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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **GENDER-BASED VIOLENCE**

AUTHORED BY - MISS. PRIYANKA.S<sup>1</sup>

## **ABSTRACT**

This research paper undertakes a comprehensive analysis of the legal response to gender-based Violence (GBV), focusing rigorously on the effectiveness of existing laws and policy frameworks. The study commences by delving into the legislative landscape, critically examining statutory provisions enacted to curb gender-based violence, such as the Protection of Women from Domestic Violence Act, 2005, the Criminal Law (Amendment) Acts, and related criminal statutes. Special emphasis is placed on the legal definitions, procedural safeguards, and the evolving role of the judiciary in interpreting statutory mandates in light of social realities. Law enforcement forms the next pillar of discussion, wherein the paper explores the structural and operational limitations faced by police and investigating agencies. This includes an evaluation of training, gender sensitivity programs, and exploration of societal and institutional bias that often undermines effective application of the law. Judicial processes are dissected with a focus on access to justice for survivors, highlighting challenges such as delays in trial, evidentiary burdens and witness protection. Support services, including one-stop centers, helplines, legal aid, and rehabilitative efforts, are assessed for their accessibility, adequacy and actual impact on ground realities. Further it extends to the influence of international standards assessing their integration into domestic frameworks. Thereafter, policy evaluation is conducted by contrasting legislative goals with actual implementation. Key challenges and gaps ranging from under reporting, social stigma, procedural hurdles, to inadequate victim support are thoroughly analyzed to develop a nuanced understanding of disconnect between law and lived experience. Ultimately this research aspires to contribute meaningfully to the discourse on gender justice by recommending pathways for enhancing both the substantive and procedural effectiveness of legal frameworks addressing gender-based violence.

**Keywords:** Gender-based violence, law and policy effectiveness, criminal justice, support services, gender justice.

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## **INTRODUCTION**

Gender-based violence (GBV) continues to be one of the persistent human rights violation in India, despite strong statutory frameworks and constitutional guarantees. The growing concern regarding physical, sexual, emotional and economic violence has pushed lawmakers, courts and government agencies to revisit the country's legal structure aimed at protecting women and other vulnerable groups. The Constitution of India guarantees equality under Article 14, 15 and 21 ensures the right to life with dignity. These constitutional rights lay the foundation for legislative measures such as the Protection of Women from Domestic Violence Act (PWDVA) 2005, the criminal law (Amendment) Acts of 2013 and 2018 and the Sexual Harassment of Women at Workplace Act 2013. although lawmaking has been rapid, implementation remains a challenge, resulting in a wide gap and their effect on survivors' lived realities. Judicial developments have attempted to strengthen women's right through progressive interpretations, but systematic barriers persist. This research paper critically analyses the overall legal response to GBV by examining legislation, enforcement mechanisms, judicial decisions, support structures, global standards and existing gaps. The main aim is to evaluate whether India's GBV framework effectively delivers justice and protection to survivors.

## **CHAPTER-I LEGISLATIVE FRAMEWORK**

India's legal framework against gender-based violence has evolved significantly over the past few decades. The PWDVA 2005 marked a major shift by introducing a civil law remedy for domestic violence, recognizing physical, mental, emotional, sexual and economic abuse as actionable wrongs. This law was strengthened by judicial interpretations such as *HIRAL P. HARSORA V. KUSUM NAROTTAMDAS HARSORA*<sup>2</sup>, where the Supreme Court widened the definition of "respondent" to include all adult males in a domestic relationship, enabling women to file complaints beyond the narrow categories originally defined in the Act. The Criminal Law (Amendment) Act 2013 introduced major reforms following the NIRBHAYA case, expanding the definition of rape under Section 375 IPC, introducing new offenses like stalking, voyeurism, acid attacks and providing stricter sentencing. The 2018 Amendment further enhanced penalties for rape of minors and introduced the death penalty for aggravated rape. Apart from these, Section 498-A IPC criminalizes cruelty by the husband or his relatives, though the provision has often been debated for alleged misuse. The Sexual Harassment of

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<sup>2</sup> Hiral P. Harsora v. Kusum Narottamdas Harsora, Supreme Court of India, 2016.

Women at Workplace Act 2013 operationalises the Supreme Court's guidelines laid down in *VISHAKA V. STATE OF RAJASTHAN*<sup>3</sup>, making safe workplaces a statutory obligation.

Although these laws appear comprehensive their effectiveness depends heavily on awareness, access to legal mechanisms, and consistent interpretations by courts. The legislature has attempted to modernize rape laws by broadening definition, but marital rape is still not criminalized in India, except where the wife is under 8 years, creating an inconsistency between constitutional protections increasingly influence legislative interpretations, evident in *INDEPENDENT THOUGHT V. UNION OF INDIA*<sup>4</sup>, where the Court struck down the marital rape exception for minor wives as unconstitutional. Despite a rich legislative framework, gaps remain in terms of implementation, inter sectional coverage, and effectiveness, especially in rural and marginalized communities.

## CHAPTER-II: LAW ENFORCEMENT

Law enforcement forms the operational backbone of GBV prevention, but it continues to be characterized by structural and behavioral challenges. Police stations remain the primary point of contact for survivors seeking protection or justice. In *LALITA KUMARI V. GOVERNMENT OF UTTAR PRADESH*<sup>5</sup>, the Supreme Court held that police must register an FIR mandatory in cases of cognizable offenses, including GBV, which reduced discretionary refusal by police officers. Still, NCRB data shows that under-reporting remains extremely high due to fear, stigma, and distrust of the police. Training programme on gender sensitivity, forensic procedures, and survivor-centrism investigation remain limited and inconsistent nationwide. Many cases are poorly handled due to lack of evidence collection skills, improper documentation, or delayed medical examinations.

Policing culture often reinforces patriarchal biases. Police frequently encourage “compromise” between spouses in domestic violence cases, despite the PWDVA offering civil protections independent of criminal processes. Moreover, all-women police stations, intended to create safe spaces, sometimes become overburdened or lack resources. Institutional accountability mechanisms, such as internal vigilance, women help desks, and district monitoring committees, exist but are weak in practice. The absence of adequate female officers, especially in rural

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<sup>3</sup> Vishaka v. State of Rajasthan, Supreme Court of India, 1997.

<sup>4</sup> Independent Thought v. Union of India, Supreme Court of India, 2017.

<sup>5</sup> Lalita Kumari v. Government of Uttar Pradesh, Supreme Court of India, 2014.

regions, further restricts survivors' willingness to report. While several states have launched initiatives like 1091 helplines and Mahila Police Volunteers, implementation varies widely, resulting in uneven enforcement.

### **CHAPTER-III: JUDICIAL PRECEDENTS**

Judicial interpretation has played a crucial role in expanding the scope and meaning of protections under GBV laws. Courts have reaffirmed the right to dignity, privacy, and bodily integrity in numerous decisions. The Supreme Court's judgment in *SUCHITA SRIVASTAVA V. CHANDIGARH ADMINISTRATION*<sup>6</sup> emphasized reproductive autonomy as part of Article 21, influencing judicial thinking in GBV cases involving bodily autonomy. In cases of sexual violence, courts have progressively recognized the importance of survivor testimony, as held in *STATE OF PUNJAB V. GURMIT SINGH*<sup>7</sup>, where it was established that the victim's sole testimony can be sufficient for conviction if trustworthy. The judiciary has also intervened to ensure timely trials, and in *STATE OF KARNATAKA V. KRISHNAPPA*<sup>8</sup>, the Court emphasized that sentencing in rape cases must reflect society's condemnation of violence against women. Courts have also contributed to expanding workplace protection. The Vishaka judgment laid down the first legally binding guidelines on sexual harassment, recognizing it as a violation of constitutional rights. Later, in *MEDHA KOTWAL LELE V. UNION OF INDIA*<sup>9</sup>, the Supreme Court directed strict implementation of Vishaka guidelines until the 2013 Act was enacted. Judicial activism has thus pushed the State to create stronger institutional mechanisms. However, judicial delays, low conviction rates, and the frequent practice of compromise or settlement in rape and domestic violence cases still weaken the judicial process. Courts have repeatedly condemned compromise in sexual offences, as stated in *STATE OF MADHYA PRADESH V. MADANLAL*<sup>10</sup>, yet such practices continue at lower court levels.

### **CHAPTER-IV: SUPPORT SERVICES**

Support services form the humanitarian pillar of India's GBV response. One-stop centers (OSCs), introduced under the Nirbhaya Fund, aim to provide integrated services such as medical care, counselling, police assistance, legal aid, and temporary shelter. Although OSCs

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<sup>6</sup> Suchita Srivastava v. Chandigarh Administration, Supreme Court of India, 2009.

<sup>7</sup> State of Punjab v. Gurmit Singh, Supreme Court of India, 1996.

<sup>8</sup> State of Karnataka v. Krishnappa, Supreme Court of India, 2000.

<sup>9</sup> Medha Kotwal Lele v. Union of India, Supreme Court of India, 2013.

<sup>10</sup> State of Madhya Pradesh v. Madanlal, Supreme Court of India, 2015.

exist in most districts, many suffer from under staffing, poor infrastructure, and limited outreach. Legal aid services provided through the National Legal Services Authority (NALSA) are designed to support survivors, but awareness is limited, and availability varies widely across states. Protection officers under the PWDVA are crucial intermediaries, but studies show they are often overburdened with multiple administrative tasks, reducing their ability to conduct home visits, file reports, or assist survivors effectively.

Shelter homes and short-stay homes offer temporary refuge, yet the Supreme Court in *In RE: ASSESSMENT OF SHELTER HOMES*<sup>11</sup> noted several deficiencies, including lack of hygiene, inadequate staff, and safety issues. Helplines such as 181 and 1091 are operational, but they lack integration with police and medical services, resulting in delays. Medical infrastructure also plays a key role, especially for survivors of sexual assault. In *LILLU V. STATE OF HARYANA*<sup>12</sup>, the Supreme Court prohibited the two-finger test, recognizing it as unscientific and violative of dignity. This decision strengthened survivor-centrism medical examination practices. However, implementation of medico-legal protocols still varies across states, and many hospitals lack trained personnel.

## **CHAPTER-V: INTERNATIONAL STANDARDS**

International frameworks have significantly shaped India's legal approach to gender-based violence. India is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which mandates states to eliminate discrimination through legislation, judicial remedies, and institutional mechanisms. The Supreme Court frequently relied on CEDAW in its decisions, including *VISHAKA V. STATE OF RAJASTHAN*, where international obligations were used to fill domestic legal gaps. Although India has not ratified the Istanbul Convention, its principles—such as preventive mechanisms, survivor-centrism procedures, and integrated support systems—provide valuable guidance for strengthening national policies. Reports by UN Women and the UN Special Rapporteur on Violence Against Women emphasize the need for coordinated multi sectoral responses, effective data collection, and accountability, which India is progressively adopting but has not yet fully institutionalized.

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<sup>11</sup> In Re: Assessment of Shelter Homes, Supreme Court of India, 2018.

<sup>12</sup> Lillu v. State of Haryana, Supreme Court of India, 2013.

International labour standards, particularly those addressing workplace safety and gender discrimination, also influence national law. ILO Convention No. 190 on Violence and Harassment sets global standards for safe work environments, although India has not ratified it yet. These frameworks encourage governments to adopt a holistic approach that integrates legal, social, and economic measures to combat GBV. Comparative studies by the World Bank and UNDP indicate that nations with strong community-based interventions and early-warning mechanisms report higher survivor protection and reduced violence.

## **CHAPTER-VI: POLICY EVALUATION**

Policy evaluation highlights the distinctions between legislative intent and actual implementation. The PWDVA was envisioned as a transformative law, but state-level studies show that protection officers are inadequately trained and often unavailable. Criminal law amendments promised faster trials and stringent punishment, but conviction rates remain low due to investigative gaps, fear of retaliation, hostile witnesses, and inadequate forensic facilities. NCRB data consistently reveals under reporting, reflecting deep-rooted social stigma and lack of confidence in authorities. Although the Sexual Harassment Act mandates Internal Complaints Committees (ICCs) in all workplaces, compliance remains low, particularly in the unorganized sector.

Government schemes such as Beti Bachao Beti Padhao include GBV-related objectives, but focus heavily on awareness campaigns rather than structural reform. The Nirbhaya Fund, created after the 2012 Delhi gang rape, remains under-utilized with several sanctioned projects pending completion. Policy evaluation also reveals a fragmented approach to GBV—health, police, judiciary, and welfare departments often operate independently without a centralized coordination system. This creates delays and confusion for survivors navigating the system. Moreover, budget allocation for women centric schemes remains insufficient compared to the scale of violence reported nationwide.

## **CHAPTER-VII: CHALLENGES AND GAPS**

Despite legal and policy reforms, several gaps hinder effective GBV prevention. Under reporting is the most persistent challenge, driven by social stigma, fear of retaliation, economic dependency, and lack of trust in police. Many survivors are pressured into compromise or informal settlements, particularly in domestic violence cases. Patriarchal norms continue to

shape institutional behaviour, including police reluctance to register cases, improper investigation, and moral judgement of survivors. Medical infrastructure suffers from inadequate training, leading to improper evidence collection. Judicial delays further discourage survivors, with many cases taking years to conclude. Lack of witness protection often results in hostile testimony, weakening prosecution.

Marital rape remains uncriminalised, creating a major legal gap and reflecting societal resistance to acknowledging violence within marriage. Implementation inequalities between urban and rural areas deepen marginalization. Support services such as OSCs, shelter homes, and legal aid are inadequate in number and quality. Coordination between agencies remains weak. Technology-based crimes such as cyber-stalking and online harassment are increasing, yet law enforcement lacks sufficient digital forensics capacity.

## **CHAPTER-VIII: SUGGESTIONS**

Strengthening India's response to gender-based violence requires systemic reforms.

Police reforms must prioritize gender-sensitivity training, recruitment of more women officers, independent oversight bodies, and strict enforcement of mandatory FIR registration.

Protection officers should be given dedicated staff, training, and exclusive responsibilities under the PWDVA.

Judicial reforms must ensure fast-track courts with adequate resources and accuracy. Survivor-centrism reforms include enhanced witness protection, free legal representation, and increased financial support schemes.

The government must fully utilize the Nirbhaya Fund to expand OSCs and shelter homes with trained counselors and social workers.

Legislative reforms should address the marital rape exception and strengthen cyber crime laws related to gender-based harassment.

Integration of international standards, particularly CEDAW principles, must continue. Community-based interventions, including awareness campaigns targeting men and boys, can help transform social norms.

Stronger employer accountability under workplace harassment laws is necessary, particularly in informal sectors.

Multi-agency coordination and digital case-tracking systems should be implemented to ensure efficient communication between police, hospitals, courts, and support centers.

## **CHAPTER-IX: CONCLUSION**

India has developed a strong legislative and constitutional framework to address gender-based violence, yet the gap between law and practice remains significant. Judicial interpretations have strengthened rights, but law enforcement weaknesses and social stigma continue to hinder justice. Support services are improving but remain inadequate in scope and quality. International standards offer valuable guidance for holistic reforms. To build a truly survivor-centrism system, India must integrate legal, institutional, and social reforms that ensure accessibility, sensitivity, and accountability across all processes. A comprehensive approach addressing the root causes of violence, enhancing state capacity, and empowering survivors is essential to transform India's GBV response into an effective and equitable system.

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