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

With this thought, we hereby present to you

THE ROLE OF LAW IN COMBATING SEXUAL VIOLENCE AGAINST MARGINALIZED WOMEN IN INDIA

AUTHORED BY - UDDEYSHIKA THAKUR

ABSTRACT

This study rigorously analyzes the persistent epidemic of sexual violence in India, contextualizing it within a comprehensive framework of systemic political, legal, and social deficiencies that perpetuate the infringement of rights, safety, and dignity of women, especially those from underprivileged populations. Notable examples, such as the rape and murder of a young doctor in Kolkata¹, reveal the significant deficiencies of current systems, highlighting the pressing necessity for radical reform.

Notwithstanding the implementation of the Bharatiya Nyaya Sanhita (BNS)², designed to advance gender justice, the criminal legal system remains inadequate in preventing sexual violence or tackling its underlying causes. The law's emphasis on retributive measures, including the death penalty, disregards essential recommendations from the Verma Committee and grassroots feminist groups, which have consistently advocated for institutional responsibility, structural reform, and survivor-centered approaches.

This paper concurrently examines the perils encountered by individuals who confront repressive power institutions.

The report examines media narratives that sensationalize violence while neglecting systemic concerns and failing to prioritize survivor dignity. It underscores the necessity of reframing public discourse via a feminist, intersectional perspective that recognizes the interplay of caste, class, religion, and gender in generating distinct forms of vulnerability and injustice.

The article advocates for the integration of feminist legal discourse to confront and remove the patriarchal structures that pervade legal, social, and political conversations regarding sexual violence. Institutions must be held accountable for their negligence and complicity in gender-based violence through tort law and rights-based frameworks.

In conclusion, tackling sexual assault in India necessitates more than legislative reform; it involves a societal shift grounded in empathy, equity, and shared accountability. By prioritizing

¹ 2024 SCC OnLine SC 2056.

² The Bharatiya Nyaya Sanhita, 2023.

survivors and adopting feminist and intersectional viewpoints, we may strive for a future in which justice is not merely promised but actualized for everyone.

KEYWORDS

Sexual Violence, Marginalized Women, Gender Justice, Verma Committee Recommendations, Vishaka Guidelines, Institutional Accountability, Patriarchy, Caste and Gender, Feminist Legal Discourse, Human Rights Violations, India

INTRODUCTION

The ongoing issue of sexual violence in India reveals a profoundly disturbing reality: our political, legal, and social frameworks consistently fail to safeguard survivors and provide substantive justice. Notable examples, such as the heinous rape and murder of a young physician in Kolkata, serve as stark reminders that we require more than mere indignation—we necessitate systemic reform.

The Bharatiya Nyaya Sanhita (BNS), presented with the commitment to uphold gender justice, has been ineffective in deterring sexual offenses. Although it enforces harsh punishments, including capital punishment for rape—a clause often condemned by feminist groups—it neglects to tackle the underlying causes of gender-based violence. It also neglects essential suggestions from the Verma Committee and grassroots women's movements, which have consistently called for enhanced systemic accountability, especially from governmental institutions.

For numerous women, particularly in fields such as healthcare, the job remains hazardous. The incident at RG Kar Medical College revealed significant safety deficiencies, including the lack of toilets and safe transportation for female personnel. The chronic under-implementation of the Vishaka Guidelines, designed to safeguard women from workplace sexual harassment, exacerbates this vulnerability. These oversights demonstrate a blatant neglect for the fundamental safety and dignity of working women.³

³ Express News Service & Express News Service, A Civilisational Problem that Exposes tottering Healthcare System, The New Indian Express, (<https://www.newindianexpress.com/states/odisha/2024/Sep/17/a-civilisational-problem-that-exposes-tottering-healthcare-system>), 2024.

Individuals who challenge dominant systems frequently encounter retribution. Criticism is penalized, as evidenced by the Hathras case, when the pursuit of justice was systematically suppressed. This silencing reinforces prevailing caste and patriarchal systems. Concurrently, numerous women's rights organizations—previously essential providers of advocacy, legal assistance, and emotional support—are seeing systematic defunding, resulting in countless survivors lacking crucial help.⁴

Despite substantial official investment in monitoring technologies such as CCTV and forensic instruments, the genuine needs of survivors remain neglected. Essential goods, such as clean garments and hygiene equipment, are frequently inaccessible during medical examinations. There exists a conspicuous deficiency of secure shelters and financial support, exacerbating the marginalization and isolation of survivors.

Public discourse around sexual violence continues to be influenced by prevailing patriarchal narratives that frequently marginalize feminist and intersectional viewpoints. Media coverage often sensationalizes events instead of promoting comprehension or emphasizing structural flaws and power disparities. The dignity of survivors, their privacy, and their lived experiences are often compromised for the sake of clicks and sensational headlines.

To effectuate significant change, we must act with determination. Ensuring institutional accountability, as advocated by the Verma Committee, is essential, particularly when high officials neglect to avert misconduct by their subordinates. The Vishaka Guidelines must be rigorously enforced rather than merely existing on paper, ensuring that workplaces are accountable and not protected by legal technicalities.⁵

Reconstructing support systems for survivors is as imperative. Women's organizations require sufficient funding to provide emergency care, legal assistance, and long-term rehabilitation services. Governments must prioritize the establishment of well equipped shelters and guarantee that survivors are not deprived of necessities throughout legal proceedings. This transcends mere politics; it pertains to dignity and the fundamental right to exist free from fear.

Legal and medical systems must be inclusive environments where every woman—Dalit, Adivasi, Muslim, or otherwise—feels valued, secure, and acknowledged. Public education initiatives can facilitate the transformation of cultural perceptions, diminish stigma, and foster

⁴ Satyama Dubey vs Union Of India on 27 October, 2020, AIR 2020 SUPREME COURT 5346.

⁵ <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary>.

empathy. The use of survivors' narratives for political purposes, particularly through the unlawful dissemination of personal information, must be unequivocally condemned and curtailed.⁶

Ultimately, institutions that neglect their duty of care must incur legal repercussions. Accountability can be enforced by methods such as tort law, fostering a culture of responsibility. Feminist legal theory must transition from the periphery to the core to confront existing power structures, redefining discourse and responses to sexual abuse.

Ultimately, combating sexual violence in India involves more than legislative reform. It necessitates a unified commitment to strengthen institutions, empower communities, and, most importantly, accompany survivors in their pursuit of justice, safety, and dignity.

LEGISLATIONS UNDER INDIAN LAWS

1. The Constitution of India⁷

The Preamble of our Constitution establishes the cornerstone of a just, equitable, and inclusive India. It guarantees equality of status and opportunity, justice—social, economic, and political—and the liberty to think, speak, believe, and worship. These principles aim to influence the daily lives of all citizens, particularly women and gender-diverse individuals, who have traditionally been marginalized from complete engagement in both public and private spheres.

Central to these constitutional assurances is the principle of gender equality—the conviction that every individual, irrespective of gender, merits equal dignity and respect. This conviction is intricately embedded within the Constitution. Article 14⁸ affirms equal treatment under the law for everyone. Article 15(1)⁹ forbids discrimination based on sex, among other criteria. Article 15(3)¹⁰ notably recognizes the entrenched structural obstacles encountered by women and children and permits the State to implement particular measures

⁶ International Dalit Solidarity Network, *Dalit Women Speak Out: Violence Against Dalit Women in India*, 2017; Human Rights Watch, “Breaking the Silence: Child Sexual Abuse in India”, 2013; United Nations Human Rights Office of the High Commissioner (OHCHR), *Combating Discrimination Against Women in the Context of Multiple and Intersecting Forms of Discrimination*, 2020.

⁷ The Constitution of India.

⁸ The Constitution of India, A.14.

⁹ The Constitution of India, A.15(1).

¹⁰ The Constitution of India, A.15(3).

for their advancement. These are not perks or favors; they are fundamental instruments to rectify enduring injustices and disparities.

Article 21¹¹ of the Constitution ensures the right to life and personal liberty. Over time, the Supreme Court has construed this right to encompass a life of dignity, devoid of violence and exploitation. This encompasses safeguards against sexual violence and harassment—particularly crucial in a society where such transgressions are prevalent yet frequently suppressed.

The judiciary has been instrumental in safeguarding these rights. In the pivotal decision of *Vishakha v. State of Rajasthan* (1997)¹², the Supreme Court acknowledged that sexual harassment in the workplace infringes upon a woman's basic rights as enshrined in Articles 14¹³, 15¹⁴, and 21¹⁵. The Court established significant directives, referred to as the Vishakha Guidelines, to guarantee secure working conditions for women. It explicitly asserts that genuine equality cannot be achieved unless women are able to work free from fear, with dignity and respect.

The dedication to workplace safety was affirmed in *Apparel Export Promotion Council v. A.K. Chopra* (1999)¹⁶, in which the Court upheld the termination of a senior official for sexually harassing a female coworker. The ruling conveyed a significant message: sexual harassment constitutes not merely an individual transgression but a breach of constitutional rights. The Court underscored that institutions, in addition to individuals, bear a duty to prevent and rectify such abuse.

2. The Indian Penal Code, 1860 or The Bharatiya Nyaya Sanhita, 2023¹⁷

The Indian Penal Code (IPC)¹⁸ was a significant legislative legislation; yet, numerous laws concerning offenses against women and children were restricted in scope. The IPC, composed in the 19th century, originated within a period markedly distinct from the present and could not have foreseen the intricate social transformations and technical progressions that would ensue. Consequently, it created significant deficiencies—neglecting to sufficiently tackle emerging forms of harm such as cyber abuse, organized child trafficking,

¹¹ The Constitution of India, A.21.

¹² AIR 1997 SUPREME COURT 3011.

¹³ *Supra* N.8.

¹⁴ The Constitution of India, A.15.

¹⁵ *Ibid*.

¹⁶ (1999) 1 SCT 642

¹⁷ The Bharatiya Nyaya Sanhita, 2023

¹⁸ The Indian Penal Code, 1860

or the psychological aspects of violence that have become increasingly prevalent in contemporary society.

In addressing these deficiencies, the Bharatiya Nyaya Sanhita (BNS)¹⁹ was enacted with the commitment to more accurately represent the contemporary reality of India. In contrast to the previous law, the BNS acknowledges the evolving nature of crime, particularly those offenses that disproportionately affect women and children. Crimes such as stalking, voyeurism, and cyberbullying—previously overlooked by the legal system—are now explicitly recognized and addressed.

The BNS seeks to modernize the legal system for the digital era, addressing abuse that occurs both in public spaces and online. This transition signifies progress toward a more adaptive, survivor-centric legal framework—designed to enhance the protection of vulnerable populations and ensure that justice evolves in accordance with the changing dynamics of harm in the 21st century.

Section 70: Gang Rape²⁰

This section addresses the offense of gang rape, wherein two or more individuals participate in the sexual assault of a woman. The law regards all participants as equally accountable, irrespective of their degree of involvement. The sentence entails a minimum of 20 years' incarceration, potentially escalating to life imprisonment or capital punishment. The legislation additionally facilitates survivor recovery by providing compensation for medical and rehabilitation costs, and courts may take victim impact statements into account. In certain instances, rehabilitation programs for offenders may be required.

Section 71: Punishment for Repeat Offenders²¹

Repeat sexual offenders encounter severe consequences, including life imprisonment or capital punishment. The prosecution must demonstrate a past rape conviction supported by legitimate legal documentation. Judicial authorities may administer more severe penalties contingent upon the gravity of prior offenses, particularly when such offenses implicated susceptible victims. Although punishment is paramount, courts may additionally mandate psychiatric counseling or rehabilitation to tackle underlying behavioral concerns.

¹⁹ Ibid.

²⁰ The Bharatiya Nyaya Sanhita, 2023, S.70.

²¹ The Bharatiya Nyaya Sanhita, 2023, S.71.

Section 72: Protection of Victim Identity²²

This provision unequivocally forbids disclosing the identities of survivors to safeguard their dignity and privacy. Unauthorized disclosure may result in a maximum of two years' imprisonment and a monetary penalty. Exceptions occur when the survivor provides written approval, when disclosure is provided by next of kin, or when mandated for legal or investigative reasons. The objective is to empower survivors by granting them authority over their narratives while protecting confidential information.

3. Indecent Representation Of Women (Prohibition) Act, 1986²³

On December 23, 1986, the Indian Parliament enacted the Indecent Representation of Women (Prohibition) Act. The primary objective was to mitigate the depiction of women in manners that are vulgar, offensive, or disrespectful—particularly in ads, periodicals, films, artworks, photography, and other media forms. The legislation is applicable nationwide.

Section 2²⁴ of the Act explicitly delineates essential terminology, including advertisement, distribution, package, and indecent depiction, among others. Section 3²⁵ prohibits the creation, publication, distribution, or facilitation of any material—whether pamphlet, magazine, film, or literary work—that depicts women in an obscene or degrading fashion.

Nevertheless, the legislation permits exceptions. Materials produced with the objective of advancing public welfare—specifically for educational, scientific, literary, artistic, or spiritual purposes—are not deemed infractions. Furthermore, representations associated with ancient monuments, sacred sites, or idols are likewise exempt.

Section 5²⁶ of this Act authorizes certain senior government officials (gazetted officers) to conduct investigations into complaints. They may conduct searches of premises and confiscate goods such as books, films, and photos that they suspect contravene the law. A valid warrant is necessary if the content is located in a private residence. Materials affixed

²² The Bharatiya Nyaya Sanhita, 2023, S.72.

²³ Indecent Representation Of Women (Prohibition) Act, 1986.

²⁴ Indecent Representation Of Women (Prohibition) Act, 1986, S.2.

²⁵ Indecent Representation Of Women (Prohibition) Act, 1986, S.3.

²⁶ Indecent Representation Of Women (Prohibition) Act, 1986, S.5.

to a wall or permanent surface, such as a mural, may still be confiscated pursuant to the Criminal Procedure Code (CrPC), 1973. Upon confiscation, the objects must be surrendered to the nearest Magistrate for subsequent legal processes.

IMPORTANT CASE LAWS

1. Hathras Gang Rape and Murder – 2020²⁷

The Hathras gang rape case shook the nation, exposing the entrenched caste and gender violence that endures in India. A 19-year-old Dalit female from Bulgarhi village in Uttar Pradesh was subjected to gang rape by four males of the dominant caste in a field adjacent to her residence. She fought for her life for two weeks before succumbing to her injuries.

However, the terror did not conclude at that point. The Uttar Pradesh police incinerated her remains at night without the family's consent, disregarding their urgent appeals. Her family was deprived of the opportunity to bid farewell or conduct her final rituals, robbing them of fundamental human decency.

Subsequent efforts were undertaken to obfuscate the truth. Certain relatives of the accused and local upper-caste villagers propagated a misleading narrative, designating it as a “honour killing.” Surprisingly, the authorities originally refuted any occurrence of rape. The matter was moved to the Central Bureau of Investigation (CBI) following significant public uproar, nationwide rallies, and extensive media attention. In December 2020, the CBI officially verified that the young woman had been gang-raped and murdered.

The path to justice is prolonged and perilous. Two significant legal actions are currently in progress: one in a specialized SC/ST court in Hathras for the criminal trial, and another in the Allahabad High Court, which is examining the unlawful cremation and purported deficiencies by the state administration.

The victim's family has endured persistent intimidation. Upon her brother's arrival at court to provide testimony, local attorneys directed threats and insults towards him and the family's legal representative. Concerned for their safety, the family petitioned the High Court, which subsequently mandated in-camera proceedings for their protection. As of September 2021, the prosecution's witnesses were still recording their statements, with delays attributed in part to the COVID-19 epidemic.

²⁷ *Supra* N.4.

Simultaneously, the victim's family endures perpetual peril. Despite receiving many death threats, the High Court has refused to relocate the case from Hathras. Their daily existence is significantly constrained. The Central Reserve Police Force (CRPF) offers continuous security, allocating four officers to each family member. Even fundamental activities like as visiting family or attending court now necessitate meticulous planning and transportation organized by the CRPF.

2. Kathua Rape and Murder Case (2018)²⁸

An eight-year-old girl from the Bakarwal Muslim nomadic clan went missing in January 2018 near Kathua, a small town in Jammu and Kashmir. One week later, her injured and damaged body was found in a jungle. The subsequent events profoundly destabilized the nation.

The investigation revealed that the little girl had been murdered, drugged, repeatedly gang-raped, and abducted. At a temple, she was subjected to multiple days of rape by numerous individuals, including a retired government official, his young nephew, and several police officers.

The intent was egregious: the conduct was premeditated, intended to intimidate the Bakarwal population and displace them from the region. Rooted in societal prejudice and caste-based discrimination, it constituted a hate crime, transcending mere sexual violence.

The attempted concealment exacerbated the distressing nature of the matter. Local law enforcement was found to be obstructing justice and tampering with evidence. Unexpectedly, the incident assumed a political dimension; several local attorneys and politicians advocated for the culpable individuals and even paraded in their support beneath the national flag.

Public outrage proliferated rapidly despite the prevailing atmosphere of fear and denial. Nationwide protests demanding justice for the young girl Asifa were ignited.

A specialized court in Pathankot (Punjab) convicted six defendants in June 2019. Three principal offenders were sentenced to life imprisonment for rape and murder. Three police officers were sentenced to five years in jail for evidence tampering.

²⁸ Mohd. Akhtar v. State of Jammu and Kashmir 2018 SCC OnLine SC 386

A seventh defendant, who was a minor at the time, appeared in court pursuant to the Juvenile Justice Act. The victim's father continues to advocate for the death penalty for the perpetrator and seeks justice delayed by political interference.

3. Patan Jamal Vali Vs. The State Of Andhra Pradesh²⁹

This case commenced with the tragic incident of a blind girl from a Scheduled Caste community being raped in her residence by an individual familiar to her family. The Sessions Court adjudicated the defendant guilty and imposed a punishment pursuant to both Section 376(1) of the Indian Penal Code (pertaining to rape) and Section 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, which pertains to offenses committed against individuals based on their caste.

The High Court upheld the judgment and sentence, prompting the accused to appeal to the Supreme Court. The Supreme Court upheld the rape conviction under the IPC, concurring with the decisions of the lower courts. Nonetheless, it annulled the conviction under the SC/ST Act, citing inadequate evidence that the assault transpired specifically due to the victim's Scheduled Caste status. The Court stated that the law requires a clear connection between the victim's caste and the reason for the crime, which was not established in this case.

CONCLUSION

In order to effectively combat sexual violence, particularly as it affects women who are marginalized in India, it is necessary to take a multi-faceted approach that goes beyond the implementation of punishing legislation. Although there have been attempts to modernize and address systemic deficiencies through the implementation of legal changes such as the Bharatiya Nyaya Sanhita, these reforms continue to be insufficient since there is a lack of institutional accountability, cultural transformation, and policies that are centered on survivors. It is impossible for the law to eradicate the deeply ingrained patriarchy, casteism, and institutional negligence that play a role in the perpetuation of gender-based violence when it is limited to retribution.

A number of marginalized women, including Dalits, Adivasis, Muslims, and others, are subject to a multiplicity of vulnerabilities that the existing legal framework does not effectively

²⁹ 2021 JC (SC)2856

address. It is still very clear that there is a significant gap between the constitutional guarantees of equality and dignity and their actual existence in the world. Case laws such as Hathras, Kathua, and Patan Jamal Vali highlight the critical need for legal systems that are attentive to intersectional realities and survivor dignity, rather than practices that are complicit in the erasure of these individuals.

The law must be supplemented by the rigorous application of principles such as Vishaka, real funding of women's support organizations, and public discourse that is anchored in empathy and equity in order for it to be truly revolutionary. It is imperative that the media, educational institutions, and state institutions collaborate in order to destroy damaging narratives and cultivate an atmosphere in which survivors are believed, protected, and inspired to take action.

A strategy for moving ahead is provided by feminist legal discourse. This strategy places survivors at the center of the discussion, questions the culpability of institutions, and reimagines justice as a collective endeavor rather than solely an individual one. The maintenance of dignity, the guarantee of institutional responsibility, and the promotion of sociocultural transformation must not continue to be aspirational aims but rather become imperatives that can be put into action. It is only via this comprehensive and intersectional approach that India will be able to start fulfilling the promise it made in its constitution and guarantee justice for all of its women, regardless of their caste, class, or faith.

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