

Gender, Child Rights, and Justice: Emerging Legal Perspectives

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Preface

GENDER, CHILD RIGHTS, AND JUSTICE: EMERGING LEGAL PERSPECTIVES

The protection of women and children has long been at the heart of human rights discourse and legal reform across the world. Yet, despite progressive constitutional frameworks and evolving international norms, women and children continue to face numerous structural, social, and technological challenges that threaten their dignity, safety, and autonomy. The present volume, *Gender, Child Rights, and Justice: Emerging Legal Perspectives*, is an attempt to bring together diverse scholarly voices that examine these issues through legal, social, and interdisciplinary lenses.

This edited collection explores a range of pressing concerns affecting vulnerable groups in contemporary society. From the persistent problem of child trafficking in India's border regions to the growing impact of digital environments on women and children, the chapters in this book engage with complex realities that demand both critical reflection and legal innovation. The contributors examine how law operates not only as a framework for protection but also as a tool for social transformation.

The first section of the book focuses on child rights and protection, highlighting challenges such as cross-border trafficking, the international dimensions of child exploitation, and the importance of safeguarding child welfare through supportive maternal rights. It also draws attention to public

health concerns such as anemia in children, framing it as a matter of the fundamental right to health. Additionally, the volume explores emerging questions at the intersection of technology and childhood, particularly whether children can meaningfully distinguish between advice given by humans and artificial intelligence.

The second section addresses women's rights, gender justice, and entrenched social norms. The chapters examine practices and institutional cultures that perpetuate gender inequality, including the legal response to female genital mutilation, the normalization of sexual misconduct within workplaces and academic spaces, and the urgent need to rethink the concept of "safe spaces" in both domestic and professional environments. These discussions underscore the continuing struggle for gender justice and the need for stronger legal and social accountability.

Recognizing the rapidly changing technological landscape, the book also examines the role of digital spaces in shaping the experiences of women and children. As online platforms expand opportunities for communication and participation, they also create new risks related to privacy, safety, and digital exploitation. Balancing these competing interests remains one of the most pressing challenges for contemporary legal systems.

The volume further situates these concerns within the broader framework of international human rights law, particularly the role of global instruments in protecting vulnerable groups. By analyzing the principles of human dignity and the influence of international conventions, the contributors highlight the importance of aligning domestic legal frameworks with global standards.

Finally, the book addresses debates surrounding reproductive autonomy and population control policies, critically examining the constitutional implications of coercive population laws and their impact on individual rights and bodily autonomy.

Collectively, the chapters in this book aim to encourage meaningful dialogue among scholars, practitioners, policymakers, and students of law. By presenting varied perspectives and rigorous analyses, the volume seeks to contribute to ongoing conversations about justice, equality, and the protection of vulnerable communities.

We hope that this book will serve as a valuable resource for those engaged in the study and practice of law, as well as for anyone interested in understanding the evolving challenges related to gender justice and child rights in contemporary society.

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Child Trafficking in India's Border States: Legal Enforcement and Cross-Border Vulnerabilities

Shringar Mishra & Chetna Singh

ABSTRACT

The issue of child trafficking continues to be among the most widespread human rights violations in South Asia and the border states of India, especially in West Bengal, Assam, and Bihar, turned out to be one of the most important hotspots, as the area is close to Nepal and Bangladesh geographically. Although there exists a comprehensive framework of laws including the Indian Penal Code, the Juvenile Justice (Care and Protection of Children) Act, the Protection of Children against Sexual Offences Act, and the international commitments of the Palermo Protocol and the UN Convention in the rights of the child, enforcement remains a failure. Poor border security, corruption, porous boundaries and poverty, displacement, gender inequality and gender disparity all contribute towards terrorist networks across borders which use children as a labor force, sexual victimization, forced marriage. This chapter argues that the anti-trafficking system in India is disjointed and mostly reactive in nature with its interest more inclined towards rescuing and prosecution without much focus on the reintegration long-term reintegration of children as well as child-centered justice. It advocates a multi-faceted approach that goes beyond punishment as a response to preventive, protective, and restorative action.

Keywords: *Legal Enforcement, Cross-Border Trafficking, Child Exploitation, Victim Rehabilitation, Socio-Economic Vulnerabilities..*

Introduction

Trafficking of children can be listed as one of the worst violation of human rights that modern India faces. As the National Crime Records Bureau (NCRB) cites the number of children missing annually, at more than 40,000 (owing to which the country had over 11,000 missing children as of 2011)¹, is in statistical terms still lack the robust resolution and reporting system means the issue it constitutes is a structural crisis in the confluence of poverty, displacement, permeable borders, and the demand economy of sexual exploitation, domestic servitude, and illegal labor². The epicenter of this crisis is formed by the border states of India that include West Bengal, Assam, Bihar, Jharkhand and the North- Eastern states of Manipur, Arunachal Pradesh, Tripura and Mizoram. Their cultural and linguistic continuity with Bangladesh, Nepal, Bhutan and Myanmar coupled with their contiguous geographical position has endowed them with high vulnerability corridors to the traffickers. More specifically, it has been found that West Bengal has been distinguished most as the primary focal point of child cross-border trafficking with Assam and Bihar coming next in line with respect to trafficking³ because of the porous borders, weak law enforcement due to jurisdiction and lack of coordination between state and central law enforcement authorities. The fact that child trafficking has existed despite an extensive statutory framework and constitutional provisions is an indicator of it not only being a legal but also an institutional, socio-economic, and transnational problem. The paper includes question concerning the effectiveness of legal system in India with special attention to the vulnerability of the border

1 National Human Rights Commission of India, *Trafficking in Women and Children in India* (NHRC 2017) 14.

2 National Crime Records Bureau, *Crime in India 2022* (NCRB 2023) 214.

3 UNODC, *Global Report on Trafficking in Persons 2024* (United Nations 2024) 56.

states, and the enforcement issues⁴. It contextualizes the issue in the greater paradigm of international human rights law, constitutional entitlements, statutory interferences, judicial assertion and similar regional practice.

DOMESTIC LEGAL FRAMEWORK ON CHILD TRAFFICKING IN INDIA

Constitutional Regime and Safeguards

The Indian constitution has incorporated various stipulations that protect the lives of children against exploitation. Article 23(1) explicitly bans human beings and beggar trafficking, laying it out no more than unconstitutional punishable by law under *Bhartiya Nyaya Sanhita, 2023*⁵. Article 24 substantiates this exception by barring hiring of children less than fourteen years of age in factories, mines, or work involving too much danger in factories, mines, or dangerous professions, as well. In addition to the express limitations, the judicial interpretation of Article 21 has extended the connotation defining the right to life, adding to it the dimensions of dignity, protection, and rehabilitation.

In addition to express prohibitions, judicial interpretation of Article 21 has broadened the meaning of right to life by putting a clause of dignity, protection and rehabilitation. The Supreme Court stated that trafficking of women and children as a source of prostitution was recognised as an outrageous act of defiance to Article 21, forcing the State to come up with means of rehabilitation⁶. Likewise, the Court believed that the issue of missing children had to be categorically associated with trafficking requiring FIRs to be registered in such cases⁷.

Child protection is also strengthened by Directive Principles. Article 39(e) guides the State to defend children against assault and offer them prospects of development in atmosphere of

4 Ministry of Home Affairs, Scheme for Anti-Human Trafficking Units (AHTUs) (MHA 2010) 12.

5 The *Bhartiya Nyaya Sanhita, 2023*, s. 143.

6 *Vishal Jeet v. Union of India*, (1990) 3 SCC 318.

7 *Bachpan Bachao Andolan v. Union of India*, (2011) 5 SCC 1.

liberty and honesty whereas the Article 39(f) is additional where occasions of healthy advancement are targeted. These principles, though non-justiciable, have been judicially drawn upon by interpreting what the State owes under Articles 21 and 23⁸.

STATUTORY REGIME

1. *Bhartiya Nyaya Sanhita, 2023*:

- *Section 143- Person Trafficking*: it criminalizes recruitment, transportation, harboring, transfer of, or receiving persons to be exploited. In the case of children, the recruitment or movement itself with the purpose of exploitation is the offence, regardless of the consent. The punishments are between a strict imprisonment lasting 10 years to a life imprisonment with higher punishments when several children are trafficked or when an official is found specifically when it involves a government official⁹.
- *Section 144- Exploitation of a Trafficked Person*: prosecutes women or men who act or use a trafficked person especially child sexually. Child victims impose a sentence of 5-10 years of strict imprisonment of punishment in addition to fines¹⁰.
- *Section 98- Selling Child to Prostitution*: It criminalizes selling, customers prostitution, and or illicit sexual act, and it prescribes up to 10 years' imprisonment with fine¹¹.

According to NCRB, even though annual registration of thousands of cases is recorded, the conviction rate is only between 10-12 per cent since most of them have poor investigation and lack victim testimony¹².

8 The Constitution of India, 1950, Arts. 21, 23, 39(e) and 39(f).

9 The *Bharatiya Nyaya Sanhita, 2023*, s. 143.

10 *Ibid*, s. 144.

11 *Ibid*, s. 98.

12 National Crime Records Bureau, *Crime in India 2022: Statistics* (New Delhi, NCRB 2023) 455.

2. Immoral Trafficking (Prevention) Act, 1956

Founded in 1956 as ITPA, the provision originally known as the Suppression of Immoral Traffic in Women and Girls Act (SITA), was further extended to reach its current comprehensive scope. It also criminalizes trafficking as an offense carried out with the intention to commercially exploit an individual, which includes brothel keeping (S. 3), acquisition or enticement of persons into engaged in prostitution (S. 5), and subsistence on the proceeds of prostitution (S. 4)¹³.

3. Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act)

The JJ Act offers a conceptual framework that trafficked children should receive rehabilitative support under the subsection of children in need of care and protection (s. 2(14)). The Child Welfare Committee is being given authority to institutionalize or provide children who have been rescued under a non-institutional care. In 2021, amendments were made to streamline CWCs adoptions and make them more accountable. Yet implementation has remained uneven, and it has been noted that victims remain in poorly controlled shelter homes¹⁴.

4. Protection of Children from Sexual Offences (POCSO) Act, 2012

The key legislation with regard to sexual exploitation of children is POCSO. It criminalizes penetrative and non-penetrative sexual violence, sexual harassment and pornography, and in accordance with child friendly treatment, holds child friendly processes of investigation and trial. Seeing that a necessity of these cases is the fact that many trafficked children choose to engage in sexual exploitation, POCSO sometimes intersects with BNS and ITPA. The expedited trial with special POCSO courts is a good initiative, as a major concern is on pendency¹⁵.

13 Immoral Traffic (Prevention) Act, 1956, ss. 3–5.

14 Juvenile Justice (Care and Protection of Children) Act, 2015, s. 2(14).

15 Protection of Children from Sexual Offences Act, 2012, ss. 3–11.

5. Ancillary Statutes

- *The Prohibition of Child marriage, 2006*: deals with the issue of trafficking in the name of marriage mostly seen in border districts¹⁶.
- *The Child Labor (Prohibition And Regulation) Act, 1986*: Amended in 2016 and 2019 continuing to prohibit full use of child labor in all professions except family businesses (limited)¹⁷.
- *Bonded Labor System (Abolition) Act, 1976*: this law is the repeal of the tradition of bonded labor which was frequently applied to exploit the tribal and marginalized children¹⁸.

RECENT LEGISLATIVE CHANGES

The Bhartiya Nyaya Sanhita 2023 that substitutes the Indian Penal Code has brought a considerable change in the anti-trafficking law. The harsh penalties provided in section 143 include life imprisonment in case of child trafficking offences. Through the provision that uses a broader definition of the term exploitation that includes slavery, servitude, and the removal of organs, the Indian law will be nearly in line with the standards applied under the Palermo Protocol. Moreover, there were two significant legislative projects: the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 and the Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021 which aimed at establishing multi-tiered anti-trafficking outlines at national, state, and district level, providing dedicated victim rehabilitation funds, and introducing specialized investigative procedures. To this effect two bills have, however, lapsed without being enacted, showing the continued absence of political consensus, although

16 Prohibition of Child Marriage Act, 2006, s. 3.

17 Child Labour (Prohibition and Regulation) Act, 1986 (as amended 2016, 2019).

18 Bonded Labour System (Abolition) Act, 1976, s. 4.

with great urging by the National Human Rights Commission and other international organizations¹⁹.

Institutional Mechanism

1. **Anti-Human Trafficking Units (AHTUs):** Established in 2007, AHTUs were established as specialized police forces to address trafficking. Approximately, 332 units were operational by 2022, most of which are overstuffed and inadequate in terms of training. The coordination between the border forces and other states has also been low which has diminished their effectiveness further.²⁰
2. **Fast-Track and Child-Friendly Courts:** Special courts are now examining the cases of child sexual offences with special legislation, as amended in the POCSO Act and judicial guidelines. Such courts offer child sensitive processes like in-camera hearings and video testimony. However, their purpose is still compromised by heavy case pendency²¹.
3. **National Action Plans: Ujjawala Scheme,** unveiled in 2007 by the Ministry of Women and Child Development, assists the NGOs engaged in rescuing and re-integrating the trafficked women and children. Nonetheless, the Comptroller and Auditor General audits indicate ineffective monitoring and misuse of the allocated funds, which restrict its effectiveness²².

Gaps and Challenges

Regardless of a solid statutory framework, there still exist several gaps within it:

19 National Human Rights Commission, Report on Trafficking in Women and Children in India (New Delhi, NHRC 2017) 88.

20 UNODC, India Country Assessment on Human Trafficking (New Delhi, UNODC 2021) 33.

21 Protection of Children from Sexual Offences Act, 2012, s. 28.

22 Comptroller and Auditor General of India, Performance Audit of MWCD Schemes (CAG Report No 12 of 2019).

1. Division of Laws: The anti-trafficking laws are still scattered among BNS, ITPA, JJ Act, and POCSO, which leads to overlaps.
2. Low Conviction Rates: Ineffective investigation, absence of forensic evidence and hostile environment discourage victim testifying.
3. Excessive focus on Rescue: Frameworks are more focused on rescue rather than on rehabilitation and reintegration.
4. Secondary Victimization: In state-operated shelter homes, survivors are regularly abused, and this represents systemic lapses in monitoring.
5. In Progress Comprehensive Law: The unsuccessful attempt to enact the 2018 and 2021 Bills is indicative of an inability to bring together the provisions into a unified regime.

DOCTRINAL AND INTERNATIONAL LEGAL FRAMEWORK

Conceptualizing Child Trafficking

Child trafficking has been interchangeably used with other similar practices like illegal migration, child labor and smuggling. The definition of trafficking in the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children (Palermo Protocol, 2000)* is a broad definition as it includes the recruitment of persons, transportation, transfer, harboring or receiving persons through coercion, deception or abuse of power to exploit these persons²³.

Conversely, migrant smuggling implies the acquisition of an unlawful entrance of an individual into a country where the individual is not a citizen, which is usually consensual. In the same way, child labor, though associated with trafficking, is a separate legal phenomenon with tools like the *ILO Convention*

23 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000, Art. 3.

*No. 182 on Worst Forms of Child Labor*²⁴ governing it. This doctrinal difference is crucial since the confusion of independent child migration with trafficking may lead to wrongful conviction of adults who have taken children with them to work²⁵.

International Legal Instruments

India is a signatory to several fundamental international conventions and protocols directly referring to child trafficking and other types of exploitation:

1. *United Nations Convention on the Rights of the child (UNCRC, 1989)*: India signed the UNCRC in 1992, which binds the states to safeguard children against abduction, sale and other sexual or economic exploitations (Articles 34- 36).
2. *The Palermo Protocol (2000)*: Supplementing the UN Convention against Transnational Organized Crime. It requires criminalizing, protecting the victims and international collaboration.
3. *International Labor Standards: Convention No.182 (1999) on Worst Forms of Child Labor and Convention No.138 (1973) on Minimum Age of Admission to Employment* are international standards on the prevention of child labor and trafficking.
4. *SAARC Convention on Preventing and Combating Trafficking in Women and Children in prostitution (2002)*²⁶: This is a regional treaty, which means that the South Asian countries are bound together in terms of prevention, investigations, and repatriation. Nevertheless, its attention to prostitution has been criticized as lacking in offering a broader perspective of tackling other acts of exploitation.

24 ILO Convention (No 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999.

25 P Ray, 'Independent Child Migration and Anti-Trafficking Law in India' (2018) 53(2) Economic and Political Weekly 47.

26 SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, adopted Jan. 5, 2002, entered into force Nov. 15, 2005.

5. *Universal Declaration of Human Rights (1948) and International Covenant on Civil and Political Rights (ICCPR, 1966)*: The two documents, whereas universal, end slavery and forced labor, which forms the basis of universal normative standards.

International Commitments and Inefficiencies of India

India as a signatory to these instruments has been inconsistent to adhere to them. The UN Special Rapporteur on Trafficking in Persons reports have criticized India on poor implementation of repatriation procedures with Bangladesh and Nepal, the absence of victim-witness protection, and excessive focus on criminalization rather than rehabilitation.²⁷ In addition, a joint study conducted by the UN Women and UNICEF, observes that although India has put legal provisions and provisions that are in harmony with the international standards, enforcement in the border areas is seldom even and survivors languish in the shelter homes without access to education and means of livelihood.²⁸ The lack of educational and economic opportunities causes children aged 14-18 years to migrate and work in informal industries.

CROSS BORDER VULNERABILITIES AND ENFORCEMENT CHALLENGES

Geographic and Structural Vulnerabilities of the Border States

The border states of India are the frontiers in the war against child trafficking. These regions are particularly susceptible to trafficking activities due to their geographical location, West Bengal, Assam, Bihar, Jharkhand, and the North-Eastern states of Manipur, Arunachal Pradesh, Mizoram, and Tripura and the socio-economic factors that have favored them. Their proximity with Bangladesh, Nepal, Bhutan, and Myanmar,

27 UN Human Rights Council, Report of the Special Rapporteur on Trafficking in Persons, especially Women and Children: Mission to India (A/HRC/38/45/Add.1, 2018) 12–13.

28 UNICEF and UN Women, Making the Connection: Women's and Children's Rights in South Asia (UNICEF/UN Women 2021) 23.

whose borders are porous, have the same cultural identities and unequal socio-economic progression, offers a transnational environment that allows traffickers to operate with relative impunity.

The India-Bangladesh border, which covers more than 2,200 kilometers, is infamously porous, with West Bengal as the main entry point to the outbound and inbound trafficking UNODC mapping has validated that West Bengal has received the largest numbers of trafficking in Indian states, serving as a source, transit area, and destination simultaneously²⁹.

In Assam, constant ethnic violence, combined with a series of annual floods that leave thousands of families displaced, creates an environment of unaccompanied children that are very easy targets of traffickers. Equally, in Bihar and Jharkhand, especially the tribal belts, the out-migration has continued to happen on a regular basis due to poverty where children are lured with the promise of labor or marriage prospects and then violated across the borders into Nepal or into metropolitan centers³⁰.

The North-Eastern states are even more complicated in their vulnerabilities. Manipur and Arunachal Pradesh have porous borders with Myanmar where political instability, armed conflict and ineffective border management are just some of the favorable grounds in which organized trafficking thrives. The crisis is positively correlated with structural weakness of the countries, which have been repeatedly identified as trafficking hotspots by NCRB³¹ (Tripura and Mizoram, which are neighbors of Bangladesh).

Socio-Economic Determinants of Trafficking

Socio-economic factors that drive the relationship of vulnerability are at the core of the trafficking issue:

29 UNODC, India Country Assessment on Human Trafficking (UNODC 2021) 27.

30 NHRC, Trafficking in Women and Children in India (NHRC 2017) 14.

31 NCRB, Crime in India 2022 (National Crime Records Bureau 2023) Vol II, 432.

- **Poverty and Unemployment:** The rural and tribal families are usually convinced by the traffickers who pretend to be job agents. They give children an opportunity to work in the city homes or even in small industries, only to see them in an exploitative domestic service or in a risky labor. According to NCRB data, there are more than 3,000 registered child trafficking victims in 2022, but the experts estimate that the number of real victims has to be even greater due to the chronic underreporting³².
- **Displacement and Migration:** In such states as Assam and Bihar, there is a large-scale displacement due to floods or communal violence, which leaves children with broken families. This provides good opportunities to traffickers to enlist children in the pretext of providing shelter or jobs.
- **Demand-Driven Exploitation:** The business of trafficking is based on demand of inexpensive domestic labor, bonded labor in the small-scale industries, and sex trading. As an example, the Commercial Sexual Exploitation (CSE) business in Mumbai alone brings up around USD 400 million yearly with trafficked children making up a good part of the victims³³.
- **Gendered Vulnerabilities:** Young girls are still overrepresented in the danger. As per NHRC reports, the proportion of child prostitutes in India is almost 40 percent, and that is how customers want their victims to be younger, and how the system has broken down³⁴.

Several scenarios, including the one of Samira in West Bengal, demonstrate the way in which the adolescent girls are trafficked across the countries to work in brothels or forced labor, highlighting the increased vulnerability of being a female and being poor.

32 *Ibid* 437.

33 Ministry of Women and Child Development, *Women and Children: Status Report (MWCD 2022)* 45.

34 NHRC (n 2) 16.

Emerging Patterns: Online Grooming and Organized Syndicates

The modes of trafficking have changed with the transforming technologies. According to the reports by NGOs like Shakti Vahini³⁵, the traffickers get more and more involved in utilizing social networks like Facebook and WhatsApp, luring adolescent girls with marriage or romance promises. The example of two girls in West Bengal in 2022, who were misled online and then found in Delhi, demonstrates how trafficking is acquired a cyber aspect.

Transnational organized trafficking networks are also used to bypass the poor coordination of enforcement mechanism. They are usually multilateral between the parties, transporters, brothel owners, corrupt officials, and recruiters and extend into many states and countries. This model of criminal syndicate renders the task of the law enforcement agencies to break down the networks in a holistic manner extremely challenging³⁶.

Enforcement Deficits

Even with the legislative changes and institutional frameworks, the enforcement infrastructure of the states that are located on the border is weak:

- **Jurisdictional Fragmentation:** Inter-state and cross-border coordination is a problem in India because of its federal structure. The jurisdictional problem and the delays in the investigation of a trafficking case are frequent since the cases can sometimes cross several states.
- **Under-Resourced Anti-Human Trafficking units (AHTUs):** The Ministry of Home Affairs ordered the creation of Anti-Human Trafficking Units (AHTUs) in each district, but most of them are understaffed, under-funded, or inactive. An audit conducted in 2021 found out that some

35 Shakti Vahini, Annual Trafficking Report (2022) 16.

36 UNODC, Global Report on Trafficking in Persons 2024 (UNODC 2024) 65.

of the AHTUs were only on paper, which jeopardized their functions in specialized investigations³⁷.

- Low Conviction Rates: NCRB statistics show that even thousands of children are saved every year, the conviction rates of trafficking stand at less than 20 percent³⁸. This is a poor record of weak investigation, failure to gather evidence and antagonistic witnesses.
- Secondary Victimization: State run shelter homes tend to re-traumatize survivors. The example of Kamla in Bengal illustrates the abuse of the survivors in the institution once they are rescued both physically and psychologically³⁹.

Armed Conflict and Child Recruitment

One more troubling aspect of trafficking in the border states is the recruitment of children by armed groups. Naxal types of insurgents are reported to have forcibly recruited children into “Bal Dasta”s units where they act as couriers, informants and even combatants⁴⁰.

The UNICEF estimates that there are more than 300,000 children globally who were used in armed conflicts and India has been reported to have child recruits in conflict-affected areas⁴¹.

The trend causes the confusion of the borderline between trafficking and forced conscription, making it difficult to respond to it either legally or within a rehabilitative context.

Repatriation and Rehabilitation Problems

Repatriation of trafficked children especially the Bangladeshi and Nepal ones is a long and bureaucratic process. Lack of bilateral protocols also makes survivors languish in shelter homes, where the survivor might stay years without any effective measures. Although the SAARC Convention

37 Ministry of Home Affairs, Status of Anti-Human Trafficking Units (MHA 2021) 8.

38 NCRB (n 3) 437.

39 MWCD (n 5) 47.

40 NHRC (n 2) 18

41 UNICEF, Ending Child Trafficking in South Asia (UNICEF 2020) 19.

(2002)⁴² offers a framework through which collaboration can be achieved, its limited scope in terms of prostitution and measures to implement their policies make it ineffective. It is the same with Tina of Darjeeling, who did not want to go back to her village because of the stigma and decided to stay in Delhi under NGO patronage but unfortunately the reintegration failed because of the prejudice of society⁴³.

In this way, even though the anti-trafficking regime of India is theoretically consistent with global requirements, the real work in the border states is inadequate and continues to perpetuate exploitation, rescue, and re-trafficking.

LEGAL AND ENFORCEMENT FRAMEWORK ON CHILD TRAFFICKING IN INDIA

Jurisprudence at the Supreme Court and High Courts

The Indian court has been instrumental in the interpretation of trafficking as a constitutional crime and not a mere statutory offence. The courts, by way of public interest litigation, progressive rulings, have gradually increased the scope of protection of trafficked children.

In *Vishal Jeet vs Union of India* the Supreme Court acknowledged that the prostitution of children has been systematic and ordered state governments to set up rehabilitation homes, vigilance committees and awareness programmes⁴⁴. The Court also expanded this tactic in *Gaurav Jain v Union of India* wherein they considered the condition of children who were born to women in sex work. It overturned the practice of segregationism (separate schools, etc.) by declaring that young girls should not be left in places where they are at risk of being lured into prostitution⁴⁵. The ruling mandated state governments and non-governmental organizations to find

42 SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002, Arts. 6–7.

43 MWCD (n 5) 47.

44 *Vishal Jeet v Union of India*, (1990) 3 SCC 318.

45 *Gaurav Jain v Union of India*, (1997) 8 SCC 114.

alternative accommodation and education with the rights of such children directly related to the constitution clause of equality and dignity.

In the case of *Bachpan Bachao Andolan v Union of India*, the Court dealt with the question of missing children and set a high presumption of trafficking in such cases. It ordered all cases of missing children would be filed as cognizable offences in section 363 of the IPC, which had the effect of placing an increased burden on the State to act urgently⁴⁶. Employment of children in circuses was also prohibited by the Court, which believed that such practice should be prohibited as these children did not have their basic rights to life, liberty, and education, thus being bound to a larger scope of child rights.

Collectively, these decisions indicate an evolution in jurisprudence whereby, through the years, the Supreme Court has interpreted Articles 21, 23 and 24 in a mutually supporting framework, which created a constitutional protection against trafficking. The courts have shifted their focus, and instead of punishing those involved, have framed the problem as a rights-based one and necessitated the active role of the state to assist in rescuing, rehabilitating, and reintegrating victims.

Prevention and Statistics of Child trafficking in India

Even though there is a solid legal framework in place, the application of anti-trafficking legislation in India is still unequal with institutional gaps. According to official statistics there is a sobering picture. The 2,250 cases of trafficking recorded in the country under the Crime in India 2022 report by the National Crime Records Bureau (NCRB) included 6,036 victims, of which close to half 2,878 were children, which highlights the gender aspect of trafficking. Even though it was reported that 1,190 girls were rescued, the numbers indicate a huge discrepancy between the number of the victims and the number of those that were successfully traced and recovered⁴⁷.

46 *Bachpan Bachao Andolan v Union of India*, (2011) 5 SCC 1.

47 NCRB, Crime in India 2022 (National Crime Records Bureau, New Delhi 2023) Vol II 432.

It has a disproportionately low conviction rate in trafficking cases. Data provided by the Ministry of Home Affairs shows that although thousands of cases are reported each year, convictions are not above 20 per cent, and poor investigation and insufficient evidence gathering are some of the primary causes of this⁴⁸.

Despite this, government and independent reports indicate that such schemes usually fail during implementation. Audits and field work claim that the poor coordination of schemes between the agencies and underfunding of the Anti-Human trafficking Units (AHTUs) of the country, especially the border states, West Bengal, Assam, and Bihar, make the country incapable of curbing the traffic of people⁴⁹. UNODC international assessment supports this view, noting that, despite legislative advances, implementation mechanisms have not been effective, obstructing the eradication of human trafficking movements in India⁵⁰.

Institutional Problems in Border States

Despite the elaborate legal framework on trafficking developed in India, border states still experience deep structural and institutional obstacles in their implementation. The eastern parts, especially West Bengal, Assam, Bihar and Jharkhand are particularly susceptible due to permeable borders, social economic marginalization and high migration levels. The North-Eastern parts including Manipur, Mizoram and Tripura are also prone to this aspect due to their low socio-economic status and massive migration.

One of the biggest challenges is the operations of the Anti-Human Trafficking Units (AHTUs). Despite the fact that they are established by the Ministry of Home Affairs at the district

48 Ministry of Women and Child Development, Women and Children: Status Report (MWCD, New Delhi 2022) 45.

49 Ministry of Home Affairs, Status of Anti-Human Trafficking Units (MHA 2021) 8.

50 UNODC, Global Report on Trafficking in Persons 2024 (UNODC, Vienna 2024) 65; NHRC, Trafficking in Women and Children in India (NHRC, New Delhi 2017) 14.

level, and frequently on paper⁵¹, regular reviews have indicated that most do not have sufficient financial resources, and trained personnel who can investigate and rescue children facing exploitation in vulnerable districts. Some anti-trafficking cells have been established at the Border enforcement agencies like the Border Security Force (BSF) and Sashastra Seema Bal (SSB) however the jurisdictional overlaps, and the poor collaboration in the neighboring countries hamper their effectiveness.

Along with these institutional inadequacies are social and cultural factors. It is a challenging task to reintegrate the survivors into their home communities as they might face stigma and ostracism. In some cases, girls have rejected coming home when they are rescued in fear of being rejected by their societies and preferred to stay in urban centers in the care of NGOs⁵². Psychosocial support and livelihood training have been recommended in the judicial directions but is not a regular practice⁵³. Overall, although the anti-trafficking system in India is normatively close to the international standards of different protocols, including the Palermo Protocol and the UN Convention on the rights of children, the enforcement gap on the practice is substantial.

FINDINGS AND RECOMMENDATIONS

Consolidated Findings

The empirical, legal, and institutional evidence about the issue of child trafficking in the Indian border states are consolidated with special mention being made to Bihar and West Bengal. The chapter identifies the issues at the ground level and offers practical, survivor-oriented reforms of the prevention, prosecution, protection, and rehabilitation.

51 Ministry of Home Affairs, Status of Anti-Human Trafficking Units (MHA, New Delhi 2021) 9.

52 Shakti Vahini, Annual Trafficking Report 2022 (Shakti Vahini, New Delhi 2023) 16.

53 Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2018; Trafficking in Persons (Prevention, Care and Rehabilitation) Bill 2021

- **Vulnerabilities At The Borders And Transits:** Trafficking is a risk due to porous borders of India between countries such as Nepal, Bangladesh, Bhutan and Myanmar. Traffickers use rail and road transport, especially interstate buses and trains in Bihar to transport children without any detection⁵⁴. Lax border control, the presence of fake ID papers allows traffickers to escape governmental investigation and, the disappearance of the names of survivors once their names are frequently erased. This compromises the prosecution and tracing of the victims.
- **Socioeconomic Drivers:** The biggest contributors to trafficking have remained poverty, unemployment and insufficiency of the state to support the Below Poverty Line (BPL) families. In the border areas, economic poverty compels families to take up fraudulent job or marriage proposals on behalf of their children⁵⁵. The West Bengal case report is about the increasing vulnerability of the population due to limited livelihoods and the lack of equal access to education, particularly with young girls belonging to tribal and rural populations (GGBK Study, 2023)⁵⁶.
- **Gaps in Law Enforcement:** The statutory measures and the law enforcement is not effective. Often missing children are listed under such generic heads as kidnapping or missing, which waters down responsibility⁵⁷. West Bengal recorded 16 per cent of cases as just General Diary Entries and 24 per cent of them as not cognizable offences (GGBK Study, 2023)⁵⁸. The given practices undermine the evidential

54 The article "Bihar's dark side — the hub of girl child trafficking" from The Hindu was published on July 30, 2025

55 NCRB, Crime in India 2022 (National Crime Records Bureau 2023) 214.

56 GGBK, Child Trafficking in West Bengal: Vulnerabilities and Legal Gaps (NGO Report 2023) 43.

57 Protection of Children from Sexual Offences Act, 2012; Immoral Traffic (Prevention) Act, 1956.

58 GGBK (n 3) 51.

foundation of prosecutions and misrepresentation of the NCRB statistics (NCRB, Crime in India 2022)⁵⁹.

- **Institutional Shortcomings:** The Anti-Human Trafficking Units (AHTUs), despite being informed, tend to be under-financed and under-staffed. Child Welfare Committees are not trained to act against traffickers with false identities, an example of which is the Champaran district in Bihar⁶⁰. This is also evident in the West Bengal study, in which the coordination with District Legal Services Authorities (DLSAs) is poor, thereby slowing down the compensation of survivors and eroding legal assistance⁶¹.
- **Rescue Without Reintegration:** The end of state responsibility is often perceived as the rescue operations. The rehabilitation services are also minimal to medical testing (HIV, pregnancy), whereas psychological assessment and trauma counselling are incomplete or poor⁶². This increases the chances of re-trafficking and permanent social exclusion⁶³.
- **Gaps in Community and Local Vigilance:** In other parts of Bihar, Community vigilance is undermined by fear of being harassed by the police and normalization of seasonal migration. This indicates a structural lacuna in the Panchayat and the school level in keeping records of migration and monitoring child absenteeism⁶⁴.
- **Deficits in Rehabilitation and Health:** Studies indicate a severe scarcity of survivor-centered rehabilitation. In one of the studies, the proportion of survivors whose psycho-analytical testing had been carried out was only 43 per cent in South 24 Parganas, and the statistics was similarly

59 NCRB (n 2) 219.

60 Ministry of Home Affairs, Anti-Human Trafficking Units Status Report (Government of India 2022) 17.

61 Bihar Field Brief (n 1).

62 Women and Child Development Ministry, Annual Report 2022–23 (MWCD 2023) 201.

63 Rescue Foundation, Shelter Home Rehabilitation Review (2019) 65.

64 UNICEF, Children on the Move in South Asia (UNICEF 2022) 31.

negligible in districts like Jalpaiguri (GGBK Study, 2023)⁶⁵. The shelter homes are also usually custodial, underfunded, and not well equipped to meet the long-term needs of the survivors (Women and Children Report, 2022)⁶⁶.

- **Technology and Cross-border Gaps:** There is poor surveillance at the transit points as night buses between Muzaffarpur and Odisha bypass detection rings regularly. Although the PICKET model is suggested to implement AI-based tracking and interstate data exchange, its implementation is still minimal⁶⁷. The data provided by UNODC indicates that in South Asia, nearly half of the reported cases of trafficking involve children, which once again proves the need to enhance interstate and cross-border collaboration (UNODC, Global Report on Trafficking in Persons 2024)⁶⁸.

Recommendations

A rights-based approach should not remain partial when it comes to enforcing, it should be comprehensive in rehabilitating and protecting. It can be recommended that the following policy measures be undertaken:

Reinforcing Border and Transit Surveillance.

- Introduce a joint India- Nepal and India-Bangladesh border surveillance task force.
- Implement biometric identifications of unaccompanied minors in the railway stations and interstate bus terminals.
- Install Transit Interception Cells manned by Railway Protection Force, AHTUs and Childline.

65 GGBK (n 3) 71.

66 Women and Children Report, Status of Trafficking Survivors and Shelter Homes in India (MWCD/NGO 2022) 45.

67 C-Lab, Building the Case for Zero: Ending Child Labour and Trafficking in India (2023) 88.

68 UNODC, Global Report on Trafficking in Persons 2024 (United Nations 2024) 56.

Legal and Policy Reforms

- Pass a unified National Anti-trafficking Law to include disjointed IPC/BNS, ITPA, JJ Act and POCSO.
- Enact law that would categorize all instances of missing children as possible trafficking victims until it is established otherwise.
- Create specialized fast-track courts on trafficking that are equipped with trained prosecutors and victim-witness protection programs.

Institutional Reforms

- Professionalize AHTUs with specific budget, forensic support and professional staffing.
- Enhance CWCs through the use of digital verification devices to identify fake identities.
- Direct DSA to take the initiative of making compensation applications and free legal assistance.

Survivor Centered Rehabilitation.

- Psychosocial evaluations should become a compulsory procedure and be done after 72 hours of rescue and followed at intervals.
- Better standards of shelter homes: qualified counsellors, education facilities, livelihood, grievance redressal.
- Establish reintegration models in communities made up of peer networks of survivors.

Community Vigilance

- Requirement Panchayats to have registration of migrations and provide data to AHTUs.
- Training school teachers to monitor absenteeism and report at an early stage.
- Educate transport workers to report suspected trafficking victims.

Technology and Data Systems

- Expand PICKET model to a National Trafficking Case Management Platform, which includes FIRs, CWCs, AHTUs, and shelters.
- Predictive analytics Find hotspots of trafficking and activate preventive operations.
- Strict data protection and anonymization protocol to protect the privacy of the survivors.

CONCLUSION

The border states of India continue to experience child trafficking as a grave human right violation even with a well-developed legal scope consisting of the Constitution, POCSO Act, JJ Act, and ITPA, supported by the international obligations of India. The study demonstrates that porous borders, poverty, gender inequality, and poor law enforcement present environments, which traffickers victimize without consequences. The conviction rates are low due to the wrong classification of cases, the lack of resources in the Anti-Human Trafficking Units, and the lack of coordination between agencies. Vigilance and technological surveillance on transit points at community levels are also undeveloped.

The research finds that the anti-trafficking response of India is uncoordinated and reactive. There is need to move towards prevention, rehabilitation that is based on rights and better cross border cooperation. This requires investment into border policing, well-trained AHTUs and CWCs, a psychological intervention being part of a rehabilitation process, and regional collaboration with Nepal, Bangladesh, and Myanmar. To conclude, India needs to go beyond rescue and prosecution and establish a consistent, preventive and child-focused anti-trafficking regime. It is then that constitutional commitments and international commitments can be fulfilled to its most needy children in a meaningful way.

Way Forward

The anti-trafficking system in India does not fail to stop trafficking but is compromised through poor enforcement and institutional inertia coupled with poor rehabilitation. India can better acculturation of its domestic practices with its constitutional mandate of Articles 21, 23, and 24, and its responsibility under the UN Convention on the Rights of the Child, 1989, and Palermo Protocol, 2000 by enhancing its border surveillance, community vigilance, and rehabilitation systems and taking advantage of technology, including artificial intelligence, versions of data sharing.

Child Trafficking: An International Perspective

Ritu

ABSTRACT

Child trafficking is a pervasive issue globally. A vast number of individuals, including men, women, and children, have fallen victim to human trafficking for sexual exploitation, forced labour, and various other forms of maltreatment on a global scale. This article aims to examine the Law of Nations regarding the trafficking of children for domestic labour. The study elucidated international mechanisms regarding the trafficking of children for domestic labour and highlighted critical perspectives that inform the development of policies addressing this issue.

Child trafficking entails the transportation of a minor, either internationally across national borders or domestically within a single state, for the purpose of exploitation. This thesis adopts a child-centric perspective on human trafficking and investigates whether the UK has established a legal framework that encompasses all trafficked children, irrespective of the nature of exploitation they endure, and whether the execution of the law is congruent with its provisions. Human trafficking legislation has evolved mostly to fight transnational organised crime and safeguard national borders. Nonetheless, there is a growing acknowledgement of the human rights of victims. A series of assumptions on human trafficking have

shaped the present legal enforcement and fostered a clichéd portrayal of the trafficked youngster.

The anti-trafficking measures in treaties, conventions, and protocols specifically emphasise policies aimed at combating the trafficking of children for domestic labour, alongside other human rights strategies that compel nations to take action against traffickers, protect children from harm, and establish preventive frameworks for those at risk of trafficking.

Keywords: *Trafficking, Legal Framework, Child, Convention, International Perspective.*

INTRODUCTION

Child trafficking constitutes a severe breach of child rights, representing a grave form of abuse against minors and a heinous crime that persists and adapts both domestically and internationally. No nation is exempt from child trafficking; it is a worldwide issue.

Notwithstanding advancements in legislation and practice in recent years, children persistently encounter distressing levels of exploitation and abuse resulting from this crime. One-third of recognised victims of human trafficking are children. The inadequacy of global attempts to prevent and eradicate child trafficking is concerning, as they fail to effectuate a significant impact. Females are predominantly trafficked for sexual exploitation, but males are more often subjected to forced labour. Over fifty percent of child trafficking victims are exploited within their own nations, suggesting that youngsters encounter considerable dangers both transnationally and within their localities. The swiftly changing dynamics of child trafficking, including exploitation for coerced criminal acts, enforced begging, technology-enabled trafficking, and online sexual exploitation of minors, are especially alarming.

No child should be excluded from initiatives aimed at preventing and combating human trafficking. Targeted actions are necessary to diminish children's susceptibility

to trafficking, safeguard at-risk youth, support victims, and eradicate the impunity of child traffickers. Over the years, states have made robust commitments to safeguard children's rights and to undertake coordinated efforts against human trafficking. It is essential that these promises be converted into tangible measures that preserve and restore the rights and dignity of every child without any kind of discrimination.¹

The study is on the international legal framework governing the trafficking of children engaged in domestic labour. It assessed the advancement of the human trafficking legislation. This delineates the evolution of the processes from contemporary human trafficking and slavery to the historical white slave trade. The aforementioned asserts that UN Protocol mandates the need to address human trafficking, as children trafficked for labour exploitation lack adequate protection.² The UN Protocol lacks a definition for the term "exploitation," and its scope is insufficient, as it exclusively addresses international crimes concerning insecurity for these two primary reasons. This article examines the norms of International Law (IL) and its instruments, such as the Convention on the Rights of the Child (CRC), in addressing the critical issue of child trafficking as a matter of protecting children's rights. These customs emphasise the employment of minors as domestic labourers. Moreover, the study elucidated that despite various approaches employed to address child trafficking, domestic labour, and children's rights, these do not influence the working conditions and experiences of children engaged in household employment. This essay suggests the necessity of adopting an international legal instrument to safeguard minors engaged in domestic employment.

- 1 **Khan Iiyas**, "International Law on Trafficking of Children for Domestic Work: An Analysis", *Journal of South Asian Studies* (2022), available at: https://www.researchgate.net/publication/360816400_International_Law_on_Trafficking_of_Children_for_Domestic_Work_An_Analysis (last visited Apr. 15, 2025).
- 2 **United Nations**, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*(2000).

SLAVERY CONVENTION (1926, 1956)

Currently, numerous experts characterise human trafficking as “modern slavery” because to its actions that signify and resemble traditional slavery. The United Nations (UN) asserts that the “abolition of its modern form and slavery” addresses human trafficking, which is regarded as a current manifestation of the 19th-century slave trade in the present world (UNHCR, 2002). The International Court of Justice (ICJ) has determined that all nations possess an obligation under international law ‘erga omnes’ to safeguard their citizens from slavery. It is established that states have the obligation to protect against slavery within the entire international community. Slavery and associated practices are not novel in many countries.³ From this viewpoint, Scarpa asserts that slavery is a practice that has endured for generations. Furthermore, she clarifies that many communities stem from slavery and exploitation as marginalised inhabitants. She noted that slavery was considered a socially and morally acceptable institution in ancient Greek society. Aristotle stated, “Just as some individuals are born free, others are inherently slaves.” According to Scarpa (2006), slavery is perceived as both advantageous and just. Despite the inherent injustices of the slave trade and slavery, subsequent stages have rendered these practices as moral aberrations and superfluous habits that must be eradicated. The Slavery Convention of 1926 mandates that nations progressively and expeditiously attain the total eradication of all forms of slavery. The Convention acknowledges the correlation between slavery and forced labour. Consequently, under the Convention, nations must refrain from permitting forced labour or allowing it to escalate to conditions akin to slavery.⁴ Despite the significant progress made by the 1926 Slavery Convention in addressing this issue, it is widely regarded that

3 **Kevin Bales & Peter T. Robbins**, “No One Shall Be Subjected to Slavery or Servitude: A Critical Examination of International Slavery Treaties and Notions of Slavery”, 2(2) *Human Rights Review* 18–45 (2001).

4 **Sharon Detrick**, “Child Trafficking in West and Central Africa”, 10(1) *Gender and Development* 38–42 (2002).

the principal issues persist. Nevertheless, the Convention does not completely eradicate activities associated with slavery. The Convention also faltered in its efforts to safeguard slavery from exploitation. Robbins and Bells assert that the deficiencies in the 'Convention' are typically associated with reality and fail to provide a methodology for assessing the persistence of slavery; furthermore, they did not establish an international institution capable of analysing and prosecuting allegations of violations. The UN ratified a new convention complementing the 'Slavery Convention, 1956.' The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Similar Practices broadened the concept of slavery. The Supplementary Slavery Convention encompasses serfdom, bonded labour, and other forms that facilitate the transfer of women or children from one individual to another. Furthermore, in light of the prevalence of slavery and human trafficking, Dottridge⁵ posits that the contemporary reality of slavery is characterised by children and adults fleeing poverty and seeking better opportunities, who are subsequently affected, coerced, and misled in circumstances that are both human and feasible across various regions of the globe today. In light of specific issues, he deemed that 'trafficking in persons' is the more appropriate term to employ instead of 'slavery,' although it is certain that some adults and children will no longer be enslaved.⁶ The Criminal Court (ICC) defined enslavement in the 'Rome Statute,' establishing a connection between enslavement, human trafficking, and slavery. Enslavement is classified as a criminal act against humanity within the jurisdiction of the ICC, as delineated in the Rome Statute. The aforementioned circumstance arose following the ruling of the International Criminal Tribunal for the Former Yugoslavia (ICTY) on the prosecutor's case against Kunarac. In this case, the accused was charged with abandoning the two children at home, treating them as private property for several months.

5 **Mike Dottridge**, "Child Trafficking in West and Central Africa", 10(1) *Gender and Development* 38–42 (2002).

6 **M. Cherif Bassiouni**, "Enslavement as a Global Offence", 23 *Journal of International Law and Policy* 445–517 (1991).

They are required to fulfil all domestic responsibilities and sexual demands of the defendant. The Trial Chamber of the ICTY noted that slavery constitutes a crime against humanity under customary international law and is regarded as a contemporary form of human trafficking (Case, *Prosecutor v. Dragoljub Kunarac*)⁷. At the onset of the 20th century, the global community's emphasis transitioned from abolishing the slave trade and slavery to advocating for resolutions to the issue now referred to as the 'white slave trade.' This shift in focus has adversely affected the development of IL about human trafficking and slavery. The significant route of IL concerning human trafficking has resulted in recent limitations on the United Nations Trafficking of Persons Protocol. In certain instances, it is asserted that human trafficking is synonymous with prostitution. Consequently, talks regarding human trafficking predominantly centred on sex work and women, while neglecting the fact that women possess the agency to participate in various forms of sex work.⁸ Nonetheless, concerning worldwide initiatives against human trafficking, advocacy and research predominantly concentrate on women, sometimes pertaining to the commercial exploitation of adults for sexual purposes. Observing many forms of misuse, such as labour exploitation and the evolution of regulations, may pose significant dangers. There are additional risks associated with the enhancement of research and regulation for many victims of human trafficking, including men, women, and children who are affected. Ultimately, despite evidence of its occurrence, trafficking for domestic labour has been neglected.

Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 1981

The disintegration of global society, which sought to foster a tolerant perspective on the status of women and girls, has

7 *Prosecutor v. Dragoljub Kunarac*, Case No. IT-96-23 & IT-96-23/1 (International Criminal Tribunal for the Former Yugoslavia).

8 **Donna M. Hughes** (Nelson reference appears to relate to similar work), "Sex Trafficking and Coerced Prostitution: New Legal Strategies", 9 *Houston Journal of International Law* 551-570 (2002).

illuminated the path towards the implementation of gender segregation mechanisms, aimed at eliminating all forms of prejudice, abuse, cruelty, and the diminished status of women across all age groups.⁹ The Committee on the Elimination of Discrimination against Women offers overarching recommendations regarding the stipulations of CEDAW. This fulfilment was completed in the final announcement of the Beijing and Cairo conferences, concurrently with the states ensuring the execution of the principles and programs approved by these symposiums. Consequently, these measures encompass the enhancement of existing regulations aimed at safeguarding the rights of girls and women, as well as addressing illegal behaviour through both criminal and civil legal frameworks. Article 6 of CEDAW mandates state parties to implement all necessary measures, including legislation, to prohibit all kinds of trafficking in women and the exploitation of women's prostitution. These practices are incompatible with women enjoying equal rights or respecting their rights and self-esteem. CEDAW is the human rights convention that explicitly addresses trafficking, making it a crucial instrument for enhancing national and international efforts against the trafficking of women and girls. Numerous nations, such as Nepal, the Netherlands, the Philippines, Sweden, Thailand, and Vietnam, have utilised CEDAW to enhance their response to trafficking. In 2009, the committee on CEDAW in Guatemala acknowledged the adoption of the Convention on the Prevention of Transnational Crime and the Protocol to Prevent and Punish Trafficking in Persons, Particularly Women and Children (Palermo Protocol). The Committee expresses concern on the absence of adequate legislation and measures to combat human trafficking for sexual exploitation and forced labour, particularly affecting women and girls. The Committee's primary interest is the human rights standards relevant to exiled migrants. The Committee expresses concern

9 **Anne T. Gallagher**, *Human Trafficking and Women's Rights: Leveraging the CEDAW Convention and Committee to Enhance National and International Efforts Against Trafficking in Women and Girls* (2005).

on the absence of sex-disaggregated data, documented cases, and convictions pertaining to the persistent issue of human trafficking. The state parties must establish their efforts to combat all forms of trafficking in young girls and women within the designated committee. The group additionally advocated for data collection, legislative measures, suitable support, awareness initiatives, root cause analysis, training for legal practitioners, criminal justice personnel, and health services. The Inter-Ministerial Committee to Combat Human Trafficking establishes and fortifies bilateral and multilateral cooperation with neighbouring nations; furthermore, countries must eradicate all forms of unwarranted discrimination against individuals, associations, or enterprises, and abolish biases against laws, regulations, customs, and practices. Upon ratifying CEDAW, governments are obligated to undertake all legal and additional measures to eradicate all forms of trafficking in girls and women and to penalise traffickers.

THE CONVENTION ON THE RIGHTS OF THE CHILD (CRC), 1989

The Convention on the Rights of the Child (CRC) categorically forbids the exploitation of children in all forms, including sexual abuse, child pornography, child prostitution, transportation, trafficking, and illicit sexual activities. The Committee on the Rights of the Child (CRC) firmly safeguards children's rights, established in 1989. The CRC is a crucial and important instrument for preventing child trafficking. The universal ratification of the CRC and its related protocol acknowledge the reality of criminals who obstruct and penalise all forms of child exploitation. This fact is evident in the provisions of comprehensive international law. The CRC enforcement mechanism is superior to the Palermo Protocol. The Treaty Monitoring Committee of the CRC has received multiple reports from state parties, with the initial report submitted within two years of the Convention on the Rights of the Child coming into effect. Subsequently, it will be reported

every five years.¹⁰ The announcement process prompted the National Executive Committee to address the noncompliance of dissatisfied countries with the provisions of the Convention, urging international organisations that have amended the CRC to execute national implementation prior to the committee's next meeting. The CRC mandates that all administrations are responsible for protecting rights and interests in light of their vulnerability. The states parties are mandated to implement all necessary measures to ensure the protection of children from all forms of discrimination and to establish suitable environments for this objective. Article 35 of the CRC, 1989 prohibits the sale, abduction, and trafficking of children for the purpose of exploitation in any form. In the context of international collaboration, the signing of a cooperation treaty aims to facilitate the development of clear prevention and law enforcement strategies through comprehensive exchange on human trafficking. The CRC and the Palermo Protocol's prohibition on the sale of children is inadequate in addressing the recruitment of child domestic workers, encompassing instances of abduction for various purposes or provision by their households. Includes, but is not restricted to, exploitation. The Committee on the Rights of the Child does not delineate terms like as abduction, sales, and trafficking, which are crucial in the context of child trafficking for domestic labour. Article 11 of the CRC characterises kidnapping as the 'unlawful transport and non-return of children abroad,' addressing the external abduction of parents and people, rather than the exploitation of specific species. There is no explicit definition of sexual exploitation as outlined in the Palermo Protocol. Muntarbhorn asserted that sexual abuse involves exploiting children to fulfil adult sexual desires. This notion pertains to the objectification of children, whose self-esteem and character are not assured by an external entity. Nevertheless, because to a misinterpretation of its fundamental wording, state parties

10 **Robert J. Levesque**, "Review of Geraldine Van Bueren, *The International Law on the Rights of the Child*", 19(2) *Fordham International Law Journal* 832–839 (1995).

have achieved minimal advancement in implementing the legal principles enshrined in this international document.

UNITED NATIONS TRAFFICKING IN PERSONS PROTOCOL, 2000

The Convention against Transnational Organised Crime (CTOC), along with the Palermo Protocol and its explanatory note, encompasses a comprehensive compilation of international duties, specifically concerning human trafficking. In reaction to the documented increase in transnational organised crime, the United Nations enacted the CTOC. Supplementary treaties or protocols to the Convention addressing anti-trafficking, smuggling, and weaponry. Only a nation that has ratified the CTOC may become a party to the Protocol, as stipulated in Article 37(2) of the Convention, and is required to interpret all relevant provisions of the CTOC included in the Protocol. The Palermo Protocol represents a significant advancement in international anti-trafficking legislation and addresses numerous fundamental problems globally. It has become one of the principal accords endorsed by the UN to implement 'comprehensive global policies' on anti-trafficking, which includes the universally accepted definition of human trafficking. A primary objective of the protocol is to assist and protect the vulnerable individuals affected by human trafficking while fully respecting their human rights. Furthermore, the protocol presents a challenge to the issue of human trafficking, not only in the context of criminal law but also in relation to human rights-based approaches. The protocol's preamble explicitly asserts that "Effective measures to halt, address, and safeguard against human trafficking, especially involving children and women, compel countries of origin, transit, and destination to implement a comprehensive array of international practices, including the prevention of such acts." This encompasses efforts to combat human trafficking, implement punitive actions against traffickers, and protect universally recognised human rights. What is more concerning is that the 'UN Protocol' fails to explicitly define the phrase exploitation as a fundamental component

of crime, rendering its interpretation very subjective. The UN Protocol tackles the problem of child trafficking for domestic labour. While trafficking in children for domestic labour lacks transnational elements, the UN Protocol does not address its efficacy.

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY (OPSC), 2002

The OPSC primarily emphasises the rights of children rather than addressing human trafficking. The OPSC Protocol asserts that children are not only the most effective entities of safety but also subjects of law. Despite the differing legal statuses and diverse needs of children and adults, children typically get more extensive and distinct protections under both domestic and international laws. Children possess the capacity to implement the method and necessitate more measures to protect their rights. Measures to combat child trafficking should be distinct from those addressing adult trafficking. OPSC acknowledges the rise in international child trafficking linked to prostitution and pornography, as well as the heightened susceptibility of girls to sexual exploitation.¹¹ The OPSC aims to eliminate this form of crime by using a comprehensive approach to address its core causes. Definitions of 'child trafficking,' 'child prostitution,' and 'child pornography' were introduced in international accords for the first time. For the benefit of all, acknowledge or accept the functions of reproductive organs, coerced labour, and unlawful adoption in any manner. Attempts to execute specific behaviours and engage in any activities have also been deemed unlawful. These crimes can undoubtedly be penalised with suitable sanctions to reflect their grave nature, whether domestically or internationally; otherwise, they undermine human dignity or established

11 **United Nations High Commissioner for Human Rights, *Slavery, Servitude, Forced Labour and Similar Institutions and Practices* (2002),** available at: www.ohchr.org/Documents/Publications/slaveryen.pdf (last visited Apr. 20, 2025).

systems. Consequently, OPSC encompasses a broader scope than the Palermo Protocol in addressing the issue of child trafficking both domestically and internationally. The primary limitation of the OPSC is its failure to offer grievance processes for individual trafficked victims or their representatives to document proceedings prior to the oversight of the designated organisation. In safeguarding the victims of child trafficking or abuse, the OPSC is more significant than the Palermo Protocol. The OPSC safeguards the rights of child trafficking victims throughout all stages of criminal proceedings. Article 9, paragraph 3 of the OPSC aims to restore the physical and psychological damage endured by prostitutes and minors trafficked for pornography.

INTERNATIONAL LABOUR ORGANISATION (ILO) FORCED LABOUR CONVENTION, 1930

Consequently, human trafficking for the purposes of forced labour and sexual exploitation constitutes the predominant form of human trafficking (UNODC 2009). Some employment scenarios in which girls and women are compelled to participate in the sex business constitute forced labour, as they typically do not engage in such work voluntarily, hence endangering their well-being. Several conventions have been established regarding international labour policies, encompassing maternity protections and the safeguarding of rights for victims subjected to harsh working conditions.¹² The ILO's distinctive function is to advocate for the right to organised labour while also addressing human trafficking as a societal issue. Article 1 of the ILO mandates the abolition of forced labour and urges countries to limit compulsory labour and the use of forced labour as soon as practicable. The absolute ban on faults and the presence of an ambiguous timeline for the eradication of forced labour might be elucidated by the reliance of colonial establishments on

12 **International Labour Organization**, *Convention No. 138: Minimum Age Convention* (1973).

forced labour for public works, which persists as a practice. Article 2(1) of this agreement delineates forced labour from slavery and slavery-like practices, emphasising that it does not align with the concept of rights, which is evident, as customs frequently impose similar restrictions on individual liberty by cruel means. The ILO's Forced Labour Convention and the dissolution of the Forced Labour Convention are the sole significant instruments for defining forced labour. Nonetheless, its prohibition has received endorsement from numerous international and domestic agreements. Article 2, paragraph 2, of the ILO Forced Labour Convention delineates specific exclusions that define forced labour. Per its imprudent regulations, 'any labour or work that constitutes a standard civic duty of a citizen in a fully autonomous nation' is excluded from 'labour or services pertaining to any tasks or duties mandated by compulsory military service laws of a strictly military nature.' Consequently, the government possesses the authority to mandate forced labour during crises and is not obligated by the forced labour treaty. Examples of such scenarios encompass wars and natural disasters, including fires, floods, famines, earthquakes, and severe epidemics. The convention also abolishes the little public services that community members provide for the direct benefit of society. Article 6 provides that public personnel must not impede anyone from engaging in the informal sector, including firms and associations.

CONCLUSION

This research study analyses the treaties and conventions of International Law (IL) to determine their effectiveness in eradicating existing child trafficking for domestic labour. International legal instruments, including the Palermo Protocol, treaties, conventions, human rights frameworks, legislation, and guiding principles regarding child trafficking for domestic labour, have lately undergone review. These protocols, treaties, and conventions are categorised to

align with the scope of human trafficking and fundamental human rights. International criminal law explicitly defines and acknowledges many forms of child domestic labour as international crimes; nonetheless, this practice persists with evident impunity. Reports indicate that, in light of the stipulations of these international agreements, the subject of child trafficking can be examined from several perspectives. The efficacy of an international instrument to eradicate child trafficking for domestic labour hinges on the pledges fulfilled by the state party. It was noted that while numerous international treaties exist, the states parties fail to implement the norms and regulations stipulated in those treaties and conventions. Upon a state's accession to the Palermo Protocol, its provisions become obligatory for that state in accordance with the agreement. Various governments worldwide should implement the regulations of these conventions within their domestic frameworks. These governments are obligated to formulate policies to eradicate human trafficking, particularly the trafficking of children for domestic labour. This necessitates robust legal and political guarantees at both internal and external levels, alongside collective accountability and sufficient collaboration among all United Nations member nations.

Upholding Child Welfare Through Maternal Rights: A Critical Study of Indian Legal Frameworks

P. Meenmozhi & A. Balamurugan

ABSTRACT

The mother is the main provider of security, advice and emotional stability in the life of the child in India. The moral development, intellectual ability, well-being, and the possibility of a child to become a member of society are all closely related to the physical well-being of a mother. When women are empowered and enabled with proper legal and social systems, families grow and communities become more united. Maternal empowerment is not just a question of personal well-being and that is the back bone of child welfare, gender justice and the national development.

This paper is a critical analysis of the nexus between the rights of the mother and the holistic growth of the children on the Indian legal system. In this inherent interdependence, the paper examines the development of the Indian constitutional requirements, legislations on welfare, and judicial interpretations to promote the maternal rights as a necessary part of child welfare.

There are still gaps in the system even with extensive legislation because of structural inequity, ignorance, weak implementation, and the patriarchal opposition. Basing on comparative views, the paper will look at the international best practices in those nations that have robust social protection and family welfare frameworks and use them

to inform domestic policies in India It also ends with the need to have rights-based reforms and cross-sector collaboration in order to make both mothers and children enjoy dignity, well-being, and gender justice.

Keywords: *Child Welfare; Maternal Rights; Women Empowerment; Gender Justice; Indian Legal Frameworks.*

INTRODUCTION

“When women protect children, they shape the future; when we protect women, we strengthen the world.”

This is a deep insight into the inherent links between the rights of women specifically mothers and the health of children. A society would not be in any hope of providing the health, development, and holistic growth of their children by compromising with the dignity, security and the rights of the mothers. Maternal rights are not simply personal rights, but a social and constitutional promise to gender justice and the process of protecting the future generations. In a modern Indian society, child-protection and empowerment of mothers are the key to the promotion of child and social equity. Maternal rights are access to nutrition, healthcare, security at work, emotional support, and all these directly impact the physical, cognitive, and emotional development of children.

This paper aims to highlight the fact that maternal rights and child welfare go hand in hand and provide a critical evaluation of the effectiveness of Indian legal frameworks in guaranteeing these rights. It finds gaps of systemic implementation and suggests specific reforms to enhance enforcement mechanisms, advance integrated policy responses, and enhance dignity, equality, and gender justice against women and children in India. The paper contends that strong maternal rights are essential to individual well-being, as well as long-term social/developmental improvements of the nation, by stressing that empowering mothers is the key aspect of effective child protection.

HISTORICAL BACKGROUND OF MATERNAL RIGHTS AND CHILD WELFARE

In Indian society, throughout the history motherhood has traditionally been regarded as sacred, the mother described as the first teacher and guardian of a values. However, **cultural honour without legal empowerment** left women vulnerable and affected the holistic welfare of children. It was only in the post-independence period that the Indian legal system began to recognise maternal protection as a crucial element of social justice. The framing of the Constitution guarantees and statutory enactments marked a turning point by explicitly recognising the need for special provisions to safeguard women and children.

Nearly 40% of Indian children under five suffer from malnutrition,¹ a grim reflection of the nation's ongoing struggle to secure healthy beginnings for its youngest citizens. In this context, maternal rights represent not just a social ideal but a crucial legal imperative for upholding child welfare. Despite constitutional guarantees and welfare legislation, women in India continue to face persistent challenges such as workplace insecurity, lack of healthcare access and limited social support. These barriers not only undermine women's dignity but also weaken the prospects of child development. Thus, the strengthening of maternal rights is not merely a women's issue but a wider concern of child welfare and nation-building.

MATERNAL RIGHTS AND CHILD WELFARE: CONCEPTUAL FRAMEWORK

Evolution of Maternal Rights

The idea of maternal rights has developed out of the traditional views on protection to a more fundamental rights-based one. Traditionally, the role of Motherhood was culturally and

1 "Malnutrition among children in the country," Ministry of Women and Child Development, Government of India, available at https://sansad.in/getFile/annex/268/AU477_kllCxU.pdf (last visited September 14, 2025).

morally venerated though it did not have legal or protection. Feminist jurisprudence and human rights law over time pointed out that mothers too were rights holders with welfare that should be given institutional and state nurture and not charity.

Key Dimensions of Maternal Rights

- (a) **Reproductive Choices and Autonomy** – Mothers have the right to make informed decisions regarding conception, pregnancy, and childbirth without coercion. Reproductive autonomy ensures safe pregnancies, reduces health risks, and strengthens both maternal and child well-being.
- (b) **Health Entitlements and Maternal Care** – Access to prenatal and postnatal care, immunisation, nutrition programmes, and safe delivery services is vital for reducing maternal and infant mortality and promoting healthy child development.
- (c) **Maternity Benefits and Economic Security** – Paid maternity leave, medical bonuses, and job protection allow mothers to care for their children without economic insecurity, thereby enhancing child survival and early development.
- (d) **Workplace Protections and Non-Discrimination** – Legal safeguards against discrimination, flexible working conditions, and supportive employment policies ensure continued workforce participation and foster an environment conducive to maternal and child welfare.
- (e) **Protection from Violence and Discrimination** – Measures addressing domestic violence, sexual harassment, and societal discrimination safeguard maternal dignity and provide a stable, secure environment for children.

Interdependence of Maternal Well-being and Child Welfare

The relationship between child welfare and maternal well-being is biological and socioeconomic. In cases where mothers feel economic insecurity or discrimination, these weaknesses

are passed on to the child and they appear as. malnutrition, lack of education or suffering. Therefore, it is not the protection of maternal rights only a gesture of gender justice but a preventative and developmental measure of securing child welfare.

Nutrition, Healthcare Access, Education, and Social Security

The nutritional and health status of mothers directly influences the child's growth and development. Poor maternal nutrition often results in low birth weight and higher infant morbidity. Ensuring maternal nutrition, immunisation, healthcare access, and social security creates a protective ecosystem that benefits children. Education plays an equally vital role an educated mother is better equipped to make informed decisions about health, sanitation, and family welfare.²

INDIAN LEGAL AND JUDICIAL FRAMEWORKS PROTECTING MATERNAL RIGHTS AND CHILD WELFARE

Constitutional Guarantees

The Constitution of India guarantees equality and protection under the law, forming the foundation for maternal rights:

- **Article 14** ensures equality before the law and equal protection, prohibiting discrimination against women in employment and social services.³
- **Article 15(3)** allows special provisions for women and children, recognising their unique needs.⁴
- **Article 21** guarantees the right to life and personal liberty, interpreted to include maternal health and safe working conditions.⁵

2 World Bank, *Investing in Maternal Health: Learning from Malaysia and Sri Lanka* (2013)."

3 *Constitution of India*, art. 14.

4 *Ibid.*, art. 15(3).

5 *Ibid.*, art. 21; see also *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

- **Article 39(e) and (f)** directs the State to ensure equal pay and protection of health for both men and women, particularly during pregnancy and maternity.⁶
- **Article 42** mandates just and humane working conditions, including maternity benefits.

Statutory Protections for Mothers

India has enacted several laws to protect maternal rights, ensuring health, security, and dignity before, during, and after pregnancy. These statutes provide specific entitlements and create legal obligations for the State and employers.

MATERNITY BENEFIT ACT, 1961 (AMENDED 2017)

- **Section 5:** Every woman employed in an establishment is entitled to maternity benefit of **26 weeks** for the first two children and **12 weeks** for more than two children..⁷
- **Section 5(4)** – Employment protection during maternity; women cannot be dismissed.⁸
- **Section 5(5)** – Option for work-from-home arrangements if agreed upon by employer and employee.⁹
- **Section 6:** A woman entitled to maternity benefit must give notice to her employer stating the date from which she intends to commence maternity leave. The notice should be given at least **eight weeks** before the expected delivery date.¹⁰
- **Section 8:** Prohibits the dismissal or discharge of a woman during her maternity leave. Any dismissal or discharge during this period is considered void.¹¹

6 *Constitution of India*, art. 39(e)-(f)."

7 *Maternity Benefit Act, 1961*, s. 5.

8 *Ibid.*, s. 5(4).

9 *Ibid.*, s. 5(5).

10 *Ibid.*, s. 6.

11 *Ibid.*, s. 8.

- **Section 9:** Provides for **leave with wages** in case of miscarriage or medical termination of pregnancy, up to **six weeks** from the date of the miscarriage.¹²
- **Section 9A:** Entitles a woman to **leave with wages** for a tubectomy operation, up to **two weeks**.¹³
- **Section 11:** Requires establishments with **50 or more employees** to provide a **creche facility** within a prescribed distance. The employer must allow the woman to visit the creche four times during the day.¹⁴

National Food Security Act, 2013 (NFSA)

Section 4 of the Act guarantees maternity benefits of not less than ₹6,000 to pregnant and lactating women to support nutritional needs for both mother and child.¹⁵

Protection of Women from Domestic Violence Act, 2005

- **Section 18:** Provides for **protection orders**, prohibiting the respondent from committing any act of domestic violence.¹⁶
- **Section 19:** Allows the aggrieved woman to seek **residence orders**, ensuring her right to reside in the shared household.¹⁷
- **Section 20:** Entitles the woman to **monetary relief**, including compensation for injuries, medical expenses, and loss of earnings.¹⁸

Factories Act, 1948

- **Section 66:** Prohibits the employment of women in any factory during the night shift, except between the hours of **6 A.M. and 7 P.M.**, unless the Government permits otherwise.¹⁹

12 *Ibid.*, s. 9.

13 *Ibid.*, s. 9A”

14 *Ibid.*, s. 11

15 *National Food Security Act, 2013*, s. 4.

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

17 *Ibid.*, s. 19

18 *Ibid.*, s. 20

19 “*Factories Act, 1948*, s. 66.

- **Section 67:** Prohibits the employment of children below the age of **14 years** in any factory.²⁰
- Similarly, **State Shops & Establishments Acts**, ensure maternity leave, flexible working hours, and job security for women in commercial settings.

Child-Centric Laws and Their Interdependence with Maternal Rights

Child protection laws complement maternal rights, reflecting the interdependence between maternal well-being and child welfare:

- **Juvenile Justice (Care and Protection of Children) Act, 2015:** Provides mechanisms for care, protection, and rehabilitation of children, emphasising the mother's role in nurturing and family stability.²¹
- **Protection of Children from Sexual Offences (POCSO) Act, 2012:** Ensures protection against sexual abuse, recognising that safe maternal environments reduce vulnerability for children.²²
- **Right of Children to Free and Compulsory Education Act, 2009:** Guarantees education for children aged 6–14, with mothers often being the first facilitators of learning at home.²³

Policy Interventions and Welfare Schemes - Government schemes operationalize statutory protections and improve access to maternal and child services:

- **Integrated Child Development Services (ICDS)**, launched in 1975 by the Ministry of Women and Child Development, provides nutrition, health check-ups, immunisation, and preschool education through Anganwadi Centres.

20 *Ibid.*, s. 67.

21 *Juvenile Justice (Care and Protection of Children) Act, 2015*, s. 3.

22 *Protection of Children from Sexual Offences Act, 2012*, s. 7–11.

23 *Right of Children to Free and Compulsory Education Act, 2009*, s. 3.

It strengthens maternal health and early childhood development addressing both mother and child welfare.²⁴

- **Janani Suraksha Yojana (JSY)**, introduced in 2005 under the National Rural Health Mission, promotes institutional deliveries and provides financial assistance to pregnant women. Implemented by the Ministry of Health and Family Welfare, it has significantly reduced maternal and infant mortality.²⁵
- **POSHAN Abhiyaan**, launched in 2018 by the Ministry of Women and Child Development, combats malnutrition among children and pregnant or lactating women, focusing on nutrition awareness, monitoring, and inter-sectoral coordination.²⁶

Significant Judicial Precedents

Indian judiciary has played a pivotal role in interpreting and expanding the scope of maternal rights and child welfare within the constitutional framework. The following landmark cases demonstrate how judicial activism has strengthened these interdependent rights:

- In *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*,²⁷ the Supreme Court extended maternity benefits to casual workers, linking them to Article 21 and 42 recognising maternity protection as a facet of the right to life and dignity.
- Similarly, *Suchita Srivastava v. Chandigarh Administration*,²⁸ recognised reproductive choice as a

24 Ministry of Women and Child Development, *Integrated Child Development Services (ICDS) Guidelines*, Govt. of India (1975)."

25 "Ministry of Health and Family Welfare, *Janani Suraksha Yojana Guidelines*, Govt. of India (2005).

26 Ministry of Women and Child Development, *POSHAN Abhiyaan Operational Guidelines*, Govt. of India (2018).

27 *Municipal Corporation of Delhi v. Female Workers (Muster Roll)* (2000) 3 SCC 224.

28 *Suchita Srivastava v. Chandigarh Administration* (2009) 9 SCC 1.

constitutional right, affirming women's autonomy in maternity decisions.

- In *B. Shah v. Presiding Officer, Labour Court, Coimbatore*,²⁹ the Supreme Court observed that maternity benefits should not be interpreted narrowly as a mere financial aid but as a social justice measure ensuring dignity and equality for working mothers.
- In *X v. Principal Secretary, Health & Family Welfare Dept.*,³⁰ affirmed that reproductive autonomy is intrinsic to the right to privacy under Article 21.
- In *Gaurav Jain v. Union of India*,³¹ the Supreme Court underscored that children's welfare cannot be divorced from their mothers dignity and livelihood, urging the State to rehabilitate both mother and child together.
- In *Laxmi Kant Pandey v. Union of India*,³² the Court established guidelines for adoption to ensure that every child grows in a loving family environment. This reflects the belief that maternal care and a stable family are central to a child's welfare.

IMPLEMENTATION CHALLENGES AND IMPLEMENTATION GAPS

1. **Administrative and Institutional Barriers:** Schemes such as the Integrated Child Development Services (ICDS) and Janani Suraksha Yojana (JSY) often face fund delays, staff shortages, and weak inter-departmental coordination. Audit reports reveal that monitoring and accountability mechanisms are insufficient, particularly in rural districts.³³
2. **Socio-Cultural and Gender Barriers:** Patriarchal norms continue to restrict women's autonomy in reproductive and

29 *B. Shah v. Presiding Officer, Labour Court, Coimbatore*, (1977) 4 SCC 384.

30 *X v. Principal Secretary, Health & Family Welfare Dept.*, (2022) 10 SCC 1.

31 *"Gaurav Jain v. Union of India*, (1997) 8 SCC 114.

32 *Laxmi Kant Pandey v. Union of India*, (1984) 2 SCC 244.

33 Planning Commission, *Evaluation Study on Integrated Child Development Services (ICDS)*, Government of India, 2011, p. 35."

healthcare decisions. Practices such as early marriage and limited education contribute to high maternal mortality and child malnutrition. Social stigma discourages women from accessing institutional healthcare or maternity leave entitlements.³⁴

3. **Exclusion in the Informal Labour Sector:** Nearly 90% of working women are in informal or unorganised employment, where the Maternity Benefit Act, 1961 remains inapplicable. Domestic workers, daily wage earners, and agricultural labourers are deprived of maternity leave and income security, forcing early return to work and undermining maternal recovery.³⁵
4. **Healthcare Infrastructure Gaps:** Rural healthcare facilities are often under-resourced and lack trained personnel for maternal and child services. Even though courts have linked maternal health to the right to life under Article 21, infrastructural deficiencies continue to limit access to safe delivery and postnatal care.³⁶
5. **Weak Enforcement and Compliance:** Judicial interventions such as *Laxmi Mandal v. Deen Dayal Harinagar Hospital (2010)*,³⁷ have emphasised State accountability, yet compliance remains inconsistent. The gap between legal recognition and administrative execution persists.

INTERNATIONAL COMMITMENTS AND COMPARATIVE INSIGHTS

India's legal framework in this domain is shaped and reinforced by international conventions, global development agendas, and comparative experiences from other jurisdictions that prioritise family welfare and gender equity.

34 "Ministry of Health and Family Welfare, *National Family Health Survey (NFHS-5) 2019–21*, Government of India.

35 International Labour Organization, *Women and Men in the Informal Economy: A Statistical Picture*, 3rd edn, Geneva, 2018, p. 42.

36 *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, (1996) 4 SCC 37.

37 *Laxmi Mandal v. Deen Dayal Harinagar Hospital*, W.P. (C) 8853/2008, Delhi High Court (2010).

International Legal Commitments

India, as a member of the **International Labour Organization (ILO)**, upholds principles of maternity protection and decent work. The **Maternity Protection Convention, 2000 (No. 183)** advocates paid maternity leave, employment security, and access to healthcare for working women.³⁸ Although India has not ratified this convention, the **Maternity Benefit Act, 1961** and its subsequent amendments align substantially with its objectives.

India's ratification of the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** in 1993 obligates it to ensure equality in employment, healthcare, and maternity protection.³⁹ Article 11(2) (b) of CEDAW explicitly guarantees paid maternity leave and job security.

Likewise, the **Convention on the Rights of the Child (CRC)**, ratified in 1992, underscores the right of every child to survival and development, including access to maternal healthcare services.⁴⁰

Similarly **International Covenant on Economic, Social and Cultural Rights (ICESCR) (1996)**, Article 12 of the ICESCR obliges States to ensure the highest attainable standard of health, including maternal and child health.⁴¹ The Covenant underscores the duty to provide special protection for mothers before and after childbirth. India's constitutional interpretation of the right to health under Article 21 is inspired by this global standard."

Sustainable Development Goals (SDGs)

The **Sustainable Development Goals (SDGs)** provide a global blueprint for achieving maternal and child welfare. **Goal 3**

38 "International Labour Organization, *Maternity Protection Convention, 2000 (No. 183)*.

39 United Nations, *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, 1979.

40 United Nations, *Convention on the Rights of the Child (CRC)*, 1989.

41 United Nations, *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, 1966, Article 12.

aims to reduce maternal mortality and ensure universal access to reproductive healthcare, while **Goal 5** focuses on gender inequality and women empowerment.⁴² India's policies, such as the **National Health Mission (NHM) and the Pradhan Mantri Matru Vandana Yojana (PMMVY)**, represent steps towards fulfilling these global commitments. However, disparities between rural and urban healthcare infrastructure highlight the persistent challenges in achieving equitable outcomes.

Comparative Insights

European and Nordic nations offer valuable lessons through their integrated family welfare models:

Sweden: Sweden represents one of the most progressive family welfare models, offering 480 days of paid parental leave shared by both parents and universal childcare.⁴³ This system promotes gender equality, economic stability, and child development principles that India could adopt by introducing shared parental benefits and universal social protection for mothers.

South Africa: South Africa's Constitution (Section 27) explicitly guarantees the right to healthcare, food, and social security. In *Minister of Health v. Treatment Action Campaign*, the Constitutional Court mandated the State to provide free medication to prevent mother-to-child HIV transmission, extending protection even to informal workers.⁴⁴ This model demonstrates how constitutionalising maternal and child health ensure enforceable rights across sectors.

Brazil: Brazil's Unified Health System (UHS) ensures universal access to maternal and child healthcare, integrating

42 United Nations, *Transforming Our World: The 2030 Agenda for Sustainable Development*, 2015."

43 "Government of Sweden, *Swedish Social Insurance Agency Report on Parental Leave and Childcare Policy*, 2021.

44 *Minister of Health v. Treatment Action Campaign* (2002) 5 SA 721 (CC).

public participation through community health programmes.⁴⁵ Its decentralised model allows local accountability and continuous care, contributing to reduced maternal and infant mortality.

IMPLICATIONS FOR INDIA

These global practice underscores the potential for India to expand social protection beyond the boundaries of formal employment. International experiences highlight the need for India to move towards **universal maternity coverage, social insurance-based benefits, and institutional childcare support.**

FINDINGS AND RECOMMENDATIONS

Findings

- The analysis reveals that maternal rights and child welfare are deeply interconnected yet often treated as distinct policy concerns in India. Although India possesses a comprehensive legal framework spanning constitutional protections, labour laws, and welfare schemes, the implementation remains fragmented and uneven across regions and social classes. Persistent gaps in awareness, accessibility, and enforcement limit the effectiveness of welfare measures designed to support mothers and children.
- The study finds that while laws such as the Maternity Benefit Act, 1961, and Juvenile Justice (Care and Protection of Children) Act, 2015 provide formal guarantees, coverage is largely confined to the organised sector, excluding a vast population of informal workers. Further, despite schemes like POSHAN Abhiyaan and PMMVY, nutritional and healthcare outcomes remain below international standards, as reflected in NFHS-5 data.
- **Comparative experiences from Sweden and other Nordic countries** ensure equality through inclusive parental and

45 Ministry of Health, Brazil, *Unified Health System Overview Report, 2020.*"

childcare policies, **India's framework still needs stronger coordination and universal access** to fully link maternal protection with child welfare.

- Internationally, India's commitments under CEDAW, CRC, and ILO Convention No. 183 demand an integrated rights-based approach. However, domestic laws still lack synchronisation with these obligations.

Recommendations

- **Legal Integration:** Harmonise maternal and child welfare laws into a unified legislative framework that ensures holistic protection and avoids policy fragmentation.
- **Universal Coverage:** Extend maternity benefits, healthcare, and childcare services to women in the informal sector through contributory and social insurance-based models.
- **Institutional Childcare:** Establish state-supported creches and day-care facilities to balance maternal employment and child development.
- **Parental Equality:** Recognise caregiving as a shared duty; introduce paid paternity and parental leave.
- **Capacity Building:** Strengthen awareness, monitoring, and grievance mechanisms at the local level to improve law enforcement and accountability.
- **Policy Reform:** Align national schemes with international commitments under CEDAW, CRC, and ILO 183, ensuring compliance through periodic review and reporting.
- **Social Transformation:** Promote gender-sensitive education and workplace reforms that value caregiving, ensuring dignity and equality for both mothers and children.

CONCLUSION

The study reaffirms that protecting maternal rights is fundamental to ensuring child welfare and advancing

gender justice. A mother's health, dignity, and security directly determine a child's survival, growth, and development. India's constitutional, statutory framework and allied schemes shows a strong commitment, yet fragmented implementation and exclusion of informal workers weaken its impact.

An integrated, rights-based approach is needed, integrating maternal healthcare, childcare, and social protection into a single framework. Strengthening institutional coordination, inclusion of unorganised sectors, and ensuring accountability are key to transform legal promises into social reality. Comparative experiences from European and Nordic nations demonstrate how inclusive, state-supported systems advance both maternal and child well-being. Ultimately, empowering mothers is the most enduring way to nurture a just and equitable society.

Anemia in Children: A Silent Emergency and the Right to Health

Pankaj Shivaji Shingare

ABSTRACT

Millions of children worldwide are still afflicted with childhood anemia, particularly iron-deficiency anemia, a common yet often overlooked public health concern, especially in low- and middle-income nations like India. Its impact extends beyond physical weakness, affecting cognitive development, academic performance, and immunity. Despite national programs such as iron and folic acid supplementation, mid-day meal schemes, and routine health check-ups, sustainable results remain limited. The primary reason is that interventions are often fragmented and medically focused, neglecting the social, cultural, and behavioral barriers that influence timely care, treatment adherence, and preventive practices—especially in marginalized communities.

This Chapter proposes a shift toward a rights-based and holistic approach termed health companionship. Health companionship envisions a community support network comprising parents, teachers, Anganwadi workers, frontline health staff, and even senior students who collectively guide and support children and families. These companions serve as a bridge between the health system and the community, promoting early detection of anemia, consistent

supplementation, improved nutrition practices, and trust-building through culturally sensitive engagement.

By examining childhood anemia through the integrated perspectives of health, education, and social welfare, the article identifies policy gaps that sustain the problem. It recommends embedding health companionship within existing systems to ensure continuity, accountability, and community ownership. Such a model strengthens every child's right to health and nutrition while fostering a sustainable, community-driven response to this silent crisis.

Keywords: *Childhood Anemia, Iron Deficiency, Right to Health, Health Companionship, Nutritional Rights, Community-Based Health Interventions, Child Health and Nutrition.*

INTRODUCTION

Childhood anemia is one of the most widespread yet under-recognized public health challenges globally. The World Health Organization (WHO) estimates that approximately 269 million children aged 6 to 59 months were anemic worldwide in 2019, with the highest burden observed in low- and middle-income countries¹. In India, the situation is particularly concerning. According to the National Family Health Survey-5² (NFHS-5, 2019–21), 67.1% of children aged 6–59 months were found to be anemic—a significant increase from 58.6% reported in NFHS-4 (2015–16).

ANEMIA AND THE CHILD'S RIGHT TO HEALTH

Anemia in children is not merely a medical issue; it represents a violation of fundamental human rights, particularly the child's right to survival, development, and health. According to the United Nations Convention on the Rights of the Child³

1 World Health Organization, *The Global Prevalence of Anaemia in 2019* (World Health Organization, Geneva, 2021).

2 Ministry of Health and Family Welfare, Government of India, *National Family Health Survey-5 (2019–21): India Fact Sheet* (MoHFW, New Delhi, 2021).

3 *Convention on the Rights of the Child*, adopted by the United Nations General Assembly on 20 November 1989, (entered into force 2 September 1990), Art. 24.

(UNCRC, 1989), every child has the right to enjoy the highest attainable standard of health and access to health care services (Article 24). When children suffer from anemia due to poverty, lack of nutrition, or poor access to health services, it reflects systemic failures in upholding these rights.

Iron-deficiency anemia is the most common type, and the good news is that it can be both prevented and treated. Yet it continues to affect large numbers of children, especially in poor and marginalized communities. This shows that the problem is not only about health, it is also about fairness and justice. As the World Health Organization points out, tackling childhood malnutrition, including anemia, is not just good policy but a moral responsibility and an essential step toward health equity.

A rights-based approach shifts the perspective from charity or welfare to entitlement and accountability. It emphasizes that children are not passive recipients of aid but rights-holders, and governments, caregivers, and communities are duty-bearers responsible for creating conditions that support optimal health and nutrition ⁴.

Anemia in children, especially iron-deficiency anemia, hampers growth, brain development, immunity, and learning, yet its early signs like tiredness, paleness, and poor attention often go unnoticed. The subtle nature of its symptoms and its profound long-term effects make it a silent emergency in child health. Despite initiatives like Anemia Mukht Bharat, POSHAN Abhiyaan, and RBSK, anemia rates remain high due to low community awareness, cultural food habits, limited health education, and weak follow-up, highlighting the need for a more integrated, human-centered approach.

INTRODUCTION TO HEALTH COMPANIONSHIP

Health companionship is a community-centred approach to fulfilling a child's right to health. It involves trained

⁴ United Nations Children's Fund (UNICEF), *The State of the World's Children 2019: Children, Food and Nutrition* (UNICEF, New York, 2019).

individuals—such as parents, caregivers, health workers, teachers, or peer supporters—who provide continuous guidance, emotional support, education, and follow-up care to promote positive health-seeking behaviour.

As highlighted in *Health Companionship: An Indistinct but Vital Right*⁵, a consistent and caring health ally, especially during early childhood, can significantly improve responses to challenges like childhood anemia. This approach moves beyond fragmented services toward a rights-based, companionship-driven model rooted in existing health systems, ensuring that every child—particularly from marginalized communities—realizes their right to health and nutritional justice.

UNDERSTANDING CHILDHOOD ANEMIA

Definition and Types of Anemia ⁶

Anemia is a condition where red blood cells or hemoglobin are lower than normal, reducing the blood's oxygen-carrying capacity and causing fatigue, weakness, dizziness, and poor concentration seriously affecting a child's growth and learning¹. In children aged 6–59 months, anemia is defined as hemoglobin below 11.0 g/dL. It is not a disease itself but a sign of underlying causes, and can be classified into:

1. **Iron-Deficiency Anemia (IDA):** The most common type, caused by poor diet, low absorption, rapid growth, infections, or parasites; accounts for over 50% of cases and is preventable
2. **Vitamin Deficiency Anemia:** Due to lack of folate or B12, often in older children or restricted diets.
3. **Hemolytic Anemia:** Premature destruction of red blood cells, either inherited (thalassemia, sickle cell) or acquired.

5 Pankaj Shivaji Shingare, *Health Companionship: An Indistinct but Vital Right* (Self-published, Dharashiv, 2024).

6 American Society of Hematology, Anemia <https://www.hematology.org/education/patients/anemia> retrieved on 24/09/2025

4. **Aplastic Anemia:** Rare, where bone marrow fails to produce enough cells, linked to infections, toxins, or genetic disorders.
5. **Anemia of Chronic Disease:** Occurs with long-term infections or illnesses that impair red blood cell production.

Anemia in Children: A Salient Epidemic

Anemia in children continues to be a major public health concern in India and globally. Despite decades of interventions, its burden remains alarmingly high.

GLOBAL SCENARIO

According to the World Health Organization¹ (WHO, 2021), approximately 269 million children aged 6–59 months globally are anemic, accounting for 42% of children in this age group. The majority of these children live in low- and middle-income countries where nutritional deficiencies, infections, and inadequate health services are prevalent.

INDIA'S BURDEN

India bears the world's highest childhood anemia load, with NFHS-5 (2019–21)² showing 67.1% of children aged 6–59 months are anemic—up from 58.6% in NFHS-4 (2015–16)⁷. This rising trend highlights the urgent need for stronger, community-focused, and rights-based interventions.

This epidemiological evidence clearly establishes the urgent need for context-specific, community-based, and rights-oriented strategies to address childhood anemia.

Key Causes of Childhood Anemia⁸

Anemia in children is diagnosed when blood hemoglobin levels fall below age- and sex-specific thresholds. It is usually a symptom of underlying conditions.

7 Ministry of Health and Family Welfare, Government of India, National Family Health Survey (NFHS-4), 2015–16 (International Institute for Population Sciences, Mumbai, 2017) .

8 World Health Organization, Anaemia Fact Sheet, <https://www.who.int/news-room/fact-sheets/detail/anaemia> retrieved on 24/09/2025

Nutritional Deficiencies: Iron deficiency, mainly due to inadequate dietary intake, is the most common cause. Deficiencies in vitamin A, folate, vitamin B12, and riboflavin can also lead to anemia by affecting hemoglobin synthesis and red blood cell production. Nutrient losses from blood loss (e.g., parasitic infections, menstruation, childbirth), poor absorption, low iron stores at birth, or interactions affecting iron bioavailability also contribute.

Infections and Chronic Diseases: Infections like malaria, tuberculosis, HIV, and parasitic infestations can impair nutrient absorption or cause blood loss. Chronic inflammation from various diseases may lead to anemia of chronic disease. HIV can reduce red blood cell production and increase destruction.

Inherited Disorders: Genetic conditions such as α - and β -thalassemia, sickle cell disease, other hemoglobinopathies, red cell enzyme deficiencies, or membrane abnormalities are common causes in certain regions.

Socio-Economic and Cultural Factors⁹: Children those from households with low wealth status are at higher risk of anemia by age five. However, anemia prevalence remains high across most groups, highlighting its persistent public health impact. Poverty continues to act as a key social determinant influencing childhood anemia.

The causes of anemia in children are deeply rooted in nutrition, infection, and Poverty. Tackling childhood anemia effectively requires a multisectoral approach that includes health, education, sanitation, and social welfare—framed within a child rights-based perspective.

9 Shimanda PP, Amukugo HJ, Norström F. Socioeconomic factors associated with anemia among children aged 6-59 months in Namibia. *J Public Health Afr.* 2020 Apr 29;11(1):1131. doi: 10.4081/jphia.2020.1131. PMID: 33209233; PMCID: PMC7649727. <https://pmc.ncbi.nlm.nih.gov/articles/PMC7649727/> retrived on 24/09/2025

Consequences of Childhood Anemia¹⁰

Anemia in children is a significant public health concern worldwide, with iron deficiency recognized as a leading cause. Iron deficiency, even when anemia is corrected, can impair psychomotor development and lead to long-term deficits in cognitive, social, and emotional functioning.

Childhood anemia also negatively impacts school performance, adult productivity, quality of life, and overall lifetime earnings. The mechanisms involve reduced oxygen transport, impaired brain development, and altered metabolic processes.

GLOBAL AND NATIONAL POLICY FRAMEWORKS ADDRESSING CHILDHOOD ANEMIA

Efforts to combat childhood anemia in India and globally have been guided by a mix of health, nutrition, and child development policies. These frameworks aim to integrate preventive, promotive, and therapeutic services to address anemia, especially among vulnerable groups like children, adolescent girls, and pregnant women.

Global Frameworks

Global Nutrition Targets 2025¹¹ by the World Health Assembly includes a target to reduce anemia in women of reproductive age by 50%.

UNICEF's programming guidance on anemia¹² emphasizes a life-cycle approach starting from infancy.

WHO guidelines advocate regular supplementation, fortification, and dietary diversification for anemia prevention.

10 Zavaleta N, Astete-Robilliard L. Efecto de la anemia en el desarrollo infantil: consecuencias a largo plazo [Effect of anemia on child development: long-term consequences]. *Rev Peru Med Exp Salud Publica*. 2017 Oct-Dec;34(4):716-722. Spanish. doi: 10.17843/rpmesp.2017.344.3251. PMID: 29364424.

11 World Health Organization, *Global Nutrition Targets 2025: Policy Brief Series* (World Health Organization, Geneva, 2016).

12 United Nations Children's Fund (UNICEF), *Programming Guidance: Preventing Iron Deficiency and Anaemia in Children* (UNICEF, New York, 2020).

National Policy Frameworks

1. *Integrated Child Development Services (ICDS)*¹³

Launched in 1975, ICDS is one of the world's largest community-based child welfare programs. It focuses on improving the health, nutrition, and development of children under six years of age. Under ICDS, Iron and Folic Acid (IFA) supplementation, growth monitoring, and supplementary nutrition are provided through Anganwadi Centres. ICDS aligns with the goal of reducing anemia by integrating nutrition-specific and -sensitive interventions.

2. *Rashtriya Bal Swasthya Karyakram (RBSK)*¹⁴

Introduced under the National Health Mission (NHM) in 2013, RBSK is a targeted initiative to screen children from birth to 18 years for 4Ds – Defects at birth, Diseases, Deficiencies (including anemia), and Developmental delays. Anemia screening and treatment are a core component, especially through Mobile Health Teams and School Health Services. Children identified with anemia are provided follow-up and IFA supplementation.

3. *Anemia Mukd Bharat (AMB)*¹⁵

Launched in 2018 under the Intensified National Iron Plus Initiative (I-NIPI), AMB is India's flagship program aimed at achieving a 3 percentage point annual reduction in anemia prevalence across all age groups.

13 Ministry of Women & Child Development, Government of India, Integrated Child Development Services (ICDS) <https://icds.gov.in/en/about-us> retrieved on 24/09/2025

14 Ministry of Health and Family Welfare, Government of India, Rashtriya Bal Swasthya Karyakram (RBSK): Operational Guidelines (Ministry of Health and Family Welfare, New Delhi, 2022).

15 Ministry of Health and Family Welfare, Government of India, Anemia Mukd Bharat: Strategy Document (Ministry of Health and Family Welfare, New Delhi, 2019).

AMB follows a **6x6x6 strategy**:

6 Target Beneficiary Groups – Children (6–59 months), children (5–9 years), adolescents, women of reproductive age, pregnant and lactating women.

6 Interventions – IFA supplementation, deworming, behavior change communication, testing and treatment, fortification, and addressing non-nutritional causes.

6 Institutional Mechanisms – Including convergence with ministries, supply chain strengthening, and community mobilization.

POSHAN ABHIYAAN (NATIONAL NUTRITION MISSION)¹⁶

Launched in 2018, POSHAN Abhiyaan aims to reduce anemia among children (6–59 months) to 40% through a Jan Andolan approach and convergence across ministries such as Health, WCD, Rural Development, and Education. It promotes growth monitoring, IFA supplementation, anemia awareness, and uses tools like the POSHAN Tracker to monitor services.

Despite strong policy support through programs like Integrated Child Development Services, Rashtriya Bal Swasthya Karyakram, and Anemia Mukta Bharat, childhood anemia remains high due to implementation gaps and socio-behavioral barriers. Integrating these efforts with community-based health companionship can help achieve an anemia-free childhood.

Gaps in Current Delivery Models

According to the National Family Health Survey-5 (2019–21), as many as 67.1% of children aged 6–59 months were found to be anemic, marking a sharp rise from 58.6% reported in NFHS-4 (2015–16). This alarming increase highlights that despite the existence of multiple government programmes aimed at anemia

16 NITI Aayog, Government of India, Progress under POSHAN Abhiyaan – Compendium of Best Practices (NITI Aayog, New Delhi, 2021).

prevention and control, significant gaps remain in effective implementation, coverage, and follow-up. Factors such as irregular supplementation, inadequate dietary practices, poor community awareness, and weak accountability mechanisms contribute to these gaps, ultimately leaving many children vulnerable. The rising trend underscores the urgent need to strengthen programme delivery, ensure sustained monitoring, and adopt innovative approaches such as the Health Companionship model to bridge these systemic shortcomings and protect children from the long-term consequences of anemia.

CONCEPTUALIZING HEALTH COMPANIONSHIP⁵

Definition and Evolution of the Concept of Health Companionship

Definition

Health companionship refers to a supportive and continuous relationship between a child (or patient) and a trained individual (such as a caregiver, frontline worker, educator, or even a peer), who actively participates in monitoring, educating, and ensuring access to health services. This companion not only acts as a bridge between families and health systems but also upholds the emotional and ethical dimensions of caregiving, thereby promoting a rights-based and holistic approach to health.

“Health companionship is an indistinct yet vital right that ensures children are not left alone in navigating their health journey. It involves being present—physically, emotionally, and socially—to support, educate, and empower both the child and the caregiver.”

CONCEPT OF HEALTH COMPANIONSHIP

The concept of Health Companionship goes beyond traditional medical care. It emphasizes a supportive, continuous relationship between individuals, families, and the health system, where care is not limited to diagnosis and treatment but

extends to guidance, emotional support, and empowerment in making health-related decisions.

A health companion may be a trained professional, community health worker, family member, or caregiver who walks alongside an individual through different stages of life and health challenges. This approach focuses on:

Preventive Care: Supporting healthy habits, early detection of risks, and timely interventions.

Holistic Support: Addressing physical, psychological, social, and sometimes even spiritual aspects of well-being.

Advocacy: Helping individuals navigate health systems, understand their rights, and access necessary services.

Continuity of Care: Ensuring consistent follow-up and long-term engagement rather than episodic care.

Community Connection: Building trust and collaboration between healthcare providers, patients, and communities.

Health Companionship transforms healthcare into a shared journey, fostering dignity, trust, and empowerment. It is particularly relevant for vulnerable groups like children, the elderly, and those with chronic illnesses, where continuous support can significantly improve outcomes.

Who Can Be Health Companions?

Health companionship is a community-inclusive approach, not limited to medical professionals. Through trust, proximity, and basic training, individuals around a child can act as health companions—ensuring continuity of care, promoting healthy behaviors, and linking families with the health system.

Health companionship is a shared responsibility. It may involve healthcare providers (doctors, nurses, pharmacists, community health workers), family members, teachers, peers, volunteers, and community leaders or NGOs. Anyone who supports, guides, and empowers a child or community toward better health can be a health companion.

DIFFERENCE BETWEEN CAREGIVER AND HEALTH COMPANION

Health companionship and caregiving may overlap, but they are distinct. A caregiver mainly provides practical support to meet immediate needs, while a health companion guides a person’s overall health journey, focusing on empowerment, prevention, and continuity of care. The following table outlines the key differences.

Aspect	Caregiver	Health Companion
Primary Role	Provides direct assistance in daily needs and medical care	Offers guidance, support, and empowerment in overall health including Assistance
Focus	Immediate needs during illness or dependency	Long-term well-being, prevention, and continuity of care
Approach	Task-oriented and often one-directional	Collaborative and participatory
Timeframe	Usually short-term, linked to illness/condition	Continuous, across different stages of life and health
Patient’s Role	Passive recipient of care	Active partner in decision-making and health journey
Scope	Physical and practical care (feeding, bathing, medicines)	Holistic support including physical, emotional, social, and rights-based aspects
Example – Childhood Anemia	Ensures child takes prescribed iron syrup and attends clinic visits	Educates family on nutrition, monitors growth, motivates adherence, links to community resources, and advocates for long-term prevention

Health companionship can and should be shared across multiple actors, each playing a complementary role. It fosters a

360-degree support system where children's health is protected not just by health services, but by those who surround them daily.

Key Roles of Health Companions

Health companions strengthen individual and community health by focusing on long-term support, empowerment, and active participation. Their key roles include:

Educator: Promote awareness on nutrition, hygiene, and preventive care to enable informed decisions.

Guide: Help families navigate health systems and access services.

Supporter: Provide emotional encouragement and reduce stigma.

Monitor: Ensure follow-up, treatment adherence, and timely referrals.

Advocate: Safeguard health rights and address service gaps.

Connector: Link families with health programs and social support systems.

Together, these roles make health companions vital bridges between communities and the health system, fostering trust, continuity, and sustainable outcomes.

Health companions—whether parents, health workers, teachers, or trained volunteers—play several key roles that contribute to early detection, effective management, and long-term prevention of anemia and other child health issues. These roles are deeply aligned with ensuring a child's right to health as per the UN Convention on the Rights of the Child (UNCRC, 1989)³.

INTEGRATING HEALTH COMPANIONSHIP IN ANEMIA PREVENTION AND MANAGEMENT

Childhood anemia reflects a child's overall environment—nutrition, family habits, and socio-economic conditions. While iron supplements are essential, they are most effective when

families receive continuous guidance. Health companions bridge medical care and daily life, helping families understand, follow, and sustain healthy practices so recovery is lasting and meaningful.

Key Roles of Health Companions in Childhood Anemia

1. **Early Detection:** They help families recognize subtle signs like fatigue and paleness, encourage timely screening, and ensure early treatment.
2. **Treatment Adherence:** By offering reminders, managing side effects, and providing encouragement, they help families complete iron therapy and prevent relapse.
3. **Nutrition Guidance:** They educate caregivers about affordable iron-rich foods, balanced diets, and habits that improve iron absorption.
4. **Addressing Social Barriers:** With cultural sensitivity, they clarify misconceptions and build trust to support informed health decisions.
5. **Linking to Services:** They connect families to government programs, school health services, and follow-up care, ensuring no child is left behind.
6. **Monitoring and Follow-Up:** They track progress, remind families of check-ups, and coordinate referrals when needed.
7. **Promoting Lasting Change:** By nurturing healthy habits and awareness, they create long-term improvements in child health and development.

Through these roles, health companions not only support treatment but also help build healthier, brighter futures for children.

HEALTH COMPANIONSHIP MODEL FOR ANEMIC CHILD

Building on these roles, health companionship can be shaped into a structured and practical framework for addressing

childhood anemia. By organizing early detection, treatment adherence, nutrition support, social sensitivity, and continuous follow-up into a coordinated approach, the Health Companionship Model for the Anemic Child translates these principles into focused, child-centered strategy.



The Health Companionship model can be seamlessly integrated into various existing health programmes to enhance the management of anemia among children. Within initiatives like the National Health Mission and Anemia Mukh Bharat, Health Companions ensure that every identified child receives continuous, personalized care, from adherence to iron-folic acid supplementation and deworming to dietary counseling and hygiene practices. Under the Rashtriya Bal Swasthya Karyakram (RBSK), they reinforce home- and school-based screening, monitor growth and development, and facilitate timely referrals for severe cases. In schools, Health Companions coordinate with the Mid-Day Meal Scheme to promote iron-rich meals, track attendance, and encourage healthy behaviors. At the community level, they lead awareness campaigns, mobilize local support networks, and strengthen family engagement. By providing continuous monitoring, personalized guidance, and

Health Companionship Model for Anemic Child

Step 1: Observation, Screening & Identification of Anemia	Step 2: Reporting / Documentation	Step 3: Health Companion Assignment with Training	Step 4: Categorization of Needs	Step 5: Accountability Fixation	Step 6: Follow-up & Intervention
<p>Household Level: Parents notice frequent tiredness, pale skin, irritability, poor appetite, delayed milestones.</p> <p>School/ Anganwadi Level: Teachers/workers observe absenteeism, fatigue, poor concentration, difficulty in play/learnin.</p>	<p>Identified suspected or confirmed cases documented at all levels. Records shared with programme authorities (RBSK, Anemia Mukht Bharat, NHM).</p>	<p>Each identified anemic child is linked to a Health Companion. Health Companion receives child-specific details and training from programme authorities/ health facilities on anemia management.</p>	<p>Basic Needs: Iron-rich diet, deworming, iron-folic acid supplementation, hygiene promotion.</p> <p>Special Needs: Severe anemia requiring close monitoring, blood transfusion, or comorbid conditions.</p> <p>Psychosocial Needs: Addressing stigma, emotional</p>	<p>Health Companion is responsible for: Monitoring the child's hemoglobin improvement and overall health status. Ensuring household, school, and community-level interventions are implemented. Maintaining regular follow-up and</p>	<p>Household Guidance: Nutrition counseling, iron-rich meals, IFA supplementation, hygiene practices.</p> <p>School/Anganwadi: Midday meals fortified with iron, monitoring for fatigue, health education.</p> <p>Community: Awareness campaigns on anemia prevention, mobilizing local support for dietary diversity.</p>

<p>Community Level: ASHA/ ANM/RBSK teams conduct routine hemoglobin testing, growth monitoring, and health checks.</p> <p>Healthcare Facility Level: OPD visits, school health camps, or diagnostic tests confirm anemia.</p>		<p>support, peer encouragement for adherence to treatment.</p> <p>Referral Needs: Children with complications referred to higher centers for specialized care.</p>	<p>documentation.</p> <p>Reporting progress to supervising health authorities.</p> <p>Taking complete ownership so that the child achieves improved health and freedom from anemia.</p>	<p>Healthcare Facility: Periodic Hb check-ups, management of severe cases, referral when necessary.</p>
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systematic follow-up, Health Companions not only improve health outcomes and reduce the burden of anemia but also enhance accountability, data quality, and overall programme effectiveness, ensuring that no child is left behind in achieving optimal health.

CONCLUSION

Childhood anemia remains a persistent and preventable public health challenge in India—one that not only endangers a child’s immediate health but also compromises their long-term growth, cognitive development, academic potential, and overall well-being. Despite multiple national programs and policy commitments, gaps in awareness, access, and sustained follow-up continue to hinder progress, especially among vulnerable populations.

Reasserting the urgency of the issue is crucial. An anemic child is often a silent victim of nutritional neglect, a form of deprivation that violates their fundamental rights under the UN Convention on the Rights of the Child (UNCRC), particularly the Right to Survival, Right to Health, and Right to Development.

To uphold these rights, there is an urgent need to reimagine the delivery of child health services through empathetic, participatory, and community-driven approaches. Health companionship, as proposed in this study, offers a promising, rights-based, and context-sensitive strategy that can bridge existing service gaps. It empowers families and communities to actively participate in the health journey of every child—from early detection to emotional support and treatment adherence.

SUGGESTIONS

The study suggests that the Health Companionship Model should be specifically applied to childhood anemia as a structured, community-based strategy. Anemia management should go beyond iron supplementation and clinical diagnosis to include continuous support, early identification of symptoms, counseling on iron-rich diets, monitoring of

hemoglobin levels, and ensuring completion of treatment. Parents, teachers, frontline workers, and community volunteers can be trained to act as health companions who guide families, improve adherence, address misconceptions, and promote preventive practices. By embedding this model within existing anemia control efforts such as Anemia Mukh Bharat, anemia care can become more consistent, culturally sensitive, and sustainable, ultimately reducing prevalence and preventing recurrence among children.

Tradition on Trial: Female Genital Mutilation and the Indian Legal Response

Khushi Dashore

ABSTRACT

The practice of Female Genital mutilation is shrouded in secrecy and myth. FGM can be seen as a way to control women in the present patriarchal society setup prevailing across the globe which directly reflects the oppressive and relentless role of societies across the globe to maintain gender inequality believing in the ideology of prolonging a female's virginity and curbing sexual pleasure. The practice is not just restricted to a particular country, it prevails across the world, and is viewed as a tool to guarantee fidelity. It is not just pertinent to analyze the health consequences but the social consequences faced by the women living in the community where this practice is prevalent and considered a social norm. FGM violates a female's right to life, health, physical integrity, and freedom from gender discrimination. This paper delves into FGM within the context of Indian law, exploring how it aligns with the principles of equality (Articles 14 and 15), personal liberty, and bodily autonomy (Article 21). It also considers the restrictions set by the Essential Religious Practices doctrine under Article 25. Additionally, the research delves into the relevance of the IPC/BNS and the POCSOs Act, while also referencing important international commitments like CEDAW and the CRC. The paper assesses whether current laws offer sufficient

protection against FGM or if there's a need for a specific legislative framework. By weaving together constitutional jurisprudence, statutory provisions, and global human rights standards, this research contends that FGM is neither a religious necessity nor acceptable under constitutional morality, urging for immediate and focused legal reforms to eliminate the practice.

Keywords: FGM (Female Genital Mutilation), Gender Violence, Human Rights, Bodily Autonomy, Constitutional Morality.

INTRODUCTION

Male circumcision is an explored area known to many but female circumcision, also known as FGM is still behind the veil shrouded with secrecy, with most of the population in the world being unaware of the inhumane practice carried out in many communities across the world violating young women, infringing their human rights which causes many harmful implications on those females in their future lives.

FGM represents deeply entrenched structural inequality and is an abhorrent and extreme form of discrimination against women. In India, FGM is often practiced as “khatna” or “khafz,” used by members of the Dawoodi Bohra community, a Shia sub-sect mainly located in the states of Gujarat, Rajasthan, Maharashtra and Madhya Pradesh, however it is believed that this prevalence continues to occur without any formal records or data supporting it.

For the past 20 years, there has been a rise in global awareness of the ancient practice of FGM, commonly known as female circumcision. UNICEF reports that “Among 31 nations, 1 in 3 girls between the ages of 15 and 19 had female genital mutilation. An estimated 200 million women and girls who had undergone FGM are currently living across the world.”¹ “Due to the disruptions caused by the COVID-19 Pandemic, UNICEF estimates that two million additional cases of FGM/C

1 UNICEF Data, “Female Genital Mutilation (FGM)” available at: <https://data.unicef.org/topic/gender/fgm/> (last visited on Aug. 5, 2025).

may occur over the next decade.”² FGM has been classified by the WHO as a “severe human rights violation,” and the UN General Assembly demanded its global abolition in 2012.

Globally there are an estimated 230 million girls and women who are affected by FGM or have been at risk for some or all of their lives.³ FGM is widely understood to be a violation of basic human rights (e.g., the right to live free from all forms of discrimination against women; the right to health; the right to life and to live in a physical circumstance characterized by physical integrity (i.e., to live free from violence)). The current pace is inadequate progress towards eliminating FGM in line with UN Sustainable Development Goal (SDG Target 5.3) to eliminate this practice by 2030.

India is currently witnessing a cascade of gender awareness including female dignity and equality. Indian Constitution guarantees everyone to be treated equally and to be entitled to equal legal protections. Despite this, gender-based discrimination still occurs under the guise of cultural and religious traditions. This paper will analyze the practice of FGM through legal lenses taking into consideration a global viewpoint on the topic.

UNDERSTANDING FGM

WHO defines FGM as “all procedures which involve partial or total removal of the external female genitalia and/or injury to the female genital organs, whether for cultural or any other non-therapeutic reasons.”⁴ This traditional practice is

2 Joint Statement by UNICEF Executive Director Henrietta Fore and UNFPA Executive Director Dr. Natalia Kanem, “FGM Elimination and COVID-19: Sustaining the Momentum”, *UNICEF Annual Report* (2020).

3 UNICEF Innocenti – Global Office of Research and Foresight, *Accelerating Action Towards FGM Elimination: Lessons from Evidence on Effective Interventions* (UNFPA-UNICEF Joint Programme on the Elimination of Female Genital Mutilation, Mar. 2025), available at: <https://www.unicef.org/media/168581/file/What%20Works%20Paper.pdf> (last visited on Sept. 11, 2025).

4 World Health Organization, *Female Genital Mutilation: An Overview* (WHO Library Cataloguing in Publication Data, 1998).

ingrained in various civilizations' coming-of-age rites as a requirement for social acceptance, marriage, and to conform to societal behavioural norms. Despite its cultural framing, FGM constitutes a severe form of gender-based violence and a violation of fundamental human rights, including the rights to life, bodily integrity, health, and dignity.

These procedures are often practiced by untrained people like family elders, secret society members, barbers, or untrained midwives, without any sterilization of the instruments used (razor blades or knives), and without anaesthesia. Even under medical conditions, FGM is considered dangerous and unethical because it violates the fundamental medical principle "do no harm." The medicalization of FGM sets up a false sense of security for patients while continuing to promote an unsafe and harmful practice.

TYPES OF FGM: The four kinds of FGM that have been categorized by the WHO are:

- "Type I (Clitoridectomy) involves the removal of the prepuce with or without removal of the clitoris
- Type II (Excision) involves the removal of the prepuce and clitoris as well as partial or complete removal of the labia minora.
- Type III (Infibulation): The removal of portion or complete external genitalia and sewing or restricting of the opening of the vagina. Most of the time the vagina is sewn closed.
- Type IV: Several other techniques involving partial or complete removal of the female external genitalia for traditional or other medically unnecessary reasons."⁵

FGM is often justified on the cultural, social, and religious grounds. Communities frequently view it as a method of preserving chastity, controlling female sexuality, ensuring marriageability and fulfilling supposed religious obligations to do so. These purported justifications do not have valid medical or religious basis; there are no documented health advantages

5 Ibid.

to FGM, and mainstream religious texts, including Islam does not mandate the practice.

Patriarchal norms are significant in sustaining FGM, with FGM representing the way in which patriarchal institutions seek to control women's bodies, sexuality, and independence. This type of control has been maintained through the pressure imposed by the community, social pressures placed upon families to comply, and fear of being ostracised or excluded from one's community for not conforming to and accepting the practice.

Consequences of FGM are severe, both physically and psychologically. On the physical side, there is the potential for increased childbirth complications, infections, haemorrhaging and death from complications associated with FGM. On the psychological side, many survivors of FGM experience trauma and anxiety, as well as difficulties with trust and intimacy in the long-term. When it comes to sexuality, those who have undergone FGM are often plagued by chronic pain and decreased levels of sexual health.

INTERNATIONAL VIEWPOINT

FGM is a global human rights concern prevalent across multiple regions, particularly in Africa, parts of Asia, and the Middle East. 33 African countries report high prevalence, while communities in countries such as India, Pakistan, Indonesia, and Malaysia also practice FGM.⁶ The widespread presence of the practice demonstrates that it is not confined to a specific geography but persists due to cultural, social, and traditional factors.

"84 nations worldwide have legal frameworks that either specifically forbids FGM or authorizations FGM to be punished via other laws, including the criminal or penal code, child protection laws, violence against women laws, or domestic violence laws, according to the 2021 edition of the

6 UNFPA, Female Genital Mutilation, *available at*: <https://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions>. (last visited on Aug. 27, 2025).

World Bank's Compendium of International and National Legal Frameworks on Female Genital Mutilation"⁷. Countries like Egypt, Djibouti, Eritrea, Ethiopia, Ghana, Nigeria, Austria, Belgium, Netherlands, New Zealand, the US, Australia, and many more have legislation prohibiting FGM.

In 2006, the UNGA explicitly denounced the use of religious grounds as an excuse for violence against women.⁸ In pursuit of this, the UNGA explicitly passed resolutions in 2012 and 2014 calling for a global ban on FGM. In spite of the Commission on the Status of Women's determination to expressly ban FGM, around 75% of Dawoodi Bohra women in India still subject their daughters to this inhumane practice.⁹

In addition to these particular resolutions, a number of international instruments safeguard every individual's entitlement to an impeccable living. The right to life and bodily integrity, highest health standard, as well as the right to be free from cruel or inhuman treatment, are protected by the UDHR¹⁰, ICESCR¹¹ and the ICCPR¹². States are expressly required under the UNCRC¹³ to safeguard children against all types of physical aggression, harm, abuse, or exploitation, including sexual abuse.

Article 2 the CEDAW states that female genital mutilation is violence against women. *General Recommendation No. 14 on Female Mutilation* was issued by the CEDAW Committee in 1990 which urges State parties to take adequate and effective

7 *Ibid.*

8 UN General Assembly, GA Res. 61/143, UN Doc A/61/438 (Dec. 19, 2006).

9 Shalini Nair, "At least 75% Bohra Women Admit Female Genital Mutilation, Says Study", *The Indian Express*, Feb. 6, 2018.

10 Universal Declaration of Human Rights, arts. 5, 25.

11 Committee on Economic, Social and Cultural Rights, General Comment No. 14 on art. 12.

12 The International Covenant on Civil and Political Rights, arts. 7, 24(1).

13 The Convention on the Rights of the Child, arts. 3, 19, 24.

action to cease the practice and asks them to include data about these efforts in their reports to the Committee. According to *General Recommendation No. 19* of the CEDAW Committee, gender-based violence restricting women from exercising their human rights under universal international law or under human rights conventions constitutes discriminatory treatment under the definition of Article 1 and is, therefore, illegal under the Convention and international human rights law.

Together with UNFPA, UNICEF is attempting to eradicate FGM in 17 nations. The Joint Project, which began in 2008 and is currently in Phase IV, aims to improve national response systems by working with governments to change societal norms in high-risk areas. Creating a worldwide coalition dedicated to ending FGM is a top objective. As a result of the effort, in 2021, 3.4 million people in 4,475 villages openly opposed FGM, more than 500,000 girls received medical, welfare, and legal assistance, and around 200,000 teenage girls in 9,234 villages acquired the skills and information necessary to fight for their rights.¹⁴

LAWS IN VARIOUS COUNTRIES

1. **UNITED KINGDOM:** The United Kingdom was among the pioneers for outlawing female genital mutilation through legislation. *The Prohibition of Female Circumcision Act 1985* was the first law aimed at criminalizing this practice, but it fell short as there were no convictions made under it. In light of concerns that the law didn't cover enough ground or have strong enforcement, Parliament passed the *Female Genital Mutilation Act 2003*. This updated law expanded criminal liability, increased penalties, and crucially, allowed for extraterritorial jurisdiction to tackle cases where girls were taken abroad for the purpose of undergoing FGM.

The first conviction was witnessed in 2019, when the Old Bailey found a Ugandan mother guilty of performing FGM

14 UNFPA-UNICEF Joint Programme on the Elimination of Female Genital Mutilation, available at: <https://www.unfpa.org/unfpa-unicef-joint-programme-female-genital-mutilation> (last visited on Sept. 5, 2025).

on her three-year-old daughter.¹⁵ This case was seen as a landmark moment. Another important conviction was that of Amina Noor, who was found guilty of facilitating the FGM of a three-year-old British girl while in Kenya.¹⁶ This was the first case to utilize the extraterritorial provisions of the 2003 Act, illustrating how UK law can reach beyond its borders to prosecute such acts. In a groundbreaking case in 2024, the Crown Prosecution Service successfully secured the first conviction for conspiracy to commit FGM in *R v. Emad Kaky*. The defendant had orchestrated the transportation of a young girl to Iraq for the purposes of forced marriage and FGM.

2. **AUSTRALIA:** Australia took a strong stand against female genital mutilation in the 1990s, making it illegal through various state and territory laws. New South Wales, in particular, was notable for its clear stance, implementing Section 45 of the Crimes Act 1900 (NSW), which specifically defines and punishes FGM. In 2016, a retired nurse and a mother of two children guilty in the case of "*R v A2; R v KM; R v Vaziri (No. 23) [2016] NSWSC 282*"¹⁷, which was dubbed "Australia's first prosecution of a FGM case." Members of the Bohra community were found guilty, and the court determined that the practice of khatna qualified as FGM under Section 45 of the Crimes Act of 1900. Following the ruling, *the Anjuman-e-Burhani Trust* of Sydney, which oversees the Dawoodi Bohra community's affairs in Australia, issued a notice acknowledging that khatna was illegal and should not be practiced by members of the community.

15 Sarah Marsh, "Mother jailed for 11 years in first British FGM conviction" *The Guardian*, March. 8, 2019.

16 *R v Noor (Amina)* (2024) EWCA Crim 714.

17 Human Rights Law Centre, "Three Convicted and Sentenced in Australia's First Female Genital Mutilation Trial", available at: <https://www.hrlc.org.au/human-rights-case-summaries/three-convicted-and-sentenced-in-australias-first-female-genital-mutilation-trial> (last visited on Sept. 5, 2025).

3. **UNITED STATES OF AMERICA:** Since 1996, FGM has been illegal in the United States, following the passage of **18 U.S.C. 7 §§116** by Congress. This law carries penalties, including fines or up to five years in prison, for anyone who performs harmful procedures on female genitalia for non-medical reasons, like pricking, piercing, incising, scraping, or cauterizing. But it wasn't until 2018 that Judge Bernard A. Friedman from the Eastern District of Michigan Southern Division declared the federal law unconstitutional. In the case of *United States v. Nagarwala*¹⁸, Judge Friedman concluded that Congress didn't have the power to enact this law, indicating that the authority to ban FGM should belong to the states. At present, 26 states have enacted specific laws that make FGM illegal.¹⁹ This includes several states that also prohibit the transportation of a girl abroad for the purpose of undergoing FGM.

INDIAN LEGAL RESPONSE TO FGM

The practice of FGM was brought before the SC in *Sunita Tiwari v. Union of India*²⁰ as a PIL under Article 32 of the Constitution. This petition questioned the diabolical practice of FGM, *khatna*, or *khafz* as a breach of the girls' integrity and basic rights. FGM's status as an "*essential religious practice*" is currently called into question. The SC noted that no one has the authority to compromise women's physical integrity and privacy in the name of religion. The respondents contended that because FGM or *khafz* is a fundamental part of religious and cultural beliefs, it is protected under Articles 25 and 26 of the Constitution, which deal with the freedom to exercise and propagate religion. Underscoring the seminal issue at

18 *United States v Nagarwala*, 17-CR-20274.

19 U.S. Immigration and Customs Enforcement, "ICE brings fight against female genital mutilation to Washington's international air hub", available at: <https://www.ice.gov/news/releases/ice-brings-fight-against-female-genital-mutilation-washingtons-international-air-hub> (last visited on Sept. 11, 2025).

20 *Sunita Tiwari v Union of India*, WP (C) No 286/2017.

stake as well as taking an emphatic objective view, Justice D Y Chandrachud stated, "*Why should the bodily integrity of a woman be subject to some external authority? One's genitals are extremely private affairs.*"²¹

ANALYSING THE CONSTITUTIONAL PROVISIONS RELATING TO FGM

A. The Indian Constitution, 1950

There are various contours of FGM w.r.t. the Indian Constitution some of which are:

Discrimination against women and girls, violating Articles 14 and 15 of the Constitution

The equality and non-discrimination tenets of Articles 14 and 15 of the Indian Constitution are blatantly flouted by the practice of FGM. While Article 15 forbids discrimination on the basis of caste, sex, or religion, Article 14 ensures equality before the law and equal protection under the law. The SC has consistently overturned actions that formalize gender discrimination, reaffirming that cultural norms or customs that harm women are not safeguarded by the constitution. These basic rights are violated by FGM, which is only performed on women and girls and exposes them to societal dominance and irreparable physical injury.

Considering it establishes an arbitrary sex-based categorization, FGM is a detrimental and prejudiced practice that solely affects women and girls, which is a violation of Article 14. The SC ruled in *E.P. Royappa v. State of Tamil Nadu*²² that any practice without a reasonable and rational foundation is unconstitutional, and that arbitrariness is the opposite of equality. FGM is arbitrary and unlawful as it is based on patriarchal concepts intended to regulate women's sexuality, indicating that it does not pass the reasonable categorization test. Additionally, the Court

21 Dr Priti Rana, "A Chance to Redeem and Rationalise the Law: Reflections on Recent Judicial Inroads in India" *SCC ONLINE*, (2022).

22 *E.P. Royappa v State of Tamil Nadu*, AIR 1974 SC 555.

invalidated Triple Talaq in *Shayara Bano v. Union of India*²³, ruling that religiously motivated practices that treat women unjustly and inequitably are unconstitutional.

FGM is considered a gender-discriminatory practice under Article 15(1) and 15(3), which forbid sex-based discrimination and permit the state to provide particular facilities for women and children. The SC upheld women's right to bodily autonomy in *Suchita Srivastava v Chandigarh Administration*²⁴, ruling that gender discrimination cannot be excused by antiquated and paternalistic customs. Due to strongly ingrained gender prejudices, FGM exclusively targets women and girls, breaching Articles 14 and 15 by restricting female bodily autonomy and promoting male supremacy. FGM is a direct form of gender-based discrimination and has to be ruled unlawful under Indian law in light of these progressive constitutional precedents.

Violation the right to life, bodily autonomy, privacy and living with dignity of women and girls ultimately infringing Article 21 of the Constitution

Article 21 of the Indian Constitution, which protects the rights to life, bodily autonomy, and dignity, is directly violated by the practice of FGM. As confirmed in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*²⁵, the SC has often emphasized that the right to life encompasses living with dignity in addition to merely existing. FGM is an arbitrary, capricious, and unreasonable practice that violates the standard that any procedure that affects life and liberty must be just, fair, and reasonable as set out in *Maneka Gandhi v. Union of India*²⁶ since it causes serious bodily and psychological suffering, frequently resulting in persistent pain, infections, and reproductive difficulties. Furthermore, in the case of *Suchita*

23 Justice K.S. Puttaswamy v Union of India (2017) 9 SCC 1.

24 Suchita Srivastava v Chandigarh Administration (2009) 9 SCC 1.

25 *Francis Coralie Mullin v Administrator, Union Territory of Delhi* (1981) 1 SCC 608.

26 *Maneka Gandhi v Union of India* (1978) 1978 SCC (1) 248.

*Srivastava v. Chandigarh Administration*²⁷, the SC acknowledged that reproductive and physical autonomy are fundamental to individual liberty, which FGM violates by definitively altering a woman's body without her knowledge or permission. The *KS Puttaswamy v Union of India*²⁸ ruling further supported the idea that FGM is an unlawful infringement on personal freedom by reaffirming that one's right to privacy and control over one's body are indispensable.

FGM also transgresses Article 21's fundamental right to dignity. The Supreme Court stressed in *Navtej Singh Johar v. Union of India*²⁹ that any action that dehumanizes a person is unlawful and that constitutional morality takes precedence over discriminatory societal norms. FGM is an obvious infringement of the concept that women should not be tied down by patriarchal dominance over their bodies. In addition, the case of *National Legal Services Authority (NALSA) v. Union of India*³⁰ confirmed that physical autonomy is essential to dignity and one's identity. FGM directly violates gender equality and constitutional rights by reducing young girls to passive recipients of patriarchal traditions through forceful and non-consensual procedures. Given the Supreme Court's developing views on privacy, dignity, and bodily integrity, FGM is manifestly against Article 21 and cannot be excused under any cultural or religious justification.

Is FGM an "Essential Religious Practice" which makes it eligible for protection under Article 25 and 26 of the Indian Constitution?

Presently there is not explicit ruling by the SC of India concerning the declaration of FGM as an ERP. The 2017 PIL of *Sunita Tiwari v UOI*³¹ was filed to seek ban of FGM amongst the Dawoodi Bohra community on the grounds of violation of Fundamental rights of women and children. The matter was

27 *Suchita Srivastava*, supra note 24.

28 *Navtej Singh Johar v Union of India* (2017) 10 SCC 1.

29 *National Legal Services Authority v Union of India*, AIR 2018 SC 4321.

30 *Shayara Bano v Union of India* (2017) 9 SCC 1.

31 *Sunita Tiwari*, supra note 20.

referred to a Constitution Bench in 2018, and while no final judgment has been delivered, the Attorney General of India strongly opposed FGM, stating that it violates constitutional rights and cannot be justified under religious freedom.

In the case of *Commr. Of Police v Acharya Jagadishwarananda Avadhuta*³², the court in detail discussed what would be considered as an “ERP”:

*“The protection guaranteed under Articles 25 and 26 of the Constitution is not confined to matters of doctrine or belief but extends to acts done in pursuance of religion and, therefore, contains à guarantee for rituals, observances, ceremonies and modes of worship which are essential or integral part of religion. **What constitutes an integral or essential part of religion has to be determined with reference to its doctrines, practices, tenets, historical background, etc. of the given religion.** What is meant by “an essential part or practices of a religion” is now the matter for elucidation. Essential part of a religion means the core beliefs upon which a religion is founded. Essential practice means those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts or practices that the superstructure of a religion is built, without which a religion will be no religion. **Test to determine whether a part or practice is essential to a religion is to find out whether the nature of the religion will be changed without that part or practice. If the taking away of that part or practice could result in a fundamental change in the character of that religion or in its belief, then such part could be treated as an essential or integral part.** There cannot be additions or subtractions to such part because it is the very essence of that religion and alterations will change its fundamental character. It is such permanent essential parts which are protected by the Constitution. Nobody can say that an essential part or practice of one’s religion has changed from a particular date or by an event. Such alterable parts or practices are definitely not the “core” of religion whereupon the belief is*

32 *Commr. of Police v Acharya Jagadishwarananda Avadhuta* 2004 (12) SCC 770.

based and religion is founded upon. They could only be treated-as embellishments to the non-essential (sic essential) part or practices."

As many religious disputes are taken before the courts, determining what constitutes ERP of a specific religion has become increasingly important. Modernization of society, the rise of critical thinking, and the introduction of perspectives such as feminism and gender justice have caused many to question actions that are authorized by religion but violate constitutional norms.

In *Shayara Bano v UOI*³³, the court opined that "*what is bad in theology cannot be good in law.*"³⁴ Only ERPs are constitutionally protected under Article 25, and Triple Talaq was ruled down because it was not considered to be an ERP and violated the right to equality and other Part III criteria. In *Indian Young Lawyers Association v State of Kerala*³⁵, the Court had to decide whether the practice of excluding women from places of worship qualifies as an ERP for constitutional protection. Justice Nariman said that, "matters that are essential to religious faith and/or belief are to be judged on evidence before a Court of law by what the community professing the religion itself has to say as to the essentiality of such belief. If the community has a variety of opinions about ERP, the Court will determine whether or not the practice is necessary."³⁶

Landmark cases like *Indian Young Lawyers Association v State of Kerala*³⁷ and *Shayara Bano v. Union of India*³⁸, have repeatedly affirmed that that religious practices that violate human dignity, gender justice, or constitutional morality are not protected under Article 25. Thus, while FGM is yet to be explicitly struck

33 *Shayara Bano*, supra note 30.

34 *Ibid.*

35 *Indian Young Lawyers Association v State of Kerala* (2008) 1 SCC 234.

36 Omkar Upadhyay, "For Whom to Decide? Conundrums of Ascertaining Essential Religious Practices", Manupatra, (2021).

37 *Indian Young Lawyers Association v State of Kerala*, supra note 35.

38 *Shayara Bano*, supra note 30.

down as unconstitutional, prevailing legal precedents strongly indicate that it would fail the ERP test.

The State's responsibility under Article 39 of the Indian Constitution

Article 39 of the Indian Constitution requires the State to protect women and children from exploitation and abuse, as well as to promote social justice and gender equality. In particular, the government is required by **Article 39(e) and (f)** to curtail conduct that jeopardize the health and dignity of women and children.

Article 39 (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

Article 39 (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

These constitutional requirements are clearly at odds with the practice of Female Genital Mutilation (FGM), which causes irreversible harm to a girl's physical and mental health. In *Bandhua Mukti Morcha v. Union of India*³⁹ (1984), the Supreme Court acknowledged that the State has a duty to end exploitative practices and provide the safety and dignity of vulnerable groups. Since FGM is a detrimental, coercive, and non-consensual procedure, the State has an obligation to implement and enforce legislation that forbid it in accordance with Article 39.

Furthermore, according to Article 39(f), children should be provided with opportunity for healthy development, free from exploitation and circumstances that impede their development. The Supreme Court held in *M.C. Mehta v. State of Tamil Nadu*⁴⁰

39 *Bandhua Mukti Morcha v Union of India*, AIR 1984 SC 802.

40 *M.C. Mehta v State of Tamil Nadu* 1996 (6) SCC 756.

that the State must take proactive steps to protect children from behaviours that impair their physical and mental development. Along similar lines, the Court stressed in *Gaurav Jain v. Union of India*⁴¹ that the government must create policies that guarantee the welfare and dignity of women and children. Given the long-term trauma and health issues brought on by FGM, the State must fulfil its constitutional duty to outlaw and prohibit the practice since it goes against the core values of child care. In order to fulfil its constitutional and international duties, the State of India must implement a robust legal framework that forbids FGM, given its adherence to international treaties like the CEDAW and the CRC. Accordingly, the State is required under Article 39 to safeguard women and children from harmful customs like FGM, guarantee their right to health and dignity, and enforce stringent legal measures to eradicate them. It would be a breach of its constitutional duty to do otherwise.

B. IPC, 1860/ BNS, 2023

Although the IPC has provisions addressing grievous hurt, there is still no particular provision addressing the cruel practice of FGM. The additional severity of FGM is not anticipated by the grievous injury provisions. FGM typically involves a parent or other family member that the kid trusts carrying out or at the very least assisting in the act. Sections 319 to 338 of the IPC are insufficient to address the act's severe barbarism. *R.K. Raghavan, former director of CBI*, has emphasized that, "while FGM is not expressly prohibited by the IPC, the law enforcement agencies are obligated to file a case under Section 326 of the IPC in response to a complaint."⁴²

Section 319 IPC/ 114 BNS defines hurt as "any kind of bodily pain, illness, or infirmity caused to a person." In this instance, Section 319 IPC/114 BNS is applicable as the FGM procedure results in physical pain for the individual. Furthermore, because this procedure entails the partial or total removal of the external female genitalia, it may be fatal in certain situations.

41 *Gaurav Jain v Union of India* (1997) 8 SCC 114.

42 Rasheeda Bhagat, "Ban this barbarous practice!", *Business Line*, (2014).

The WHO reports that it has also been connected to excessive bleeding (haemorrhage), swelling of the genital tissue, issues with wound healing, shock, and even death. Section 320(4) and Section 320(8) IPC/ 116 BNS address the deprivation of any limb or joint and any injury that puts life in jeopardy, respectively. Since this conduct satisfies every requirement of the aforementioned Sections, anybody found engaging in it can be charged under the sections.

C. POCSO ACT, 2012

POCSO was implemented with the objective of protecting children from offences of sexual assault and sexual harassment embodying the spirit of Article 15(3) of the Indian Constitution. Penetrative sexual assault against a female is defined in Section 3 of the POCSO Act as “the penetration of any item into the girl’s vagina.”⁴³ According to Section 3 of the POCSO Act, performing FGM/C on a girl less than 18 years old, which involves inserting a sharp object into the vagina during the process, may be considered an offence under Section 3 of the Act.

In contrast to the IPC, the POCSO Act establishes a class of serious offenses pertaining to both penetrative and non-penetrative sexual assault. Because of who commits them and the manner in which they are committed, aggravated offenses are seen as such. As a result, specific individuals are burdened with the additional responsibility of safeguarding the child. Public employees, blood or marriage relations, hospital administration personnel, and perpetrators of sexual assault using lethal weapons are all included in this group. Although the POCSO Act does acknowledge FGM specifically, it does account for the special circumstances of a FGM case by classifying sexual assault by a family member or relative as “aggravated sexual assault” and sexual assault by a deadly weapon.⁴⁴ It further states that sexual assault against a kid under the age of 12 is considered aggravated. The trauma associated

43 The Protection of Children from Sexual Offences Act, 2012, s. 3.

44 The Protection of Children from Sexual Offences Act, 2012, ss. 9(h), 9(n).

with FGM is acknowledged by POCSO by categorizing such situations as aggravated and separate from other forms of sexual assault.

CONCLUSION AND SUGGESSTIONS

The aforementioned research indicates that IPC and POCSO provide indirect channels of addressing FGM, however they lack adequate provisions for specifically defining and criminalising the practice. FGM largely perpetuates through social conditioning and community pressure rather than through sexual intent and therefore does not adequately fall under the parameters of existing legal framework. Therefore, there is an urgent need for the establishment of a specific and comprehensive legislative framework to address FGM in India. Legislation that should specifically define FGM in line with international standards, criminalise all versions of the practice and place criminal sanction against parents, guardians and health care providers engaging in any manner, providing services to encourage, support or causing FGM. A comprehensive approach is necessary to guarantee the successful eradication of FGM, which includes establishing victim-centred rehabilitation measures, providing or ensuring access to medical and psychological assistance and establishing and creating anonymous channels for reporting grievances. Policy makers need to also implement awareness and education campaigns, engage with communities and sensitize the frontline workers like healthcare providers, police officers and teachers. Media and educational institutions need to take a proactive role in raising awareness of the physical, psychological and human rights impact of FGM. Drawing inspiration from international models of Australia and the Netherlands, India can adopt coordinated community-based interventions alongside strict criminal provisions. Ultimately, eradicating FGM requires a multidimensional strategy combining legislation, awareness, rehabilitation, and community participation to protect the dignity, bodily autonomy, and fundamental rights of women and young girls.

Power, Patriarchy, and Silence: The Normalization of Sexual Misconduct in Workplaces and Academia

Taniya Saha & Garima Pahwa

ABSTRACT

Sexual harassment remains one of the most pervasive and normalized forms of gender-based violence against women, particularly within workplaces and academic institutions. Amid growing national concern over women's safety, this research paper seeks to critically examine the dynamics of power, patriarchy, and silence that enable and perpetuate sexual misconduct in these environments. It explores the underlying cultural and institutional factors that contribute to the normalization of such behavior. The study adopts a doctrinal research methodology, drawing upon a wide range of secondary sources, including news reports, academic literature, legal texts, relevant statutes, and official government publications, to provide a comprehensive understanding of what constitutes sexual harassment and how it is addressed—or overlooked—within existing legal and social frameworks.

Keywords: *Power, Patriarchy, Sexual Harassment, Gender-Based Violence.*

INTRODUCTION

Sexual harassment in the workplace constitutes a direct affront to the constitutional guarantees of equality, dignity, and

professional autonomy, as enshrined in Articles 14, 15, and 21¹. Sexual harassment not only affects a person's wellbeing it also jeopardizes every aspect of being a woman and living in the society. Even though sexual harassment is gender neutral but this paper focuses on women and the perils that women face in their everyday life.

A framework of rules and regulations were established on 9th December, 2013 Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013. This act aims at protecting women from sexual harassment at workplaces and establishes guidelines for grievance redressal.

Coming to sexual harassment in academic institutions, it is not only prevalent with teachers or faculty members but is also widespread among students, evidence indicates that 50%-60% of undergraduate women face sexual harassment in their institutions, which not only deteriorates their mental wellbeing but also affects their health in a detrimental manner. ²

The negative outcomes which has been seen among the victims of sexual harassment are PTSD, Alcohol Abuse, Depression, Anxiety, Disruptions in their Academic Endeavor.³

Violence against women is the manifestation of the historical prevalence of patriarchy in our society, the unequal balance of power between men and women has led to the suppression of women by the male members of the society. Violence against women is one of the crucial social mechanism to dominate women and keep them under the control of the patriarchal

1 **Aayushi Sharma**, "Critical Evaluation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013", 3(3) *International Journal of Advanced Legal Research* (2023), available at: <https://ijalr.in/volume-3-issue-3-2023/critical-evaluation-of-the-sexual-harassment-of-the-sexual-harassment-of-women-at-workplace-prevention-prohibition-and-redressal-act-2013-aayushi-sharma> (last visited Apr. 2025).

2 **Leslie Wood, Shonali Hoefler, Melissa Kammer-Kerwick, Juan R. Parra-Cardona & Noel Busch-Armendariz**, "Sexual Harassment at Institutions of Higher Education: Prevalence, Risk, and Extent", 36(9-10) *Journal of Interpersonal Violence* 4520-4544 (2021).

3 *Ibid.*

structure.⁴ Under article 1 of the United Nations Declaration on Violence against Women, it has been stated that “Any act of gender-based violence that results in, physical, sexual or psychological suffering to women, including threats of such acts, coercion, or arbitrary deprivations of liberty, whether occurring in public or private life.”⁵

Acts of threats and violence against women, prove to be an obstacle in the development of women in the society, violence against women degrades the society socially and culturally and hampers the growth of the economy. Women have historically played an intensive role in the development of the society, suppressing them violates their right to equal status and forces them into subordination.⁶

HISTORY OF SEXUAL HARASSMENT IN WORKPLACES AND ACADEMIC INSTITUTIONS

Since the early 80’s, sexual harassment on women remained a central concern. During the 1980’s cases regarding the militant action by the Forum Against The Oppression of Women, sexual harassment of nursing staff in public as well private hospitals by patients, male relatives, ward boys and hospital staff, harassment of air-hostesses by their colleagues and co-passengers. Harassment of teachers by their colleagues, principal and management representatives, and harassment of Ph.D. scholars by their guides, and so on and so forth started gaining recognition across the whole of India. Initially it was the media trying to gather the attention of people regarding the issues of sexual harassment but eventually with time more

4 **United Nations General Assembly**, *Declaration on the Elimination of Violence against Women*, G.A. Res. 48/104, art. 1 (Dec. 20, 1993), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women>.

5 G.A. Res. 48/104, *Declaration on the Elimination of Violence against Women*, art. 1 (Dec. 20, 1993)

6 **International Monetary Fund**, “How Domestic Violence is a Threat to Economic Development” (Nov. 24, 2021), available at: <https://www.imf.org/en/Blogs/Articles/2021/11/24/how-domestic-violence-is-a-threat-to-economic-development>.

and more women started taking actions by reporting sexual harassment cases.⁷

In 1986 “Bailancho Saad” was officially launched in Goa, this was launched in order to mobilize public support in the case of the chief minister who had allegedly sexually assaulted his secretary, the same organization during 1990 filed Public Interest Litigation to bring changes/amendments in the then rape laws, which had a very narrow sense of interpretation “Penile Penetration in the Vagina”⁸.

The most controversial and barbarous act took place during the 1990’s where a Rajasthan government employee tried to prevent a child marriage, which resulted in the upper-caste men teaching her a “lesson” by raping her repeatedly. As a worker of the Women Development Department, prevention of child marriages came under the ambit of her job avenue, by merely performing her duties for the welfare of women, she came under the radar of the upper-caste men who saw her as barrier in achieving their oppression towards women.

After this case came into highlights, guidelines for the safety of women were created by the Judiciary which came to be known as the “Vishakha Guidelines”.⁹ Previously women had to lodge their complaint under sections 354 of IPC (now Section 74 BNS, 2023)(criminal assault of women to outrage a women’s modesty) and section 509 of the IPC (now Section 79 BNS, 2023)(punishes an individual/individuals for using a word, gesture, or act intended to insult the modesty of a woman). Under the Vishakha guidelines it has been explicitly stated that it is the duty of the employer to prevent sexual harassment in the workplace, provide mechanisms for the resolution of complaints. And all women who draw a regular salary, receive an honorarium, or work in a voluntary capacity

7 **Vibhuti Patel**, “A Brief History of the Battle Against Sexual Harassment at the Workplace” (2003).

8 **Vibhuti Patel**, *Women’s Challenges of the New Millennium* (Gyan Publishing House, New Delhi, 2005).

9 *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

in the government; private sector or unorganized sector comes under the purview of these guidelines.¹⁰

Sexual harassment is a pervasive problem that has been prevalent in academic institution. In Indian societies, victims of sexual assault face excessive amount of scrutiny, and victim blaming, whereas the perpetrators get a free pass to roam around freely in our society. Shabnam Hashmi a Delhi based activist said “Real change begins not only with enforcing laws but with reshaping how we view honor and accountability”¹¹

The security of women students in campus has become one of the leading issues in public debates since the incident of Delhi Gang Rape case and #MeToo movement institutions are a centre of social unrest in India, and even though internal committees have been formed wherein women can register their complaints when faced with sexual harassment but very few go noticed. The prime accused in sexual harassment cases taking place in universities and academic institutions are either male peers or faculty members.¹²

Incidents of sexual violence differ on the basis of history, socio-economic factors, political locations, race, ethnicity, and class¹³. In India women hail from different backgrounds, and their experiences vary according to their caste and class because of the culture of discrimination.

Incident of sexual harassment in academic institutions have started gaining attention during the 2000’s, beginning with the Delhi gang rape case, which took place in 2012, the efforts of the Saksham report of the UGC, the #MeToo campaign, and the release of the Raya Sarkar’s list of sexual harassers in

10 Sharma, Aayushi. (2023). *Critical Evaluation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*. International Journal of Advanced Legal Research, 3(3).

11 [Activist Shabnam Hashmi steps down: An era of fearless activism comes to a close, but the fight goes on.](#)

12 **Vandana**, “Dalit Girls and Sexual Harassment in the University”, 27(1) *Indian Journal of Gender Studies* 33-54 (2020).

13 *Ibid.*

sites of higher education.¹⁴ The definition of sexual harassment as per the UGC (Prevention, Prohibition, and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations 2015 states: “An unwanted conduct with sexual undertones if it occurs or which is persistent and which demeans, humiliates, or creates a hostile intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and includes any one or more or all of the following unwelcome acts or behavior whether directly or by implication, namely any unwelcome physical, verbal, or non-verbal conduct of sexual abuse, demand or request for sexual favor, making sexually colored remarks, physical contact and advances, or showing pornography)¹⁵”.

#MeToo Movement

The #MeToo movement gained significant attention in India starting in 2018 when actor Tanushree Dutta publicly accused Nana Patekar of sexual harassment, what followed Tanushree’s post was a series of posts by other women. Actors, film directors, writers, politicians and women professionals who called out obnoxious behavior by men.

The #MeToo movement was initially started by Tarana Burke back in 2006, who was a survivor of rape and sexual assault, this initiative was taken so that women could share about their experiences on sexual harassment, violence or assault.

As per the reports share by the National Council for Women, since the resurfacing of the #MeToo movement, the cases of sexual harassment have increased by 33%.

53% of women in Indian workplaces face sexual harassment, further reports have shown 54% increase in registered cases

14 **Vandana**, “Dalit Girls and Sexual Harassment in the University”, 27(1) *Indian Journal of Gender Studies* 33-54 (2020).

15 **University Grants Commission**, *The UGC (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015*.

of sexual harassment.¹⁶ 1/3rd women in domestic labour have reported sexual abuse, 88% of women in information Technology (IT) sectors have faced some sort of sexual abuse, whereas more than 70% of women in India do not report sexual abuse in fear of societal norms and backlashes¹⁷.

De Benedictis, Orgad, and Rottenberg (2019) argues that while print news #MeToo movement in United Kingdom was broadly positive and focused on individualized cases, whereas in India journalists brought up issues of legitimacy, sexual harassment and their uptake.¹⁸

India has seen over 400 cases of sexual harassment at workplaces filed every year since 2018. According to National Crime Records Bureau, more than 445 cases were reported yearly. In 2024 there has been an increase of 79% in workplace sexual harassment cases with TCS and ICICI bank reporting the highest number of cases at 133 and 110 respectively.¹⁹

About 1 in 3 women in India are working, majority of them are casual workers, domestic workers, labors in agricultural fields, and construction sites. As per reports it has been found that the more women move up the ladder, the scarcer they become, in top companies which have been listed under the Bombay Stock Exchange, women constituted of only 7% of all board members and 5% of leadership roles.²⁰ The scarcity in roles played by women in the corporate industries showcases the gender disparity in India. A study of 400 women working in different sectors in India revealed that 17% of the women

16 **Radhika Sambaraju**, "I Would Have Taken This to My Grave, Like Most Women": Reporting Sexual Harassment during the #MeToo Movement in India", 76(3) *Journal of Social Issues* 603-631 (2020).

17 *Ibid.*

18 **Sara De Benedictis, Shani Orgad & Catherine Rottenberg**, "#MeToo, Popular Feminism and the News: A Content Analysis of UK Newspaper Coverage", 22(5-6) *European Journal of Cultural Studies* 718-738 (2019).

19 **National Crime Records Bureau**, *Crime in India 2022 Statistics* (Ministry of Home Affairs, Government of India, 2024), available at: <https://ncrb.gov.in>.

20 "Women Hold 21% of Board Seats at NSE-Listed Firms: Report", *The Economic Times*.

face sexual harassment at their workplaces.²¹ Most insecure among them are employees from the informal sectors such as construction workers or domestic helps. Disparity in wages, inconsistent payment structure and ambiguous working conditions drive women out of the workforce.

Section 9(1) Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013²² also referred to as POSH Act mandates that complaints of sexual harassment can be filed by an aggrieved woman to the Internal Complaints Committee (ICC) within three months of the incident taking place, which is extendable for more three months if there are genuine reasons for delay. The POSH Act came into play during the year 2013, according to the act all complaints related to sexual harassment at workplaces are supposed to be registered under the Internal Complaints Committee, whereas the #MeToo allegations were made on social media.²³

In October 2017, Raya Sarkar A law student from India posted a list of male Indian academics who allegedly sexually harassed their female co-workers and students. this was posted on Facebook, which made a big impact on the emergence of #MeToo in academia. Sarkar's list, as it came to be known sparked controversy as it did not disclose the name of the perpetrators and the details of the incidents which took place. Although academic institutions are not recognized as sites of violence or agents of oppression, but statistics indicate that academic institutions are the key places where sexual violence takes place. Adding to it, lack of reporting mechanisms, casteism, sexism, queerphobia, slut shaming, victim blaming, are some of the features that make academic institutions prone to violence. Even though many students face sexual harassment

21 **Russell Reynolds Associates**, *Deciphering the Indian Boardroom: 2024 India Board Analytics & Insights* (2024).

22 *Ibid.*

23 **Government of India**, *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* (Act No. 14 of 2013), Ministry of Women and Child Development.

in their institutions, they do not go forward with their complaints due to lack of support mechanisms. Universities like Jawaharlal Nehru University have a grievance redressal mechanism in place known as GSCASH (Gender Sensitization Committee Against Sexual Harassment), but in spite of these efforts majority of the students faced the inability to approach because of a lack of support from peers as well as their institution²⁴.

Following the Vishakha's Judgment, the University Grants Commission (UGC) mandated all universities to establish permanent Gender Committees however after the Nirbhaya Gang Rape case, sexual harassment taking place in universities came to light. Universities were asked to submit reports which came to be known as Saksham Reports. During 2013 the University Grants Commission (UGC) came up with The Sexual Harassment of Women in the Workplace (Prevention, Prohibition, and Redressal) Act, 2013 which mandated every university to have its own Internal Complaints Committee (ICC). The UGC has also set rules regarding the sensitization, infrastructural improvement and support structure to help prevent Sexual Harassment.

"Today it seems as if violence has become a kind of touchstone for the recognition of an issue as a women's issue. The presence of coercive force- in a whole range of acts- from rape to sexual harassment- appears to crystallize feminist issues, renders them recognizable as such, and even enables them to acquire resonance within a larger, otherwise unsympathetic public. Just as an actual touchstone certified the purity of gold once upon a time, violence seems to authenticate an issue as genuinely addressing the wrongs of women in present day India.²⁵

24 **Kaitlynn Mendes**, "It Started with This One Post: #MeToo, India and Higher Education", 21(3) *Feminist Media Studies* 1-15 (2021).

25 **Mary E. John**, *The Acts and Facts of Women: Essays in the Politics of Women's Studies in India* (Navayana, New Delhi, 2020).

Mostly in peri-urban and rural areas, women have very scarce means of transportation due to which they have to rely on their male friends, who have access to motorbikes for their daily needs, in most cases these male friends expect a favor in return for the transport. Women students wearing hijabs often face taunts whereas women coming from the North-Eastern states face teasing and harassment on a daily basis.

One of the greatest obstacle to gender sensitization was the approach taken by universities and academic institutions to deal with cases of harassment. The rules and regulations on women were made more stringent such as the hostel timings were curtailed and night outs were prohibited. In undergraduate colleges and private institutions, there would be an unsaid pact between the administration and the students where rules which were discriminatory in nature had to be followed if not accepted. If students spoke up or acted against the rules it would result in terminating the student from the school.²⁶

After independence there were approximately a hundred thousand students who were enrolled in higher education, but only 10% of the students at the time of independence were women. By the year 2000 the enrollment of women had increased up to 40% and was inching close to 47.6% in the year 2017-18. Enrollment in educational institutions have been highest in terms of women, in no other sector where gender disparity existed was a revolution so big.²⁷

SOCIETAL PRESSURES: SILENCING THE VICTIMS

Women in Indian Society have gone through all phases of life which includes the pre-Vedic glorification of women to the post-Vedic oppression. The struggle for survival, equality and to be able to live without any discrimination persists. The violence that women face in the society is not only limited to

²⁶ *Ibid.*

²⁷ **S. S. Mahalakshmi**, "Trends in Enrolment in Higher Education in India", 5(4) *IRJEdT* 343-351 (Apr. 2023).

physical abuse it encompasses all sorts of violence like, mental torture, human trafficking, verbal abuse, economic deprivation, and societal disregard.²⁸

Women through all phases, throughout all ages and from various walks of life face discrimination in one form or another. This discrimination or violence can be in the form of sexual trafficking, domestic violence, violence related to dowry, dowry deaths, female infanticide: Foeticide, rape, sexual harassment and other forms of inhuman violence. Women across the world face this kind of violence in their lives, either in their domestic lives, their workplace or even in their academic institutions.²⁹ Women are victimized throughout the world and they are discriminated upon just to establish the male gender superiority. Women are thought to be disadvantaged due to their biological and physical differences, and even still there exists certain sectors where women are not employed because they are perceived to be weaker than men. Because of the gender disparity faced by women there are differences in wages in almost all forms of employments, women are mostly paid less than a man for the same work portfolio.³⁰

When a woman is subjected to sexual harassment, she mentally goes through shock and trauma. The victims of sexual harassment are usually socially excluded, isolated and often faced with rejection in society. They go through a mental agony which cannot be described in words.

Women who have faced sexual harassment in their offices, it becomes impossible for them to keep working in the same office, girls who have been subjected to harassment in their schools or colleges their attendance usually drops and their grades get affected too because of the psychological trauma

28 **Vandana Kapoor & Kanchan Dhingra**, *Sexual Harassment Against Women in India* (2014).

29 **Ridhi Kashyap & Jere Behrman**, "Gender Discrimination and Excess Female Under-5 Mortality in India: A New Perspective Using Mixed-Sex Twins", 57(6) *Demography* 2143-2167 (2020).

30 *Ibid.*

that they face. The psychological and emotional disturbances also highly impact their personal lives in a negative manner. However in the case of sexual of violence the deep emotional scars run deep which cannot be easily forgotten and replaced with other emotions.³¹

The society has always ostracized women who have gone through sexual harassment, be it in a minor form of eve-teasing or a major incident like rape. Instead of giving sympathy and understanding the person's emotional trauma, the society inflicts more pain on that person by excluding them, making them feel lonelier and rejecting them. Women also develop suicidal tendencies after going through such problems and there have been instances where family members have also resorted to such harsh outcomes.³²

Women who have been sexually harassed or humiliated oftentimes exhibited extremely low self-esteem, anguish, helplessness, despair, and remorse. All this proves to have a very negative impact on the woman, causing mental agony and depression. Marital rapes often involves women not voicing it with the believe that it is an obligation to serve their husband's, it shakes the very core of the foundation of marriage. The self-inflicted silence, suffering and the societal pressure of expecting a woman to go through it without any incident report is disturbing and causes a woman's mental health to further deteriorate.³³

STATUTORY PROVISIONS

The preamble of India ensures Equality of Status and Opportunity to all its citizens irrespective race, caste, sex, gender, religion and place of birth. Article 15(1) states that the state shall not discriminate on the basis of race, caste,

31 **M. Agarwal et al.**, "Impact of Sexual Harassment on Mental Health of Women", *NeuroQuantology* (2023).

32 "Sexual Assault Against Women in India", *Ballard Brief*.

33 **P. Ravish**, "Impact of Sexual Harassment on Working Women's Psychology", 16(1) *Journal of Advances and Scholarly Researches in Allied Education* (2019).

gender, religion, sex or place of birth. Article 15(3) states that nothing in this article shall prevent the state from making special arrangements for women and children. Article 16(2) prohibits discrimination on the basis of sex in public services this is, deterrent to the fact that women are sexually harassed in the name of official favors. Sexual harassment at work and academic institutions not only affects a woman's mental, physical and social well-being but it also prevents a woman from excelling in her field. Sexual harassment also violates article 21 which talks about right to life and personal liberty.

Coming to the Directive Principles of State Policies, the DPSP's talk about Article 39A- "Equal Justice and Free Legal Aid", Article 41- "Labor Rights, Education, and in some cases government support", Article 42- "Provisions for Fair and Appropriate Working Conditions for Women and Maternity Leaves" and Article 43- "Workers Living Wages and Working Conditions".

The Bharatiya Nyay Sanhita also have various provisions which safeguards women from sexual harassment and punish the perpetrators of such acts. The measure taken for the protection of women enshrined under the criminal laws are as follows: -

- Section 74- section 74 of the BNS penalty for assault or criminal force committed with the deliberate intent to offend the modesty of a woman, the punishment for such crime shall not be less than one year and can be extended up to five years.
- Section 79- section 79 punishes any act, word, or gesture which is intended towards insulting the modesty of a woman, it provides for an imprisonment for a term not less than three years.
- Sections 75, 76, 77 and 78- These sections specifically deal with stalking, disrobe, sexual harassment and voyeurism respectively.
- Section 63 - deals with acts of physical and sexual assault.

- Section 74 section 79 defines sexual offence and provides punishment for the same.

Section 114 of the Indian Evidence Act states that women can seek for help in regards to the aforementioned sections.

The Equal Remuneration Act (1976)- prohibits discrimination of women in workplaces and also provides for equal pay for equal work.

The Industrial Disputes Act (1947)- gives the employee the right to seek redressal in the labour tribunal in case of wrongful dismissal of employee paired with asking for sexual favors.

The Industrial Employment (Standing Orders) Act, 1946- Mandates that employers must reveal the working conditions of the employee.

The Indecent Representation of Women (Prohibition) Act, 1986- this act talks about indecent representation of women through books, paintings, photographs, films or packages which is punishable for a minimum sentence of two years.

The Factories Act (1948)- Section 19 of this act talks about separate washrooms for men and women, section 48(1) talks about crèche facilities for the benefit of women employees where the percentage of women employees is more than thirty percent, section 66 prohibits women from working in factories between the hours of 7:00PM to 6:00AM and no woman can work between 10:00PM to 5:00AM.

The Maternity Benefit Act (1961)- This act protects women from unemployment during motherhood.

The National Commission for Women Act (1990) and The Protection of Human Rights Act (1993)- the main objectives of both of these act is the protection of women's rights. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013- the main objective of this act is to provide for a safe and secure workplace to women addressing incidents of sexual harassment at workplaces. Protection of Children from Sexual Offences Act, 2012- this act aims at protecting children from sexual offences.

LEGAL POSITION OF INDIA

Prior to the landmark decision of the Supreme Court: Vishakha Judgement,³⁴ there was no law specifically designed for the sexual harassment of women. Labour and employment laws did not talk about safeguarding. Only the IPC had certain features which defined and criminalized sexual harassment, section 509 of the IPC spoke about any word, gesture, or act, which is intended to insult the modesty of a woman is an offence. Section 354 criminalized any act which outraged the modesty of a woman.

In the case of Radhabai Vs. Union Territory of Pondicherry ,³⁵ the appellant was an government officer who was sexually harassed by the Home Minister of Tamil Nadu, she went through this horrific incident because she exposed the circumstances in which inmates were kept and also the illegal activities that were involved. She was terminated from service upon complaining about the incident. Seventeen years later the supreme court intervened on this issue and later the supreme court directed the state and the harasser to compensate the victim.³⁶

The Vishakha case was highlighted because of the Public Interest Litigation filed to the Supreme Court. The Vishakha rape case took place, when a woman who was involved in advocating against child marriages spoke up against it, and was gang raped by men of higher castes in her village. This incident led to the guidelines regarding the prevention of sexual harassment and abuse of women at workplace.

After the Vishakha judgement the Supreme Court recognized that sexual harassment violates article 21 of the Indian constitution which states Right to Life and Liberty, article 14 and 15 of the Indian constitution and article 19(1) which talks about the freedom to practice any profession or to carry out any business. The Supreme Court not only relied on the fundamental rights enshrined under the constitution but also

34 (1997) 6 SCC 241.

35 AIR 1995 SC 1476.

36 *Ibid.*

on article 11 of Convention on the Elimination of All Forms of Discrimination (CEDAW).

As of now it is an obligation upon the employer to take reasonable steps in order to safeguard their employees. The court has recognized it as a “duty” upon the employee and the person responsible to deter such harassment in workplaces. Private and public organizations alike need to provide procedures which would help in deterring sexual harassment and provide for penalties for such acts done. The Supreme court has also directed the employers to create a complaint mechanism which would help in redressing the complaints made by the victims, and such committee shall be headed by a woman and not less than half of its members should be women.

In other Supreme Court judgements such as the Apparel Export Promotion Council Vs. Vimmi Joshi and Ors. The court clarified that “Actual Molestation or Even Physical Contact” are not required for the purpose of establishing a case of sexual harassment”

CONCLUSION

To sum it up, sexual harassment remains one of the most pervasive problems in workplaces as well as academic institutions. It reflects power imbalances and cultural patterns that, for generations, has allowed gender-based discrimination to take place. This issue that persists is not just about misconduct on an individual level but it is tied to much larger structures that protect the powerful and discourage the victims from speaking up.

Legally, the measures that have been taken has certainly made the situation better than what it was before, but laws alone cannot solve the problems. These laws need to be backed by stronger implementation, fair and transparent reporting systems and accountability. Cultural shift is also an important task in this scenario, one that encourages awareness, challenges harmful stereotypes, and creates a climate where people feel

safe to share their experience without any fear of retaliation or backlash.

Ultimately it can be said that that tackling sexual harassment is not only about preventing harm but also about respecting dignity and equality, and only when both both systemic reform and cultural changes go hand in hand can workplace and academic institutions become safer, fairer, and genuinely inclusive.

Rethinking Safe Spaces: Preventing Violence Against Women in Homes and Workplaces

H. Ningzimla Ansenra

ABSTRACT

Violence against women in our country is most commonly perceived through the lens of high-profile rape cases that dominate headlines on news channels. However, these incidents, often committed by strangers, are only the tip of the iceberg. Something which is far more pervasive and crucial, yet frequently invisible or unheard of to the public's eyes and ears, are those domestic violence and sexual harassment that takes place within the four walls of homes and workplaces. Despite this environment being considered safe, it often turns out to be places where women face significant risks and threats to their safety. Regardless of various legal and institutional reforms, it remains chronically underreported due to deep-rooted socio-cultural norms, fear of retaliation, stigma, and lack of institutional trust. This paper aims to explore and unravel the paradox of women's safety in familiar spaces, raising the question as to why women hesitate to report abuse and harassment in homes and workplaces. By critically analysing these hidden yet persisting incidents, it calls for a rethinking of both cultural and institutional system. Ultimately, this paper argues that the first and foremost step of ending violence against women is to make them safe and protected at home and workplace. Without fulfilling this particular essential condition, the

idea that women can be fully protected outside these spaces remains a distant and unrealistic goal.

Keywords: Domestic Violence, Sexual Harassment; Socio-Cultural Norms; Institutional Trust; Professional Space.

INTRODUCTION

'The best Protection any woman can have is courage'¹– Elizabeth Cady Stanton.

The discussion around women's safety in India is not a new concept; it has been ongoing for decades. Yet, the critical question remains: Does real change really come? Regardless of countless debates, awareness campaigns, and policy reforms, violence against women continues. When we talk about violence against women, our minds often go to high-profile cases like the Nirbhaya case. However, it is also important to shed a light on cases that are less visible but deeply rooted forms of harassment and violence that take place within the walls of our homes and workplaces. These incidents are often ignored and sidelined, considering them as something internal. The Constitution of India, through its various judicial interpretations, enshrines the concept of equality. Yet, in reality, women in our society continue to face threats to their safety, especially in homes and in professional spaces where they should be safe. This contradiction leads us to a question, if women are not safe in their workplace and home, can we truly say that the constitutional guarantee of "equality" is being upheld?

This Chapter aims to highlight the primary reasons why many incidents of violence against women in the workplace and at home remain underreported. Through real-life cases and publicly available incidents, this paper will illustrate how such factors contribute to a culture of silence. Ultimately, it emphasizes a critical question: if we are unable to protect women in spaces where they should feel safe and protected,

1 Elizabeth Cady Stanton, *Women on 20s*, available at: https://www.womenon20s.org/elizabeth_cady_stanton (last visited Sept. 10, 2025).

how can we protect them outside these spaces where the actions are often committed by strangers?

DOMESTIC VIOLENCE

We often consider homes as a safe place where we will be protected by our family members. However, it often turns out to be a place where harassment against women takes place. Often committed by family members, between spouses, these kinds of incidents are not new, although they rarely come to light.

- (a) **Marital rape** - In India, marital rape is not criminalized. It still exists as an exception under Section 375 of IPC, now Section 63 of BNS. It is wrong to assume that a woman loses her 'free will' to give consent to any sexual acts after marriage. Through different judicial interpretations, Article 21 enshrines 'Right to live with Dignity' as part of the provision. So, a married woman without free will over any sexual acts cannot be considered a woman who lives with dignity. It is also important to point out that women, both married and unmarried, deserve the same protection of law and the same fundamental rights.

Different courts in India have given varying judgments and opinions regarding it. Recently, in the case of *Gorakhnath Sharma vs the State of Chhattisgarh*², where a husband who committed marital rape was acquitted by the court on the basis that Marital rape is not a crime in India.

- (b) **Financial/Dowry Harassment**- It is a socio-cultural system built up over time in India where dowry signifies social status, economic security, and family compatibility. In 1961, the Dowry Prohibition Act was enacted to combat the dowry system in India.³ Although it has been decades since the enactment of the Act, the dowry system still prevails. It has led to death of women caused by both emotional and

2 CRA No. 891 of 2019.

3 **Pranshul Pathak**, "The Dowry Prohibition Act in India: A Critical Analysis", 10(1) *International Journal of Law* 248–251 (2024).

physical abuse. This situation makes us ponder as to why dowry system can't be abolished once and for all.

The recent "*Gurgaon Dowry Death Case – Nikki Bhatia Dowry Murder*"⁴ case has brought up the topic of Dowry death in India once again, triggering massive public outbursts. The facts of this case were that one Nikki Bhatia, a 28 years old woman from Gurgaon, was set ablaze allegedly by her husband. It was alleged that the victim endured years of abuse based on dowry demands.⁵ The accused husband, in a recorded video, deliberately set the victim on fire; sadly, she succumbed to the injuries. According to reports, when the victim was tortured for dowry demands, she went back to her natal home instead of the police, and every time she is sent back to reconcile. The victim's brother also stated that they endured years of compromise due to social shame.

Why Does It Persist?

- (a) Weak legal enforcement and legal gaps - One of the most crucial reasons is that marital rape is not criminalised in India. It is also important to point out that despite the existence of various laws such as the Dowry Prohibition Act, the Domestic Violence Act, and IPC/BNS provisions, in reality they have weak enforcement due lack of evidence and delays in trials.
- (b) Patriarchal norms and victim silencing – Our Indian society is deeply rooted in patriarchy, where women are considered inferior, ultimately leading to inequality between men and women. This normalised male dominance and violence against women is viewed as a husband's right or a family

4 "*Set Afire on Camera: 10 Chilling Details in Nikki Bhati Dowry Murder*", *Hindustan Times* (Noida, Aug. 25, 2025), available at: <https://www.hindustantimes.com/cities/noida-news/triggering-videos-grim-details-arrests-10-facts-on-nikki-bhati-dowry-death-case-101756102086988.html> (last visited Sept. 3, 2025).

5 *Ibid.*

matter rather than a crime.⁶ Due to this, women are often silenced in the name of family honour.

- (d) Economic dependence – Victims of such incidents are often fully dependent on the husband or in-law financially, making it difficult for them to leave the situation.
- (e) Dowry as a deep-rooted cause – Even though dowry is prohibited in India, it persists as a mechanism to mark social status and honour in marriage.⁷ Moreover, marriage is viewed as a transaction where the bride’s family gives dowry to the husband’s family, with the mindset that women are dependent and men are the breadwinners. This practice has been disguised as a gift most of the time.

Legal Provisions

- (a) Domestic Violence Act, 2005- This Act recognised that domestic violence covers the aspects of physical, verbal, emotional, and sexual abuse as well.⁸ Through Article 21, the Act seeks to protect the rights of women to live in a home free from violence.
- (b) Bharatiya Nyaya Sanhita, 2023 – i) Under Section 85 of BNS, cruelty by husband or in-laws, including mental and physical harassment, especially for dowry, is punishable with imprisonment up to three years and fines. ii) Under Section 111 BNS, dowry death is defined as when a married woman dies in unnatural circumstances within 7 years of marriage due to dowry harassment. It is punishable with imprisonment of 7 years up to life imprisonment.
- (c) Dowry Prohibition Act, 1961 – The aims and objectives of this Act is to prohibit the giving, taking, and demanding

6 L. Mshweshwe, “Understanding Domestic Violence: Masculinity, Culture, Traditions”, 6(10) *Heliyon* e05334 (2020), available at: <https://pmc.ncbi.nlm.nih.gov/articles/PMC7599123/> (last visited Oct. 28, 2025).

7 Pranshul Pathak, “The Dowry Prohibition Act in India: A Critical Analysis”, 10(1) *International Journal of Law* 248–251 (2024), available at: <https://www.lawjournals.org> (last visited Oct. 28, 2025).

8 **Protection of Women from Domestic Violence Act, 2005**, available at: https://en.wikipedia.org/wiki/Protection_of_Women_from_Domestic_Violence_Act,_2005 (last visited Oct. 28, 2025).

of dowry in India. The act of giving and taking dowry is recognised as a cognizable and non-bailable offence where the accused will face up to 5 years in prison. Also, if anyone is found demanding dowry, it is punishable by up to 2 years in prison.

CHALLENGES AND SUGGESTIONS

Challenges in the existing legal provisions have become a barrier to fully protecting and prohibiting domestic violence in India.

- (a) Marital Rape – The Indian legal framework does not criminalise marital rape. It still exists as an exception to section 375 of the IPC (Section 63 BNS). While an attempt to remove the exception has been made several times, response by Union Government, on 4th October 2024, filing an affidavit opposing the striking down of the marital rape exception is a setback.⁹ This kind of response makes us question about the essence of ‘Rule of Law’, where “Supremacy of Law” is a pillar. This exception is a proof that the concept of Supremacy of Law has failed, as provisions like the *Right to Life* and the *Right to Equality* have been overridden by other legislation. It is important to recognise that marriage does not take away the rights of women under Article 14 and Article 21, and that marriage does not mean unconditional consent. India is also a signatory to CEDAW, so India has a moral duty to criminalise marital rape. Therefore, India should criminalise marital rape at the earliest.
- (b) Dowry Prohibition Act, 1961- The definition of dowry given under this Act is ambiguous, as it does not include “customary gifts” in the definition, which makes it easy to disguise dowry as gifts.¹⁰ The Act is also criticised for not

9 “Challenge to the Marital Rape Exception – *Hrishikesh Sahoo v. State of Karnataka*”, *Supreme Court Observer*, available at: <https://www.scobserver.in/cases/challenge-to-the-marital-rape-exception-hrishikesh-sahoo-v-state-of-karnataka/> (last visited Oct. 28, 2025).

10 “Definition of Dowry under Dowry Prohibition Act”, *LawyersClubIndia*, available at: <https://www.lawyersclubindia.com/articles/definition-of-dowry-under-dowry-prohibition-act-8993.asp> (last visited Oct. 28, 2025).

having a dedicated authority to monitor and ensure strict compliance with the Act. Sometimes the Act is misused by filing frivolous cases, which is why the judiciary is reluctant to act firmly in genuine cases. To curb this misuse of the Act, it is important to take into account the direction given by the Court in the case of *Rajesh Sharma v. State of UP, 2017*¹¹, where it was directed that police should conduct a preliminary investigation before arrest. Committees like the Family Welfare Committee should scrutinize complaints before filing an FIR.

- (c) Domestic Violence Act, 2005- It is more focused on civil relief rather than punishment. These civil reliefs aim to be immediate; however, it is often delayed, leaving the victims vulnerable which is why it is important to lay out punishment specifically in the Act itself. Although the Act provides provisions of Protection Officers, these officers are often absent and not trained properly in reality. There is also no particular authority to monitor how effectively the Act has been applied in India, which means that the enforcement remains weak. Therefore, a dedicated authority is needed to look into it. Moreover, overlapping with other laws like Section 498A of the IPC creates confusion and drags the cases on for a long time which is why it is necessary to have a proper statutory explanation in order to avoid confusion.

VIOLENCE IN PROFESSIONAL SPACE

Workplace harassment and violence is a serious issue that has negative consequences on the professional life of women. The fight for equality for women has been largely successful, providing women with opportunities to participate in various spheres of life. But the irony is that despite this, the growing number of workplace harassments has made us question the depth of the progress.

11 (2017) SCC 821.

*Greenpeace India sexual assault case (2015)*¹² – In this incident, a former employee of the organization posted on Facebook in the year 2015, alleging that she was sexually harassed in the year 2012 by a senior colleague and rape by another colleague in the year 2013. Subsequently, she complained to HR, but no action was taken by the Internal Complaint Committee (ICC). She was banned from registering a complaint and faced character assassination by the staff. Also, the ICC female members blamed her for not setting boundaries. She alleged that in the year 2013 she was rape by another colleague when she was unconscious. She left the NGO after the incident, stating that she was afraid to report to the police and to the organization as they had failed her the first time. After the post went viral, the Greenpeace organization issued an apology to the victim, and the accused was terminated. The outcome of this case was that no legal actions were taken against the accused, as the victim did not file any police complaint. Thus, no criminal case was initiated. ICC, a body whose sole role and aim is to protect any employee from harassment and abuse of women in the workplace cannot protect women even if complaint is made, its sole existence is undermined.

Why does it persist?

- (a) Fear– It is one of the key reasons why women don't dare to report or file a complaint. This stems from fear of being retaliated against by the company where they worked, which may result in termination of employment.
- (b) Shame- Our society is patriarch centric. It is a system that has been deeply embedded in our culture and psychology. Women are expected to be obedient, submissive, tolerant toward male behaviour, and responsible for maintaining their own honour and dignity.

12 **Nita Bhalla**, "Greenpeace India Admits Failures after Staff Claims of Rape, Sexual Harassment", *Reuters* (June 17, 2015), available at: <https://www.reuters.com/article/world/us/greenpeace-india-admits-failures-after-staff-claims-of-rape-sexual-harassment-idUSKBN0OX1R2/> (last visited Oct. 28, 2025).

- (c) Victim silencing - As seen in the case mentioned above, the concept of 'character assassination' by the colleague instead of supporting the victims led to many more being silenced.
- (d) Inadequate legal process – In India, the judiciary is not adequate in addressing this issue. Victims of workplace harassment sometimes do not dare to file a police complaint when the incident is fresh due to fear or shame, which is why they report after months or years. Sometimes the court doesn't accept such late complaint, citing that it has been time-barred.

Legal Provisions

- (a) Vishaka Guidelines¹³– It is a set of guidelines given by the Supreme Court in the year 1997 to address sexual harassment at the workplace. The Supreme Court formulated a list of guidelines that are meant to protect women in the workplace.
- (b) POSH ACT- In the year 2012, the Supreme Court in the case of *Medha Kotwal Lele v. Union of India*¹⁴, said that many of the institutions and professional spaces were not following and adhering to the Vishaka Guidelines given by the Supreme Court. Due to this, the Court directed stringent adherence to the guidelines in all workplaces. Based on this direction, in the year 2013, the POSH Act was enacted by the government based on the Vishaka Guidelines.
- (c) 2023 SC Directions - In 2023, the Supreme Court took notice of the lapse in implementing and adhering to the POSH Act, 2013. This direction was given by the Court in the case of *Aureliano Fernandes v. State of Goa*.¹⁵ The Court realised that most of the institutions don't comply

13 "The Vishaka Guidelines", *iPleaders Blog* (Mar. 2, 2020), available at: <https://blog.ipleaders.in/vishaka-guidelines/> (last visited Oct. 28, 2025).

14 (2012) 1 SCC 311.

15 Criminal Appeal No. 2482 of 2014.

with the POSH Act regarding the setting up of the Internal Complaint Committee (ICC) in all government departments, institutions, public sector undertakings, and private companies.

CHALLENGES IN THE PROVISIONS

- (a) It is evident from the recent 2023 Supreme Court Directions that decades have passed after the 1997 Vishaka Guidelines laid down by the Supreme Court; these guidelines have not been properly and sincerely followed by organizations, companies, and institutions.
- (b) ICC – The gap in implementing ICC is one of the reasons why women are often subjected to harassment in the workplace. Since there is no committee to approach when an incident occurs, victims are often silenced, and the perpetrators are not caught. Even if such a committee exists, it is not functioning properly.
- (c) The punishment mentioned under the POSH Act is very light. The Act mandates that for not constituting ICC, the fine is up to Rs 50,000. For employees, if they are found violating the Act, the punishment associated with it is either termination, or warning, or a handwritten apology. There is no punitive punishment associated with it leading to repeated offenses and the victims quitting the job.
- (d) Employer and Employee relationship – The relationship between employer and employee mentioned in the POSH Act is very traditional in its nature. It doesn't cover any new jobs such as contractual workers, media, gig workers, volunteer work, etc. This complex relationship defined in this Act, has been subjected to various interpretations by the courts in many cases.

SUGGESTIONS

- (a) The POSH Act doesn't focus on any punitive measures. Therefore, in order to deter any potential future offenders, it is important to enforce strict and heavy fines and punishment for non-compliance with the Act.

- (d) It is very necessary on the part of the government to address the proper implementation of ICC by appointing or creating a Central Enforcing authority to oversee and enforce the Act.
- (e) Meetings and discussions are often carried out through online mode, where harassment or abuse may take place through virtual means. It is important to acknowledge such developing situations and enact proper provisions suitable for them.
- (f) Even if the law provides lengthy provisions on this topic, if the society's mindset remains regressive and the concept of 'Victim Blaming' continues, the situation will remain as it is, with no progress.

CONCLUSION

The analysis of cases of domestic violence and workplace harassment in this paper has shown the unpleasant nature where spaces like homes and workplaces, considered safe for women, are places where violence is often normalised and victims remain silent. These kinds of recurring circumstances are deeply rooted in patriarchy, societal shame, victim blaming, economic dependence, and, most importantly, weak legal enforcement.

With this being said, it is important to say that to combat the fight against violence cannot begin in public spaces alone, as protecting women in public spaces becomes a lost cause if they remain unsafe in their own homes and workplace, where safety is supposed to be present. These spaces are important as these are the places where women's confidence, courage, dignity, and independence are moulded. Therefore, true equality and empowerment of women will be achieved only when they are safe and protected at home and in the workplace. As long as women are subjected to violence in their homes and workplace, the struggle for women's protection in public spaces will remain a far cry and an illusion.

Ultimately, a society that claims to protect women in public spaces while ignoring the violence subjected to women within homes and the workplace is a society that is failing its women. Homes and workplaces are important spaces and the foundation of women's lives; therefore, making them feel safe and protected in these spaces is the first and most necessary step towards ending violence everywhere as it is only when women feels safe and protected in these daily spaces will they be able to step into the larger world with confidence, dignity and the assurance that their rights will be protected at all times.

The Impact of Digital Spaces on Women and Children: Balancing Rights, Safety and Privacy

Anjali M. & Liz Joseph

ABSTRACT

The integration of digital technologies into everyday life has transformed avenues of communication, education, commerce, and social interaction. However, this technological shift has also brought significant concerns regarding the protection of rights, safety, and privacy of women and children. In India, where internet penetration has surpassed 850 million users, digital platforms have become both an opportunity and a threat. While they enhance access to information and connectivity, they also serve as channels for harassment, exploitation, and cyber-enabled crimes. Recent reports by the National Crime Records Bureau (NCRB) indicate a notable rise in online stalking, cyberbullying, identity theft, grooming, and child sexual exploitation.

Indian legislations such as the Information Technology Act, 2000, the Protection of Children from Sexual Offences (POCSO) Act, 2012, and the Digital Personal Data Protection Act, 2023 attempt to create a protective legal framework, yet enforcement challenges, jurisdictional constraints, and policy gaps remain unresolved. The judiciary has interpreted constitutional principles to safeguard privacy and dignity, but the need for comprehensive preventive mechanisms persists. Furthermore, global instruments like the Convention on the

Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) guide India in harmonizing domestic laws with international human rights standards.

This chapter critically evaluates the legal frameworks, judicial responses, technological concerns, and policy deficiencies and proposes reforms to ensure that digital ecosystems evolve into safe, inclusive, and rights-respecting spaces.

Keywords: *Digital Rights, Cybercrime, Women's Safety, Child Protection, Privacy, POCSO, Data Protection, Online Harassment.*

INTRODUCTION

The revolution in the digital world refers to the transformative shift brought about by the widespread adoption of digital technologies, reshaping communication, governance, education, and social interactions across the world. The transformation to the digital world has profoundly redefined human interactions, trade, learning, and governance.

With India having more than 850 million internet users, digital spaces have become an inseparable part of life, providing unprecedented opportunities for communication, education, and economic engagement.

Just as women and children remain vulnerable in physical spaces, their safety is equally compromised in digital environments. The online sphere has replicated many of the structural inequalities and risks of the offline world, manifesting new vulnerabilities such as cyberstalking, online grooming, online harassment cyberbullying, trolling, and non-consensual circulation of private information.

Anonymity of perpetrators, trans-border jurisdictional issues, and poor digital literacy levels among vulnerable communities have augmented these threats, which require all-encompassing legal, technological, and social interventions¹. The present research seeks to analyse the changing digital risk environment, the policy and legal frameworks protecting rights, and the difficulty in applying meaningful protection strategies.

DIGITAL TRANSFORMATION AND EMERGING RISKS

The spread of digital technologies has dramatically transformed education, business, governance, and social networking, facilitating for the first time in history access to information and connectivity across geographical spaces.

Internet-based platforms have become chief domains for learning, business, social interaction, and civic activities, particularly among youth. And yet the same platforms that provide these opportunities pose tremendous risks for women and children, from stalking and harassment through sexual exploitation and financial scams. India reported 1,823 cybercrime offenses against children in one year alone, with 1,171 for sexual exploitation, 158 for online stalking or bullying, and 416 for other types of digital exploitation and abuse, as per the report released by the National Crime Records Bureau (NCRB) 2023¹. At the same time, women have increasingly been subjected to online harassment, identity theft, phishing, and access to abusive content, underlining the need for thorough preventive action². The anonymity of the digital infrastructure facilitates perpetrators to commit crimes across borders with impunity, making it difficult to enforce and prosecute. Cybercrimes take advantage of users' cognitive and technical weaknesses, as well as social and cultural dynamics like familial oversight, gender roles, and stigmatization of reporting, which increase the likelihood of victimization. Children and young people, who tend to be relatively unaware of digital threats, are most vulnerable to grooming, sextortion, and exposure to obscene material.

Women, particularly those in professional or public life online, are also most often the targets of harassment and reputational assaults that spill over to offline realms, underlining the

1 National Crime Records Bureau, *Crime in India Report 2023* (Ministry of Home Affairs, Government of India, 2024).

2 Child Rights and You (CRY), *Child Cyber Crime Surges 32%: NCRB Data Underlining Vulnerability to Online Risks*(2024).

intersectional nature of digital threats. Furthermore, the psychological and economic impacts of cybercrime are significant, with victims undergoing trauma, anxiety, and erosion of trust in digital spaces. Economic exploitation, such as fraudulent transactions and identity theft, adds to these abuses and long-term socioeconomic impacts.

In such instances, legal systems, technological prevention, and community intervention have to work collectively. Enhancing child and women's digital literacy programs, organizing awareness campaigns at grassroots levels, introducing AI-facilitated monitoring of abusive content, and creating a reporting and protection culture are key measures to counter these risks.

Thus, while digital transformation presents itself as a powerful tool for empowerment and inclusion that too in a patriarchal society, it necessitates a careful re-examination of existing legal, technological, and policy frameworks. Safeguarding rights in digital spaces must not come at the cost of safety and privacy, but instead must harmonize these principles to create secure and inclusive digital ecosystems.

INTERNATIONAL MODELS OF SAFE GUARDING WOMEN AND CHILDREN IN THE DIGITAL ENVIRONMENT

India, being a signatory to global conventions like the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), has committed itself to instruments that protect women and children from online exploitation. These treaties established worldwide standards for protecting basic rights, underscoring the importance of legal, technological, and policy responses that recognize the vulnerabilities of women and children in digital spaces.

The United Nations Convention on the Rights of the Child (UNCRC), 1989, ratified by India in 1992, recognizes the right of children to protection from exploitation and abuse, with its General Comment No. 25 (2021) extending these rights to the

digital sphere. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, ratified in 1993, obliges India to take steps against gender-based violence, a mandate that includes online harassment and cyberstalking.

Comparative examination with the European Union's General Data Protection Regulation (GDPR) brings to the fore the significant gaps in India's data protection and privacy regime. GDPR prescribes express consent for data processing, strict cross-border data transfer provisions, and strong accountability provisions for platforms. India's Digital Personal Data Protection Act, 2023, though a major improvement, needs further sharpening in its implementation, enforcement, and platform adherence, especially for sensitive data related to children and women.

While the GDPR provides comprehensive safeguards through principles such as informed consent, data minimization, the right to be forgotten, and strong enforcement mechanisms, India's data governance has traditionally relied on fragmented provisions under the Information Technology Act, 2000 and its rules. The absence of a robust, rights-based statutory regime has left individuals particularly vulnerable groups like women and children exposed to misuse of personal data and inadequate remedies in cases of digital exploitation.

Global guidelines prioritize multi-stakeholder collaboration that includes government departments, civil society, tech firms, and educational institutions. They recommend AI-powered monitoring technologies to identify abusive content, expedited content removal procedures, and civic awareness campaigns to promote digital literacy and reporting. India may develop these best practices by incorporating technology-based solutions, regular reporting procedures, and ongoing capacity-building training programs for law enforcement officials and judges.

In addition, cross-border cooperation is indispensable for the resolution of crimes that cut across national borders. International treaties offer instruments of cooperation, mutual

legal assistance, and sharing knowledge so that countries may effectively counter cybercrimes against women and children. Harmonization of domestic legislation with such standards will enable India to reinforce its ability to safeguard vulnerable groups in online environments, making legal interventions not only compliant at the national level but also in accordance with international standards of human right.

LEGAL FRAMEWORKS PROTECTING WOMEN AND CHILDREN

The evading boundaries between private and public spheres in online environments intensifies the challenges of ensuring safety and privacy. From a constitutional perspective, these risks directly engage the guarantees of equality and dignity under Article 14, the right to freedom of speech under Article 19, and the fundamental right to life and personal liberty under Article 21.

Under Article 14 of the Indian Constitution, it guarantees equality before the law and equal protection of the laws. In the context of digital platforms, this provision extends beyond formal equality to require substantive equality, ensuring that women and children who are disproportionately targeted in online environments must receive effective safeguards. So, such offences must not be merely private wrongs but constitutional concerns, as the denial of protection in digital spaces would amount to a denial of equal protection under the law. Thus, Article 14 obliges the State to create and enforce policies that guarantee equal access to safe, secure, and inclusive digital environments, preventing technology from becoming a tool that reinforces pre-existing gender and age-based vulnerabilities.

Article 19(1)(a) guarantees the freedom of speech and expression, which in today's context includes the right to access and participate in digital platforms. For women and children, this right is crucial to education, self-expression, awareness, and participation in public discourse. However, online harassment, cyberbullying, trolling, and threats often

silence their voices and force them to withdraw from digital spaces, effectively curtailing this freedom. Protecting women and children in cyberspace therefore becomes a constitutional obligation to ensure that their right to expression is meaningful and not illusory. At the same time, Article 19(2) allows the State to impose reasonable restrictions in the interests of decency, morality, and public order providing the constitutional justification for regulating harmful digital content such as pornography, hate speech, or child sexual abuse material.

Article 21 ensures the right to life and personal liberty, which has been expansively interpreted by Indian courts to include privacy, dignity, and autonomy. From the constitutional analysis, it has been very clear that the right to privacy is intrinsic to Article 21, extending its scope to protection against misuse of personal data, surveillance, and online exploitation. For women, this right translates into protection from digital sexual harassment, non-consensual circulation of intimate images, and privacy breaches. For children, it includes safeguarding against grooming, pornography, and unauthorized profiling. Therefore, Article 21 considers the constitutional guarantee that digital participation must not come at the cost of fundamental rights, making safety and dignity non-negotiable in cyberspace.

The protection of women and children in cyberspace is not only a matter of technology and governance but also a constitutional duty, grounded in the principles of equality and affirmative protection as enshrined in Article 15.

As Article 15 prohibits discrimination on grounds of sex, religion, caste, or place of birth, and by extension, protects women and children from gender or identity-based exclusion in digital spaces. Online harassment, targeting, or exclusion of women and children constitutes a form of discrimination that undermines equal participation in digital society. Importantly, Article 15(3) empowers the State to make special provisions for women and children, legitimizing targeted digital policies such as stricter regulation of cyberstalking, safe reporting

mechanisms, and child-specific online safety laws. In this sense, Article 15 not only guarantees freedom from discrimination but also mandates affirmative protection to address vulnerabilities in virtual environments.

India has also developed a robust legal framework to protect women and children from online exploitation, harassment, and invasion of privacy. The Information Technology Act, 2000 is the foundation law dealing with cybercrimes such as hacking, phishing, impersonation, cyberstalking, and invasion of privacy of personal data. Section BNS 66, 66C, 66D, and 66E of the Act make criminal offenses for theft of identity, cheating using impersonation, and publishing private matters without consent, thus establishing legal deterrence against online abuse.

The Protection of Children from Sexual Offences (POCSO) Act, 2012 supplements these provisions by expressly criminalizing online grooming, child pornography and sexual exploitation through digital platforms.

The Act requires the setting up of special courts, child-friendly procedures, and the implementation of technology to make evidence collection and trial processes sensitive to children's needs (Sections BNS 3, 4, 5). The law places emphasis on the right of the child to dignity, privacy, and speedy justice while strictly punishing the offender. The Digital Personal Data Protection Act, 2023 further enhances protection by disciplining the collection, storage, and processing of personal data, including that of children. Sections BNS 11 and 15 mandate parental permission for processing data of children, impose fiduciary duty on data managers, and institute mechanisms of accountability and grievance redressal. The Act brings India at par with international practices on privacy and data protection, and is also taking a step towards protecting the increasing digital footprint of women and children.

Apart from these industry-specific laws, the Indian Penal Code (IPC) also has additional provisions to deal with cyber-enabled harassment. Sections BNS 354D and 509 make cyberstalking,

voyeurism, and acts meant to insult the modesty of women punishable offenses, thus providing a dual legal framework to deal with abuse both online and offline.

India's legislative system is also compatible with international norms, including the Convention on the Rights of the Child (CRC, 1989) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979), which are source principles for safeguarding online rights of children and ensuring gender equality.

Through the incorporation of domestic laws with international conventions, India exhibits a willingness to maintain higher standards of protection so that legislative provisions are reconcilable with international human rights standards while responding to the characteristic threats of cyberspace.

Though the construction of constitutional framework and legislative designs are very strong in our country, yet, gaps in implementation and awareness continue to expose women and children to disproportionate harm.

JUDICIAL APPROACHES IN PROTECTING WOMEN AND CHILDREN IN DIGITAL SPACES

Judicial interventions have played a crucial role in making constitutional principles conform to the fast-changing digital scenario, ensuring that the rights of women and children are well safeguarded. Its interpretations have been instrumental in reinforcing the enforcement of some laws too.

In *Justice K.S. Puttaswamy v. Union of India*³, the Supreme Court identified privacy as a constitutional right under Article 21 of the Constitution and broadened its scope to encompass informational digital privacy. This judgment highlighted the need for protecting personal information, online communications, and digital identities and thus provided a precedent to understand cyber laws in India. The Court underscored that privacy is intrinsic to dignity and autonomy, principles especially relevant in shielding women and children from intrusive online practices.

3 (2017) 10 SCC 1.

In *Avnish Bajaj v. State (NCT of Delhi)*⁴ clarified the ambit of intermediary liability, underscoring that online platforms do have obligations to remove illegal content upon notice, but not to police all user-generated content proactively. This ruling offered a workable model of regulating digital platforms, focusing on accountability while being mindful of technological and operational constraints. It also delineated the parameters of intermediary liability, declaring that websites could be held liable for hosting illicit content if they did not act on notice.

The *Shreya Singhal v. Union of India*⁵, the Supreme Court invalidated Section 66A of the Information Technology Act, 2000, which was faulted for its broad language that had the potential to limit free speech. The ruling highlighted the fact that while the state has a valid interest in managing injurious online content, safeguarding measures must be neither overbroad nor arbitrary and strike a balance between safety and freedom of expression. The Supreme Court also established the constitutional parameters of free speech in relation to cybercrime provisions, declaring overbroad and vague provisions that might hinder legitimate expression to be unconstitutional. This case has also had profound implications for online harassment, cyberbullying laws, and the protection of vulnerable users, especially women and children.

Trial courts too have been proactive in addressing gender-based digital crimes. The conviction in *State of West Bengal v. Animesh Boxi*⁶ for “revenge pornography” marked a landmark moment in recognizing non-consensual image circulation as a grave violation of dignity.

Similarly, in *Court on its Own Motion v. State*⁷, the Delhi High Court directed authorities to adopt cyber-forensic tools and swift takedown measures for obscene videos of minors, reinforcing the obligation to protect children from digital exploitation.

4 (2008) 105 DRJ 721.

5 AIR 2015 SC 1523.

6 C.R.M. No. 11806 of 2017.

7 CRL. REF. 2/2024.

The Supreme Court in *Prajwala v. Union of India*⁸ also adopted a proactive stance by directing the government to establish mechanisms for blocking and removing child sexual abuse material online, showing judicial willingness to move beyond individual cases towards systemic reform.

In addition to domestic jurisprudence, Indian courts have come to increasingly invoke international conventions and standards, including the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to interpret domestic laws in harmony with international human rights norms. This integration reaffirms safeguarding measures for women and children in cyberspace, such that judicial methods remain up-to-date and attuned to new digital threats.

In addition, the courts have emphasized the need for child-friendly proceedings, prompt redressal measures, and the use of technology tools in investigations to improve enforcement effectiveness. Through these measures, the judiciary has played a key role in filling gaps between statutory laws and effective protection of vulnerable classes, and fostering a safer digital environment in India.

POLICY GAPS AND CHALLENGES IN PROTECTING WOMEN AND CHILDREN IN DIGITAL SPACES

In spite of the creation of detailed legal frameworks and judicial interventions, there are still wide-ranging policy and enforcement gaps which exist in protecting women and children in digital spaces.

Low digital literacy of the vulnerable population is a key challenge, constraining the capacity of children and women to identify, respond to, and report online risks. This is especially so in rural and semi-urban settings, where access to digital training and campaign awareness is low, making users vulnerable to cyberstalking, phishing, grooming, and exposure to harmful content. Weak mechanisms of enforcement only

8 W.P. (C) No. 56/2004.

add to these issues. Police force themselves usually do not have units dealing with cybercrime, training, and equipment required for prompt investigation and prosecution of crimes committed on the internet. Lack of specialized cyber cells that deal specifically with women and children prevents efficient response and legal action.

Major policy gaps lie in the fragmented nature of legal protections. Provisions addressing cybercrimes, online harassment, child pornography, and data privacy are scattered across multiple legislations, resulting in inconsistencies and weak enforcement. This makes it difficult for victims, especially children and women, to seek timely and effective remedies.

Another is the underreporting of online abuse, as it is controlled by social stigma, gender norms, and fear of reputational harm. Even when cases are reported, inadequate digital forensic capacity and delays in investigation hinder effective prosecution.

Cross-border jurisdictional problems also pose major hurdles. Cybercrimes often have foreign origin jurisdictions, making it challenging for evidence to be gathered, mutual legal assistance to be sought, and extradition procedures to follow. Social and cultural issues, including fear of vengeance, societal stigma, and unawareness, tend to discourage victims from reporting the crime, leading to delayed response and loss or destruction of digital evidence.

New technologies such as deep fakes, AI content, and advanced phishing pose challenges to existing legislative provisions, generating new threats which are based on existing vulnerabilities. A multi-faceted response to these issues includes the adoption of strong digital literacy programs for children and women, setting up special cyber cells, investment in technology infrastructure for investigation, and efficient reporting and grievance redressal processes. It is also important to have joint engagement with technology firms, civil society, and international agencies to bridge gaps, ensure accountability, and make digital spaces safe for vulnerable

populations.

Lastly, the absence of platform accountability also remains a critical issue. Although the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, impose certain due diligence obligations, enforcement has been weak, and global technology companies often escape liability due to jurisdictional complexities.

CONCLUSION

For India, the system to be adopted lies in a comprehensive child and gender sensitive digital policy that moves beyond a fragmented approach and builds a coherent framework for online safety. Such a policy must give equal weight to preventive and remedial strategies. Preventive measures include integrating digital literacy programs into school curriculum, creating awareness campaigns to reduce the stigma around reporting, and equipping families with the tools to guide children in navigating online spaces responsibly. At the same time, remedial mechanisms should ensure timely investigation, swift removal of harmful content, victim support services, and accessible grievance redressal platforms that are sensitive to the needs of women and children.

Strengthening data protection laws is another critical step, particularly in light of increasing risks of identity theft, cyberstalking, and misuse of personal information. A rights-based data protection regime must guarantee informed consent, transparency in data processing, and stronger accountability for technology companies handling sensitive data. Corporate responsibility, especially for global digital platforms, must go beyond compliance and include regular safety audits, child-friendly content moderation systems, and strict penalties for non-compliance.

Most importantly, the protection of women and children online cannot be viewed solely as a matter of security; it is a question of ensuring their meaningful and fearless participation in the digital public sphere. Equal access to safe digital spaces empowers women and children to express themselves, pursue

educational and professional opportunities, and engage fully in democratic life. Thus, digital safety is not an isolated policy concern but an essential dimension of constitutional values of equality, dignity, and justice. In this sense, building a secure digital environment is fundamental to advancing democratic inclusivity and achieving social justice in the information age.

SUGGESTIONS

The protection of women and children's safety, privacy, and rights in the digital world needs to be addressed through a multi-layered strategy incorporating legal, technical, educational, and social components. Drawing on domestic and international frameworks, the following recommendations are proposed:

1. Implement AI-based content surveillance and automated warning mechanisms to identify and delete abusive or exploitative content directed against women and children.
2. Make digital safety education compulsory in schools covering safe online behaviour, identification of cyber threats, privacy control, and reporting processes.
3. Develop specialized cyber units in law enforcement agencies to deal with crimes against women and children with trained officers and sophisticated forensic equipment.
4. Improve cooperation with technology firms to facilitate swift deletion of illegal or offensive content and strengthen accountability for platform management.
5. Establish campaigns of awareness among parents, caregivers, and communities to enhance knowledge regarding online dangers, reporting procedures, and privacy value.
6. Encourage tools of parental monitoring, online literacy programs, and reporting facilities especially designed for children and women.
7. Ensure domestic policies align with global measures like the CRC, CEDAW, and GDPR, to facilitate harmonized data protection practices, privacy, and cybercrime handling.

8. Facilitate public-private partnerships to create technology-driven solutions, capacity development programs, and digital security programs at the community level.

The safeguarding of women and children in the virtual world requires concerted efforts within legal, technological, educational, and policy platforms.

While current legislation and judicial decisions create a fundamental platform, their value rests on proactive implementation, ongoing technological evolution, and public education. Merging statutory protection, judiciary supervision, digital competence, AI-powered monitoring, and transnational collaboration is responsible for making digital spaces not merely secure but also open and respectful of basic rights. By integrating these efforts, India can establish a strong environment in which women and children are able to use the internet confidently, without harassment, exploitation, and intrusion into their privacy.

Child Trafficking in India's Border States: Legal Enforcement and Cross-Border Vulnerabilities

Aishwarya B. Patil & Kanika Arora

ABSTRACT

The dignity of the human being, having an absolute and intrinsic value, is the moral and legal basis of modern international human rights. It persists at the core of international treaties seeking to protect the rights of the most fragile groups, specifically females and minors, discriminated and marginalised in so many ways. This chapter analyses two key treaties that reflect the global community's commitment to equality, protection, and empowerment, namely, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

This chapter employs a doctrinal research methodology by analysing the treaty provisions, the preambles, the general comments, and other interpretative guidance. It explores the extent to which the notion of human dignity is woven into these instruments. These conventions have had a massive impact on legal systems, judicial rulings, and public policy debates worldwide. They have inspired constitutional amendments, legislative reforms, and rights-based advocacy movements focused on protecting women and children. Yet the implementation of these treaties has continued to struggle. Due to

both cultural practices and socio-economic disparities, maintaining the practical side of such a commitment will be extremely problematic.

The Chapter demonstrates that international human rights standards must be balanced with local cultural practices, safeguarding human dignity without enforcing cultural uniformity. Finally, CEDAW and CRC assert that respect for the dignity of women and children is not only a legal duty but also a moral imperative, which is critical to the attainment of justice, equality, and human development worldwide.

Keywords: *Human Dignity, CEDAW, CRC, Women and Children's Rights, International Human Rights Law.*

INTRODUCTION

The fundamental value of every human being exists in human dignity, which functions as the fundamental moral and legal basis for the current international human rights system. The statement confirms that every human being has inherent and equal value by virtue of being human, irrespective of gender, age, race or social status. The idea of human dignity is deeply rooted in most significant documents approved by the United Nations. One which is most important is the Universal Declaration of Human Rights (UDHR) 1948, adopted in Paris by UN General Assembly. The first Article of the Declaration reminds us of a powerful truth that "All human beings are born free and equal in dignity and rights." Here, dignity exists as both a philosophical concept and a legal principle that shapes the progress of human rights law throughout different countries. The concept functions as a global moral standard that requires governments and organisations to treat individuals with fundamental respect as the basis for their governmental and judicial operations.

Women and children from the most vulnerable segments of society experience ongoing discrimination through systemic barriers that create unending disparities. Women experience multiple obstacles that prevent them from accessing educational and employment opportunities and owning property and receiving healthcare, and participating in politics. Children experience neglect and exploitation while their basic rights to

education and health care, and protection from violence and human trafficking are denied to them. Many societies treat children as dependents rather than as individuals with their own rights and independent voices. The present conditions show that we need an urgent rights-based system that will protect the fundamental respect of both women and children while empowering them.

To address these concerns, the international community adopted two landmark treaties - the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979 and the Convention on the Rights of the Child (CRC) in 1989. CEDAW establishes a comprehensive framework for women's equality because it requires states to eliminate all discrimination that affects women in political and economic and social and cultural domains while supporting projects that empower women. The CRC introduced a new framework for understanding children's rights by proving that children possess distinct rights which they can exercise without needing protection from adults. The law guarantees minors the right to live and grow up safely, while their opinions must be considered during decision-making processes.

Countries face major difficulties when they attempt to implement the conventions, which contain moral and legal strengths. The states have established reservations that weaken the fundamental requirements of these agreements, because they want to preserve their cultural, religious and political values. The treaties face domestic execution challenges because of deep-rooted patriarchal attitudes and weak institutional frameworks and insufficient knowledge, and limited resources. The international norms establish a strong basis for implementation, but their actual execution needs effective domestic measures and legal changes and ongoing court involvement.

This chapter, thus, concentrates on a critical examination of CEDAW and CRC, focusing on how they conceptualise and protect human dignity. It tests the role of national courts,

especially in countries like India, in altering international principles into enforceable rights. It also discovers the influence of monitoring bodies, global cooperation, and legislative initiatives in bridging the gap between global ideas and local realities. Ultimately, the paper argues that for safeguarding human dignity, particularly that of women and children, that demands firm legal commitments and sustained social, political, and judicial will.

HISTORICAL AND PHILOSOPHICAL FOUNDATIONS OF HUMAN DIGNITY

Human dignity has evolved over centuries, drawing from philosophical, religious, and legal traditions. In Western thought, Immanuel Kant posited that humans possess inherent worth, which claims that every individual should be treated as an end, never merely as a means to an end.¹

The philosophical knowledge established dignity as a universal human rights principle, which serves as the basis for all human rights laws. The international community responded to the destruction caused by World War II and the Holocaust by establishing legally binding human rights standards, which included human dignity as an essential element. The UDHR in 1948, alongside subsequent human rights treaties, embedded dignity as both a legal right and an ethical imperative.² International law recognises that dignity is intertwined with equality, non-discrimination, autonomy, and protection from degrading treatment. For women and children, dignity entails not only protection from violence and exploitation but also the realisation of substantive opportunities for participation, development, and self-expression.

International human rights law enforces dignity through political, social, economic, cultural and civil rights. Civil and political rights exist to protect people from unwarranted attacks which violate their right to privacy and their freedom

1 I. Kant, *Groundwork of the Metaphysics of Morals* (1785), p. 43.

2 M. Nowak, *Introduction to the International Human Rights Regime* (3rd edn, 2017), p. 56.

and their safety. The financial social and cultural rights give people access to educational and medical services and social welfare programs, thereby promoting conditions in which dignity can be fully realised.³

CEDAW and CRC, as specialised treaties, extend these general principles to address systemic inequalities affecting women and children. They recognise that formal equality (*de jure*) is insufficient unless accompanied by substantive equality (*de facto*) and societal transformation. This means that guaranteeing equal rights in law does not automatically ensure equality. CEDAW emphasises that absolute equality requires eliminating deep-rooted social, cultural, and economic barriers that prevent women from enjoying their rights on an equal basis with men. Similarly, the CRC underlines that protecting children's rights involves more than legal recognition; it demands active measures to create environments where children can grow, learn, and participate freely and safely. So, both treaties stress the need for States to move beyond symbolic commitments and to adopt concrete actions - such as policy reforms, institutional mechanisms, and public awareness initiatives - to bring about meaningful changes in the lives of women and children. Through this approach, CEDAW and CRC transform the abstract concept of equality into a lived reality, ensuring that human dignity is a legal promise and a social experience grounded in fairness and justice.

CEDAW AND THE PROTECTION OF WOMEN'S DIGNITY

Objectives and Scope of CEDAW

CEDAW requires state parties to implement all necessary actions which will eliminate discrimination against women in political, economic, social, cultural, and family life⁴. It addresses overt legal inequalities (such as discriminatory

3 S. Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (2008), p. 78.

4 CEDAW, Art. 2-16.

statutes) and covert social disadvantages (such as cultural practices restricting women's opportunities).⁵

Key provisions include:

- **Article 1:** Definition of discrimination against women.
- **Article 2:** Obligation to eliminate discrimination through legislative and other measures.
- **Article 5:** Modification of social and cultural patterns that perpetuate inequality.
- **Article 10 - 11:** Access to education and employment.
- **Article 16:** Equality in marriage and family relations.

The treaty establishes that equality functions as both a legal requirement and a fundamental human right. CEDAW enables women to participate fully in all social and political and economic activities through its mission to eliminate discriminatory systems.

Role of the CEDAW Committee and General Recommendations

The CEDAW Committee, which consists of independent experts, will monitor compliance through state reports and issue general recommendations that clarify the obligations of the treaty and provide guidance that can be interpreted.

For instance:

- **General Recommendation 19** addresses violence against women as a form of discrimination while linking it directly to dignity.⁶
- **General Recommendation 28** expands the application of the convention to rural women to highlight the intersectional vulnerabilities.⁷

5 A. Charlesworth, 'Gender and Human Rights' (2005) 6 Human Rights Law Review 99.

6 CEDAW General Recommendation 19, 1992.

7 CEDAW General Recommendation 28, 2010.

These recommendations have influenced national legislation, judicial interpretations, and policy reforms, highlighting the practical relevance of dignity in legal and social contexts.

Judicial Implementation and Case Studies

India: The Supreme Court of India has vigorously summoned ideologies aligned with CEDAW to sustain women's rights. In *Vishaka v. State of Rajasthan*,⁸ . The court established essential rules to protect workers from workplace sexual harassment. The court recognised that sexual harassment constitutes a fundamental rights violation which affects the dignity of women. The court affirmed that the state must provide safe and respectful working conditions in accordance with constitutional requirements and international treaty obligations that India has ratified.

In the case of *Gaurav Jain v. Union of India*,⁹ The Apex Court focused on the right to equal admittance to education for all children, especially girls. It stressed that educational opportunities should be available without making any discrimination and that the State must take positive steps to remove barriers that prevent girls from attending school. This decision reflects the principles laid down in Articles 10 and 11 of CEDAW, which call for equal access to education and the elimination of practices hindering women's development. Accordingly, these judgments reflect the Indian judiciary's application of the principles derived from international conventions promoting equality and dignity in practical, real-life scenarios.

South Africa: South Africa's Constitutional Court has interpreted gender equality provisions in line with the principles laid down in CEDAW. In *Minister of Home Affairs v. Fourie*,¹⁰ the court acknowledged same-sex marriage as a legal right, emphasising that dignity demands a genuine kind of equality.

8 *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

9 *Gaurav Jain v. Union of India*, (1997) 8 SCC 114; CEDAW, Arts. 10–11.

10 *Minister of Home Affairs v. Fourie*, 2005 (1) SA 524 (CC).

Latin America: Several Latin American countries, including Colombia and Mexico, have adopted domestic laws against domestic violence and gender discrimination influenced by CEDAW's recommendations.¹¹ These effective measures prove the role of the treaty in influencing policy and jurisprudence internationally.

CRC AND THE RECOGNITION OF CHILDREN'S DIGNITY

Evolution of Child Rights under International Law

Children have traditionally been viewed as dependents or property of their parents, with little acknowledgement of their individual rights. The later stage of World War II human rights regime has slowly recognised children as autonomous right bearers, in need of protection, care and participation in decisions that affect their lives.¹²

The **CRC 1989** represents the most comprehensive international treaty on children's rights. It combines protection, participation, and provision rights into a single framework, reflecting the intrinsic link between child rights and human dignity.¹³ CRC emphasises on all actions concerning children must prioritise the **child's best interests (Article 3)** and respect the child's evolving capacities.¹⁴

Key Provisions of CRC Relating to Dignity

The CRC codifies various rights that directly protect and promote dignity:

- **Article 6:** Right to survival and development ensures children to grow in environments that promote physical, mental, and social well-being.¹⁵

11 S. Bunch & C. Reilly, *Women's Rights in Latin America* (2012), p. 121.

12 J. Tobin, *Children's Rights and Human Dignity* (2010), p. 52.

13 Convention on the Rights of the Child, 1989, Art. 1–2.

14 CRC, Art. 3.

15 CRC, Art. 6.

- **Article 12:** Right to be heard recognises children as active participants in decisions affecting them, empowering them to express opinions without fear.¹⁶
- **Article 19:** Protection from all forms of violence underscores the principle that children have the right to live free from physical and psychological harm.¹⁷
- **Articles 28–29:** Right to education highlights access and the development of skills and values necessary for self-respect and dignity.

CRC's General Comments issued by the Committee on the Rights of the Child further explain how the dignity should guide the interpretation and execution of the same. For example, General Comment No. 12 demonstrates meaningful child participation, while General Comment No. 13 addresses the prevention of violence and exploitation.¹⁸

Judicial Implementation of CRC

India

Indian courts have increasingly used the principles of the CRC while deciding cases related to children. In *Sheela Barse v. Union of India*, the Supreme Court recognised the rights of children who conflict with the law (juveniles). The Court stressed that such children should be treated with dignity and given a chance for rehabilitation and reformation rather than being punished harshly. This judgment showed a change in attitude, right from treating children as offenders to viewing them as vulnerable individuals who need care, protection and guidance. It also reflected the ideas in Articles 37 and 40 of the CRC, which call for treating children with humanity by helping them learn skills and helping them to rejoin society.

Similarly, in *In Re: Children in Need of Care and Protection*, the Court reminded the government of its duty to provide children

16 CRC, Art. 12.

17 CRC, Art. 19.

18 Committee on the Rights of the Child, General Comment Nos. 12 & 13, UN Doc CRC/C/GC/12 (2009), CRC/C/GC/13 (2011).

with safe and caring surroundings. Referring to Article 3 of the CRC, the Court said that every decision about a child must keep the “best interests of the child” in mind. The judgment also pointed out that protecting children’s rights is about following laws and genuinely giving them education, emotional support, and a sense of security. Though in practice, education is not a part of it. It should also be considered. The Supreme Court of India brought international child rights standards into India’s legal and constitutional system.

The same approach was seen in later cases, like In *Bachpan Bachao Andolan v. Union of India*,¹⁹ The Supreme Court applied CRC principles to uphold the protection against child labour and trafficking. The Court asked the government to take strong steps to rehabilitate, rescue and educate the affected children. Likewise, in *Gaurav Jain v. Union of India*,²⁰ the Court pressed the rights of children of sex workers, saying that they deserve the same respect, education, and opportunities as other children do, as there should not be any discrimination. These decisions show that Indian courts are not just relying on the CRC as an international treaty but are actually implementing it to give more meaning to the fundamental rights of children under the Constitution. The judiciary has therefore played a key role in ensuring that the principles of dignity, equality and justice for children are a part of everyday legal practice in India.

International Examples

- In *African Committee of Experts on the Rights and Welfare of the Child v. Tanzania*,²¹ The court held that failure to protect children from forced labour violated their inherent dignity.

19 *Bachpan Bachao Andolan v. Union of India*, (2011) 5 SCC 1.

20 *Gaurav Jain v. Union of India*, (1997) 8 SCC 114.

21 *African Committee of Experts on the Rights and Welfare of the Child v. Tanzania*, Communication No. 002/2006 (2010).

- European jurisdictions have used CRC as a guiding framework in family law and juvenile justice, reinforcing children's rights to participation and protection.²²

COMPARATIVE ANALYSIS: DIGNITY IN CEDAW AND CRC

CEDAW and CRC share a common commitment to **human dignity**, yet they focus on distinct vulnerabilities and operational strategies.

Commonalities

1. **Equality and Non-discrimination:** Both conventions demand that states eliminate discriminatory practices based on gender (CEDAW) or age/status (CRC)²³.
2. **Autonomy and Participation:** Both frameworks recognise agency — women in social and political life, children in decisions affecting their development²⁴
3. **Protection from Violence:** Violence against women and children is explicitly recognised as a violation of dignity and a barrier to rights realisation.²⁵

Divergences

1. **Target Groups:** CEDAW addresses structural inequalities experienced by women; CRC targets vulnerabilities specific to children.
2. **Legal Mechanisms:** CEDAW relies heavily on legislative reforms and gender-sensitive policies; CRC emphasises institutional care, education, and participatory rights.²⁶
3. **Social vs. Legal Focus:** CEDAW often challenges entrenched cultural norms and discriminatory social

22 European Court of Human Rights, *Neulinger v. Switzerland*, App No 41615/07, 2010.

23 S. Fredman, *Discrimination and Human Rights* (2011), p. 89.

24 CEDAW, Art. 7; CRC, Art. 12.

25 CEDAW, General Recommendation 19; CRC, Art. 19.

26 D. Tripp, *Women and Children in International Law* (2013), p. 112.

practices; CRC focuses more on children's physical, developmental, and psychological well-being.

Domestic Implementation

Domestic legal systems are crucial in amalgamating international treaties and conventions with local practices at the domestic level. While some countries, such as India and South Africa, integrate CEDAW and CRC principles into constitutional and statutory law, others face challenges as they follow customary laws, plural legal systems, and as they resist towards the social reforms.²⁷

IMPLEMENTATION GAPS AND CHALLENGES

Besides, the clarity has been provided by the principles laid down in CEDAW and CRC, the crucial gaps still persist between formal responsibilities and practical implications.

RESERVATIONS AND DOMESTIC RESISTANCE

Many states still set aside the key provisions of the treaties, citing reasons like barriers in cultural and religious practices or legal conflicts. For example, some countries have limited Article 16 of CEDAW (marriage equality) due to religious law conflicts.²⁸ Such reservations weaken the implication and global applicability of dignity and hinder protective mechanisms.

CULTURAL RELATIVISM

Cultural norms followed at the domestic level may clash with universal standards laid down in the international conventions or treaties. Practices such as dowry, child marriage, gender-based restrictions in education or female genital mutilation contradict with the obligations that are mentioned in the treaties. Courts and policymakers must guide in regard to these tensions while upholding and applying the core principle of dignity.²⁹

27 A. Kapoor, *CEDAW and CRC in Domestic Law: Comparative Perspectives* (2015), p. 75.

28 CEDAW Committee, Report of State Parties with Reservations (India, 1997).

29 R. Smith, *Textbook on International Human Rights* (2014), p. 221.

INSTITUTIONAL WEAKNESSES

Lack of trained personnel, weak governance, and insufficient monitoring mechanisms at the domestic level and the central level obstruct the effective implementation of the principles of the treaties. Inadequate coordination between national agencies and local authorities worsens these gaps.³⁰

RESOURCE LIMITATIONS

In many developing countries, lack of financial and infrastructure resources plays a vital role in limiting access to basic necessities like health care, education, and legal support, undermining the realisation of dignity.³¹

POLITICAL AND SOCIAL BARRIERS

The rights of children and women are systematically denied, mainly due to the resistance from the political groups, patriarchal structures, and the deep-rooted societal attitudes, and this is how the reform is hindered despite international obligations.³²

JUDICIAL TRENDS AND ACTIVISM

Judiciary follows a proactive approach known as judicial activism to unite international human rights norms with national legal frameworks. Through interpreting constitutional and statutory provisions in a progressive manner, the courts assure that the guiding principles and objectives of the conventions like CEDAW and CRC are combined into the domestic jurisprudence even when there is an absence of explicit laws in this regard.

Through weaving the principles of CEDAW and CRC, the judges have enlarged the ambit of fundamental rights to include international human rights. This expanded interpretation enhances the protection of women and children

30 UNICEF, *State of the World's Children 2019*, p. 34.

31 CRC Committee, *Implementation Challenges Report, 2015*, UN Doc CRC/C/OPSC/2015.

32 K. Jayasuriya, *Social Barriers to Human Rights Enforcement* (2012), p. 48.

and empowers the courts to confront emerging issues of discrimination, violence and exploitation. In total, judicial activism amalgamates the moral authority of international law and enforceable national legal obligations.

INDIA

The Indian judiciary has increasingly relied on the principles of human dignity enshrined in CEDAW and CRC.

1. **Women's Rights:** In *Vishaka v. State of Rajasthan*, the Supreme Court drew upon CEDAW principles to establish guidelines for preventing sexual harassment at the workplace, recognising harassment as a violation of women's dignity.³³ Similarly, in *Daniel Latifi v. Union of India*,³⁴ the Court interpreted personal laws to ensure that Muslim women have equal rights in maintenance after divorce, reflecting CEDAW's objective of substantive equality.
2. **Children's Rights:** The *Sheela Barse* case³⁵ and subsequent cases, such as *Centre for Child Rights v. Union of India*,³⁶ have invoked CRC principles to protect children from the abuse, neglect, and the exploitation. The judiciary has emphasised rehabilitation and education over punitive approaches for juveniles, highlighting the link between dignity, development, and protection.

International Examples

Judicial activism is not limited to India alone. Courts globally have increasingly referred to CEDAW and CRC in domestic rulings of other countries:

- **South Africa:** In *Minister of Home Affairs v. Fourie*,³⁷ The Constitutional Court recognised same-sex marriage, linking dignity with equality and non-discrimination.

33 *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

34 *Daniel Latifi v. Union of India*, AIR 2001 SC 3958.

35 *Sheela Barse v. Union of India*, AIR 1986 SC 1773.

36 *Centre for Child Rights v. Union of India*, AIR 2002 SC 1280.

37 *Minister of Home Affairs v. Fourie*, 2005 (1) SA 524 (CC).

- **Latin America:** Courts in Colombia and Mexico have applied CEDAW recommendations to strengthen domestic laws against domestic violence and gender discrimination.³⁸
- **Africa:** The African Court on Human and Peoples' Rights has consistently emphasised dignity as a guiding principle in cases involving child labour and women's rights.³⁹

These instances highlight the crucial role judicial interpretation in the practical realisation of dignity, demonstrating how courts convert the abstract principles into enforceable entitlements.

BRIDGING THE GAP: STRATEGIES FOR EFFECTIVE REALISATION

Regardless of the wide legal framework provided by CEDAW and CRC, determined gaps make it necessary to frame multidimensional strategies for the effective accomplishment.

Legal Reforms

- **Harmonisation of Domestic Law:** The nations must amend and review the laws passed or in existence to see that they do not conflict with the global obligations. For instance, the reservations made under Article 16 of CEDAW must be revisited and re-examined to secure marriage and family law equality.⁴⁰
- **Codification of Committee Recommendations:** codifying the General Recommendations and Comments into domestic or local statutes offer precise direction on how to apply international principles to authorities.⁴¹

Institutional Strengthening

- Mandate autonomous monitoring bodies to track the progress and applicability of women's and children's rights.

38 S. Bunch & C. Reilly, *Women's Rights in Latin America* (2012), p. 121.

39 African Court on Human and Peoples' Rights, *African Committee of Experts v. Tanzania*, Communication No. 002/2006 (2010).

40 CEDAW Committee, *State Party Reports with Reservations*, India, 1997.

41 CEDAW General Recommendations 19, 28; CRC General Comments 12, 13.

- Provide specialised training to deliver a comprehensive training program for the police, social workers, judiciary and administrative personnel on the principles and applicability of dignity-based methodologies.

Awareness and Education

- Initiate awareness campaigns addressing cultural practices that violate human dignity. Undermine dignity, like domestic violence, child marriage, and unequal access to education. These initiatives should focus on educating the public about the detrimental effects of these traditions practised on children and women, causing a harmful impact on them.
- The initiatives may include community dialogues, media outreach, educational programs, etc, to shift the mindset. Through spreading awareness of respect, human rights, equality, the communities may be encouraged gradually to abandon the traditional practices that violate or undermine the dignity of the children and women and embrace the values rooted in justice, empowerment and protection.
- Incorporate gender and child rights education into school curricula to foster respect for dignity from an early age. This would enable the children to grasp the concepts of equality, respect and empathy as a part of their learning process. Learning about gender sensitivity and child rights at school can motivate young minds to question stereotypes, accept differences and appreciate the concept of fairness in their dealings. When children learn these values from a young age, they will be able to grow up with a better understanding of human dignity and help create respectful community in the years to come.

International Cooperation and Monitoring

- States should actively participate in periodic reporting to the CEDAW and CRC Committees and implement their recommendations.

- Regional and international bodies can facilitate knowledge exchange and best practices for dignity-based legal enforcement.
- **E. Technology and Data-Driven Implementation**
- Leverage Technology for monitoring compliance, reporting violations, and ensuring accountability.⁴²
- Data collection on gender-based violence, child labour, and access to education can guide policy and enforcement.⁴³

CONCLUDING REMARKS

This Chapter examines how CEDAW and CRC complement each other in protecting the dignity of women and children, who are often faced with severe disadvantages. Both these international treaties are built on the belief that every person, regardless of gender or age, deserves to live with respect, equality, and freedom from discrimination or abuse.

Be it, political, economic, social, and cultural, CEDAW aims to eliminate systemic gender discrimination and promote women's empowerment across all aspects of life. It urges the governments to not only enact laws that uphold gender equality but also to assure that women's access to justice and their participation in a meaningful way in decision-making processes. CEDAW guides the countries, as a roadmap or guideline, towards achieving the right equality between men and women by bringing in the changes in legislation, policies, and social attitudes.

On the other hand, the CRC identifies that children are not just passive recipients of protection and care, but they are independent rights holders. It highlights their right to protection, participation, survival and development. This ensures that every child is given a fair opportunity to express their views, have their opinions be considered and be raised

42 See *United Nations Human Rights Council*, "The Role of Digital Technologies in the Promotion and Protection of Human Rights," A/HRC/44/24 (2020)

43 *UNICEF*, "Data Must Speak: Using Data to Drive Progress for Children," (2022)

in an environment and surroundings which fosters their complete physical, emotional and intellectual growth.

The Supreme Court of India has drawn upon the principles laid down in CEDAW and CRC to enhance the protection of children and women. Its judicial decisions have highlighted justice, equality, particularly in the examples where local laws were silent or not sufficient. This shows the significant impact these international treaties and conventions have on the national legal interpretations internationally. The critical function of judicial activism, as shown by legal interventions across Latin America and South Africa, is to leverage international commitments into binding legal obligations.

Similar judicial interventions have been seen in South Africa and across parts of Latin America, where courts have relied on these international principles to expand human rights protections. The judicial system uses activist judges to create international standards that protect human rights. The established precedents demonstrate how judges transform international treaties into fundamental rights that people can legally enforce.

The current technological progress in the field still encounters problems. Progress suffers from deep-seated cultural traditions and ineffective institutional systems together with public unawareness and governmental opposition. Countries need to perform actual implementation of treaties instead of merely showing their commitment through ratification to achieve treaty objectives. They must invest in systems which provide stronger legal protections and systems which ensure effective law enforcement and education programs and awareness programs and international partnerships which enable them to exchange best practices while monitoring their compliance.

The CEDAW and CRC conventions enable the implementation of human rights by protecting human dignity in all cultural contexts. Human rights become actual human rights through the application of these conventions, which transform rights declarations into active rights protection. The dignity of

children and women serves as the fundamental element that creates an equal and just society that leads to peaceful social relations. The benchmark of national progress depends on the health and safety of all women and children. The claim of having established an empathetic and all-inclusive society exists when every person experiences equal treatment and freedom and honour from others.

Towards Safer Workplaces: Policies and Measures to Prevent Sexual Harassment

Dr. Aswathi Sukumaran & Lakshmy S

ABSTRACT

Sexual harassment at work is still a big problem in today's workplaces, even though there have been many changes in the law, institutions, and society over the years. Modern factors like more women working, new technologies, and globalization have made the problem more complicated. Harassment at work now happens not only in physical offices but also more and more on virtual platforms like social media, digital communication, and remote work systems. This makes it harder to find and regulate. International treaties, like those set up by the International Labour Organization, and national laws, like India's Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act 2013, are both part of the growing body of law. However, effective enforcement is made harder by strong cultural stereotypes, fear of retaliation, poor compliance with rules, and not reporting enough. The #MeToo movement was one of the most well-known events that brought attention to the widespread sexual misconduct that happens in all fields. It showed how important it is to create safe, welcoming, and gender-sensitive workplaces. This Chapter emphasizes a significant analysis of the Act, scrutinizing the deficiencies in current legislation and offering recommendations for their rectification.

Keywords: POSH Act, Sexual Harassment, Workplace, Gender Equality, Basic Rights..

INTRODUCTION

The modern workplace, which is a key part of social and economic progress, is also a place where gender differences often show up in a big way, with sexual harassment being the worst example. This behaviour is not just wrong on an individual level; it shows a systemic failure that threatens the basic rights to equality, dignity, and a safe workplace. The enactment of the POSH Act, 2013, represented a significant milestone in Indian jurisprudence, transforming the aspirational guidelines of the Vishakha Judgment into binding legislative mandates. However, more than ten years after it was passed, there is still a big gap between the law's lofty goals and the real-life situations that many women face. This paper asserts that although the POSH Act provides a fundamental framework, it is impeded by significant legal, procedural, and cultural shortcomings that undermine its efficacy. This research will thoroughly analyze these deficiencies, including ambiguous definitions, discriminatory regulations, procedural complexities, and inadequate inclusivity, and will propose concrete, actionable strategies to align legislative objectives with transformative, safer workplace outcomes.

INDIAN LEGAL MECHANISM ON SEXUAL HARASSMENT AT WORKPLACE

Indian women are becoming increasingly conscious of their constitutional and statutory rights.¹ This consciousness has awakened in them a sense of urgency in expressing equality and social justice.² Until 2013, there was no legal remedy for sexual harassment in the workplace in India.³ Instead, victims might seek redress under the Indian Penal Code under more general provisions for sexual offences, such as Sections 354 and 509. The primary foundation for prevention and reparation was established by the Supreme Court in 1997 with the *Vishaka*

1 G.S. Sharma & Anil Kumar Tandi, *Law Relating to Women and Children* 6 (Asian Law House, 1st edn., 2015).

2 *Ibid.*

3 Anjali Kant, *Law Relating to Women and Children* 181 (Central Law Publications, 4th edn., 2020).

Guidelines, which required employers to establish internal procedures. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, replaced these court-derived rules, which were based on a landmark case and international treaties.⁴

RELEVANCE OF POSH ACT

After a long call for legislation for the prevention of sexual harassment in the workplace, in the year 2013, the POSH Act came into existence⁵. In order to protect women from sexual harassment in the workplace and to guarantee that complaints are addressed, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was passed. The Act was created in response to the realisation that sexual harassment violates several fundamental rights protected by the Indian Constitution, such as the right to equality (Articles 14 and 15), the right to a dignified life (Article 21), and the right to a safe workplace.⁶

In order to understand the legal mechanism provided for the prevention of sexual harassment of women at workplace, first we should know the meaning of the terms 'sexual harassment' and 'workplace'. The Act⁷ defines both these terms. Section 2(n) of the POSH Act 2013⁸ defines the term 'sexual harassment' as it includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely: -

4 Ajay Singh Solanki, "India's Workplace Harassment Law: A Decade On", International Bar Association, available at: <https://www.ibanet.org/india-decade-of-posh-act> (last visited Sept. 25, 2025).

5 Devi Prasad Singh, *Law and Life* 109 (Universal Law Publishing, 1st edn., 2016).

6 India Law, "Addressing Sexual Harassment at Workplace", available at: <https://www.indialaw.in/blog/civil/addressing-sexual-harassment-work/> (last visited Sept. 25, 2025).

7 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14 of 2013 (India).

8 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14 of 2013, s.s. 2(n) (India).

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

The definition starts with the term “including,” and as a result, it is indicative rather than exhaustive. The interpretations are contingent upon the circumstances surrounding each incident, the relationship between the parties involved, and their heritage.

The sexual harassment can take on any of the following forms:

1. Physical - Any inappropriate physical contact with a woman
2. Verbal - A comment that is sexually suggestive and unpleasant
3. Uncomfortable nonverbal communication - An action, gesture, or appearance that is sexually objectionable to a woman
4. Cyber - Any sexually motivated communication through electronic media, such as an email, WhatsApp message, SMS, audio, video, or behaviour with a sexual undertone during virtual meetings or interactions.⁹

The Act also explains who an aggrieved woman is. Any woman of any age, whether employed or otherwise, who faces sexual harassment at the workplace is an aggrieved woman.¹⁰ The definition also includes women working in dwelling houses. The definition is broad enough to include any women. Another unique feature is that it includes non-employees. Eg: Clients, visitors etc.

⁹ Deepa Rafeeqe, *Prevention of Sexual Harassment of Women at Workplace* 28 (Notion Press, 2023).

¹⁰ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14 of 2013, ss. 2(a) (India).

It encompasses (i) any department, organization, undertaking, establishment, enterprise, institution, office, branch, or unit that is established, owned, controlled, or predominantly financed by funds provided directly or indirectly by the relevant Government, local authority, Government company, corporation, or cooperative society; (ii) any private sector organization or private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit, or service provider engaged in commercial, professional, vocational, educational, entertainment, industrial, health services, or financial activities, including production, supply, sale, distribution, or service (iv) any sports institution, stadium, sports complex, or venue for competitions or games, regardless of residential status, utilized for training or related activities; (v) any location frequented by the employee in connection with their employment, including transportation provided by the employer for such travel; (vi) a residence or dwelling.

Sexual harassment can be taken place while working from home through the online platforms. The definition of workplace is wide enough to include it. And section 2 (o) ¹¹defines the term 'workplace'. It encompasses (i) any department, organization, undertaking, establishment, enterprise, institution, office, branch, or unit that is established, owned, controlled, or predominantly financed by funds provided directly or indirectly by the relevant Government, local authority, Government company, corporation, or cooperative society; (ii) any private sector organization or private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit, or service provider engaged in commercial, professional, vocational, educational, entertainment, industrial, health services, or financial activities, including production, supply, sale, distribution, or service (iv) any sports institution, stadium, sports complex, or venue for

11 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14 of 2013, ss. 2(o) (India).

competitions or games, regardless of residential status, utilized for training or related activities; (v) any location frequented by the employee in connection with their employment, including transportation provided by the employer for such travel; (vi) a residence or dwelling. Sexual harassment can be taken place while working from home through the online platforms. The definition of workplace is wide enough to include it.

Also, the Act is applicable to unorganised sector. Section 2 (p)¹² of the Act defines the term 'unorganised sector'. An unorganised sector in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.¹³

PROHIBITION OF SEXUAL HARASSMENT

The POSH Act is designed to prevent and prohibit sexual harassment at workplace. While the POSH Act mandates that employers report on the number of cases filed and disposed of in their annual report, its implementation will be overseen by both the Central and state governments. The central government will be responsible for its own undertakings and establishments, while the states will be responsible for every workplace that is owned, controlled, or partially or fully financed by the federal government or by private sector entities located within their borders. Organizations that don't write Annual Reports would give this information to the District Officer. With this system in place, it is up to each employer to follow the law in their own firm. The central and state governments are in charge of making sure that everyone follows the law. Governments are also in charge of keeping track of information on how the law is being carried out. The

12 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14 of 2013, ss. 2(p) (India).

13 *Ibid*, ss. 2(p).

Act would set up a complicated system for reporting and checks and balances, which is what will make the Law work.¹⁴

INTERNAL COMPLAINTS COMMITTEE

An Internal complaints Committee (ICC) is a mandatory in-house body established under the POSH Act, 2013, that every employer is required to form to investigate and resolve allegations of sexual harassment in the workplace. The Internal Complaints Committee is responsible for establishing a secure environment by accepting grievances from affected women, conducting investigations, suggesting disciplinary measures such as transfer, leave, or termination, and compiling annual reports for the employer. The committee shall comprise a minimum of two members, be led by women, and include at least one representative from a non-governmental organization or association dedicated to women's issues. The Internal Committees will be made up of members who will be nominated by the employer, specifically as follows:

- A Presiding Officer, who will be a woman holding a senior position within the workplace, selected from among the employees.
- At least two Members from among the employees, ideally those who are passionate about women's issues, have experience in social work, or possess legal knowledge;
- A representative from non-governmental organizations or associations dedicated to women's causes, or an individual knowledgeable about issues surrounding sexual harassment.
- At least half of the total Members should be women.

Local Complaints Committee

The Local Complaints Committee is a district-level committee that is responsible for the resolution of sexual harassment grievances from workplaces with fewer than ten employees,

14 Apoorva Mishra, *POSH: Stand Up Speak Out 26* (Books Clinic Publishing, 1st edn., 2022).

the unorganized sector, and complaints against the employer. This ensures that women in these situations have a redressal mechanism for workplace misconduct. The local complaints committee is established by the District Officer and is tasked with the responsibility of receiving, investigating, and conveying these complaints to guarantee women's rights.¹⁵

A District Magistrate, Additional District Magistrate, Collector, or Deputy Collector shall be notified as a "District Officer". The responsibilities of the LCC are identical to those of an ICC. Upon the submission of sexual harassment complaint, the LCC members are obligated to investigate. Additionally, it is required to generate an official final report that recommends the provision of assistance to the penalties for the employer and the victim, which is a woman. As a last step, the LCC must compile an annual report detailing its operations. This report is evaluated using a range of criteria, such as the total number of complaints received and resolved, the number of cases that are unresolved for more than 90 days, and the quantity of workshops and programs organized to promote awareness regarding sexual harassment.¹⁶

Complaint

A complaint in writing can be filed by any woman who is the aggrieved, with the Internal Committee of her workplace if there are 10 or more employees, or with the Local Committee at the district level if the workplace has fewer employees or no internal committee. Complaints may be submitted on behalf of the aggrieved women by relatives, friends, coworkers, union members, or, in specific circumstances, other individuals with knowledge of the incident (written consent required) if the woman is incapacitated physically or mentally, or if she

15 Keka Academy, "What is POSH?", available at: <https://academy.keka.com/blog/what-is-posh/> (last visited Sept. 29, 2025).

16 Swaraj Choudhary, "Redefining the Role of Local Complaints Committees", 1(3) *International Journal of Policy Sciences and Law* 1658 (2021).

is deceased.¹⁷ Three months' time limit is there to file written complaint. A complaint can be submitted after three months but to be filed with the reasons for omission in writing.

Provision for conciliation is there in the Act. Section 10 of the POSH Act says that the person who made the complaint can choose to try to work things out before a formal POSH inquiry. This is an optional action that the committees cannot take on its own or at the request of the respondent.¹⁸ Conciliation does not allow for monetary settlements. The committee records the settlement and throws away the complaint if all sides agree and settle the issue peacefully. But some people have said bad things about this portion because it is possible that the complainant was forced to settle.

The Central Government has suggested an amendment that would get rid of the conciliation process in favour of a more effective and open official mechanism for resolving issues. If mediation does not work, the ICC/IC moves on to a full investigation.¹⁹ And in the case if conciliation does not work, the internal Committee will start the probe under POSH as outlined in section 11 of the POSH Act 2013. After completion of inquiry, a report should be prepared and submitted.

SHE Box Portal

The SHe-Box portal is directly linked to the enforcement of the POSH Act, 2013, serving as the official platform for lodging workplace sexual harassment complaints under this legislation. The Ministry of Women and Child Development established SHe-Box to enable the reporting, monitoring, and resolution of complaints in accordance with the terms of the POSH Act for

17 Bhakra Beas Management Board, "Internal Complaint Committee", available at: <https://bbmb.gov.in/Internal-Complaint-Committee.htm> (last visited Sept. 27, 2025).

18 ComplyKaro, "Understanding POSH Complaints Process in Workplace", available at: <https://complykaro.com/understanding-posh-complaints-process-in-workplace/> (last visited Sept. 27, 2025).

19 *Ibid*

all women, regardless of their employment in public or private sectors, or organized or unorganized workplaces.²⁰

Transition of BNS

Also, Section 79 updates the law's response to stalking by including digital forms of harassment. It also recognizes that workplace abuse is changing in remote and online settings. In general, these clauses show that the government is very serious about making workplaces in India safer and fairer. The law is only for women and doesn't take complaints from LGBTQ+ employees into account. People in this community also need support right now.

Many organizations, especially in the private and unorganized sectors, don't set up ICCs or follow the right steps, which leads to a lot of non-compliance. The credibility and fairness of inquiries suffer when ICCs are not set up correctly, such as when there are no outside legal or NGO representatives and not enough gender balance. A lack of awareness and sensitization programs leads to underreporting, with fear of retaliation, shame, and a lack of faith in redressal mechanisms being major reasons. The Act does not cover informal sectors well enough, and it still does not do enough to stop sexual harassment by third parties or in non-traditional work settings. Reports from the Supreme Court and field studies consistently emphasize insufficient enforcement, inadequate penalties for non-compliance, and the necessity for enhanced specialized legal training for ICC members.

Sexual Harassment at Workplace: Cross Jurisdictional Analysis

One of the important reasons, inter alia given for the acceptance and the commission of the offence against women is economic independence.²¹ Now, as women try to fight economic disparity

20 Manorama Yearbook, "POSH Act & She-Box Portal", available at: <https://www.manoramayearbook.in/current-affairs/india/2024/12/05/posh-act-she-box-portal.html> (last visited Sept. 27, 2025).

21 Mamta Rao, *Law Relating to Women and Children* 213 (EBC Publications, 4th edn., reprint 2019).

with men, new form of crime emerges sexual harassment at the workplace.²² the offence is the most glaring example of human rights violations, gender inequality and injustice. Economic independence is often cited as a contributing factor to the acceptance and committing of crimes against women. As women strive to address economic disparities, a new type of workplace crime has emerged: sexual harassment. The Offence is the most obvious example of human rights violations, gender inequality, and injustice.

United Kingdom

The Equality Act 2010 is the primary anti-discrimination legislation in the United Kingdom, amalgamating and modernizing over 100 antecedent statutes into a unified legal framework. It safeguards individuals against discrimination, harassment, and persecution based on certain “protected characteristics” including age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation. The Act pertains to sectors such as employment, public services, and education, mandating companies to implement reasonable accommodations for those with disabilities.

The Equality Act of 2010 made sexual harassment unlawful in the UK, and the Worker Protection Act of 2023 gave employers a proactive obligation to stop it on October 26, 2024. Employers may now face up to 25% more in tribunal compensation if they fail to take “reasonable steps” to avoid sexual harassment, both by employees and outside parties like clients. Unwanted sexual behaviour that degrades someone’s dignity or fosters a hostile environment is a sign of sexual harassment; examples include physical contact, the presentation of pornographic material, and sexual jokes and remarks.²³

22 *Ibid.*

23 Reed Smith, “New Duty to Prevent Sexual Harassment: 12 Things UK Employers Need to Know”, available at: <https://www.employmentlawwatch.com/2024/10/articles/employment-uk/new-duty-to-prevent-sexual-harassment-12-things-uk-employers-need-to-know/> (last visited Sept. 26, 2025).

The Equality Act 2010 (applicable in England, Wales, and Scotland) delineates sexual harassment as undesired sexual behaviour that seeks to or culminates in the infringement of an individual's dignity or the creation of an intimidating, hostile, humiliating, or degrading atmosphere.²⁴ The Worker Protection Act 2023, an update to the Equality Act 2010, imposes a legal obligation on companies to avert sexual harassment in the workplace. The Equality and Human Rights Commission has issued recommendations regarding the activities employers ought to undertake. This proactive obligation pertains to safeguarding employees against harassment by external parties, including patients.²⁵

All individuals in Britain are safeguarded by the Equality Act. The Act delineates the protected traits as: age disability, gender transition, matrimony and civil union, Gestation and motherhood, ethnicity faith or conviction and sexual orientation.²⁶ The Act prohibits direct and indirect discrimination, along with harassment and victimization. It prohibits discrimination based on an individual's disability and mandates the provision of appropriate accommodations for handicapped persons. The Act applies to various circumstances, including employment, education, and the delivery of services and public responsibilities. Public authorities must comply with a Public Sector Equality Duty. The Duty mandates that they consider equality concerns while executing their responsibilities.²⁷

24 BMA, "Sexual Misconduct at Work", available at: <https://www.bma.org.uk/advice-and-support/equality-and-diversity-guidance/gender-equality-in-medicine/sexual-misconduct-at-work> (last visited Sept. 26, 2025).

25 *Ibid.*

26 Equality and Human Rights Commission, "Equality Act 2010", available at: <https://www.equalityhumanrights.com/equality/equality-act-2010> (last visited Sept. 27, 2025).

27 House of Commons Library, available at: <https://commonslibrary.parliament.uk/research-briefings/cbp-9448/> (last visited Oct. 15, 2025).

United States

In the United States, federal legislation forbids sexual harassment in the workplace pursuant to Title VII of the Civil Rights Act of 1964, which is enforced by the U.S. Equal Employment Opportunity Commission (EEOC). Sexual harassment constitutes a type of sex discrimination, encompassing unsolicited sexual propositions, demands for favours, or other verbal or physical behaviours of a sexual nature that foster a hostile work environment or lead to adverse job outcomes. This legislation typically pertains to firms with 15 or more employees, and individuals of any gender may be victims, as harassment can be inflicted by anyone, irrespective of sex or sexual orientation.

Since the mid-1970s, US labour law has seen sexual harassment at work as a type of discrimination based on sex. The law in the United States recognizes two types of sexual harassment: *quid pro quo* sexual harassment (when an employee has to put up with sexual harassment to keep their job, get a benefit, or avoid punishment) and behaviour that makes the workplace hostile.

Both Indian and US laws make sexual harassment at work illegal, although they do it in different ways and with different levels of enforcement. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) in India is gender-specific and focuses on stopping and fixing the problem. It requires firms to set up Internal Committees to handle complaints. Title VII of the Civil Rights Act of 1964 makes it illegal for the US to discriminate against anyone based on their sex, including sexual harassment. This law applies to both men and women.

The statutory framework, obligations of employers, mechanisms for complaint and redress, and the extent of protection vary significantly among the United States, the United Kingdom, and India with respect to sexual harassment laws in the workplace. The development of each country's approach has been influenced by its legal history and policy priorities. The UK has recently moved to a more proactive, preventive

approach that puts clear, forward-thinking responsibilities on employers. The employer's quick response to complaints and the role of the harasser are both important for US law to be enforced. Liability depends on what the employer does. The POSH Act of India is different from other laws because it has clear legal requirements for training and redressal, requires internal complaints committees, and is only for women. Right now, the laws in the UK and US do not favour either gender, but India's law only protects women. These differences affect how cases are reported, stopped, and fixed in real life.

Judicial Interpretation and Pronouncements

India did not have any legislation about sexual harassment in the workplace until 1997. Women might submit complaints under Sections 354²⁸ and 509²⁹, which prohibit assault or conduct that "outrage a woman's modesty," but these laws were not clear. The authorities were the only ones who could decide what "outraging modesty" meant, which meant that victims didn't get enough or consistent protection. One of the most essential sections of the Indian Constitution is that it says that discrimination based on gender is not allowed. The Constitution strongly supports the principle of gender equality. In the important case of *Vishaka v. State of Rajasthan*³⁰, the Supreme Court of India said for the first time that sexual harassment at work constituted a crime. The Court made it plain what the rules were and urged the Union of India to establish a law to stop sexual harassment at work. The POSH Act and the POSH Rules came out 16 years after the Vishaka Judgment, which is amusing. The Vishaka Judgment set out rules that required every employer to have a way to deal with complaints of sexual harassment at work. These rules were followed by employers until the POSH Act was passed.

The case started in 1992, and the brutal gang rape revealed how unsafe it is for women who work and how crucial it is to keep them safe. This event sparked the rise of women's rights

28 Indian Penal Code, No. 45 of 1860, ss.354 (India).

29 Indian Penal Code, No. 45 of 1860, ss.509 (India).

30 *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

campaigners. The Court made a historic decision by admitting that there was an obvious legal error and reaffirming that sexual harassment at work is a violation of human rights. The Court issued the Guidelines because India had to follow CEDAW³¹ and Article 32 of the Constitution. These norms had to be followed by both the public and commercial sectors until a formal legislative framework was put in place.

The Vishaka verdict defines sexual harassment as any unlawful conduct of a sexual nature, regardless of its explicitness or subtlety. This encompasses making sexual propositions, soliciting sexual favours, uttering sexual remarks, displaying pornographic content, and engaging in other inappropriate physical, verbal, or non-verbal conduct.

Sexual harassment in the workplace encompasses any conduct that induces feelings of embarrassment or jeopardizes an individual's health and safety, irrespective of their occupation or industry. Discrimination transpires when a woman perceives that resisting such conduct will endanger her job opportunities or foster a hostile workplace, particularly if her refusal or objection results in adverse repercussions.

POST VISHAKA JUDGMENTS

Apparel Export Promotion Council v. A.K Chopra³²

The Vishaka verdict ignited extensive national discourse regarding workplace sexual harassment, a subject that had hitherto received limited attention. The judicial precedent was significantly reinforced as the Supreme Court affirmed the dismissal of a superior officer who was determined to have sexually harassed a subordinate. This significantly broadened the scope of sexual harassment. The decision was reached that physical touch is not an essential component of the violation. The infraction includes any unsolicited sexual advances, solicitations for favours, or any verbal or physical conduct with sexual implications. This conduct, whether explicit or implicit, constitutes sexual harassment, especially where it jeopardizes

31 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979.

32 *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759.

the victim's job, significantly impairs work performance, or fosters a hostile or intimidating work environment.

Suman Dhanda v. Kurukshetra University, Kurukshetra and others³³

We are established these rules and guidelines for all workplaces and other institutions to follow, as there are currently no laws in place to ensure that the fundamental human right to gender equality and protection from sexual harassment and abuse is enforced, particularly in the workplace. This measure is implemented to safeguard the fundamental liberties enumerated in Article 32 of the Constitution. It is crucial to recognize that this will be interpreted as the law established by this Court in accordance with Article 141 of the Constitution.

Railway Board v. Chandrima Das³⁴

This case demonstrates that when government employees physically harm women, it is an assault on their dignity and a breach of their entitlement to respectful treatment. Because the victim in this instance was a citizen of Bangladesh, the Supreme Court ruled that non-citizens are entitled to the rights and protections of Article 21.

Medha Kotwal Lele & Ors. v. Union of India & Ors³⁵

Following the Vishaka ruling, Dr. Medha Kotwal of Aalochana wrote to the Supreme Court, expressing concern that the rules were not being followed correctly. The letter included numerous particular incidents of sexual harassment. The Court converted this letter into a writ petition and took on a supervisory role, directing state governments to submit affidavits explaining how they were carrying out the directives. The Court's ruling said unequivocally that implementation must be more than simply formal; it must also be substantial and principled in order to create a truly safe and secure workplace where

33 CWP No. 10782 of 2014.

34 *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 311.

35 *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490

women can work with dignity. The Court was dissatisfied with the development and advised governments to establish proper mechanisms for effective enforcement. It also said that if persons were hurt and did not follow the guidelines, they might seek assistance from their respective High Courts.

Dr. Punita K. Sondhi vs. Bharat Sanchar Nigam Limited³⁶

A BSNL employee's boss sexually harassed her. The internal complaints committee deemed the accused guilty, and the Supreme Court agreed, punishing the culprit harshly. The case demonstrated how effectively internal complaints committees may handle charges of harassment. The verdict demonstrated the courts' support for internal systems and emphasized the need of adhering to existing rules.

Farah Deeba Abdul Moin v. Union of India³⁷

Farah Deeba, an employee of the National Commission for Women, has lodged an official complaint against a colleague, alleging sexual harassment. The court stated that the internal committee failed to adhere to the principles of procedural fairness, rendering its decisions illegitimate. Consequently, the judges mandated a new investigation to ensure the process was equitable and devoid of bias. The case demonstrated the significance of the IC ensuring procedural fairness and conducting investigations impartially. The outcome demonstrated the significance of adhering rigorously to legal regulations and addressing grievances equitably.

CONCLUSION AND SUGGESTIONS

This research analysis reveals several critical issues in the framework for addressing workplace sexual harassment, including administrative inefficiencies, procedural inadequacies, jurisdictional ambiguities, violations of natural justice, ambiguous institutional liability, and intrinsic shortcomings in the POSH Act. The study recognizes its limitations, including both self-imposed constraints and

36 W.P.(C) No. 367/2009.

37 Original Application No. 330/00377/2018, decided on May 15, 2018.

those imposed by the research context. In response to these results, the next section outlines practical solutions and policy recommendations aimed at addressing the highlighted difficulties. The subsequent item is a recommendation.

Establishing an independent appellate body to examine decisions rendered by the Internal Committee (IC) will enhance the fairness and efficacy of the redressal mechanism. This council, comprising a blend of internal members such as employees and external specialists including legal officials, counselors, and NGO representatives, would serve as a crucial mechanism to safeguard against any prejudice. This approach will facilitate the appeal process for individuals, resulting in more equitable outcomes and reduced workload for the judiciary. This will enhance the efficiency and cost-effectiveness of the process.

The government can establish standards as a provisional solution to create an equitable process for individuals to submit grievances within businesses, ensuring fairness for both men and women. This would facilitate the current ICC in addressing grievances from male and LGBTQIA+ employees, ensuring prompt access to justice for all individuals.

Contemporary interpretations often erroneously claim that only women can be victims of sexual harassment, despite the term's inherent gender neutrality. The POSH Act and UGC Regulations provide a gender-neutral definition of the victim; yet, this is often regarded as discretionary, prompting numerous academic institutions to embrace a female-centric perspective. To avert the exclusion of persons, it is imperative to clearly integrate unambiguous gender-neutral elements into the POSH Act.

Continue with the Process

It is essential to eliminate the discretionary compliance or hesitation of the ICC in adopting or adhering to a standard operating procedure. A cautious or moderate follow-up with the procedural foundations might be enough to some degree. Excluding both will equate to excessive, unregulated

administrative discretion and partiality. Consequently, the minimal criteria must be observed.

INSTITUTIONAL ACCOUNTABILITY

Institutional liability is dual in nature: liability arising from circumstances that implicate the employer as the accused, or failure to adhere to the statutory requirements of the POSH Act and UGC Regulations; and liability of the nomination committee or Board of Appointment for the selection of ineffective members or fraudulent appointments. In the event of an appointment, it will be decided by the prejudice shown by the relevant decision-makers. Consequently, inspections conducted quarterly or monthly, adjusted based on the advancement of the ICC, will fulfill the objective. Such surveys will allow the inspection body to conduct a thorough evaluation of the internal circumstances. This will address any institutional bias in the selection of ineffective internal members and institutional non-compliance with legislative obligations.

EMPLOYER-EMPLOYEE RESPONSIBILITY

A victim compensation system may be used to find out if the respondent can pay a lump sum of damages if they go bankrupt. This system creates a fund pool at work through regular payments from both the employer and the workers. When setting up pay, a certain payment ratio must be kept. Every month, one-fourth of the pay may be taken out until the money is paid back or a lump sum is given. The employer can take out one-sixth of the income as a flat amount or monthly from the salary until the compensation is paid. After the first conviction, they can take out two-sixths of the income for the same offense under the Act. The ICCs and LCCs must use this percentage as a guideline when deciding on compensating relief. However, it is important for the recommended resolutions to be recognized by lawmakers. If this recognition doesn't happen, the resolutions will stay unfulfilled, and the number of administrative mistakes and problems listed in this document will reach its highest point.