 2004). Parsi marriages and divorces are regulated by the Parsi Marriage and Divorce Act, 1936. The Act requires the performance and certification of the *Ashirvad* ceremony and recognises grounds including non-consummation, unsoundness of mind, pregnancy by another person, adultery, cruelty, causing grievous hurt, desertion, conversion and divorce by mutual consent. Although community-specific procedures are retained, their operation remains subject to constitutional values and the requirements of fairness, dignity and access to justice (Mody, 2008).

6. Grounds of Divorce and Dissolution of Marriage

Divorce legally terminates a valid marriage and releases the parties from their marital status and obligations, subject to continuing responsibilities concerning maintenance, property and children. Under the Hindu Marriage Act and the Special Marriage Act, recognised grounds include adultery, cruelty, desertion, conversion, specified mental disorders, communicable venereal disease, renunciation and the presumption of death after prolonged absence. Both statutes also provide for divorce by mutual consent, which allows spouses who have mutually decided to separate to seek dissolution without proving matrimonial fault (Mayne, 2016). Cruelty may be physical or mental and must be assessed in the context of the parties' relationship and circumstances. Mental cruelty may include sustained humiliation, abusive conduct, false accusations, deliberate neglect or behaviour making continued cohabitation unreasonable. However, ordinary disagreements and routine marital conflict should not automatically be treated as legal cruelty. Courts must avoid gender stereotypes and evaluate whether the conduct caused serious harm to the dignity, health or safety of the complaining spouse (Gopal, 2013).

The Supreme Court has also exercised its extraordinary power under Article 142 to dissolve marriages that have irretrievably broken down, even though irretrievable breakdown is not an ordinary statutory ground available before family courts under the Hindu Marriage Act. In *Shilpa Sailesh v. Varun Sreenivasan*, (2023) 14 SCC 231, a Constitution Bench held that the Supreme Court may, in appropriate cases, dissolve a marriage on this ground and may dispense with procedural requirements to do complete justice. This exceptional constitutional power does not convert irretrievable breakdown into a universally available statutory ground before all matrimonial courts (Kumar, 2023).



7. Maintenance and Economic Protection after Separation

Maintenance law seeks to prevent destitution and provide financial support to a spouse who lacks sufficient independent means. Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 provides a religion-neutral summary remedy for wives, children and parents who are neglected by persons possessing sufficient means. Matrimonial statutes also permit interim and permanent maintenance, while the Protection of Women from Domestic Violence Act, 2005 authorises monetary relief for expenses and losses caused by domestic violence. Maintenance is determined by considering factors such as income, property, reasonable needs, standard of living, dependants and the circumstances of the parties (Desai, 2012). In *Rajnesh v. Neha*, (2021) 2 SCC 324, the Supreme Court issued comprehensive guidelines to promote consistency in maintenance proceedings. It required parties to disclose their assets, income, expenditure and liabilities in prescribed formats and addressed overlapping claims under different statutes. The Court clarified that maintenance should ordinarily be awarded from the date of the application and that courts must consider existing orders to prevent unjust duplication. The judgment seeks to reduce delay, concealment of income and inconsistent awards that frequently disadvantage economically dependent women (Khanday, 2021).

For divorced Muslim women, *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556 affirmed the availability of the secular maintenance remedy under the former Code of Criminal Procedure. After the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, the Supreme Court in *Danial Latifi v. Union of India*, (2001) 7 SCC 740 held that the husband must make a reasonable and fair provision for the divorced woman's future within the *iddat* period. The obligation is therefore not confined merely to paying maintenance for the duration of *iddat* (Carroll, 2001).

CONCLUSION

India's legal framework for gender justice has developed considerably since 1950, from broad constitutional guarantees of equality and non-discrimination to a substantial body of specific protective legislation and an increasingly assertive body of judicial precedent. The analysis across five thematic headings and five corresponding lines of case law in this paper demonstrates that Indian law today addresses violence, workplace discrimination, unequal inheritance and political under-representation through a combination of constitutional principle, statute and binding precedent, with courts frequently stepping in — as in *Vishaka*, *Shayara Bano* and the 2022 abortion-rights decision — to fill legislative gaps or correct constitutionally infirm provisions.

Nonetheless, significant gaps between legal guarantee and lived reality persist. Enforcement of the Domestic Violence Act and the Sexual Harassment of Women at Workplace Act remains uneven, particularly in the unorganised sector, where Internal Complaints Committees are frequently absent altogether. The marital rape exception continues to withstand constitutional challenge, leaving a significant category of sexual violence outside the scope of criminal



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sanction. The Uniform Civil Code, though constitutionally directed under Article 44, remains unimplemented, leaving personal-law disparities across religious communities substantially intact notwithstanding incremental reforms such as the 2019 triple talaq legislation. The Nari Shakti Vandan Adhiniyam, 2023, despite its historic significance, will not translate into actual political representation until the Census and delimitation exercises to which its implementation is tied are completed, deferring its practical impact by an uncertain number of years. Addressing these gaps will require sustained institutional investment: adequately resourced and trained Protection Officers and Internal Complaints Committees; expedited disposal of cases under the Domestic Violence Act and the Criminal Law (Amendment) Act framework; a constitutional resolution of the marital rape exception consistent with the equality and dignity principles articulated in Puttaswamy and Independent Thought; a renewed and inclusive dialogue on the Uniform Civil Code that respects both gender equality and religious diversity; and a firm, time-bound roadmap for implementing the Nari Shakti Vandan Adhiniyam.

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