

PATRIARCHY AND VICTIMIZATION IN INDIAN JUSTICE: A FEMINIST LEGAL  
AND CRIMINOLOGICAL RECONFIGURATION

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*Ishita Shukla<sup>1</sup>*

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**ABSTRACT**

*This paper looks at the growth and continuing importance of feminist criminology, a critical theory that started in the 1970s as a reaction to the limits of traditional criminology. Feminist criminology studies how patriarchy, gender differences, and unequal power shape both crime and the justice system. In India, women face violence at every stage of life. Today, this violence has become so common that it almost feels "normal," but the real causes are still not deeply studied. Unlike mainstream criminology, which often ignores or silences the experiences of women and LGBTQ people, feminist criminology focuses on gender and sexuality. It questions the justice system for practices like blaming victims, denying inequality, and overlooking race, class, and sexuality as factors that make people vulnerable to harm.*

*This research agrees with feminist thinkers who argue that gender-power relations, male dominance, and female subordination work together to keep patriarchy in place and spread systematic violence against women. Feminist criminology shows that victimization is always connected to gender. Women are more exposed to violence, exploitation, and exclusion. It also points out bias in punishment: Women who commit crimes are often punished more strictly, not only for breaking the law, but also for going against what society expects from women. This often leads to heavier punishment and stronger social stigma. But feminist criminology doesn't stop at criticism; it also suggests solutions. It supports justice models that focus on healing, empowerment, and accountability rather than revenge. It sees community programs and grassroots movements as powerful tools for building fairer systems. By combining psychology with social, legal, and historical insights, feminist criminology creates a rich model for improving law and justice.*

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<sup>1</sup> Ishita Shukla, Babu Banarsi Das University.

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## INTRODUCTION

**Patriarchy**, or "rule by fathers," is not natural or universal. Patriarchy appeared much later, about 5,000 years ago, in early Mesopotamian states<sup>2</sup>. There, rulers needed people to produce extra food and fight wars, which pushed women toward childbearing and home life. Marriage customs and laws then treated women like property, locking them into a lower status. Patriarchy is a social system in which men hold the most power and influence. They often hold more authority in society and enjoy privileges that women may not have access to. Patriarchy didn't come from family life or farming but from state power forcing strict gender roles to serve the elite. Ideas like "men are violent" and "women are nurturing" became fixed stereotypes. Patriarchy is a man-made system, not an unchangeable one, and so it can be undone.

**The discrimination and restrictions imposed by patriarchy led to the rise of a movement called Feminist Legal Theory<sup>3</sup>.** This began with women's rights movements in the 19th century and grew stronger during the feminism of the 1960s. It studies why women are often seen as less powerful, how the law helps maintain male control, and what changes the law can or cannot achieve.

### 1. Approaches

This theory views law as something created by society, which can be used both to harm and to help women. There are different approaches within it: **liberal feminism**, which seeks equal rights for women and men; **radical feminism**, which sees law and politics as built on male power; **postmodern feminism**, which focuses on how women's identities connect with race, class, and sexuality; and **cultural feminism**, which values women's unique experiences and ways of caring. While each approach has critics, all aim to reshape the law so it better reflects and supports women's lives.

### 2. Emergence of feminist Criminology-

**Building on this foundation, Feminist criminology** began in the late 1960s <sup>4</sup>as a way to challenge the fact that criminology mostly focuses on men and overlooks women's experiences. It says that women's crime is caused by social inequality and unfair treatment, not by biology.

<sup>2</sup> Gerda Lerner, *The Creation of Patriarchy* 6 (Oxford Univ. Press 1986).

<sup>3</sup> Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Harvard Univ. Press 1989).

<sup>4</sup> Feminist School of Criminology, *Feminist School of Criminology* (EBSCO Research Starters 2019).

Feminist criminologists look at why women commit fewer crimes than men and note that women who do often have histories of trauma, mental health struggles, and money problems. They also point out that many women are victims, especially of sexual violence, and that abuse can sometimes push them into crime as a way to survive. Finally, they show how the justice system treats women differently, aiming to explain crime more clearly through the lens of gender.

### **3. Gendered Victimization and Justice-**

The Indian legal system is strongly influenced by patriarchy, which upholds male power in both law and practice. Because of this, women face primary victimization through crimes like domestic violence, dowry harassment, and sexual assault, and secondary victimization from the justice system itself, where they meet disbelief, delays, and insensitive treatment. Feminist legal theory criticizes this bias, saying that women are often treated as dependents instead of equal citizens, and calls for fairer procedures, equal representation, and attention to issues like caste and class. In the same way, feminist criminology shifts focus to women's experiences, showing how patriarchy not only exposes them to crime but also punishes them when they resist or act for survival. Put together, patriarchy causes victimization, victimization shows the system's weaknesses, feminist legal theory asks for reform, and feminist criminology expands how crime is understood. Together, they demand a justice system that is fair, inclusive, and sensitive to women.

In 2022, data from the **National Crime Records Bureau of India** showed that 2022 there was an average of nearly 90 rape cases reported every day in the country<sup>5</sup>. Violence against women is a serious public health issue and a violation of women's basic rights. The World Health Organization (WHO) estimates that about **1 in 3 women** worldwide (35%) have faced either physical or sexual violence from a partner, or sexual violence from someone else, at some point in their lives. In India's criminal justice system, the idea of equality often reflects and supports the **patriarchal mindset** that exists in society. Women, whether as victims or as offenders, face special difficulties in the system. These problems have now become an important health, development, and human rights issue worldwide.

### **4. Amendments-**

India's criminal justice system came under heavy criticism, both within the country and internationally, after the gang rape of a physiotherapy student in Delhi on 16 December 2012,

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<sup>5</sup> Nat'l Crime Recs. Bureau, *Crime in India 2022* (Ministry of Home Affairs, Gov't of India 2023).

followed by the assault of a female judge in her own residence. In response, reforms were introduced. The repeat in crime against women significantly increased, which led to the revolution of the Criminal Justice System, several amendments, and in 2013, **the Criminal Law (Amendment) Act was passed** after the recommendations of the Justice Verma Committee<sup>6</sup>. However, despite this new law, gender-based violence crimes continue to be reported in shocking and brutal ways. In 2018, India passed the Criminal Law (Amendment) Act after high-profile cases like **Kathua and Unnao**. The law made punishments for sexual crimes, especially against children, stronger and aimed to speed up investigations and trials. It also changed the Indian Penal Code and the Evidence Act to protect victims and improve legal processes. However, the law is still not very effective because conviction rates are low, trials take a long Time, and there is not enough support for victims. The justice system itself often adds to the silence around **gender-based violence**. When conviction rates are low and cases take too long in court, many survivors lose hope of getting justice. A lack of political interest and the absence of gender-sensitive policies, such as clear guidelines on how to treat rape survivors, make the system unreliable. Too often, survivors face blame, mistrust of government hospitals, and very little legal or emotional support. This only deepens their trauma and discourages them from speaking up.

Outside the **justice system, social stigma, shame, and poor community support** also prevent many women from filing a case report. Many people do not trust the police, especially when officers delay or refuse to register First Information Reports (FIRs), closing the door to justice from the start. In cases of domestic violence, fear of social backlash and the lack of proper protection keep victims silent. As a result, many crimes are never reported, making official numbers unreliable. Real change needs system reforms, greater public awareness, and stronger support networks to restore trust and ensure that survivors are protected and heard.

The **Indian Constitution guarantees every individual the right to life and liberty under Article 21**, and it explicitly prohibits discrimination based on gender under Article 15.<sup>7</sup> Yet, when it comes to addressing **gender-based violence** (GBV), these promises often fall short in practice. Policymaking in this area continues to face challenges, not only because of gaps in legal enforcement but also due to deep-rooted social norms and attitudes that perpetuate inequality.

<sup>6</sup> Justice J.S. Verma Committee, *Report of the Committee on Amendments to Criminal Law* (Gov't of India, Jan. 23, 2013), [https://adrindia.org/sites/default/files/Justice\\_Verma\\_Amendmenttocriminallaw\\_Jan2013.pdf](https://adrindia.org/sites/default/files/Justice_Verma_Amendmenttocriminallaw_Jan2013.pdf).

<sup>7</sup> India Const. arts. 15, 21.

This brief explores both the legal structures and the social realities that shape the problem of GBV in India, drawing on primary and secondary research. It emphasizes the need to reframe GBV-related policies through a feminist approach, one that goes beyond surface-level solutions to consider the everyday experiences of marginalized genders.

The policymaking can move toward meaningful, long-term change that upholds constitutional values while **addressing the unique social dynamics of gender in India.**

The feminist movement has greatly shaped the lives of women in the criminal justice system, whether as victims, offenders, or employees. Thanks to the early work of feminist criminologists, there is now a better understanding of what leads women to commit crimes, how their life situations influence their actions, and the struggles they face when trying to return to their communities. For victims, the system has also changed; women's voices are being heard more today, unlike in the past when they were often ignored or even blamed for what happened to them. The movement has also opened up conversations about what it's like to be a woman working in the criminal justice field and the unique challenges they deal with every day. While women have made important progress over the last century, they still face many difficulties as offenders, as victims, and as professionals in the system.

## HISTORICAL CONTEXT

### 1. Origin of Patriarchy/Feminism-

Ideas about how patriarchy began include the 1968 "Man the Hunter" theory<sup>8</sup>, supported by anthropologist Richard B. Lee, which portrayed men as the main providers. Karl Marx and Friedrich Engels argued that when men took control of making goods, while women were mainly linked to childbirth, it led to male dominance<sup>9</sup>. This made women dependent on men, socially unequal, and excluded from politics.

The word feminism is often credited to French socialist Charles Fourier in 1837, though this is not fully proven. In 1872, Alexandre Dumas files first used the word feminist as a joke against supporters of women's rights. Much earlier, Mary Wollstonecraft's *A Vindication of the Rights of Woman* (1792) called for equal education and respect for women. In Europe, laws like France's Salic Law barred women from inheriting the throne, and Montesquieu argued it was "unnatural" for women to lead families, though he admitted they could rule monarchies. In India,

<sup>8</sup> Richard B. Lee & Irven DeVore, eds., *Man the Hunter* (Aldine Publ'g Co. 1968).

<sup>9</sup> Friedrich Engels, *The Origin of the Family, Private Property and the State* (1884).

pioneers like Savitribai Phule, who opened a girls' school in 1848, and Tarabai Shinde<sup>10</sup>, whose book *Stri-Purush Tulana* (1882) criticized gender discrimination, voiced early feminist ideas.

## 2. Understanding patriarchy: historical and sociological perspective-

Patriarchy is a system where men hold power over women, families, and society. Once thought natural and universal, scholars now see it as a **historical construction**. Lerner (1986) argues that patriarchy developed in the Ancient Near East more than 2,500 years ago, especially with the shift from mother goddess worship to male-centred religions. This change gave men control over women's sexuality and reproduction, often with women themselves participating in maintaining these systems.

Unlike Levi-Strauss (1969), who suggested women were exchanged like objects, Lerner explains that it was their ability to give birth that was controlled. Under Mesopotamian law, women were treated as property, and rape was considered a crime against a woman's husband or father, not against her. This idea still exists today, for example, in India, where marital rape is not legally recognized, and older adultery laws reinforced male ownership. Lerner also highlights how **women helped sustain patriarchy**, from queens ruling through kings to bible stories where handmaids were given for reproduction.<sup>11</sup>

She concludes that **family-based oppression existed before slavery and made it possible**. This framework helps explain modern practices such as forced marriage, mother-in-law abuse, and women enforcing patriarchal rules (Kandiyoti, 1988).

## 3. Colonial inheritance and gendered legal systems-

Colonialism made patriarchal systems stronger by using laws, economic rules, and cultural controls that still affect women today. These systems limited women's movement, their ability to earn and control money, and their access to basic rights.

In Kenya, colonial rulers (the time period when Kenya was under the control of European powers) set up a confusing legal system that treated Africans, Muslims, and Hindus differently when it came to inheritance. Each system ended up reinforcing male power. African women were placed under colonial versions of "**customary law**," which were rewritten to give men more authority. Christian converts were directed towards English law, while Muslims followed

<sup>10</sup> Rosalind O'Hanlon, A Comparison Between Women and Men: Tarabai Shinde and the Critique of Gender Relations in Colonial India, in *Recasting Women: Essays in Indian Colonial History* (Kumkum Sangari & Sudesh Vaid eds., Rutgers Univ. Press 1990).

<sup>11</sup> Claude Lévi-Strauss, *The Elementary Structures of Kinship* 189–90 (Beacon Press 1969).

Quranic inheritance rules, and Hindus were moved from older community practices to colonial-made Hindu inheritance law. Across all these systems, women were pushed out of owning or inheriting property. Many widows were left with nothing and had no choice but to rely on male relatives to survive<sup>12</sup>.

Before colonial rule, some customary systems had given women certain protections, especially as mothers and members of extended families. But colonial changes to local leadership and community rules stripped away these protections while still expecting women to work and raise families. The result was a “two-systems-of-law” approach that locked inequality into both colonial statutes and reshaped customary law.

These colonial legacies are still visible today in unfair inheritance laws and practices that continue to deny women control over property. This keeps many women economically dependent on men and stops them from fully taking part in public and political life.<sup>13</sup>

#### 4. Personal laws and patriarchal structures-

In India, personal laws vary across communities, and Muslim personal law in particular has often faced criticism for being unfair to women. Practices like triple talaq (instant divorce), polygamy, and nikah halala show how deep patriarchy runs in marriage, divorce, and inheritance, denying women equal rights. Courts have stepped in many times to stop such practices, for example, in the **Shah Bano case (1985)**, **Shamim Ara (2002)**, and **Prakash v. Phulavati (2015)**.<sup>14</sup> These rulings made it clear that such practices go against the Constitution’s promises of equality and dignity under Articles **14, 15, and 21**<sup>15</sup>. But because women have to depend on court cases for justice, the process often becomes long and painful.

This is why many people argue for a Uniform Civil Code (UCC). **A UCC would not only bring all personal laws under one system but also make sure they are fair to women, no matter which religion or state they belong to.** At the same time, we need to remember that family laws everywhere, whether based on religion or secular systems, have historically been shaped by men and used to control women. Scholars point out that controlling women’s sexuality has always

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<sup>12</sup> Deniz Kandiyoti, *Bargaining with Patriarchy*, 2 *Gender & Soc'y* 274, 277–80 (1988).

<sup>13</sup> Dorothy Hodgson, *Shaping Women's Lives: Gender and Colonial Law in Kenya* 115–20 (Univ. of Washington Press 1999); see also Lerner, *supra* note 2, at 60–62.

<sup>14</sup> *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556 (India); *Shamim Ara v. State of U.P.*, (2002) 7 SCC 518 (India); *Prakash v. Phulavati*, (2015) 2 SCC 265 (India); see also Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* 212–20 (Cambridge Univ. Press 1994).

<sup>15</sup> *India Const.* arts. 14, 15, 21.

been a key way to keep male power in place. Even from an evolutionary and anthropological perspective, patriarchy has deep roots in controlling women's reproductive and sexual choices. So, while a UCC could be a big step towards gender equality, it should not stop at simply merging religious laws. It must also challenge the patriarchal mindset built into family laws themselves and truly work towards empowering women and marginalized groups.

### **5. Caste and communal dimensions of women's victimization-**

Indian women who belong to oppressed castes or minority communities often suffer in more than one way. On the one hand, being a woman makes them vulnerable to patriarchal violence and humiliation. On the other hand, their caste or religious identity exposes them to discrimination, exclusion, and a higher risk of abuse.

For example, Dalit women are more often targeted for sexual violence, both inside their homes (through domestic and partner violence) and outside in society. Many times, the men who commit these crimes go unpunished because caste privilege protects them.

During communal violence or riots, women from minority religions or lower castes are often attacked deliberately. They may be treated as symbols of their community and become direct targets of brutality or honour-based violence.

These women also face serious barriers when seeking justice or support. Poverty, lack of legal awareness, social stigma, and bias in institutions make it much harder for them to get protection.

**Studies and national surveys like NFHS-5 clearly show that women from the Scheduled Castes, especially those with less education and lower income, face far higher levels of physical, sexual, and emotional violence compared to others.<sup>16</sup>**

In short, caste and communal identity magnify the violence women face, not only through direct attacks, but also through deep-rooted inequalities in health, mobility, safety, and opportunities for empowerment.

## **LEGISLATIVE FRAMEWORK**

### **1. Feminist legal theory: key concepts and debates-**

Feminist jurisprudence, an extension of feminist thought, looks at how legal systems both support patriarchy and can be used to achieve **equality and justice**. It challenges male-centred assumptions in law and highlights the gap between women's real-life experiences and the legal

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<sup>16</sup> Int'l Inst. for Population Sciences & Ministry of Health & Family Welfare, *National Family Health Survey (NFHS-5), India, 2019–21*, Tables 15.1–15.3.

order, calling for changes to end gender bias. Within it, four main approaches- liberal, radical, cultural, and postmodern feminism- differ in focus but all share the goal of equality through law. Feminist legal philosophy takes this further by questioning basic ideas about what law is and what it should do. Instead of simply seeing law as rules, commands, or morality, it rethinks core values like freedom and equality. It also debates where the limits of law should be, such as whether it should only prevent harm or also enforce morality. Importantly, this shows how patriarchy shapes the lives of women, men, and gender-diverse people. Scholars like MacKinnon (1993), Manne (2018), and Suk (2023) argue that **social power and misogyny deeply affect law**, often blocking equal justice, but also creating openings for reform.

## 2. Criminological approaches to gender and victimization-

Analysis reveals that women are generally more likely than men to report crimes and seek support services<sup>17</sup>. This difference is often explained by how men and women cope with trauma. Men are more likely to react with anger, while women experience greater trouble, which makes them more inclined to reach out for help. Golding et al. found that trouble directly influences the use of support services, and Kaukinen's study in Canada showed **that women were more than twice as likely as men to go to the police instead of staying silent**.<sup>18</sup> Similarly, Truman and Rand confirmed that women who experience violent crime are more likely to report it than men. These findings highlight how emotional responses and coping behaviours shape gender differences in victimization.

## 3. Intersectionality: caste, class, religion, and gender-

Analysis reveals that social factors like caste, class, and gender are not fixed categories. Instead, they overlap and interact, creating both advantages and disadvantages in society. Evidence from many institutional programs shows that caste affects student performance, though weaker performance is not seen only among lower castes. Gender also works differently across caste groups- for example, while men from the lowest caste perform the worst, women from the same caste face even greater disadvantages.

In healthcare, too, data from the **National Sample Survey (2017–18) shows that class inequality is the strongest factor behind unmet healthcare needs**. However, when caste and

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<sup>17</sup> Nat'l Crime Recs. Bureau, *Crime in India 2022: Statistics* 112 (Ministry of Home Affairs, Gov't of India 2023)

<sup>18</sup> Catherine Kaukinen, The Help-Seeking Strategies of Female Violent Crime Victims: The Direct and Conditional Effects of Race and the Victim-Offender Relationship, 19 *J. Interpers. Violence* 967, 967–90 (2004).

gender are also considered, the gaps become even wider.<sup>19</sup> Poor households, lower castes, and marginalized groups face more barriers, caused by a lack of money, discrimination, and gender inequality

Overall, these findings highlight the importance of looking at education and healthcare through an intersectional lens, understanding how caste, class, and gender combine to shape people's opportunities and challenges. Policies must address these overlapping disadvantages in order to create real equity.

Researchers studied a U.S. program that helps prevent gang involvement. They looked at three things to explain why young people commit crimes: self-control, peer influence, and social bonds. For men, being a victim was connected to being in a gang, committing crimes, and having parents who didn't supervise them well. Having a complete family lowered the risk. For women, being a victim was linked to being in a gang and even having friends who behaved well. For both men and women, committing crimes made them more likely to become victims. Overall, men and women experience being victims differently, but theories about crime can still explain this if they consider gender, social influences, and family situations.

#### 4. Gendered Violence and the State's Response-

One of the most serious human rights issues in the world, including in India, is gender-based violence. Women are often the ones most affected, facing both physical and emotional abuse at home from husbands or family members. The World Health Organization (2021) has called it a global public health crisis, estimating that more than 641 million women worldwide have experienced violence from a partner at least once in their lives. In India, the problem has existed for generations. According to NCRB (2022), nearly one in three crimes against women are cases of cruelty by husbands or their relatives, and in 2022 alone, **more than 6,900 domestic violence complaints were filed with the National Commission for Women.** To address this, the **Protection of Women from Domestic Violence Act (PWDVA) of 2005** marked a turning point by focusing on protecting women rather than just punishing abusers.<sup>20</sup> In Bihar, where almost 40% of married women face marital violence, the government launched One Stop Centres (OSCs) in 2015 to bring together legal, medical, police, and counselling support under one roof. Recently,

<sup>19</sup> Sandhya R. Mahapatro, K.S. James & Udaya S. Mishra, Intersection of Class, Caste, Gender and Unmet Healthcare Needs in India: Evidence from NSS 75th Round (2017–18), *Health Policy OPEN*, Sept. 2021, <https://doi.org/10.1016/j.hopen.2021.100040>.

<sup>20</sup> *Protection of Women from Domestic Violence Act*, No. 43 of 2005, India Code.

the Women and Child Development Corporation (WCDC), UNFPA, and GRC-CNLU held a three-day training program to strengthen the way these centres respond. Sixty-one OSC administrators and counsellors were trained in areas like trauma care, ethical guidance, referral support, and teamwork between agencies. These efforts represent a meaningful step toward building stronger support systems for survivors and helping women move toward safety, dignity, and freedom.

### **5. Rape, Sexual Harassment, and Domestic Violence-**

Domestic violence against women in India is deeply tied to patriarchy, where men are often seen as superior and given control within families. A recent global study across 31 countries, including 825 Indian women, found that nearly **three out of four (72.5%) had faced some form of abuse, and over one-third (35.1%) had experienced controlling behaviours from their partners**. Women whose partners held strong patriarchal beliefs were the most likely to lose their freedom and suffer physical, sexual, or emotional abuse at home. This shows that domestic violence is not just a private matter but a larger social problem rooted in gender inequality and cultural acceptance of male dominance. Marital rape and sexual violence within marriage remain widespread but are rarely reported in India because of legal loopholes and social stigma. For example, the National Family Health Survey (2019–20) revealed that about one in three married women had faced physical or sexual violence from their husbands or partners<sup>21</sup>, yet fewer than 1% of these cases were reported to the police, partly because marital rape is still not recognized as a crime under Section 375 of the Indian Penal Code.<sup>22</sup> Survivors often describe being forced into sex, pressured in matters of reproduction, or subjected to degrading acts, but institutional support is still weak, leaving them vulnerable. The health impacts are severe, including reproductive illnesses, sexually transmitted infections, pregnancy complications, mental health struggles, depression, and even suicidal thoughts. These realities highlight the urgent need to criminalize marital rape and strengthen healthcare and justice systems so survivors can seek help safely. Indian law has made some progress: in *Lalita Toppo v. State of Jharkhand (2018)*, the Supreme Court confirmed that women in live-in relationships are also protected under the Domestic Violence Act,<sup>23</sup> and in *Vishaka v. State of Rajasthan (1997)*, the Court set guidelines

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<sup>21</sup> Int'l Inst. for Population Sciences, *NFHS-5 (2019–21): Key Indicators for India and States*, Table on Intimate Partner Violence, at 31.4%.

<sup>22</sup> *Indian Penal Code*, § 375, No. 45 of 1860, India Code.

<sup>23</sup> *Lalita Toppo v. State of Jharkhand*, Crim. App. No. 1656/2015 (Sup. Ct. Oct. 30, 2018) (India).

to prevent sexual harassment at work, steps that eventually led to the **POSH Act in 2013**<sup>24</sup>. Such rulings show the judiciary's role in advancing women's rights, but major gaps remain when it comes to addressing domestic and sexual violence within marriage.

## 6. The “neutrality” myth of law-

The Dobbs decision pulls back the curtain on the long-standing myth of judicial neutrality by showing how ideas like **federalism and so-called “neutral principles”** (school leaders who remain unbiased and impartial in their decisions and actions) of constitutional law work more as tools of power than as fair or unbiased rules. The Court tried to present its choice to hand abortion regulation back to the states as a neutral return to the Constitution's design. But in reality, this move did not create more freedom; it handed women's rights over to the changing will of local politics. For wealthier women, abortion may still be available through travel or private doctors, but for poor women, especially women of colour, the new restrictions create almost impossible barriers. Federalism in this case does not share authority fairly; it stacks it in ways that make inequality worse, while hiding the Court's role in producing those outcomes.

This clash echoes older debates about whether constitutional law can ever really be neutral. **Scholars like Wechsler, Pollak, and Hart believed that courts could build their legitimacy by making decisions based on objective, lasting principles, separate from politics.** But critics have long pointed out that principles are never truly neutral. They always reflect values, and judges use them to justify particular results. Dobbs makes this problem very clear. By using the language of federalism and judicial restraint, the Court claimed to stay neutral, but in practice, it allowed specific ideological and religious beliefs, such as the idea, rooted in some Christian traditions, that life begins at conception, to shape state law.<sup>25</sup>

In this way, the idea of neutrality in law is a myth: a story that makes political choices look like they are simply matters of principle or procedure. Both federalism and “neutral principles” hide the fact that judging always means choosing whose rights will be protected and whose will be denied. Instead of defending freedom, Dobbs shows how claims of neutrality can be used to reinforce systems of power based on religion, class, gender, and race, giving the state control over women's autonomy in the name of constitutional loyalty<sup>26</sup>.

<sup>24</sup> *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011 (India).

<sup>25</sup> *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2243–44 (2022).

<sup>26</sup> Leonard M. Fleck, The Dobbs Decision: Can It Be Justified by Public Reason? 32 *Cambridge Q. Healthcare Ethics* 343, 345–47 (2023).

## 7. Obstacles women face in seeking justice-

Obstacles women face in seeking justice remain deep and complex, caused by a mix of legal, institutional, and social shortcomings. Even though there has been global progress in building stronger justice systems, **women still face discrimination, gender bias, stereotypes, stigma, and indifference that stop them from fully claiming their rights.** Gaps in laws and policies, weak institutions, and corruption all reinforce inequality, while impunity erodes trust in justice systems and discourages women from seeking help. These challenges are especially harmful for women who face multiple forms of discrimination, such as those living through conflict, crises, or natural disasters, where they are more likely to experience violence, exclusion, and abuse without proper protection or support.

## 8. Policy Recommendations for Gender-Sensitive Legal Reforms-

Policy reforms that respond to gender need to balance two things: being fair and inclusive for everyone, while still protecting groups that have faced deep-rooted discrimination. Gender-sensitive correctional approaches, guided by feminist criminology and international standards like the Bangkok Rules<sup>27</sup> Show us that women in the justice system often have unique experiences. Many have lived through trauma, violence, or challenges linked to pregnancy and motherhood. Their needs cannot be met through gender-blind, one-size-fits-all policies. Reforms must instead provide tailored support that helps reduce repeat offenses while ensuring dignity and fairness.

At the same time, gender-neutral reforms, such as **the Bhartiya Nagarik Suraksha Sanhita (BNSS, 2023), take important steps toward inclusivity by making it easier for all genders to report crimes, such as domestic violence, or file a First Information Report (FIR).** <sup>28</sup> These measures recognize that anyone can be a victim of harm. However, such inclusivity must be pursued with care so that special protections for women, who still face higher risks of gender-based violence and systemic inequality, are not weakened in the process.

A balanced way forward is a dual approach. On one side, legal framework should keep gender-sensitive protections for women, acknowledging and addressing their specific needs. On the other hand, they should also create inclusive pathways for men, transgender, and non-binary

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<sup>27</sup> U.N. Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), G.A. Res. 65/229, U.N. Doc. A/RES/65/229 (Dec. 21, 2010).

<sup>28</sup> *Bharatiya Nagarik Suraksha Sanhita*, No. 45 of 2023, Gazette of India, Extraordinary, pt. II, sec. 1 (Dec. 25, 2023) (India).

people to seek justice without stigma. To make this work in practice, judges and law enforcement officials must be trained to reduce bias, public awareness campaigns should be implemented to challenge stereotypes, and monitoring systems must be established to ensure that reforms are achieving fairness. Taken together, these steps can help build a justice system that is both gender-sensitive and genuinely inclusive.

## JUDICIAL REVIEW

### 1. Judicial discourses on gender and morality-

Just like in India, research comparing different countries shows that courts often act more like guardians of morality than neutral interpreters of law. For example, studies of U.S. court rulings on obscenity in the early 1900s revealed that judges created rules not based on law but on “feeling rules.”<sup>29</sup> These were meant to control desire, shame women, and present self-control as the ultimate test of a person’s moral character.

This shows that judicial language, in India or anywhere else, has often worked to keep patriarchal gender roles and moral standards alive. By weaving cultural fears and emotional expectations into the law, courts have reinforced sexism instead of removing it. Such judgments don’t just deal with crime; they also quietly dictate how women should behave, how they should respond, and how they should represent virtue. In this way, sexist norms are polished and passed off as justice.

### 2. Victim- Blaming and Judicial Narratives-

These studies look at how people blame victims and assign moral responsibility, both in everyday attitudes toward rape survivors and in how Swedish courts handle such cases. In the first study with 142 participants, Men **were more likely than women to blame victims**, and how much they could relate to the victim partly explained this. Stereotypes about victims, how dangerous the situation seemed, belief in a “**just world**,” acceptance of rape myths, and traditional gender roles also influenced blame, showing how cultural ideas shape views of victim responsibility. The Swedish research echoes this, examining how judges, prosecutors, defence lawyers, and victim counsels deal with moral blame in cases of rape, assault, and fraud. While professionals said outright blaming was rare, many survivors still felt blamed during questioning, especially when defence lawyers cross-examined them. Rape cases carried the highest risk of

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<sup>29</sup> Mihaela Popescu, Judicial Discourse as Feeling Rules: Obscenity Regulation and Inner Life Control, 1873–1956, 2 *Soc. & Legal Stud.* 209, 212–15 (2015).

such blame, reflecting the power of rape myths and stereotypes even after reforms like Sweden's 2018 consent-based rape law.<sup>30</sup> Victims of assault and fraud also reported feeling blamed, often linked to assumptions about drinking, provoking the situation, being gullible, or being greedy. This shows that harmful stereotypes go beyond sexual violence and appear in other crimes as well. Together, these findings highlight the importance of looking at both victim and observer characteristics, as well as courtroom practices, to understand how blame arises. They also stress the need for respectful questioning, better training for professionals, and preparing survivors before hearings to reduce bias and protect victims' dignity in both society and the justice system.

### **3. Feminist Interventions in Legal Reform Movements-**

For many women, getting fair access to justice is still a struggle. Even though justice systems have improved in many places, women often face prejudice, stereotypes, and a lack of concern that stop them from fully enjoying their rights. When laws are weak, institutions are corrupt, and crimes go unpunished, many women lose faith in the system and are discouraged from speaking up. The risks are even greater for women in conflict zones, disasters, or crises, where they are more exposed to violence and exclusion, with little protection.

**A big part of the problem is the lack of women in positions of power within the justice system.** If women are not well represented in courts or legal bodies, their voices are missing, and the system itself becomes less fair. While global agreements like CEDAW and the Beijing Platform for Action push for change, many countries still fall short in creating real opportunities for women in legal careers. Reliable data is also missing, making it hard to see progress or identify obstacles. Without fair laws, supportive institutions, and clear information, women remain trapped in a cycle of disadvantage. Breaking it requires not just reforms, but real commitment to equality and inclusion.

A landmark example of feminist legal intervention is *Vishaka v. State of Rajasthan (1997)*: After the gang rape of Bhanwari Devi, a social worker, the Supreme Court said that sexual harassment at work violates women's rights to equality, dignity, and life.<sup>31</sup> Since no law existed, the Court used CEDAW and created the Vishaka Guidelines, requiring employers to prevent and address harassment. These rules stayed in place until the 2013 Sexual Harassment Act was passed.

<sup>30</sup> Camilla Fägerstam et al., Capricious Credibility: Legal Assessments of Voluntariness in Swedish Negligent Rape Judgments, 27 *Nordic J. Criminology* 125, 130–35 (2021).

<sup>31</sup> Vishaka, supra note 25.

#### 4. Digital spaces, cybercrime, and new forms of patriarchal victimization-

The rapid growth of digital technology and online platforms has opened up new ways for people to connect, learn, and feel empowered. But it has also created new forms of harm, especially against women and girls. **One of the most troubling issues is technology-facilitated gender-based violence (TFGBV).**<sup>32</sup> This includes things like sharing private images without consent, cyberstalking, bullying, trafficking, and blackmail. These actions are meant to shame, control, and silence women, reinforcing harmful gender roles, even in spaces that are supposed to give freedom and opportunity.

What happens online doesn't just stay online. It often spills into real life, causing stress, stigma, fear, isolation, and, in the worst cases, leading to honour-based violence, murder, or suicide. Teen girls are especially at risk because they spend more time online but often lack the digital skills to protect themselves. Their vulnerability is even higher in conflict or crisis situations, where families are displaced, support systems are broken, and access to legal or mental health services is very limited.

The effects are far-reaching. TFGBV restricts women's freedom of expression, limits their ability to participate online, blocks their empowerment, and ultimately deepens the digital gender gap. To fight this problem, we need a multi-layered approach: governments must build strong laws and easy reporting systems; police and authorities must be trained to handle cybercrimes; and tech companies must set up fair, gender-sensitive policies and safe ways for victims to seek help. At the same time, schools, communities, and families should promote digital literacy, encourage victims to speak up, and give young women the skills they need to safely navigate online spaces. Recognizing TFGBV as a violation of human rights is the first step toward breaking the cycles of violence, both online and offline, that are rooted in patriarchy.

An example addressing digital spaces and cybercrime is *Shreya Singhal v. Union of India (2015)*: This case challenged Section 66A of the IT Act<sup>33</sup>, which allowed arrests for "offensive" online posts. The Supreme Court struck it down as unconstitutional, saying it violated freedom of

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<sup>32</sup> U.N. Human Rights Council, Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences on Online Violence Against Women and Girls from a Human Rights Perspective, U.N. Doc. A/HRC/38/47 (June 18, 2018), <https://www.ohchr.org/en/documents/thematic-reports/ahrc3847-report-special-rapporteur-violence-against-women-its-causes-and>.

<sup>33</sup> Information Technology Act, No. 21 of 2000, § 66A, India Code.

speech (Article 19) because it was vague and easily misused, highlighting the need for clear laws to protect online expression while addressing cyber abuse and harassment.<sup>34</sup>

### **5. Resistance Movements and Grassroots Feminist Justice Models-**

Grassroots feminist models of justice and resistance movements are ways that communities, especially those pushed to the margins, come together from the ground up to challenge unfair systems like patriarchy, racism, economic inequality, or colonial power. Their goal is to build fairer, more caring, and more inclusive societies.

At the heart of these movements are values like choice, community, and fairness. They recognize that people don't face oppression in just one way; gender is tied up with class, race, caste, sexuality, place, and history. Instead of relying on top-down solutions, these models focus on community-driven actions, such as awareness-raising, shared decision-making, local leadership, mutual support, and building solidarity. They also see that small, everyday act, such as cultural traditions, mutual support, or speaking up, are just as important as protests or legal changes.

Most importantly, these movements want to rethink justice itself. For them, justice is not only about punishing wrongs but also about preventing harm, caring for one another, repairing damage, and transforming society. They aim to change entire systems, not just fit women into the old ones. In doing so, they create alternative ways of living built on feminist values: cooperation instead of hierarchy, listening instead of silencing, and caring instead of exploiting.

A significant example related to resistance movements and grassroots feminist justice models is the *Nirbhaya Case (Mukesh & Anr. v. State, 2017)*: The 2012 Delhi gang rape and murder sparked massive public protests and grassroots activism demanding safer spaces for women. These movements pressured the government to implement the Justice Verma Committee recommendations and the 2013 Criminal Law Amendment, showing how collective action and community resistance can drive legal reform and challenge systemic patriarchy.<sup>35</sup>

### **CONCLUSION**

In India, the problems women face in the justice system are not just about individual cases; they come from a long-standing system where men's voices are considered more important than women's. Women are often exploited, treated as objects, or trapped by legal, social, and economic systems that fail to protect them. Gender injustice affects everyone- men, women,

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<sup>34</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 (India).

<sup>35</sup> *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1 (India).

policymakers, and society at large. A society can only be fair when women have freedom and equal opportunities to grow and succeed.

Feminist criminology and theory show that violence isn't just physical; it can also be emotional, social, and institutional. Survivors often face more harm when the justice system questions them, delays their cases, or blames them. Women who also face discrimination because of caste, class, religion, or sexual orientation face even bigger challenges. Feminist law studies look at why women are treated as second-class citizens and call for more than just legal protection. Social attitudes, economic independence, mental health support, and recognizing domestic work as real labour are all important for true equality.

This is not hopeless. Feminist thinking asks us to imagine justice differently, one that listens to survivors, helps them heal, empowers them, and treats them as full citizens. This means listening to survivors, speeding up justice without cutting corners, and designing laws and institutions that respect dignity, equality, and care. In India, constitutional promises for women's rights are still not fully realized, so change is overdue. A justice system that continues patriarchal practices cannot be fair. Real change happens when survivors are heard safely, their rights are respected, and laws protect people instead of outdated social hierarchies.

Changing patriarchy through law isn't just about improving police or courts; it's about rethinking justice. A fair system ensures everyone's safety, freedom, and gives women the chance to reach their full potential. It is also important to understand that justice for women cannot happen on its own but must be linked to wider social, cultural, and institutional changes. Education is very important in shaping how people think, and schools and colleges should teach the values of gender equality, respect, and empathy from the beginning. Public awareness programs, media, and social activities are also needed to challenge patriarchal practices that normalize discrimination and silence women. If society as a whole does not learn to value women's work, contributions, and choices, then legal changes alone will not bring real progress. A justice system that truly supports women requires shared responsibility from the state, policymakers, communities, and families so that women are not only protected by law but also empowered to live with dignity, independence, and equal opportunities in every part of life.