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**HUMAN PROTECTION IN THE CONTEXT OF SOCIAL JUSTICE:  
(WOMEN, CHILDREN AND MARGINALIZED COMMUNITIES)**

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**LIST OF ABBREVIATIONS**

S.No	Abbreviation	Full Form
1	AIR	All India Reporter
2	Art.	Article
3	CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
4	CRC	Convention on the Rights of the Child
5	CrPC	Code of Criminal Procedure, 1973
6	CRPD	Convention on the Rights of Persons with Disabilities
7	Edn.	Edition
8	Ed.	Editor
9	FIR	First Information Report
10	HRBA	Human Rights Based Approach
11	Hon'ble	Honourable
12	ICCPR	International Covenant on Civil and Political Rights
13	ICESCR	International Covenant on Economic,

		Social and Cultural Rights
14	ICC	Internal Complaints Committee
15	IPC	Indian Penal Code, 1860
16	J.	Justice
17	JJB	Juvenile Justice Board
18	LCC	Local Complaints Committee
19	LGBTQ+	Lesbian, Gay, Bisexual, Transgender, Queer and Others
20	MHA	Ministry of Home Affairs
21	NCRB	National Crime Records Bureau
22	NCW	National Commission for Women
23	NCPCR	National Commission for Protection of Child Rights
24	NFHS	National Family Health Survey
25	NHRC	National Human Rights Commission
26	OBC	Other Backward Classes
27	p.	Page
28	PC-PNDT	Pre-Conception and Pre-Natal Diagnostic Techniques Act
29	PIL	Public Interest Litigation
30	POCSO	Protection of Children from Sexual Offences Act, 2012
31	POSH	Prevention of Sexual Harassment (at Workplace)
32	PSED	Public Sector Equality Duty
33	PWDVA	Protection of Women from Domestic Violence Act, 2005
34	r/w	Read with

35	RPWD	Rights of Persons with Disabilities Act, 2016
36	RTE	Right to Education Act, 2009
37	SCC	Supreme Court Cases
38	SC	Supreme Court / Scheduled Castes
39	SC/ST	Scheduled Castes and Scheduled Tribes
40	SDG	Sustainable Development Goals
41	ST	Scheduled Tribes
42	TRC	Truth and Reconciliation Commission
43	UN	United Nations
44	UNDP	United Nations Development Programme
45	UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
46	UNICEF	United Nations International Children's Emergency Fund
47	UOI	Union of India
48	v.	Versus
49	VAWA	Violence Against Women Act
50	Vol.	Volume
51	WCD	Women and Child Development
52	w.e.f.	With Effect From

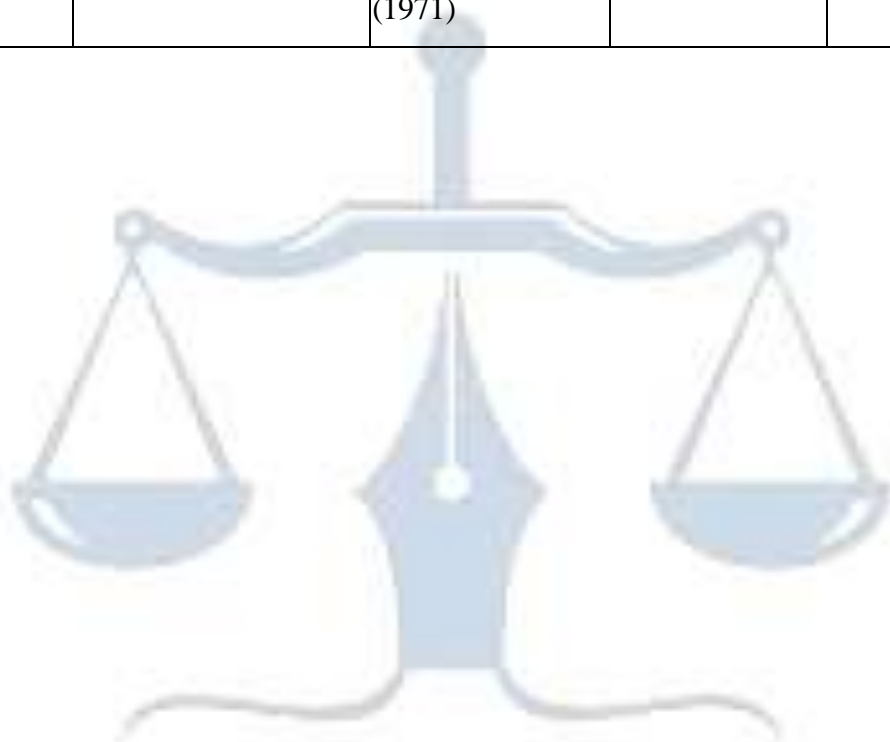
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7	Indian Young Lawyers Association v. State of Kerala	(2019) 11 SCC 1	India (SC)	Women's Rights
8	Indra Sawhney v. Union of India	AIR 1993 SC 477	India (SC)	Equality
9	Jeeja Ghosh v. Union of India	(2016) 7 SCC 761	India (SC)	Disability Rights
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12	National Legal Services Authority v. Union of India	(2014) 5 SCC 438	India (SC)	LGBTQ+ Rights
13	Navtej Singh Johar v. Union of India	(2018) 10 SCC 1	India (SC)	LGBTQ+ Rights
14	Sampurna Behura v. Union of India	(2018) 4 SCC 433	India (SC)	Children's Rights

15	Shayara Bano v. Union of India	(2017) 9 SCC 1	India (SC)	Women's Rights
16	S.P. Gupta v. Union of India	AIR 1982 SC 149	India (SC)	PIL
17	State of Madras v. Champakam Dorairajan	AIR 1951 SC 226	India (SC)	Equality
18	Unni Krishnan v. State of Andhra Pradesh	(1993) 1 SCC 645	India (SC)	Children's Rights
19	Vishaka v. State of Rajasthan	(1997) 6 SCC 241	India (SC)	Women's Rights
20	Shah Bano Begum v. Mohd. Ahmed Khan	AIR 1985 SC 945	India (SC)	Women's Rights
21	Dr. Subhash Kashinath Mahajan v. State of Maharashtra	(2018) 6 SCC 454	India (SC)	Equality
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24	Andrews v. Law Society of British Columbia	[1989] 1 SCR 143	Canada (SC)	Equality
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27	Minister of Finance v.	2004 (6) SA	South Africa	Equality

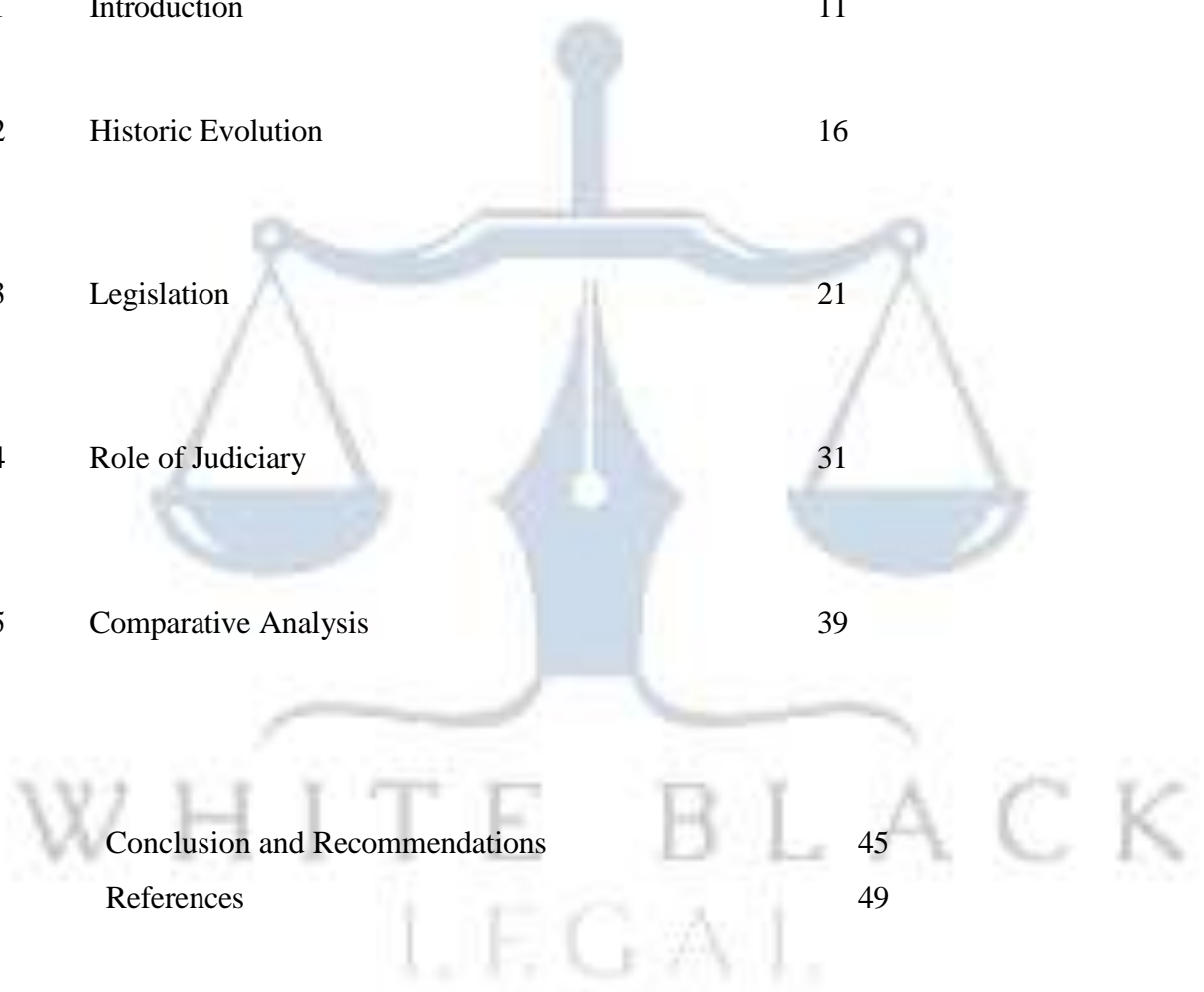
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28	Minister of Health v. Treatment Action Campaign	2002 (5) SA 721 (CC)	South Africa (CC)	Right to Health
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30	Reed v. Reed	404 US 71 (1971)	USA (SC)	Gender Equality



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**ABSTRACT**

Human protection in the context of women, children, and marginalized communities is a central concern of social justice, as these groups experience disproportionate levels of vulnerability due to structural inequality, discrimination, and limited access to resources and decision-making processes. Social, economic, cultural, and legal barriers often expose them to violence, exploitation, poverty, and exclusion from education, healthcare, and justice systems. Studies show that patriarchal norms, caste hierarchies, poverty, and weak enforcement of protective laws significantly undermine their human rights despite the existence of constitutional and international safeguards. This research adopts a human-rights-based and intersectional approach to examine the forms of structural violence affecting women, children, and marginalized groups and the role of legal frameworks, administrative institutions, and community-based interventions in ensuring protection and empowerment. Administrative mechanisms such as human rights commissions, social welfare schemes, and child protection laws provide formal safeguards, yet gaps in implementation, awareness, and accessibility continue to hinder effective protection. The study highlights the importance of participatory governance, legal aid, gender-sensitive policies, and grassroots mobilization in promoting dignity, equality, and access to justice. Empowerment through education, economic inclusion, and community engagement emerges as a key strategy for transforming beneficiaries from passive recipients of protection into active rights-holders. The paper concludes that achieving meaningful human protection requires not only legal reforms but also structural social change, stronger institutional accountability, and inclusive development policies that address the root causes of marginalization. Such an approach is essential for realizing substantive social justice and safeguarding the fundamental rights of women, children, and marginalized communities.

**Keywords:** Social Justice, Human Rights, Women's Rights, Children's Rights, Marginalized Communities, Constitutional Law, Intersectionality, Structural Violence, Legal Empowerment, Participatory Governance, Institutional Accountability, Gender Justice, Child Protection, Disability Rights, Transgender Rights.

## **CHAPTER 1: INTRODUCTION**

### **1.1 Background and Context**

The protection of human rights is the foundational obligation of every constitutional democracy. In India, this obligation is not merely aspirational, it is embedded in the text of the Constitution, in the framework of fundamental rights, in the directive principles that guide the State, and in the fundamental duties that bind every citizen. Yet the distance between the promise of the Constitution and the lived reality of millions of women, children, and marginalized persons remains one of the defining challenges of Indian democracy.

Social justice, as articulated in the Preamble to the Constitution, seeks to secure for every citizen justice are social, economic, and political and equality of status and opportunity. It is a transformative ideal that demands not merely the formal equality of persons before the law, but the substantive equality of persons in life equal access to resources, education, healthcare, justice, and political voice. When measured against this standard, the situation of women, children, and marginalized communities reveals the profound incompleteness of the social justice project in India.

Women constitute nearly half of India's population, yet they remain disproportionately affected by poverty, gender-based violence, discrimination in property and inheritance, inadequate healthcare, limited educational and occupational opportunities, and the persistence of harmful social practices including dowry, child marriage, female foeticide, and trafficking. The National Family Health Survey (NFHS-5, 2019-21) reveals that nearly one in three women between the ages of eighteen and forty-nine years has experienced spousal physical, sexual, or emotional violence. The gender pay gap persists across sectors, and women's representation in legislative bodies and senior public positions remains far below their proportion of the population.

Children, as the most biologically and socially vulnerable members of society, are uniquely dependent on the protection of family, community, and the State. Yet children in India continue to face child labour, trafficking, sexual abuse, denial of the right to education, malnutrition, child marriage, and a juvenile justice system that struggles to balance welfare and accountability. The Census of 2011 enumerated over ten million child workers in India, and the National Crime

Records Bureau (NCRB) data consistently reports high rates of crimes against children including those under the POCSO Act.

Marginalized communities encompassing Scheduled Castes, Scheduled Tribes, Other Backward Classes, persons with disabilities, transgender persons, religious minorities, indigenous forest-dwelling communities, and persons living in extreme poverty face what scholars have described as structural violence: the systematic embedding of inequality and harm in the social, economic, and political structures of society. Despite constitutional guarantees of non-discrimination and affirmative action, caste-based atrocities, denial of land rights, exclusion from public spaces, and discrimination in education and employment continue to be reported across the country.

The present research is situated at the intersection of law and social justice. It examines the formal legal framework constitutional, statutory, and judicial that has been constructed for the protection of women, children, and marginalized communities, and evaluates its adequacy and effectiveness against the yardstick of substantive human rights. It does so from a human-rights-based and intersectional perspective, recognizing that the vulnerabilities of these groups are not separate and parallel but are frequently overlapping and mutually reinforcing. A Dalit woman, a tribal girl, a disabled child each occupies multiple axes of disadvantage simultaneously, and the law must be equipped to respond to this complexity.

## **1.2 Statement of the Problem**

A comprehensive constitutional and legislative framework, the human rights of women, children, and marginalized communities in India remain significantly unrealized in practice. The principal obstacles include weak enforcement of protective laws, inadequate institutional capacity, pervasive social and cultural norms that normalize discrimination and violence, lack of awareness among intended beneficiaries, structural barriers to access to justice, and the persistence of poverty and economic exclusion. The formal equality guaranteed by the Constitution has not translated into substantive equality in social life. This research identifies and analyses these gaps and proposes pathways for reform.

### 1.3 Significance of Research

The significance of this research lies in its comprehensive, cross-sectional approach. While there is substantial existing scholarship on individual aspects of the subject are women's rights, child protection, or the rights of specific marginalized communities, there is a need for an integrated analysis that examines the legal framework for human protection in a holistic and intersectional manner. This research fills that gap by bringing together constitutional law, social legislation, judicial decision-making, international human rights standards, and comparative best practices within a single analytical framework.

The research is also timely. Recent years have seen significant legislative changes includes the Criminal Law (Amendment) Act of 2013, the POCSO Act, the Juvenile Justice Act of 2015, the Rights of Persons with Disabilities Act of 2016, the Transgender Persons Act of 2019, and the Muslim Women (Protection of Rights on Marriage) Act of 2019 that require critical evaluation. Landmark judicial decisions including Shayara Bano (2017), Navtej Singh Johar (2018), and K.S. Puttaswamy (2017) have transformed the constitutional landscape in ways that demand scholarly attention.

### 1.4 Objectives of the Study

The present research is guided by the following objectives:

1. To examine and critically analyse the constitutional and legislative framework for the protection of women, children, and marginalized communities in India from a human- rights-based and intersectional perspective.
2. To assess the role of the judiciary through landmark judgments and the exercise of the public interest litigation jurisdiction in advancing substantive social justice for vulnerable groups.
3. To undertake a comparative study of legal frameworks in select foreign jurisdictions such as the United States, the United Kingdom, South Africa, and Canada with a view to identifying best practices applicable to the Indian context.
4. To identify the structural gaps between law and reality and to propose concrete legislative, institutional, and policy reforms to address these gaps.

5. To advance an understanding of empowerment through education, economic inclusion, legal aid, and community engagement as a transformative strategy for human protection.

### **1.5 Hypothesis**

Women, children, and marginalized communities in India continue to face systemic denial of fundamental rights despite strong constitutional and legal protections. This gap between law and reality is largely due to weak implementation, limited access to justice, and persistent social inequalities. Effective protection of human rights requires an integrated approach involving legal reform, stronger institutional accountability, inclusive policies, and empowerment of vulnerable groups as active rights-holders.

### **1.6 Research Questions**

The research seeks to answer the following questions:

1. How adequate is India's existing constitutional and legislative framework in protecting the rights and dignity of women, children, and marginalized communities, and what are the principal gaps in this framework?
2. What has been the contribution of the Indian judiciary through constitutional interpretation and public interest litigation to the advancement of social justice for vulnerable groups, and what are the limitations of judicial intervention as a strategy for social transformation?
3. How does India's approach to human protection compare with the frameworks adopted in the United States, the United Kingdom, South Africa, and Canada, and what lessons can be drawn from these comparisons?
4. What structural, institutional, and policy reforms are necessary to bridge the gap between the formal legal framework and the substantive realization of human rights for women, children, and marginalized communities?

### **1.7 Scope and Limitations**

This study is primarily confined to the legal framework in India, with comparative references to four foreign jurisdictions. The research focuses on central legislation and Supreme Court jurisprudence, with selective reference to state legislation and High Court decisions were

significant. The study relies on secondary sources and does not involve empirical fieldwork; its assessment of implementation gaps draws on published reports, data, and scholarship rather than primary field data. The research covers developments up to the present date.

This research is structured in seven chapters. Chapter 1 introduces the subject, articulates the objectives, research questions, and methodology, and situates the study within existing literature. Chapter 2 surveys the scholarly literature on the subject. Chapter 3 examines the legislative framework for the protection of women and children. Chapter 4 analyses the role of the judiciary with reference to landmark case laws and footnotes. Chapter 5 undertakes comparative legal analysis. Chapter 6 concludes the research with findings and recommendations.



## **CHAPTER 2: HISTORIC EVOLUTION**

A systematic review of existing literature serves three functions: it establishes the state of knowledge on the subject, identifies the gaps that the present research seeks to fill, and situates the research within the broader intellectual tradition. The subject of human protection in the context of social justice is inherently interdisciplinary, drawing on law, sociology, political science, feminist theory, disability studies, and development economics. This survey accordingly draws on scholarship across these disciplines.

### **2.1 Constitutional Foundations of Social Justice**

M.P. Jain's *Indian Constitutional Law* remains the most authoritative text on the constitutional framework for social justice. Jain's analysis of Articles 14 to 18, the directive principles of state policy, and the evolution of the fundamental rights jurisprudence provides the foundational doctrinal framework for understanding the constitutional basis of human protection. H.M. Seervai's *Constitutional Law of India* offers a more conservative but rigorous treatment of the same subject and provides a useful corrective to the expansive judicial activism that has characterized the Supreme Court's approach in recent decades.

Granville Austin's *The Indian Constitution: Cornerstone of a Nation* provides the historical and political context for understanding the constitutional design of social justice. Austin demonstrates that the Constitution's social justice provisions were the product of a conscious commitment by the framers particularly Dr. B.R. Ambedkar to use the law as an instrument for the transformation of a deeply hierarchical and unequal social order. This transformative constitutional vision is the normative backdrop against which the present research evaluates the adequacy of the existing legal framework.

Uppendra Baxi's *The Future of Human Rights* advances a critical perspective on the limits of formal rights discourse. Baxi argues that the language of rights must be connected to the material conditions of the poor and the marginalized, and that rights must be understood not merely as individual entitlements but as claims against structural injustice. His concept of "suffering" as the central problematic of human rights scholarship has significantly influenced the human-rights- based approach adopted in this research.

## 2.2 Women's Rights and Gender Justice

Flavia Agnes' *Law and Gender Inequality: The Politics of Women's Rights in India* is perhaps the most important single work on women's rights law in India. Agnes traces the historical evolution of laws relating to women from personal laws on marriage, divorce, and property to criminal laws on rape, dowry, and harassment and demonstrates how the law has frequently served to reinforce rather than challenge patriarchal structures. Her critique of the "protectionist" paradigm in women's rights law which treats women as objects of protection rather than as active rights-bearers is directly relevant to the conceptual framework of this research.

Ratna Kapur and Brenda Cossman's *Subversive Sites: Feminist Engagements with Law in India* examines the relationship between feminist legal theory and legal practice in India. The authors critique the limitations of liberal feminism in addressing the structural roots of gender inequality and advocate for a more radical engagement with questions of power, identity, and social transformation. The Justice Verma Committee Report (2013) is an indispensable primary source for any study of women's rights law in India. The Report's comprehensive recommendations on criminal law reform many of which were incorporated into the Criminal Law (Amendment) Act, 2013 represent the most significant reform of the law on sexual violence since independence. The Report's emphasis on the connection between gender inequality, impunity, and sexual violence provides a structural framework for understanding the problem of violence against women.

Vrinda Grover's extensive legal advocacy work and scholarship on violence against women and access to justice, as reflected in her contributions to various edited volumes and law journals, has significantly shaped the discourse on institutional accountability and the rights of survivors.

## 2.3 Children's Rights

Neera Burra's *Born to Work: Child Labour in India* remains the most comprehensive empirical and legal study of child labour in the Indian context. Burra identifies the structural factors are poverty, lack of educational facilities, social norms, and the demands of specific industries that perpetuate child labour and critiques the inadequacy of legislative interventions that do not address these

structural roots. Her work underscores the importance of economic and social policies as complements to legal prohibition.

Ved Kumari's *The Juvenile Justice System in India: From Welfare to Rights* traces the evolution of juvenile justice law in India and critically examines the tension between welfare and rights-based approaches. Kumari's analysis of the Juvenile Justice Act, 2015, particularly its controversial provision for trying children between sixteen and eighteen years as adults, argues persuasively that this provision is inconsistent with international standards and with the constitutional value of the best interests of the child.

Asha Bajpai's *Child Rights in India: Law, Policy and Practice* provides a comprehensive overview of the legal framework for child rights in India, covering education, health, protection from abuse and exploitation, and the juvenile justice system. Bajpai's analysis consistently evaluates the formal legal framework against the standards of the UN Convention on the Rights of the Child.

The annual reports of the National Commission for Protection of Child Rights (NCPCR) document the state of child rights enforcement in India and provide empirical grounding for the assessment of implementation gaps in this research.

#### **2.4 Rights of Marginalized Communities**

Marc Galanter's *Competing Equalities: Law and the Backward Classes in India* is the foundational text on the legal framework for protective discrimination in India. Galanter's exhaustive analysis of the reservation system, its constitutional justification, and its implementation over the first three decades of the Republic provides the doctrinal and historical context for understanding contemporary debates on affirmative action and social justice.

Christophe Jaffrelot's *India's Silent Revolution: The Rise of the Lower Castes in North India* offers a sociological analysis of the political mobilization of backward classes and its impact on social justice policy. Jaffrelot's work situates the legal framework for affirmative action within the broader dynamics of caste politics and social transformation.

On the rights of persons with disabilities, Anita Ghai's *Rethinking Disability in India* argues for a fundamental paradigm shift from the medical model which treats disability as an individual pathology to be treated or managed to the social model which locates disability in the barriers

created by an inaccessible and discriminatory society. This paradigm shift is now reflected in the Rights of Persons with Disabilities Act, 2016 and the UN CRPD.

On transgender rights, the Supreme Court's decision in *National Legal Services Authority v. Union of India* (2014) and the subsequent enactment of the Transgender Persons Act, 2019 have been subject to extensive scholarly commentary. Arvind Narrain and Alok Gupta's *Law Like Love: Queer Perspectives on Law* provides a collection of legal and theoretical essays on the rights of gender and sexual minorities that has significantly shaped the discourse in this area.

## **2.5 Intersectionality and Structural Violence**

The concept of intersectionality, developed by Kimberle Crenshaw in the American context, has been applied by Indian scholars to analyse the compounded disadvantage faced by persons who occupy multiple axes of marginalization simultaneously. Sharmila Rege's sociological work on Dalit feminist perspectives has been particularly influential in developing an intersectional understanding of gender and caste oppression in India. The application of an intersectional lens reveals that legal frameworks that address gender, caste, or disability in isolation are inadequate to the lived experiences of those who face multiple and overlapping forms of discrimination.

Johan Galtung's foundational concept of structural violence are embedded in social structures rather than perpetrated by identifiable individuals, provides the theoretical framework for understanding the forms of harm addressed in this research. Structural violence encompasses not only overt physical harm but also the systematic denial of access to resources, opportunities, and decision-making that characterizes the situation of women, children, and marginalized communities.

## **2.6 International Human Rights Framework**

Philip Alston and Ryan Goodman's *International Human Rights: The Successor to International Human Rights in Context* provides a comprehensive treatment of international human rights law that contextualizes India's treaty obligations under CEDAW, the CRC, the CRPD, and other instruments. The General Comments and Concluding Observations of the relevant treaty bodies particularly the CEDAW Committee, the Committee on the Rights of the Child, and the Committee on the Rights of Persons with Disabilities provide authoritative interpretations of India's obligations under these instruments and constitute important secondary sources for this research.

## 2.7 Research Gap

The existing literature, though rich and diverse, tends to address the rights of women, children, or specific marginalized communities in isolation. There is a relative absence of integrated scholarship that examines the legal framework for human protection in a holistic, intersectional, and comparative manner. This research seeks to address this gap by bringing together these strands of scholarship within a unified analytical framework and by evaluating the Indian legal framework against both domestic constitutional standards and international human rights norms.



## **CHAPTER 3: LEGISLATION**

The legislative framework for the protection of women and children in India is extensive and has evolved significantly over the seven decades since independence. It spans constitutional provisions, central legislation, state legislation, and delegated legislation, covering a wide range of subjects including violence and exploitation, marriage and family, property and economic rights, labour and employment, education and health, and access to justice. This chapter examines the principal legislative instruments under these heads, assesses their key provisions, and identifies their limitations. The chapter is structured to reflect the holistic, human-rights-based approach of the research, examining legislation not merely as a collection of individual statutes but as a framework of protection that must be evaluated for its overall adequacy and coherence.

### **3.1 Constitutional Framework**

The Constitution of India provides the normative foundation for all legislation relating to women and children. The relevant constitutional provisions may be grouped as follows.

**Equality and Non-Discrimination:** Article 14 guarantees equality before the law and equal protection of the laws. Article 15(1) prohibits discrimination by the State on grounds of religion, race, caste, sex, or place of birth. Article 15(3) provides an express exception permitting the State to make special provisions for women and children, the constitutional basis for protective and affirmative legislation.

Article 16 guarantees equality of opportunity in matters of public employment.

**Right to Life and Dignity:** Article 21 guarantees the right to life and personal liberty. The Supreme Court has interpreted this provision broadly to encompass the right to live with dignity, the right to health, the right to education, the right to a safe environment, and the right of women to be free from sexual harassment and violence. Article 21A, inserted by the 86th Constitutional Amendment in 2002, guarantees the right to free and compulsory education for children between six and fourteen years.

**Prohibition of Exploitation:** Article 23 prohibits trafficking in human beings and begar (forced labour) and declares any contravention to be an offence punishable by law. Article 24 prohibits the

employment of children below the age of fourteen years in factories, mines, and other hazardous occupations.

Directive Principles: Several directive principles are directly relevant to the protection of women and children. Article 39(a) directs the State to secure the right of men and women equally to an adequate means of livelihood. Article 39(d) directs equal pay for equal work for men and women. Article 39(e) directs the State to protect the health and strength of workers, including women and children, from abuse. Article 39(f) directs the State to ensure that children are given opportunities and facilities to develop in a healthy manner and are protected against exploitation. Article 42 directs the State to make provision for maternity relief. Article 45, as amended, directs the State to provide early childhood care and education for all children under six years.

## **3.2 Legislation Relating to Women**

### **3.2.1 The Dowry Prohibition Act, 1961**

The Dowry Prohibition Act was enacted to address the social evil of dowry, the demand for property or valuable security as a condition of marriage which has been responsible for widespread domestic violence, harassment, and the deaths of thousands of women each year. The Act prohibits the giving or taking of dowry and provides for imprisonment of up to five years and a fine for violation. Subsequent amendments and the insertion of Sections 304B and 498A in the Indian Penal Code strengthened the criminal law response to dowry-related violence. Section 304B IPC provides for a specific offence of dowry death, with a minimum sentence of seven years, while Section 498A penalizes cruelty to a married woman by her husband or his relatives. Despite these provisions, the Act has been criticized for its narrow definition of dowry, the difficulty of obtaining evidence in the privacy of the matrimonial home, and the social stigma that discourages reporting.

### **3.2.2 The Maternity Benefit Act, 1961 (as amended in 2017)**

The Maternity Benefit Act protects the employment of women during and after pregnancy and provides for paid maternity leave. The 2017 amendment increased paid maternity leave from twelve to twenty-six weeks for the first two children, and introduced provisions for work from home options where the nature of work permits, crèche facilities in establishments employing fifty or more employees, and the facility for the woman to visit the crèche four times a day. The Act

applies to establishments employing ten or more persons. Significant limitations include the exclusion of most women working in the unorganized sector and the absence of publicly funded maternity support for women outside formal employment.

### 3.2.3 The Protection of Women from Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) represents the most significant piece of civil legislation for the protection of women in India. Prior to its enactment, women who experienced domestic violence defined to include not only physical violence but also sexual, emotional, verbal, and economic abuse had access only to criminal remedies under Section 498A IPC, which were both difficult to pursue and inadequate to address the immediate need for protection and relief.

PWDVA provides a comprehensive civil remedy framework. It defines domestic violence broadly to cover any act, omission, or commission that harms, injures, or endangers the health, safety, life, limb, or well-being whether mental or physical of the aggrieved person. The Act provides for protection orders prohibiting the respondent from committing or abetting domestic violence; residence orders securing the aggrieved person's right to remain in or return to the shared household; monetary relief covering loss of earnings, medical expenses, and maintenance; custody orders; and compensation orders for mental torture and emotional distress.

The Act covers not only married women but also women in live-in relationships and other domestic relationships and extends to women in joint families. The appointment of Protection Officers and the recognition of service providers under the Act create an institutional infrastructure for implementation. The Supreme Court, in *Hiral P. Harsora v. Kusum Narottamdas Harsora* (2016), expanded the scope of the Act by striking down the restriction of the definition of "respondent" to adult male persons.

Limitations of the Act include the chronic shortage of Protection Officers, the limited capacity of shelter homes and other support services, delays in the disposal of domestic violence applications by Magistrates, limited awareness of the Act's provisions among women, and the social and economic pressures that inhibit women from seeking its protection.

### 3.2.4 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Enacted pursuant to the Supreme Court's directions in *Vishaka v. State of Rajasthan* (1997), this Act provides a statutory framework for the prevention and redressal of sexual harassment at the workplace. It defines sexual harassment broadly to include physical contact and advances, demands for sexual favours, sexually coloured remarks, the display of pornography, and any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature. It covers all women employees such as regular, contractual, temporary, and daily wage and extends to non-traditional workplaces including the unorganized sector and domestic work.

The Act requires every employer with ten or more employees to constitute an Internal Complaints Committee (ICC) and provides for Local Complaints Committees (LCC) at the district level for smaller workplaces. The Act imposes penalties including dismissal and compensation on respondents found guilty and provides for penalties against employers who fail to constitute ICCs. Implementation gaps include low awareness, reluctance to complain due to fear of professional consequences, the inadequacy of LCCs in addressing complaints in the unorganized sector, and the absence of effective monitoring and enforcement.

### 3.2.5 The Criminal Law (Amendment) Act, 2013

The Criminal Law (Amendment) Act, 2013, enacted following the nationwide outrage over the Delhi gang rape of December 2012, represents the most comprehensive reform of the criminal law on sexual violence in India's post-independence history. Based substantially on the recommendations of the Justice Verma Committee, the Act amended the Indian Penal Code, the Code of Criminal Procedure, and the Indian Evidence Act.

Key amendments to the IPC included the broadening of the definition of rape to include penile penetration of the vagina, mouth, urethra, or anus, and insertion of any object or body part into these orifices by a man against a woman; the introduction of new offences of stalking, voyeurism, acid attack, and disrobing; the imposition of enhanced minimum mandatory sentences for aggravated forms of rape including gang rape, rape by persons in positions of authority, and rape causing death or persistent vegetative state; and the introduction of the death penalty as an option for the offence of repeat rape. Amendments to the CrPC and the Evidence Act strengthened the

procedural rights of survivors, including the prohibition on questions regarding the survivor's past sexual history, in-camera trials, and the prohibition on the identity of the survivor being disclosed.

Critics have noted that the Act, while significant, does not address marital rape as a criminal offence, has not resolved the problem of low conviction rates in rape cases, and has not substantially improved the treatment of survivors in the investigation and trial process.

### 3.2.6 The Protection of Women from Sexual Offences (Vishaka Guidelines and Beyond)

Prior to the 2013 Act, the Vishaka Guidelines of 1997 provided the only legally binding framework for the prevention of sexual harassment at the workplace. These guidelines, developed by the Supreme Court in the absence of legislation, drew on CEDAW and other international standards and imposed a positive obligation on employers to prevent and redress sexual harassment. Their replacement by the POSH Act in 2013 represented the transition from judge-made to legislated standards, though many of the substantive principles of the guidelines are preserved in the Act.

### 3.2.7 The Prohibition of Child Marriage Act, 2006

The Prohibition of Child Marriage Act, 2006 prohibits the solemnization of child marriages are marriages in which the boy is below twenty-one years or the girl is below eighteen years. The Act provides for the voidability of child marriages at the option of the contracting party who was a minor at the time, the punishment of persons who solemnize, contract, or promote child marriages, and the appointment of Child Marriage Prohibition Officers. The Act's most significant limitation is that it does not make all child marriages void ab initio, meaning that unless challenged, such marriages remain valid at law. This anomaly is currently the subject of reference to a larger bench of the Supreme Court. India continues to have one of the highest absolute numbers of child marriages in the world, with the NFHS-5 reporting that 23.3% of women between twenty and twenty-four years were married before the age of eighteen.

### 3.2.8 The Muslim Women (Protection of Rights on Marriage) Act, 2019

Following the Supreme Court's declaration in *Shayara Bano v. Union of India* (2017) that the practice of instantaneous triple talaq (talaq-e-biddat) was unconstitutional, Parliament enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalizes the pronouncement of triple talaq by a Muslim man and provides for imprisonment of up to three

years. The Act also provides for the payment of subsistence allowance and custody of minor children by the husband. The Act has been criticized by some commentators for the criminalization of what is essentially a family law matter and for its potential for misuse, while others have welcomed it as a necessary protection for Muslim women against an arbitrary practice.

### 3.2.9 The Immoral Traffic (Prevention) Act, 1956

The Immoral Traffic (Prevention) Act penalizes activities associated with organized prostitution are the running of brothels, soliciting in public places, living on the earnings of a prostitute, and procuring persons for prostitution. The Act does not criminalize prostitution per se. It has been widely criticized for its conflation of consensual adult sex work with trafficking, for its failure to adequately protect trafficking victims, and because its enforcement has frequently targeted the victims of trafficking rather than the traffickers.

### 3.2.10 The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994

The PC-PNDT Act prohibits the use of pre-natal diagnostic techniques for determining the sex of the foetus and regulates genetic counselling centres, laboratories, and clinics. The Act was enacted in response to the alarming decline in the child sex ratio, which the Census of 2011 recorded at 918 girls per 1,000 boys in the 0-6 age group. Despite the Act, sex-selective practices persist in several states, reflecting the inadequacy of legal prohibition in the absence of changes in social norms and economic incentives.

## 3.3 Legislation Relating to Children

### 3.3.1 The Right of Children to Free and Compulsory Education Act, 2009

The Right to Education Act was enacted to give effect to Article 21A of the Constitution, which guarantees the right to free and compulsory education for children between six and fourteen years. The Act provides for neighborhood schools within a specified distance from the child's residence, prohibits physical punishment and mental harassment of children, mandates age-appropriate admission for out-of-school children, prescribes standards for teachers and school infrastructure, and requires private unaided schools to reserve 25% of seats for children from economically weaker sections and disadvantaged groups. The exclusion of children below six years leaving early childhood care and education outside the ambit of the enforceable right and of children

above fourteen years, who must transition to secondary education without a corresponding right, are significant limitations of the Act.

### 3.3.2 The Child Labour (Prohibition and Regulation) Act, 1986 (as amended in 2016)

The 2016 amendment to the Child Labour Act completely prohibited the employment of children below fourteen years in all occupations and processes, with an exception for work within the family or family enterprise, outside of school hours, or in the audio-visual entertainment industry. The amendment also prohibited the employment of adolescents between fourteen and eighteen years in hazardous occupations and processes. The exception for family-based employment has been criticized as liable to be misused to perpetuate child labour in agriculture, beedi rolling, brick kilns, and other industries where children are employed under the guise of "family work." The enforcement of the Act in the vast unorganized sector remains a serious challenge.

### 3.3.3 The Protection of Children from Sexual Offences Act, 2012 (as amended in 2019)

The POCSO Act provides a comprehensive framework for the protection of children are persons below eighteen years of age from sexual abuse and exploitation. It defines and penalizes penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, aggravated sexual assault, sexual harassment, and use of children for pornographic purposes. The Act establishes Special Courts for the expeditious trial of offences and provides for child-friendly procedures: in-camera trials, the assistance of a support person, the right to record evidence at the child's residence, the prohibition on aggressive cross-examination, and a duty of confidentiality. The 2019 amendment increased penalties for aggravated penetrative sexual assault, including the introduction of the death penalty in the most serious cases, and introduced specific provisions on child pornography.

The Act operates based on mandatory reporting by any person who has knowledge or reason to believe that a child has been or is being sexually abused is obligated to report this to the police. Failure to report is itself an offence. Despite these provisions, NCRB data consistently shows a significant and growing backlog of POCSO cases in the Special Courts, pointing to serious capacity gaps in the justice system.

### 3.3.4 The Juvenile Justice (Care and Protection of Children) Act, 2015

The Juvenile Justice Act of 2015 replaced the earlier Juvenile Justice Act of 2000 and introduced significant structural and substantive changes. The Act distinguishes between two categories: children in conflict with the law where children alleged to have committed an offence and children in need of care and protection where children who are homeless, abandoned, victims of abuse, or at risk. For the first category, the Act establishes Juvenile Justice Boards composed of a Magistrate and two social workers. For the second, it establishes Child Welfare Committees.

The most controversial innovation of the 2015 Act is the provision in Section 15 permitting the Juvenile Justice Board to assess whether a child between sixteen and eighteen years who is alleged to have committed a heinous offence defined as one carrying a minimum sentence of seven years should be tried as an adult. If the Board assesses that the child has the mental and physical capacity to commit the offence and understands the consequences, the case is transferred to a Children's Court for trial as an adult. Critics, including UNICEF and child rights scholars, have argued that this provision is inconsistent with the UN Convention on the Rights of the Child, which requires that the best interests of the child be a primary consideration in all proceedings, and that rehabilitation rather than punishment be the primary objective of juvenile justice.

### 3.3.5 Other Legislation Relating to Children

Additional legislation of significance includes the Commissions for Protection of Child Rights Act, 2005 (which established the National and State Commissions for Protection of Child Rights); the Child Marriage Restraint Act, 1929 (now superseded by the Prohibition of Child Marriage Act, 2006); the Guardians and Wards Act, 1890; the Hindu Adoption and Maintenance Act, 1956; and the various state children's acts that supplement central legislation.

## 3.4 Legislation for Marginalized Communities

### 3.4.1 The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

The SC/ST Prevention of Atrocities Act was enacted to address the limitations of general criminal law in responding to caste-based violence and discrimination. The Act defines a comprehensive list of atrocities specific offences committed by a person who is not a member of a Scheduled Caste or Scheduled Tribe against a person who is and provides enhanced penalties. It establishes Special Courts for the expeditious trial of atrocities cases and provides for relief and rehabilitation

of victims. The 2015 amendment expanded the list of offences and introduced provisions for the attachment of property of accused persons. The Act's effectiveness has been repeatedly questioned in light of low conviction rates and delays in the disposal of cases.

#### 3.4.2 The Rights of Persons with Disabilities Act, 2016

The RPWD Act, enacted to align Indian law with the UN CRPD ratified by India in 2007, represents a paradigm shift from a welfare model to a rights-based model of disability. The Act recognizes twenty-one categories of disability and provides for reservation in government employment and higher educational institutions, universal accessibility in public buildings, transport, and information and communication technology, legal capacity of persons with disabilities on an equal basis with others, and the establishment of National and State Disability Commissioners. The Act's conceptual shift from medical certification of disability to a rights-based framework is significant, though implementation particularly of accessibility mandates remains incomplete.

#### 3.4.3 The Transgender Persons (Protection of Rights) Act, 2019

The Transgender Persons Act provides for the legal recognition of transgender identity, prohibits discrimination in employment, education, healthcare, and housing, and establishes a National Council for Transgender Persons. The Act has been subject to sustained critique from the transgender community and civil society organizations for requiring a certificate of identity from a District Magistrate rather than recognizing the right to self-identification, for providing inadequate protection against violence, and for provisions on "family interaction" that have been seen as enabling family-based coercion. Legislative reform of this Act is widely regarded as necessary to align it with the standards set in the NALSA judgment and the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity.

#### 3.4.4 The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

The Forest Rights Act recognizes the rights of forest-dwelling Scheduled Tribes and other traditional forest dwellers over forest land and resources. It provides for individual rights, community rights, and developmental rights for forest-dwelling communities. The Act is a

landmark piece of legislation that seeks to correct the historical injustice caused by colonial and post-colonial forest governance that excluded tribal communities from their traditional territories. Implementation has, however, been severely impeded by resistance from forest bureaucracies, inadequate gram sabha empowerment, and high rates of rejection of rights claims.



## **CHAPTER 4: ROLE OF JUDICIARY**

The Indian judiciary, particularly the Supreme Court of India, has played a role of extraordinary importance in the protection of human rights of women, children, and marginalized communities. Operating within a constitutional framework that combines justiciable fundamental rights, a broadly framed right to constitutional remedies under Article 32, and a tradition of judicial activism, the Supreme Court has progressively expanded the content of constitutional rights, developed innovative procedural tools above all, the public interest litigation jurisdiction to make justice accessible to the marginalized, and intervened to fill legislative gaps and direct institutional reform. This chapter examines the principal strands of this judicial contribution through landmark cases organized thematically.

### **4.1 The Public Interest Litigation Jurisdiction**

Public interest litigation (PIL) is the most consequential institutional innovation in the history of Indian constitutional adjudication. Through a series of decisions in the late 1970s and early 1980s, the Supreme Court liberalized the rule of locus standi to permit any person, acting bona fide in the public interest, to petition the court on behalf of those who, by reason of poverty, illiteracy, or social or economic disadvantage, were unable to approach the court themselves.

In *S.P. Gupta v. Union of India* (1982)<sup>1</sup>, the Court definitively established that any member of the public could approach the court by way of a writ petition for the enforcement of the rights of persons who were unable to approach the court themselves. Justice Bhagwati, writing for the Court, declared that the rule of locus standi must be relaxed in the Indian context where the Constitution is committed to the transformation of an unequal society.

In *Hussainara Khatoon v. Home Secretary, State of Bihar* (1979)<sup>2</sup>, the Court acted on a petition filed on the basis of a newspaper article and ordered the release of thousands of undertrial prisoners predominantly poor and marginalized persons who had spent longer in jail as undertrial prisoners than the maximum sentence for the alleged offence. This decision established the right to speedy trial as a component of the right to life under Article 21 and demonstrated the power of PIL as an instrument for advancing the rights of the most vulnerable.

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<sup>1</sup> *S.P. Gupta v. Union of India*, AIR 1982 SC 149.

<sup>2</sup> *Hussainara Khatoon v. Home Secretary, State of Bihar*, (1980) 1 SCC 81.

## 4.2 Rights of Women

### 4.2.1 Vishaka v. State of Rajasthan (1997)<sup>3</sup>

The Vishaka case arose from the gang rape of Bhanwari Devi, a social worker employed under a State Government programme, by upper-caste men who attacked her for attempting to prevent a child marriage. The failure of the police and local administration to act on her complaint, and the acquittal of the accused by the Sessions Court, prompted women's rights organizations to file a PIL before the Supreme Court seeking enforcement of the right of women to be free from sexual harassment at the workplace.

The Supreme Court, in a judgment authored by Justice J.S. Verma (later the author of the Verma Committee Report), held that sexual harassment at the workplace violates the fundamental rights of women to equality, non-discrimination, and the right to life and dignity under Articles 14, 15, and 21 of the Constitution. In the absence of domestic legislation, the Court drew upon CEDAW and other international standards to formulate the Vishaka Guidelines, which imposed binding obligations on all employers to prevent and address sexual harassment. The Guidelines remained in force as law until the enactment of the POSH Act in 2013. The Vishaka case is a landmark not only in the law of gender justice but also in the jurisprudence of PIL and the relationship between international human rights law and domestic constitutional law.

<sup>3</sup> Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

### 4.2.2 Chairman, Railway Board v. Chandrima Das (2000)<sup>4</sup>

This case arose from the gang rape of a Bangladeshi national by employees of the Indian Railways at Howrah Station. The Supreme Court held that the right to life under Article 21 was available to all persons, not merely citizens, and that the State was liable in public law for the acts of its employees. The Court awarded compensation and held that the violation of bodily integrity and sexual dignity of a woman, whether citizen or foreigner, was a violation of human rights guaranteed by the Constitution and by international instruments to which India is a party.

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<sup>4</sup> Chairman, Railway Board v. Chandrima Das, (2000) 2 SCC 465.

#### 4.2.3 Shayara Bano v. Union of India (2017)<sup>5</sup>

In a historic verdict, a five-judge Constitution Bench of the Supreme Court, by a majority of three to two, declared the practice of instantaneous triple talaq unconstitutional. Justice Rohinton Nariman, in the majority judgment, held that triple talaq was manifestly arbitrary within the meaning of Article 14 of the Constitution, as it allowed a Muslim husband to dissolve a marriage capriciously and irrevocably without any reasonable cause or process. Justice Kurian Joseph, in a concurring judgment, held that the practice was un-Islamic and therefore not protected under Article 25. The two dissenting judges held that the court should have referred the matter to the legislature. The decision led to the enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019.

<sup>5</sup> Shayara Bano v. Union of India, (2017) 9 SCC 1.

#### 4.2.4 Joseph Shine v. Union of India (2018)<sup>6</sup>

The Supreme Court unanimously struck down Section 497 of the Indian Penal Code, which criminalized adultery but only at the instance of the husband against the man with whom his wife had committed the act. The provision treated the woman as the property of her husband, incapable of consenting to sexual relations outside marriage, and denied her agency and dignity. The Court held that Section 497 violated Articles 14, 15, and 21 of the Constitution and was a manifestation of the patriarchal assumption that a woman's sexuality belongs to her husband. The decision reaffirmed the constitutional commitment to gender equality as a substantive rather than merely formal value.

<sup>6</sup> Joseph Shine v. Union of India, (2018) 2 SCC 189.

#### 4.2.5 Indian Young Lawyers Association v. State of Kerala (2018) — The Sabarimala Case<sup>7</sup>

By a majority of four to one, the Supreme Court held that the prohibition on the entry of women between ten and fifty years of age into the Sabarimala temple was unconstitutional. The majority held that the exclusion of women based on a physiological characteristic, menstruation, was a form of untouchability prohibited by Article 17, and that it violated the rights of women to equality and non-discrimination under Articles 14 and 15 and the right to freedom of religion under Article 25. Justice Indu Malhotra, in a significant dissent, argued that courts should not interfere in matters of religious belief unless they amount to a social evil of the order of Sati or human sacrifice. The case

has been referred to a larger bench on the broader questions of the relationship between religious freedom and constitutional morality.

<sup>7</sup> *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1.

4.2.6 *Hiral P. Harsora v. Kusum Narottamdas Harsora* (2016)<sup>8</sup>

The Supreme Court struck down the restriction in the definition of "respondent" under the Domestic Violence Act, 2005 to "adult male persons," holding that it was over-inclusive and discriminatory. The decision enabled aggrieved women to file domestic violence complaints against female relatives are mothers-in-law, sisters-in-law significantly expanding the protective scope of the legislation in contexts where abuse is perpetrated or enabled by female members of the matrimonial household.

<sup>8</sup> *Hiral P. Harsora v. Kusum Narottamdas Harsora*, (2016) 10 SCC 165.

### 4.3 Rights of Children

4.3.1 *Unni Krishnan v. State of Andhra Pradesh* (1993)<sup>9</sup>

The Supreme Court held that the right to education for children up to the age of fourteen years was a fundamental right implicit in the right to life under Article 21, read with the directive principle in Article 45. This decision laid the foundation for the 86th Constitutional Amendment of 2002, which inserted Article 21A guaranteeing the right to free and compulsory education, and for the enactment of the Right to Education Act, 2009. The decision is a foundational example of the Supreme Court's use of constitutional interpretation to advance the social and economic rights of marginalized persons.

<sup>9</sup> *Unni Krishnan v. State of Andhra Pradesh*, (1993) 1 SCC 645.

4.3.2 *Bachpan Bachao Andolan v. Union of India* (2011)<sup>10</sup>

In this significant PIL concerning child trafficking and forced labour in circuses and other industries, the Supreme Court issued comprehensive directions for the enforcement of child rights. The Court directed the prohibition of employment of children in circuses, the rescue and rehabilitation of trafficked children, the establishment of a national database of missing and trafficked children, and the strengthening of the institutional mechanisms for child protection. The

case illustrates the Supreme Court's willingness to use the PIL jurisdiction to address complex systemic violations of children's rights and to issue detailed implementational directions.

<sup>10</sup> *Bachpan Bachao Andolan v. Union of India*, (2011) 5 SCC 1.

#### 4.3.3 *Sampurna Behura v. Union of India* (2018)<sup>11</sup>

In proceedings concerning the implementation of the Juvenile Justice Act, 2015, the Supreme Court issued comprehensive directions on the constitution and functioning of Child Welfare Committees and Juvenile Justice Boards, the training of their members, the availability of legal aid for children in conflict with the law, and the standards of care in children's homes. The Court emphasized the paramountcy of the best interests of the child in all juvenile justice proceedings and the primacy of rehabilitation over punishment.

<sup>11</sup> *Sampurna Behura v. Union of India*, (2018) 4 SCC 433.

#### 4.3.4 *Gaurav Jain v. Union of India* (1997)<sup>12</sup>

The Supreme Court held that children of sex workers were entitled as a matter of constitutional right to education, vocational training, and opportunities for rehabilitation, and directed the establishment of juvenile homes and educational facilities for them. The decision affirmed the principle that the circumstances of a child's birth or the occupation of her parents cannot be permitted to determine the opportunities available to her.

<sup>12</sup> *Gaurav Jain v. Union of India*, (1997) 8 SCC 114.

### 4.4 Rights of Marginalized Communities — Judicial Contributions

#### 4.4.1 *State of Madras v. Champakam Dorairajan* (1951)<sup>13</sup>

This foundational decision, in which the Supreme Court struck down a state order reserving seats in state educational institutions on the basis of religion, race, and caste as violative of Article 29(2), precipitated the First Constitutional Amendment of 1951, which inserted Article 15(4) to permit the State to make special provisions for the advancement of socially and educationally backward classes or Scheduled Castes and Scheduled Tribes. The decision thus established the constitutional mechanism for affirmative action while at the same time subordinating it to the fundamental right to non-discrimination.

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<sup>13</sup> State of Madras v. Champakam Dorairajan, AIR 1951 SC 226.

#### 4.4.2 Indra Sawhney v. Union of India (1992)<sup>14</sup>

This landmark decision of a nine-judge Constitution Bench is the foundational authority on the constitutionality and scope of the reservation system in India. The Court upheld the Mandal Commission's recommendation of 27% reservations for Other Backward Classes in central government services, while imposing the important qualification that the "creamy layer", the more affluent and educationally advanced among the OBCs should be excluded from the benefit of reservation. The Court also placed a ceiling of 50% on total reservations, subject to exceptional circumstances. The decision remains the governing authority on affirmative action law in India and has been applied and distinguished in numerous subsequent decisions.

<sup>14</sup> Indra Sawhney v. Union of India, AIR 1993 SC 477.

#### 4.4.3 National Legal Services Authority v. Union of India (2014)<sup>15</sup>

In a landmark judgment, the Supreme Court recognized transgender persons as a "third gender" and held that they were entitled to all fundamental rights under the Constitution on the same footing as other citizens. The Court held that the right to recognition of gender identity is an essential component of the right to personal autonomy, dignity, and freedom under Article 21. It directed the Union and State Governments to take steps to provide social welfare schemes for transgender persons, to recognize transgender persons as a socially and educationally backward class entitled to reservations, and to take measures to promote their health, education, and livelihood. The decision is one of the most progressive in the history of Indian constitutional adjudication and has had a significant influence on the global discourse on transgender rights.

<sup>15</sup> National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

#### 4.4.4 Navtej Singh Johar v. Union of India (2018)<sup>16</sup>

In a five-judge Constitution Bench decision, the Supreme Court unanimously partially struck down Section 377 of the Indian Penal Code, which criminalized "carnal intercourse against the order of nature." The Court held that Section 377, insofar as it criminalized consensual sexual conduct between

adults in private, was unconstitutional as it violated the rights to equality, non-discrimination, privacy, dignity, and freedom of expression of LGBTQ+ persons. The Court



expressly overruled the earlier decision in *Suresh Kumar Koushal v. Naz Foundation* (2013) which had reinstated the criminalization of homosexual conduct. The *Johar* decision is a transformative moment in the history of human rights in India and has significant implications for the rights of all sexual and gender minorities.

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<sup>16</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

#### 4.4.5 *K.S. Puttaswamy v. Union of India* (2017) — The Privacy Judgment<sup>17</sup>

A nine-judge Constitution Bench unanimously held that the right to privacy is a fundamental right protected under Article 21 of the Constitution. The decision has far-reaching implications for marginalized communities. The Court's recognition of decisional privacy, the right of the individual to make intimate choices about her life, identity, and relationships underpins the subsequent *Navtej Singh Johar* decision. The Court's recognition of informational privacy has implications for the protection of personal data of individuals belonging to marginalized communities in the age of digital governance. The decision also reaffirmed the dignity of the individual as the foundational value of the Indian constitutional order.

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<sup>17</sup> *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

#### 4.4.6 *Jeeja Ghosh v. Union of India* (2016)<sup>18</sup>

The Supreme Court held that the forcible deboarding of a passenger with cerebral palsy from a SpiceJet flight violated her fundamental rights to equality and dignity under Articles 14 and 21. The Court awarded compensation and issued directions for the formulation of accessible air travel policies. The decision affirmed that the constitutional guarantee of dignity applies to persons with disabilities in all aspects of their daily lives and that public service providers including private entities performing public functions are bound by constitutional norms.

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<sup>18</sup> *Jeeja Ghosh v. Union of India*, (2016) 7 SCC 761.

#### 4.4.7 *Budhan Choudhry v. State of Bihar* (1955)<sup>19</sup>

One of the earliest Supreme Court decisions to address caste-based discrimination in law, this case held that a provision of the Criminal Tribes Act that subjected members of a notified tribe to special

restrictions was unconstitutional as it was based on hostile discrimination without reasonable classification. The decision established the foundational principle that legislative classifications



that disadvantage specific communities based on identity must satisfy the test of reasonable classification and must not reflect invidious discrimination.

<sup>19</sup> *Budhan Choudhry v. State of Bihar*, AIR 1955 SC 191.

#### 4.5 Assessment of the Judicial Role

The decisions examined in this chapter illustrate the multifaceted role of the Indian judiciary in advancing social justice. The Supreme Court has functioned as interpreter expanding the content of fundamental rights to encompass dignity, privacy, education, and freedom from violence; as legislator filling the void left by legislative inaction in cases such as *Vishaka*; as administrator issuing directions for institutional reform and monitoring their implementation through PIL; and as protector providing direct relief to victims of rights violations through the Article 32 jurisdiction.

This judicial role has, however, attracted well-founded criticism. The concerns include the democratic legitimacy of judge-made rules in a constitutional democracy; the limited capacity of courts to address structural and systemic problems that require sustained political and administrative action; the patchy and uneven enforcement of judicial directions; the risk of judicial overreach into domains properly reserved for the executive and legislature; and the paradox that while the Supreme Court has advanced progressive social justice norms, access to the Supreme Court itself remains inaccessible for the vast majority of the poor and marginalized.

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## **CHAPTER 5: COMPARATIVE ANALYSIS**

A comparative analysis of legal frameworks for human protection in select jurisdictions enriches the analytical perspective of this research, identifies best practices that may inform Indian reform, and situates India's approach within the global human rights landscape. This chapter examines the frameworks of the United States, the United Kingdom, South Africa, and Canada, and assesses their relevance to the Indian context.

### **5.1 The United States of America**

The United States constitutional framework for equality rests on the Equal Protection and Due Process Clauses of the Fourteenth Amendment. The Supreme Court has developed a tiered scrutiny framework under which classifications based on race and national origin receive strict scrutiny, classifications based on sex receive intermediate scrutiny, and other classifications are subject only to rational basis review. This framework has been applied to progressively invalidate legislative and executive discrimination against women and racial minorities, though it has significant limitations in addressing private discrimination and structural inequality.

Federal civil rights legislation supplements the constitutional framework. The Civil Rights Act of 1964 prohibits discrimination on grounds of race, colour, religion, sex, and national origin in employment and public accommodations. Title IX of the Education Amendments of 1972 prohibits sex discrimination in educational programmes receiving federal funding. The Americans with Disabilities Act (ADA) of 1990 provides comprehensive protection against discrimination for persons with disabilities in employment, public services, and public accommodations. The Violence Against Women Act (VAWA), originally enacted in 1994 and subsequently reauthorized, provides federal funding for investigation and prosecution of crimes of violence against women and for victim support services.

The US approach offers India several lessons. The concept of disparate impact discrimination where facially neutral policies have a disproportionate adverse impact on a protected group recognized under Title VII of the Civil Rights Act, is a powerful tool for addressing structural discrimination that is not captured by formal equality doctrine. The ADA's provisions on reasonable accommodation are the requirement that employers and service providers adjust enable persons with disabilities to participate equally provide a model for implementing the disability

rights provisions of the RPWD Act. The VAWA's focus on a coordinated community response to domestic violence involving not only criminal prosecution but also victim services, housing, and economic support offers a model for a more comprehensive approach to domestic violence response in India.

## 5.2 The United Kingdom

The United Kingdom's Equality Act of 2010 represents the most comprehensive legislative consolidation of equality law in any common law jurisdiction. The Act consolidates and harmonizes nine separate equality enactments and covers nine "protected characteristics": age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. It covers discrimination in employment, education, the provision of goods and services, and the exercise of public functions.

The Act's most distinctive and innovative provision is the Public Sector Equality Duty (PSED) in Section 149, which requires all public authorities, in the exercise of their public functions, to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity between persons who share a protected characteristic and those who do not, and foster good relations between such persons. The PSED transforms the anti-discrimination framework from a reactive, complaint-based model to a proactive model in which public authorities are required to assess and address the equality implications of their policies and decisions as a matter of course.

The UK's Children Act of 1989 and the Children Act of 2004 provide a comprehensive statutory framework for child welfare and protection, organized around the paramountcy of the child's welfare as the court's paramount consideration in all decisions relating to children. The Serious Crime Act of 2015 introduced the offence of "coercive or controlling behaviour in an intimate or family relationship," which addresses the psychological and economic dimensions of domestic abuse that were previously difficult to prosecute under physical assault laws. The Domestic Abuse Act of 2021 further strengthened the legal framework by providing a statutory definition of domestic abuse, creating a statutory duty to provide support in refuge accommodation, and establishing the office of Domestic Abuse Commissioner.

### 5.3 South Africa

South Africa's Constitution of 1996 is widely regarded as one of the most progressive in the world. Section 9 (the equality clause) of the Bill of Rights not only prohibits unfair discrimination on a wide range of grounds including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, and religion, but also explicitly provides in Section 9(2) that equality includes the full and equal enjoyment of all rights and freedoms, and that legislative and other measures to promote the achievement of equality are permitted and may be taken to advance persons disadvantaged by unfair discrimination. This provides the constitutional foundation for substantive equality and affirmative action.

The Constitutional Court of South Africa has developed a rich jurisprudence on equality and socio-economic rights. In *Government of the Republic of South Africa v. Grootboom* (2000), the Court held that the State was obliged under the Constitution to take reasonable measures to progressively realize the right of access to adequate housing, and that this obligation was justiciable. In *Minister of Health v. Treatment Action Campaign* (2002), the Court ordered the Government to implement a programme for the prevention of mother-to-child transmission of HIV. These decisions represent a more systematic approach to the judicial enforcement of socio-economic rights than the ad hoc PIL jurisdiction of the Indian Supreme Court.

The Children's Act of 2005 provides a comprehensive framework for childcare and protection based on the best interests of the child. The Child Justice Act of 2008 establishes a separate child justice system grounded in restorative justice principles, diversion, and the preference for community-based rather than institutional responses to juvenile offending. The Employment Equity Act of 1998 and the Broad-Based Black Economic Empowerment Act of 2003 provide legislative frameworks for addressing structural economic inequality rooted in the apartheid era.

### 5.4 Canada

The Canadian Charter of Rights and Freedoms, forming Part I of the Constitution Act of 1982, contains Section 15 (equality rights), which guarantees every individual the right to equal protection and equal benefit of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability, and permits affirmative action programs for disadvantaged groups. The Supreme Court of Canada has developed a sophisticated

equality jurisprudence. In *Andrews v. Law Society of British Columbia* (1989), the Court established the principle that the equality guarantee is substantive rather than formal, and that equality may require differential treatment to address disadvantage.

In *R. v. Gladue* (1999), the Supreme Court held that courts sentencing an Aboriginal offender must consider the systemic and background factors that brought the offender before the courts, and the types of sentencing procedures and sanctions appropriate to the offender's particular circumstances. The Gladue principles now codified in Section 718.2(e) of the Criminal Code represent a model for addressing the overrepresentation of marginalized communities in the criminal justice system through structural sensitivity in sentencing. This approach is particularly relevant to India in the context of the overrepresentation of Scheduled Castes, Scheduled Tribes, and minorities in the prison population.

Canada's Truth and Reconciliation Commission (TRC), established to address the legacy of the Indian Residential Schools system, and the subsequent adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into Canadian law through the United Nations Declaration on the Rights of Indigenous Peoples Act (2021), provide a model for addressing historical injustice against indigenous communities. The parallels with India's tribal communities and the Forest Rights Act are significant.

### **5.5 International Human Rights Framework**

India's obligations under international human rights law are directly relevant to the evaluation of its domestic legal framework. Under CEDAW, ratified in 1993, India is required to take all appropriate measures to eliminate discrimination against women in all fields, and to modify social and cultural patterns of conduct to eliminate prejudice and practices based on the inferiority or superiority of either sex. The CEDAW Committee's Concluding Observations on India's periodic reports have consistently noted concerns about the persistence of gender-based violence, child marriage, female foeticide, and discrimination against women in property and inheritance.

Under the CRC, ratified in 1992, India is required to ensure that the best interests of the child are a primary consideration in all actions concerning children, and to take all appropriate legislative, administrative, and other measures to implement the rights recognized in the Convention,

including the rights to education, health, protection from all forms of violence, and participation. The Committee on the Rights of the Child has raised concerns about child labour, child marriage, the corporal punishment of children, and the conditions in children's homes.

Under the CRPD, ratified in 2007, India is required to adopt a social model approach to disability, ensure that persons with disabilities enjoy all human rights on an equal basis with others, and take active measures to promote their participation in all aspects of social life. The Committee on the Rights of Persons with Disabilities has noted concerns about the continued use of the medical model in India's disability laws and the inadequate implementation of accessibility mandates.

## 5.6 Comparative Lessons for India

The comparative analysis yields the following principal lessons for India:

- **A Comprehensive Anti-Discrimination Statute:** India's equality law is currently fragmented across multiple statutes covering specific grounds of discrimination and specific sectors. The UK's Equality Act model of consolidating equality law in a single comprehensive statute, covering all protected characteristics and all sectors, would significantly improve the coherence, accessibility, and effectiveness of India's equality framework.
- **A Proactive Public Sector Equality Duty:** The UK's Public Sector Equality Duty, which requires public authorities to proactively assess and address the equality implications of their policies, offers a model for transforming India's administrative culture from passive compliance with specific prohibitions to active promotion of equality.
- **Justiciable Socio-Economic Rights:** South Africa's experience of treating the rights to housing, health, food, and education as justiciable constitutional rights, enforceable against the State, offers a model for strengthening the enforceability of India's directive principles in relation to marginalized communities.
- **Restorative Justice in Juvenile Justice:** Canada's Child Justice Act model and the restorative justice principles embedded in South Africa's child justice framework offer lessons for India in addressing the punitive thrust of the 2015 Juvenile Justice Act and reorienting juvenile justice towards rehabilitation.
- **Structural Sensitivity in Criminal Justice:** Canada's Gladue principles offer a model for sensitizing the Indian criminal justice system to the structural factors that lead to the overrepresentation of Dalit, tribal, and minority persons in the prison population.

- Historical Injustice and Indigenous Rights: Canada's TRC process and the UNDRIP offer models for addressing India's obligations to its tribal communities and for ensuring that the Forest Rights Act is implemented in accordance with the rights of tribal persons to self-determination and participation in governance.



## **CHAPTER 6: CONCLUSION AND SUGGESTIONS**

### **6.1 Summary of Findings**

This research has undertaken a comprehensive examination of the legal framework for human protection in the context of social justice for women, children, and marginalized communities in India, from a human-rights-based and intersectional perspective. The research has established the following principal findings.

1. India possesses a rich and progressive constitutional framework for equality and social justice, grounded in the fundamental rights guaranteed by Part III and the directives of Part IV of the Constitution. The constitutional vision of social justice, as expressed in the Preamble and interpreted by the Supreme Court over seven decades, provides a normative standard that is broadly consistent with international human rights norms.
2. The legislative framework for the protection of women, children, and marginalized communities is extensive and has developed significantly in the post-independence period. Key enactments such as the Domestic Violence Act, the POCSO Act, the SC/ST Prevention of Atrocities Act, the Rights of Persons with Disabilities Act, the Transgender Persons Act represent genuine advances in the legal protection of vulnerable groups.
3. The judiciary particularly the Supreme Court, through its PIL jurisdiction and its progressive constitutional jurisprudence has played an indispensable role in advancing social justice for vulnerable groups in the absence of or in supplementation of legislative action. Decisions such as Vishaka, NALSA, Navtej Singh Johar, and Puttaswamy have transformed the constitutional landscape and have had significant practical implications for the rights of women, LGBTQ+ persons, and others.
4. The research identifies significant and persistent gaps between the formal legal framework and its practical realization. These gaps are attributable to weak enforcement, inadequate institutional capacity, pervasive social and cultural norms that normalize discrimination and violence, limited awareness of rights among intended beneficiaries, structural barriers to access to justice, the persistence of poverty and economic exclusion, and the absence of a proactive approach to equality in public administration.

5. The comparative analysis reveals important best practices from the United Kingdom, South Africa, Canada, and the United States that are applicable to the Indian context, particularly in the areas of comprehensive anti-discrimination legislation, proactive equality duties, justiciable socio-economic rights, and structural sensitivity in criminal justice.

The research affirms the central argument of its abstract: that achieving meaningful human protection requires not only legal reform but also structural social change, stronger institutional accountability, and inclusive development policies that address the root causes of marginalization. Empowerment through education, economic inclusion, legal aid, and community engagement is identified as the key transformative strategies.

## 6.2 Recommendations

### Legislative Reforms:

India should enact a comprehensive, unified anti-discrimination statute consolidating the existing fragmented equality laws, covering all grounds of discrimination recognized under the Constitution and India's international treaty obligations, and applying to both public and private actors across all sectors of social and economic life. This statute should incorporate the principle of indirect or structural discrimination, which is currently not explicitly recognized in Indian equality law.

The Prohibition of Child Marriage Act should be amended to make all child marriages void ab initio, removing the present anomaly of voidability at option. The exception for family-based employment in the Child Labour Act should be removed to prevent misuse. The Transgender Persons Act should be amended to recognize the right to self-identification of gender without the requirement of certification by a District Magistrate, in conformity with the NALSA judgment and the Yogyakarta Principles. The marital rape exception in Section 375 of the Indian Penal Code should be abolished.

### Institutional Reforms:

The institutional infrastructure for the enforcement of protective legislation requires urgent strengthening. Protection Officers under the Domestic Violence Act, Child Marriage Prohibition Officers, Child Labour Inspectors, and the staff of Special Courts under the POCSO and SC/ST

Acts must be adequately staffed, trained, and resourced. Fast Track Special Courts for POCSO and SC/ST atrocities cases should be substantially increased. The National Human Rights Commission, the National Commission for Women, the NCPCR, and the National Commission for Scheduled Castes should be provided with adequate resources, independence, and enforcement powers.

**Policy Reforms:**

A Public Sector Equality Duty should be legislated, requiring all central and state government bodies to proactively assess and address the equality implications of their policies and programmes. Disaggregated data on violence, access to justice, and social indicators for women, children, and marginalized communities should be systematically collected and published. Legal aid services for women, children, and marginalized communities should be substantially expanded and the quality of legal aid improved. A national awareness programme on the rights of women, children, and marginalized communities should be implemented.

**Empowerment and Community-Based Strategies:**

Consistent with the research's emphasis on empowerment as a transformative strategy, the recommendations highlight the importance of education at all levels for girls and women, particularly in rural and tribal areas; economic inclusion programmes targeting women and marginalized communities; the promotion of participatory governance through the empowerment of gram sabhas and local self-government institutions; the support of civil society organizations and grassroots social movements that work with and for marginalized communities; and the mainstreaming of gender and disability perspectives in all government programmes and policies.

**6.3 Conclusion**

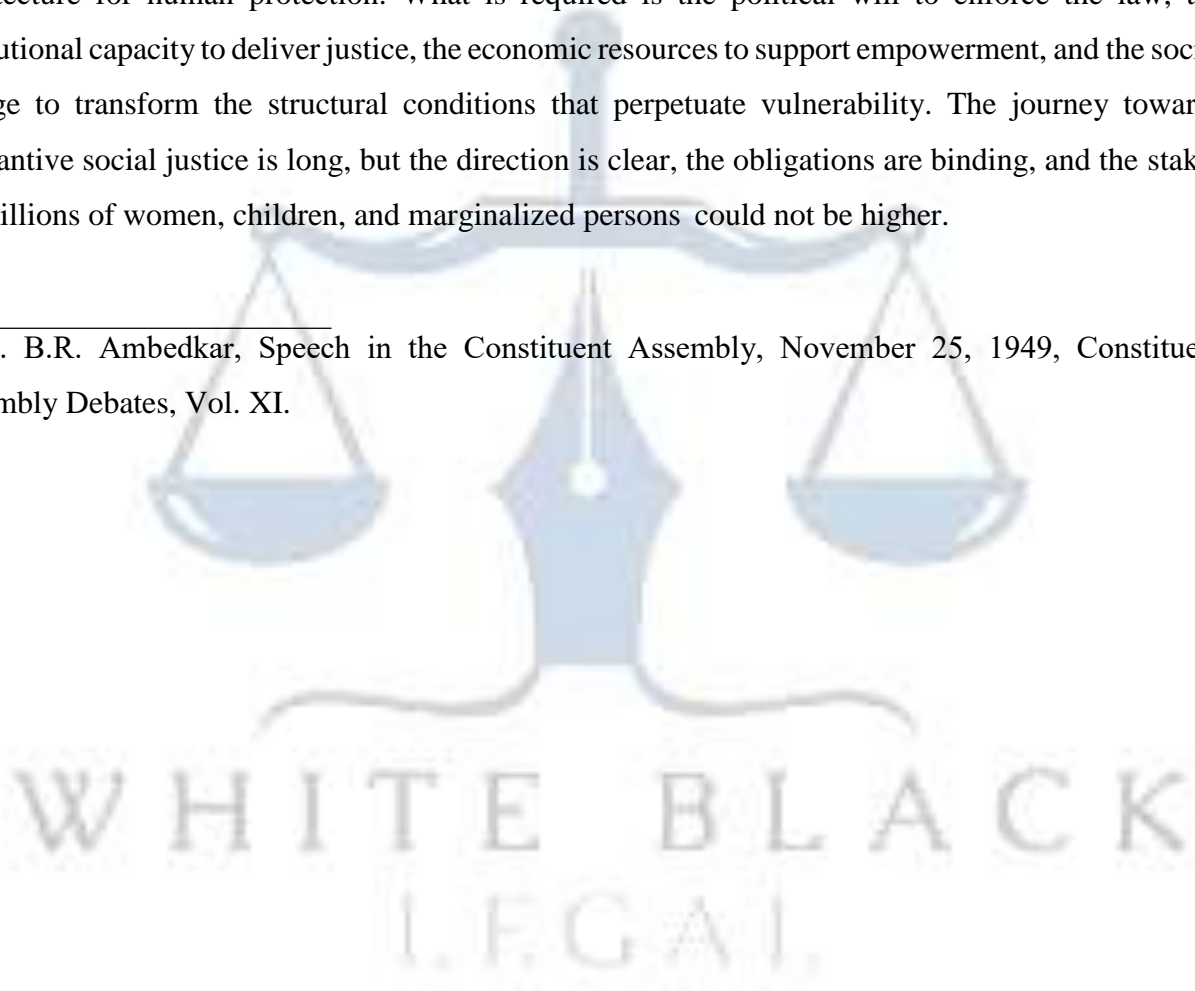
The protection of human rights in the context of social justice is ultimately a civilizational project. It requires not merely the enactment of good laws and the delivery of court judgments though these are necessary but the transformation of social relations, the redistribution of power and resources, and the cultural change that enables every person, regardless of gender, age, caste, disability, or identity, to live with dignity and to participate fully in the life of the community and the nation.

The Indian Constitution embodies a transformative vision of this kind. In the words of Dr. B.R. Ambedkar, the principal architect of the constitutional order, the Constitution is "a social document" whose purpose is to make India not merely a political democracy but a social democracy "a way of life which recognizes liberty, equality and fraternity as the principles of life." The realization of this vision for women, children, and marginalized communities remains the most urgent and defining task of Indian democracy.<sup>20</sup>

This research has demonstrated that India possesses the constitutional foundations and the legislative architecture for human protection. What is required is the political will to enforce the law, the institutional capacity to deliver justice, the economic resources to support empowerment, and the social change to transform the structural conditions that perpetuate vulnerability. The journey towards substantive social justice is long, but the direction is clear, the obligations are binding, and the stakes for millions of women, children, and marginalized persons could not be higher.

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<sup>20</sup> Dr. B.R. Ambedkar, Speech in the Constituent Assembly, November 25, 1949, Constituent Assembly Debates, Vol. XI.



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