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# LAW, SOCIETY, AND THE STRUGGLE FOR GENDER JUSTICE: A SOCIO-LEGAL INQUIRY

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## ABSTRACT

India's Constitution promises equality between the sexes in plain language, yet they lived reality for most women in the country still does not match that promise. This paper examines that gap and asks why it has not closed despite decades of legislative and judicial effort.

The central argument is that a law functions only as well as the society around it allows it to function. A carefully drafted statute can still fail in practice because of the custom, family pressure, or lack of court access underneath it remains untouched. Accordingly, this paper does not stop reading judgments and legislation alone. It examines a set of Indian court decisions on gender rights, some that advanced the law and some that expose its limits and reads these alongside sociological and feminist scholarship to explain a recurring pattern: a law that appears facially fair can still leave women, and other marginalized genders, worse off once it meets the realities of enforcement.

Caste, religion, and class complicate this picture further. Two women situated under the same statute can experience markedly different outcomes, and treating gender justice as a uniform experience obscures rather than explains that difference. This paper takes that variation seriously rather than smoothing it over.

None of this is an argument against legislative reform. Reform alone, however, has not closed the gap, and this paper considers what must accompany it: institutions that are held accountable for their failures, communities with sufficient legal literacy to exercise their rights, and courts that remain responsive to the people they serve. The paper's underlying aim is to look past what the law states and examine what the law achieves in practice, since that is where the substantive account of gender justice in India is found.

**Keywords:** Gender Justice; Socio-Legal Inquiry; Judicial Interpretation; Patriarchy; Intersectionality.

## I. INTRODUCTION

Article 14 of the Constitution of India guarantees equality before the law. Article 15 forbids the State from discriminating on the ground of sex. Article 16 extends this to public employment, and Article 21 protects life and personal liberty for every person, not merely every man.<sup>1</sup> The Indian legal order committed itself to gender equality from the moment the Constitution came into force in 1950. Yet more than seven decades later, the National Crime Records Bureau recorded 4,41,534 cases of crime against women in 2024 alone, with cruelty by a husband or his relatives accounting for the largest single category at over 1.2 lakh cases.<sup>2</sup> A gap of this size, between a constitutional promise and a lived reality, is not a footnote to the study of gender justice in India. It is the subject itself.

This paper treats that gap as a socio-legal problem rather than a purely doctrinal one. Doctrinal analysis asks whether a rule is internally consistent, whether it fits within the constitutional scheme, and how courts have read it. Those questions matter, and this paper asks them. But doctrine alone cannot explain why a woman entitled to an equal share in ancestral property under the Hindu Succession (Amendment) Act, 2005 might still never file the claim, or why a workplace with a functioning Internal Complaints Committee under the 2013 sexual harassment law might still see almost no complaints reach it. Those outcomes are produced by forces sitting outside the statute book: family structure, economic dependence, social stigma, and the practical cost of using a legal system that is slow, distant, and often unfamiliar to the person it is meant to protect.

The remainder of the paper proceeds as follows. Part II sets out what “gender justice” is taken to mean here, distinguishing formal equality from substantive equality. Part III traces the constitutional and statutory architecture built around that idea. Part IV examines how the judiciary has interpreted, and at times stretched, this architecture through a set of landmark decisions. Part V turns to the socio-legal gap itself, asking why implementation lags enactment. Part VI examines how caste, religion, class, and geography intersect with gender to produce unequal outcomes even under a single, formally uniform statute. Part VII sets out what a more

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<sup>1</sup>INDIA CONST. arts. 14, 15, 16, 21.

<sup>2</sup>National Crime Records Bureau, Ministry of Home Affairs, Government of India, Crime in India 2024 (released 6 May 2026); see also NCRB Report Out: Crimes Against Women Saw Minor Dip in 2024, Maximum Cases Were Cruelty by Husband, The Print (6 May 2026).

grounded approach to gender justice might look like, and Part VIII concludes.

Methodologically, the paper relies on doctrinal legal research read through a socio-legal lens: it draws on the constitutional text, central legislation, and reported Supreme Court judgments, but interprets each of these against secondary sociological and feminist scholarship rather than treating the case law as self-explanatory. It does not present new empirical fieldwork; its contribution lies in reading a familiar body of case law and legislation together with the social conditions that determine whether that law reaches the people it names. The cases and statutes discussed below were selected for their doctrinal significance and their capacity to illustrate the gap between legal recognition and social enforcement; they are illustrative rather than an exhaustive survey of Indian gender jurisprudence. The paper's scope is similarly bounded: it concentrates on cisgender women and, in Part IV, on transgender recognition as a matter of constitutional equality, but it does not undertake a full study of male victims of gender-based violence or of LGBTQ+ rights beyond the specific question of gender identity, both of which merit separate treatment.

## II. CONCEPTUALISING GENDER JUSTICE: FORMAL AND SUBSTANTIVE EQUALITY

Formal equality asks the law to treat likes alike: if men and women are both citizens, a rule that applies to one should apply to the other without distinction. This was the dominant reading of Article 14 for much of India's early constitutional history. Its limitation is well known by now. Treating unequal parties identically does not produce equal outcomes; it often preserves whatever inequality already exists, because it ignores the different starting points from which men and women enter a marriage, a workplace, or a courtroom.

The Constitution itself anticipates this problem. Article 15(3) permits the State to make special provisions for women and children, carving out space for what would otherwise look like discrimination on the ground of sex.<sup>3</sup> Articles 39(a) and 39(d) of the Directive Principles direct the State toward equal pay and an adequate livelihood for men and women alike, while Article 51A(e) asks every citizen to renounce practices derogatory to the dignity of women.<sup>4</sup> Read together; these provisions point toward substantive equality: a standard concerned not just with

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<sup>3</sup>INDIA CONST. art. 15(3).

<sup>4</sup>INDIA CONST. arts. 39(a), 39(d), 51A(e).

identical treatment on paper but with actual parity of outcome and opportunity in practice.

Gender justice, as used in this paper, adopts that substantive standard. It is not satisfied by a law that reads the same for men and women if the social conditions around that law make it easier for one group to invoke and harder for the other. A society in which women can, in theory, inherit property but rarely do so because a brother is expected to “look after” the family land has not achieved gender justice merely because the statute is gender neutral. The rest of this paper is organized around that distinction between the text of the law and its social life.

It is worth explicit about a comparative point here. India is not unusual among constitutional democracies in having a wide gap between its equality guarantees and its social reality; the same criticism has been levelled at jurisdictions with far older equal-protection traditions. What distinguishes the Indian case, and what makes a socio-legal rather than purely comparative approach useful, is the sheer density of overlapping social structures, religious personal law, caste hierarchy, regional variation in state capacity, and a still-large informal economy, that a single national statute has to work through before it reaches any individual woman. A framework built for a more socially uniform society would not necessarily translate; the Indian gap must be understood on its own terms.

### **III. THE LEGAL FRAMEWORK: CONSTITUTIONAL GUARANTEES AND STATUTORY REFORM**

India's statutory response to gender inequality has grown since Independence, particularly from the mid-2000s onward. Several pieces of legislation, discussed below in two groups, illustrate both the ambition and the limits of this record.

First, the Hindu Succession (Amendment) Act, 2005 rewrote Section 6 of the Hindu Succession Act, 1956 to make a daughter a coparcener “by birth” in a joint Hindu family governed by Mitakshara law, placing her on the same footing as a son with respect to ancestral property.<sup>5</sup> For decades before this, a daughter's claim to family property was treated as secondary to a son's, a position rooted in Mitakshara doctrine rather than in any constitutional text. The amendment closed that gap in principle. Its practical effect took another fifteen years to settle, since the Supreme Court initially divided over whether the amended section applied

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<sup>5</sup>The Hindu Succession (Amendment) Act, No. 39 of 2005, § 6, amending The Hindu Succession Act, No. 30 of 1956, § 6.

retrospectively. The Court finally resolved the question in *Vineeta Sharma v. Rakesh Sharma*, holding that a daughter becomes a coparcener by birth regardless of whether her father was alive when the 2005 Amendment came into force.<sup>6</sup> That fifteen-year gap between enactment and settled interpretation is itself a small case study in how slowly a gender-just rule can travel from the statute book into everyday property arrangements.

Second, the Protection of Women from Domestic Violence Act, 2005 was the first Indian statute to treat domestic violence as a civil wrong attracting protection orders, residence orders, and monetary relief, rather than leaving a woman to rely solely on the criminal process.<sup>7</sup> Its definition of “domestic relationship” was drafted broadly enough to cover live-in partners and not only married couples, a departure from the assumption that domestic protection belongs solely inside a formal marriage. The Act’s central innovation, a statutory right to the shared household regardless of ownership title, tries directly to address the economic vulnerability that keeps many women inside abusive homes. Whether that right can be exercised depends heavily on access to a Protection Officer, a functioning shelter system, and a court willing to move quickly, none of which is evenly distributed across India’s states.

Third, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 codified the guidelines the Supreme Court had laid down sixteen years earlier in *Vishaka v. State of Rajasthan*, making an Internal Complaints Committee mandatory in every workplace with ten or more employees.<sup>8</sup> The judgment behind this statute is discussed in Part IV.

Fourth, the criminal law itself was rewritten by the Criminal Law (Amendment) Act, 2013, passed after the Justice Verma Committee’s recommendations following the December 2012 Delhi gang-rape case. The amendment widened the definition of rape, created new offences such as stalking, voyeurism, and acid attacks, and increased sentencing for repeat and aggravated offenders.<sup>9</sup> Alongside it, the Protection of Children from Sexual Offences Act, 2012 built a gender-neutral, child-specific framework for sexual offences and fixed the age of consent at eighteen.<sup>10</sup> As Part IV shows, the coexistence of a child-protection statute setting

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<sup>6</sup>*Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1.

<sup>7</sup>The Protection of Women from Domestic Violence Act, No. 43 of 2005.

<sup>8</sup>Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013; see also *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

<sup>9</sup>The Criminal Law (Amendment) Act, No. 13 of 2013.

<sup>10</sup>The Protection of Children from Sexual Offences Act, No. 32 of 2012.

the age of consent at eighteen with a marital exception under the Indian Penal Code permitting a husband to have intercourse with a wife as young as fifteen produced exactly the kind of internal contradiction that court-driven reform later had to resolve.

A second group of statutes, older or more specialized than the four above, completes the picture and shows that economic gender justice has its own, separate history. The Dowry Prohibition Act, 1961 made both the giving and taking of dowry a criminal offence. Decades before domestic violence or workplace harassment received comparable legislative attention.<sup>11</sup> In practice, the Act has struggled with enforcement: NCRB data for 2022 records a conviction rate of only 11 to 17 percent in dowry-death cases across major states, a pattern attributed to evidentiary hurdles, delayed trials, and pressure on complainants to withdraw.<sup>12</sup> The Equal Remuneration Act, 1976, later subsumed into the Code on Wages, 2019, required equal pay for equal work regardless of sex.<sup>13</sup> Data from the Periodic Labour Force Survey 2023-24 shows the gap persisting nearly five decades on: self-employed men earned roughly three times what self-employed women earned, salaried men earned about 1.2 times more than salaried women, and male casual labourers earned about 1.5 times more than their female counterparts.<sup>14</sup> This is the same pattern already visible in the Hindu Succession Amendment: a formally equal rule coexisting for decades with a substantively unequal outcome because pay-setting happens inside private employment relationships the statute can prohibit discrimination in but cannot fully police.

A third addition, the Maternity Benefit (Amendment) Act, 2017, extended paid maternity leave from twelve to twenty-six weeks for a woman's first two children, added leave for adoptive and commissioning mothers, and made a creche mandatory in any establishment with fifty or more employees.<sup>15</sup> The reform placed India's statutory maternity leave among the most generous in the world, benchmarked as third highest globally against the International Labour Organization's own minimum standard of fourteen weeks.<sup>16</sup> Its limitation is structural rather

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<sup>11</sup>The Dowry Prohibition Act, No. 28 of 1961.

<sup>12</sup>National Crime Records Bureau, Crime in India 2022, discussed in 20 Dowry Deaths a Day, but Conviction for 1 in 6—A Tale of Evidentiary Hurdles, Delayed Trials, Apathy, *The Print* (9 Sept. 2025).

<sup>13</sup>The Equal Remuneration Act, No. 25 of 1976, now consolidated within The Code on Wages, No. 29 of 2019.

<sup>14</sup>Periodic Labour Force Survey 2023-24, National Statistical Office, Ministry of Statistics and Programme Implementation, discussed in Mind the (Pay) Gap: Decoding Gender Wage Inequality in India, *The Secretariat* (25 Sept. 2024).

<sup>15</sup>The Maternity Benefit (Amendment) Act, No. 6 of 2017.

<sup>16</sup>Maternity Benefit (Amendment) Act, 2017: A Right Delayed, A Policy Denied, IMPRI Impact and Policy Research Institute (6 Aug. 2025).

than textual: it applies only to establishments covered by the Act, which in practice means the organized sector, leaving out the large majority of Indian women who work in agriculture, domestic labour, or other informal arrangements the statute was never drafted to reach. A right that only the organized, formally employed minority of working women can claim illustrates, once again, the difference between a law's stated scope and its effective reach.

#### **IV. JUDICIAL TRENDS: FROM GUIDELINE-MAKING TO CONSTITUTIONAL RE-READING**

If the legislature has moved unevenly on gender justice, the judiciary has at times moved ahead of it, using constitutional interpretation to fill gaps Parliament had left open. Seven decisions illustrate this pattern.

*Vishaka v. State of Rajasthan* arose after Bhanwari Devi, a rural development worker in Rajasthan, was gang-raped for attempting to stop a child marriage in the village where she worked.<sup>17</sup> In the absence of any legislation on workplace sexual harassment, a bench led by Chief Justice J.S. Verma held that such harassment violates Articles 14, 15, 19(1)(g), and 21 of the Constitution, and drew on the Convention on the Elimination of All Forms of Discrimination Against Women, in particular its provisions on equal treatment in employment, to frame binding guidelines that would operate until Parliament legislated.<sup>18</sup> Those guidelines remained the only legal framework on the subject for sixteen years, until the 2013 Act discussed above finally codified them, and continued non-compliance with the guidelines in the interim required the Supreme Court to revisit the issue in *Medha Kotwal Lele v. Union of India*.<sup>19</sup> *Vishaka* is often cited as a model of judicial gap-filling, but the sixteen-year interval between the judgment and the statute, and the further litigation needed to enforce mere compliance with the guidelines in the interim, is itself worth noticing: a right the highest court had already recognized took well over a decade and a half to acquire an enforcement mechanism an ordinary complainant could use without filing a writ petition.

*Shayara Bano v. Union of India* addressed *talaq-e-biddat*, the practice under which a Muslim husband could dissolve his marriage by pronouncing the word “*talaq*” three times in one sitting,

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<sup>17</sup>*Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

<sup>18</sup>*Vishaka v. State of Rajasthan*, (1997) 6 SCC 241; Convention on the Elimination of All Forms of Discrimination Against Women arts. 11(1)(a), (f), 24, Dec. 18, 1979, 1249 U.N.T.S. 13.

<sup>19</sup>*Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 297.

without notice, reconciliation, or judicial involvement.<sup>20</sup> A five-judge bench split 3:2, but the majority struck the practice down as manifestly arbitrary and therefore inconsistent with Article 14. Justice Kurian Joseph, writing separately, held that a practice contrary to Quranic mandate could not claim the protection of Article 25, framing the issue as internal to Islamic law rather than a clash between religion and the Constitution. The two dissenting judges, by contrast, held that uncodified personal law was not “law” within the meaning of Article 13 and therefore fell outside judicial review altogether.<sup>21</sup> Parliament responded with the Muslim Women (Protection of Rights on Marriage) Act, 2019, which made instant triple talaq a criminal offence.<sup>22</sup> Shayara Bano sits inside a longer history that includes Mohd. Ahmed Khan v. Shah Bano Begum, where the Court's 1985 recognition of a Muslim woman's right to maintenance under Section 125 of the Code of Criminal Procedure provoked a legislative reversal through the Muslim Women (Protection of Rights on Divorce) Act, 1986.<sup>23</sup> Read side by side, the two cases show a pattern: courts extending protection to Muslim women, and Parliament initially retreating from that protection under political pressure before eventually re-codifying a version of it decades later.

Independent Thought v. Union of India dealt with a narrower but sharper contradiction. Exception 2 to Section 375 of the Indian Penal Code excluded a husband's intercourse with his own wife from the definition of rape, provided the wife was fifteen years of age or older, even though the Protection of Children from Sexual Offences Act treated anyone under eighteen as a child incapable of giving valid consent to any sexual act.<sup>24</sup> The Supreme Court read down the exception, holding that a married girl between fifteen and eighteen is entitled to the same protection as an unmarried girl of the same age, since marriage does not alter a child's capacity to consent. The Court was careful to confine its holding to minors and declined to rule on marital rape involving adult women, leaving that broader question open.<sup>25</sup> The case is a useful illustration of how a purely internal, textual inconsistency between two statutes can itself become the occasion for a gender-justice ruling, without any explicit constitutional challenge to the concept of a marital exception as such.

Joseph Shine v. Union of India went further, striking down Section 497 of the Indian Penal

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<sup>20</sup>Shayara Bano v. Union of India, (2017) 9 SCC 1.

<sup>21</sup>Shayara Bano v. Union of India, (2017) 9 SCC 1.

<sup>22</sup>Muslim Women (Protection of Rights on Marriage) Act, No. 20 of 2019.

<sup>23</sup>Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556; The Muslim Women (Protection of Rights on Divorce) Act, No. 25 of 1986.

<sup>24</sup>Independent Thought v. Union of India, (2017) 10 SCC 800.

<sup>25</sup>Independent Thought v. Union of India, (2017) 10 SCC 800.

Code, which had criminalized adultery only for the man involved and treated a married woman as incapable of consenting to sex outside her marriage, functionally as her husband's property for the purposes of the offence.<sup>26</sup> A five-judge bench, in four concurring opinions, held the provision of archaic and paternalistic, finding that it violated a woman's autonomy, dignity, and right to privacy under Article 21, as well as Articles 14 and 15.<sup>27</sup> The judgment is notable for locating gender injustice not in an overtly punitive law but in a supposedly protective one: Section 497's asymmetry was often defended as shielding women from prosecution, when its deeper effect was to deny married women any legal personality of their own within the offence.

National Legal Services Authority v. Union of India extended the constitutional guarantee of equality beyond the male-female binary altogether, recognizing transgender persons as a “third gender” entitled to self-identification and to the full protection of Articles 14, 15, 16, 19, and 21.<sup>28</sup> The Court read “sex” in Articles 15 and 16 to include gender identity based on self-perception, not merely biological characteristics, and directed the State to treat transgender persons as a socially and educationally backward class for the purposes of reservation.<sup>29</sup> Parliament later enacted the Transgender Persons (Protection of Rights) Act, 2019, which requires an applicant to obtain a certificate of identity from the District Magistrate rather than permitting pure self-identification.<sup>30</sup> A critical analysis published by the Centre for Environmental Law, Education, Research and Advocacy at the National Law School of India University has argued that this certification requirement sits in tension with the self-identification standard NALSA had laid down, since it conditions legal recognition on an external administrative process rather than a person's own declared identity.<sup>31</sup> NALSA is included in this survey deliberately: a socio-legal account of gender justice that stops at the male-female binary reproduces the same narrowness this paper has been arguing against.

Two further decisions round out this survey by showing that gender justice litigation in India is not confined to sexual offences or personal law. Anuj Garg v. Hotel Association of India struck down a provision of the Punjab Excise Act, 1914 that barred women from being employed in any establishment where liquor was served, a rule defended by the State as

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<sup>26</sup>Joseph Shine v. Union of India, (2019) 3 SCC 39 : AIR 2018 SC 4898.

<sup>27</sup>Joseph Shine v. Union of India, (2019) 3 SCC 39 : AIR 2018 SC 4898.

<sup>28</sup>National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

<sup>29</sup>National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

<sup>30</sup>The Transgender Persons (Protection of Rights) Act, No. 40 of 2019, §§ 5–6.

<sup>31</sup>Transgender Persons (Protection of Rights) Act & Rules – A Critical Analysis, CEERA, National Law School of India University (2020).

protective of women's safety.<sup>32</sup> The Court held that a protective-discrimination statute must satisfy a proportionality test, asking whether the restriction is a legitimate response to a real risk or merely a paternalistic assumption dressed up as protection, and found the excise provision fell into the latter category.<sup>33</sup> The case matters here because it names a pattern this paper has already flagged: legislation that presents itself as protecting women can, on closer inspection, function to exclude them instead. *Lata Singh v. State of Uttar Pradesh* addressed a different pressure point, holding that an adult's right to marry a partner of their own choosing, including across caste lines, is protected under Article 21, and directing police authorities to protect couples facing threats or violence from family members opposed to the match.<sup>34</sup> Both decisions confirm that gender justice, as a constitutional value, extends well beyond the criminal law into employment regulation and the freedom to choose a spouse, areas where the pressure on women is frequently generated by family and community rather than the State.

Taken together, these seven decisions show a judiciary willing to read the Constitution's equality guarantees expansively, often well ahead of legislative consensus. What they do not show, on their own, is whether that expansive reading changed daily life for the women and gender minorities the judgments were written to protect. That question belongs to Part V.

## **V. THE SOCIO-LEGAL GAP: WHY LAW ALONE HAS NOT BEEN ENOUGH**

A socio-legal approach starts from the premise that a rule's meaning is not fixed by its text but is produced, in practice, by the people and institutions that apply it, avoid it, or ignore it. Three mechanisms explain much of the distance between the legal framework described above and outcomes such as the NCRB figures cited in Part I.

The first is enforcement capacity. A right without an accessible forum is close to no right at all. The Protection of Women from Domestic Violence Act depends on Protection Officers who, in many districts, are overworked, under-trained, or appointed only nominally alongside an unrelated primary job. The Sexual Harassment of Women at Workplace Act applies with reasonable consistency in large, formal-sector organizations but has limited reach in the informal economy, where the majority of Indian women work and where an Internal

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<sup>32</sup>Anuj Garg v. Hotel Association of India, (2008) 3 SCC 1.

<sup>33</sup>Anuj Garg v. Hotel Association of India, (2008) 3 SCC 1.

<sup>34</sup>*Lata Singh v. State of Uttar Pradesh*, (2006) 5 SCC 475.

Complaints Committee is unlikely to be constituted at all.

The second is social costs. Reporting domestic violence, filing for maintenance, or pursuing a workplace harassment complaint carries a cost that the statute itself cannot absorb social stigma, the risk of family breakdown, and, for many women, the loss of the only economic support they have. Epidemiological analysis of two decades of NCRB reporting has found that the rate of reported cruelty by husband or relatives rose by over fifty percent between 2001 and 2018, a trend the same study attributes partly to genuine increase and partly to the NCRB's own reporting system continuing to under-capture the true incidence of the offence.<sup>35</sup> Reported figures, in other words, understate the underlying problem precisely because it takes place inside a relationship the victim may still depend on.

The third is what might be called institutional habit: the tendency of police stations, lower courts, and even some Complaints Committees to treat a gender-based claim with skepticism unless it fits a familiar narrative of victimhood. A woman who does not present as sufficiently distressed, who has continued living with her husband after filing a complaint, or whose harassment complaint concerns a senior colleague rather than a stranger, often finds her credibility questioned in ways a purely textual reading of the relevant statute would not predict. This is not a failure of drafting; it is a failure that lives in the space between the text and the person applying for it, which is exactly the space a purely doctrinal account of law cannot see.

Conviction data reinforces this picture. NCRB compilations show the conviction rate for crimes against women at just 26.5 percent in 2021, with seven states recording a conviction rate below ten percent and West Bengal as low as 2.5 percent; rape convictions specifically stood at 27.2 percent in 2018, down from 32.2 percent the previous year.<sup>36</sup> Even where a case is reported and registered, the criminal process frequently does not end in conviction, and this has been attributed to weak investigation, delayed trials, and the withdrawal of complaints under family or community pressure before a case reaches judgment. A statute deterrent value depends on the credible likelihood of enforcement, and where that likelihood is low, the existence of a strong criminal provision on paper does little to change behaviors on the ground. This is not an argument for harsher punishment as such; it is an argument that the socio-legal gap identified

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<sup>35</sup>Domestic Violence in Indian Women: Lessons from Nearly 20 Years of Surveillance, National Library of Medicine (PMC) (2022).

<sup>36</sup>10 Years of Nirbhaya: Conviction Rate in Crimes Against Women Just 26.5% in India, Deccan Herald (compiling National Crime Records Bureau data); Conviction Rate for Rape Cases is Only 27.2 Per Cent, Deccan Herald (2019), reporting National Crime Records Bureau, Crime in India 2018.

in this paper sits as much inside the criminal process, in investigation and prosecution, as it does in the substantive content of the law.

## **VI. INTERSECTIONALITY: CASTE, RELIGION, AND CLASS WITHIN GENDER JUSTICE**

Treating “women” as a single legal category, entitled to a single uniform bundle of protections, obscures more than it reveals. Kimberlé Crenshaw's foundational account of intersectionality argued that a Black woman's experience of discrimination could not be understood as simply race discrimination plus sex discrimination added together, because the two operate jointly to produce an experience distinct from either alone.<sup>37</sup> The same logic applies with force to caste, religion, and class in the Indian context.

A Dalit woman's access to justice for a caste-based sexual offence is shaped by the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act as much as by any gender-specific statute, and by a local police machinery that is frequently drawn from the same social groups implicated in the offence. A Muslim woman's rights on divorce or maintenance sit at the intersection of constitutional equality guarantees and a personal-law system that Parliament and the courts have historically approached with considerable caution, as the Shayara Bano litigation itself demonstrates. The Supreme Court's decision in *Indian Young Lawyers Association v. State of Kerala*, permitting women of menstruating age to enter the Sabarimala temple, showed how directly religious practice, gender, and constitutional morality can collide, and how contested the aftermath of such a ruling can become even after the legal question is formally settled.<sup>38</sup> A working-class woman, meanwhile, may hold every formal right available under the Domestic Violence Act and still be unable to use it, simply because taking a day off to attend a hearing costs her a day's wages she cannot spare.

The rural urban divides compounds into all three axes. A woman in a metropolitan city ordinarily has closer access to a functioning police station, a legal aid clinic, a women's helpline, and a lawyer familiar with the relevant statute than a woman in a village several hours from the nearest district court. Lata Singh's own case is instructive here: the couple required Supreme Court intervention and explicit police protection because local family and community

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<sup>37</sup> Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. Chi. Legal F. 139 (1989).

<sup>38</sup> *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1.

pressure, not any defect in the Hindu Marriage Act, was the actual obstacle to their marriage being respected. Distance from institutions, in other words, is itself a form of disadvantage that intersects with gender, and it rarely appears as a variable in the text of the statutes discussed in Part III.

Disability adds a further layer that Indian gender-justice scholarship has only recently begun to take seriously. A woman with a disability faces the same institutional and social barriers described above, compounded by a legal system, courtrooms, police stations, and legal aid offices, that is frequently inaccessible in a literal, physical sense, and by a long-standing social tendency to treat disabled women as unlikely victims of gender-based violence, which in practice makes their complaints harder to be believed. None of the statutes discussed in Part III were drafted with this compounded vulnerability specifically in mind, which is itself evidence for the broader argument of this Part: gender-neutral or gender-specific drafting is not enough on its own, because the categories that most affect how a right functions in practice, caste, religion, class, geography, and disability, sit outside the four corners of the statute.

None of this means gender-specific legislation is misdirected. It means a single statute cannot be expected to deliver equal protection to women who enter the legal system from unequal starting points. A socio-legal account of gender justice must hold caste, religion, class, and geography in view at the same time as gender, rather than treating them as separate chapters of a different inquiry.

Public awareness campaigns are often proposed as a further remedy, and they are not without value: a woman who has never heard of the Domestic Violence Act cannot use it, whatever its content. But a campaign that tells women they have a right, without simultaneously strengthening the institutions meant to honour that right, risks raising expectations the system cannot meet. A woman encouraged to report harassment who then encounters an inactive Internal Complaints Committee, or a woman told she can claim maintenance who then waits years for a family court date, may come away more distrustful of the legal system than before the campaign reached her. Awareness-building, in other words, must be paired with the institutional reforms discussed in Part VII, not treated as a substitute for them.

## **VII. TOWARDS A MORE GROUNDED APPROACH**

If the preceding Parts are right that legislation and judicial reasoning alone cannot close the gap between formal and substantive equality, four shifts follow.

The first is institutional accountability. Protection Officers under the Domestic Violence Act, and Internal Complaints Committees under the 2013 workplace to harassment law, need routine, independent audits of whether they function, not merely whether they exist on paper. A committee that has never received a complaint in three years is not necessarily evidence of a harassment-free workplace; it may equally be evidence of a committee nobody trusts.

The second is legal literacy at the level where disputes arise, meaning village panchayats, urban informal-sector workplaces, and lower courts, rather than only appellate litigation and academic commentary. Rights recognized by the Supreme Court in a reported judgment travel slowly to a woman who has never read that judgment and has no lawyer to explain it to her. Legal aid clinics, paralegal networks, and community outreach do more to close this gap than any further refinement of the case law is likely to achieve on its own.

The third is a willingness among courts and lawmakers to treat intersectional disadvantages as a factor in remedy design, not only in academic description. A domestic violence remedy designed with an urban, English-speaking, salaried woman in mind will not necessarily work for a rural, Dalit, agricultural labourer, even though both are nominally covered by the same Act. Building that difference into implementation guidelines, rather than leaving it to be discovered case by case in litigation, would bring statutory design closer to the substantive equality standard set out in Part II.

The fourth concerns data. Much of the socio-legal gap described in this paper is visible only indirectly, through NCRB crime statistics, conviction-rate studies, and scattered field research, rather than through any systematic tracking of what happens to a right after a court or Parliament creates it. Government bodies could routinely publish data on how many Internal Complaints Committees exist against how many workplaces are actually covered by the 2013 Act, how many Protection Officers are in post against how many are sanctioned, and how long domestic violence and maintenance cases take to resolve in each state. Without that data, the distance between a statute promise and its performance remains harder to measure and to act on than it needs to be.

## **VIII. CONCLUSION**

The story this paper has traced is not one of the legal failures in the sense of bad drafting or judicial indifference. Vishaka, Shayara Bano, Independent Thought, Joseph Shine, NALSA, Anuj Garg, and Lata Singh all represent serious, often courageous, uses of constitutional

interpretation to expand the boundaries of gender justice in India. The difficulty lies at one level below the judgments and the statutes, in the social terrain those rules are meant to operate on but cannot, by themselves, change. A law that grants a right without addressing the economic dependence, social stigma, or institutional skepticism standing between a woman and that right will keep producing the same gap this paper opened with: a constitutional promise on one side, and a National Crime Records Bureau report on the other.

Closing that gap will take more than a further round of amendments. It will take Protection Officers who are trained and available, courts that move at a pace ordinary litigants can bear, and communities where a woman asserting a legal right is met with support rather than suspicion. It will also take an honest accounting of who the existing framework has not reached: the informal-sector worker outside the 2013 Act's coverage, the rural woman several hours from her nearest family court, the disabled woman whose complaint is not taken seriously, and the woman whose personal law the higher judiciary has approached with more caution than her constitutional rights arguably warrant. Until these gaps are closed, the law's account of gender justice and society's practice of it will keep telling two different stories, and the harder, more useful work of Indian legal scholarship lies in the space between them.

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