

## Safeguards or Symbolism? The Enforcement Crisis of Women's and Children's Rights in India

Karan Gupta<sup>1</sup>

Annadatha Venkata Sai Lasya<sup>2</sup>

### Abstract

*Protection and empowerment of women and children remain at the forefront of the Indian Constitution framework by giving equality, justice, and dignity to the relationships and marginalized families. Despite an established Constitutional and legislative framework, the reality of lived experiences manifests systemic indifference and persistent socio-legal disparities. While the Indian Constitution enshrines provisions such as equality, prohibits exploitation, child labor, and affirmative actions for the empowerment of women and children, bureaucratic inefficiencies, cultural and institutional barriers hinder its effectiveness. The paper critically explores the disconnect between constitutional ideas and their limited realization through legislative safeguards. Additionally, the study considers whether the provisions effectively address children's and women's vulnerabilities, and whether the intended purpose amounts to results. The paper uses a mixed-methods approach by combining doctrinal analysis with empirical research to assess whether rights-based safeguards for women and children are adequate. The paper comprehensively discusses the statutory law, the government reports, the NCRB, the NFHS data, and real-world case scenarios to explore the real-world implementation effectively. The Findings reveal stark disparities between legal mandates and their ground-level enforcement, including a 4% increase in violence against women and overwhelming judicial backlogs (95% case pendency). While judicial activism has expanded, these protection failures, such as inadequate victim support, infrastructure, and gender-insensitive law, undermine its efficiency. The paper underscores collaborative multidimensional reforms from all stakeholders, such as judicial capacity building, accountability, and targeted grassroots-level programmes to combat these challenges. The research indicates that going from constitutional commitments to social action entails legal reform and conscious and transformational change to protect the rights of women and children in India.*

**Keywords:** Women's Rights, Constitutional Safeguards, Gender Justice, Judicial Backlogs, Legislative Reforms

### Introduction:

There is a visionary revolution in the Indian Constitution that aimed at ensuring justice, equality, and dignity, especially for women and children who have been historically oppressed and marginalized. Being agents of change and custodians of the next generations, the empowerment and protection of these groups are not only issues of legal obligation but also a moral and social imperative. The Indian Constitution, with its Preamble, Fundamental Rights, Fundamental Duties, DPSP, along with special focus on Articles 14, 15(3), 21, 39(e), which explicitly mandates having special provisions for women and children to ensure gender equality and protect them from being exploited.<sup>3</sup> Yet, despite such constitutional assurances,

<sup>1</sup> Student 2nd year BA.LLB (Hons), CHRIST(Deemed to be University) Bengaluru, Karnataka

<sup>2</sup> Student 2nd year BA.LLB (Hons), CHRIST(Deemed to be University) Bengaluru, Karnataka

<sup>3</sup> Vishnu Patil. Tripathi, "Constitutional and Legal Provisions for Women Empowerment in India" 6 IJL. 227, 228-232 (2020)

there are wide disparities and problems between legal obligations and their practical implementation, e.g., patriarchal culture, institutional vulnerability, and socio-economic issues. In modern-day India, women and children are still struggling with deep-seated problems like gender discrimination, child labour, etc. The judiciary plays vital role in expanding these protections to these vulnerable groups through its landmark pronouncements, such as *Vishaka vs State of Rajasthan*, *Joseph Shine vs Union of India*, etc along with parliament legislative enactments such as Protection of Children from Sexual Offenses (POCSO), Child Labour (Prohibition and Regulation) Act 1986 their implementation remains inconsistent and hindered by various factors.<sup>4</sup> These disconnects between law and reality raise a critical question about the effectiveness of rights-based safeguards for women and children. This paper will critically study and analyze the effectiveness and application of legislative, constitutional protection, and judicial activism in India. By reviewing and analyzing legal advancements and their actual world consequence, this paper tries to fill the current gap between constitutional theory and actual world realities.

### **Constitutional Mandates: Safeguarding Women and Children in India**

The Indian Constitution was the supreme law of the land that guarantees women's equality and child protection and empowers the state to implement specific programmes and policies that benefit them. The Indian Constitution is not only the world's biggest but also envisages provisions related to protecting and empowering women and children. Recognizing women and children's socio-economic vulnerabilities, the Indian Constitution explicitly provides safeguards regarding fundamental rights and the Directive Principle of State Policy. Basic rights such as Article 14, 15(3), 21, and many more, along with Directive Principles of State Policy, such as Article 39, 42, etc, were incorporated by the framers of the Indian Constitution to safeguard their legal and social rights.<sup>5</sup>

Provisions	Applicability	Women	Children
<b>Article 14</b>	Equality Before Law	yes	yes
<b>Article 15(3)</b>	Special Provisions	yes	yes
<b>Article 23-24</b>	Protection From Exploitation	yes	yes
<b>Article 39(a)-(e)</b>	Economic Justice and Child Development	yes	yes
<b>Article 42</b>	Maternity Relief	yes	No
<b>Article 45</b>	Early Childhood Care and Protection	No	yes

### **Fundamental Rights as Pillar of Empowerment: Legal Analysis**

Fundamental Rights are legal rights and the heart and soul of the Indian Constitution. Part III consists of Six Types of Fundamental Rights from Article 12 to 35. By recognizing the diversity and socio-legal landscape of the country, drafters and framers of the Indian

<sup>4</sup> Dr. S.K. Rai, "Constitutional Safeguards Towards Women in India" 9 IJCR. 293,296,298(2021)

<sup>5</sup> Supra Note 1

Constitution took a very conscious approach by incorporating unequal treatment along with some general provisions for the upliftment of women and children since time immemorial.<sup>6n</sup> As Justice Bhagwati in *Maneka Gandhi v. Union of India* said: “These basic rights are reflecting the basic values which we have cherished as a people ever since Vedic times, and they are meant to protect the human dignity and to make sure that conditions exist for every human being to develop his personality to the maximum.”<sup>7</sup>

#### **Article 14: Enshrining Equality Before Law**

Article 14 of the Indian Constitution was a critical legal weapon against discriminatory practices such as gender discrimination in jobs, inheritance laws, etc.

As per Article 14, “*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Prohibition of discrimination on grounds of protection under the law without regard to religion, race, caste, sex, or place of birth.*”<sup>8</sup>

The principle of “*Rule of Law*” announced by *Albert Dicey* is derived from the French term “*La Principe de Legalité*,” which equates to “*a government based on the rule of law and justice is opposed to the arbitrariness of the ruler*”.<sup>9</sup>

This doctrine was the basis of Article 14, which means that no one is above the law, even the State itself, and their actions must be legally authorized. It is instrumental in challenging arbitrary and discriminatory practices against women and children.

**Case Study:** In the case of *Air India vs Nargesh Meerza (1981)*, the Supreme Court of India struck down provisions of the Air India Service regulation that mandated termination of female Air Hostesses upon marriage, pregnancy, or attaining a certain age, which is not applied to male employees. The Supreme Court of India ruled these provisions unconstitutional and violative of Article 14 of the Constitution of India.<sup>10</sup>

This judgement represents more than a legal determination; it encompasses constitutional protection, and it clarifies that Article 14 guarantees individuals a right to protection against discrimination, and it isn't only protection from discrimination, it is / can also be protection against discrimination. The judgement is more about women's rights, but the rationale of the judgement could also apply to the rights of children. For instance, the same reasoning could apply to schools or any educational institution with discrimination based on race, caste,

#### **Article 15(3): Affirmative Constitutional Actions for Women and Children**

Article 15 of the Constitution prohibits discrimination by the state on specific grounds such as caste, race, sex, place of birth, etc. Despite these prohibitions, Clause (3) of Article 15 makes a significant exception.<sup>11</sup>

Article 15(3) states, “*Nothing in this article shall prevent the State from making any special provision for women and children.*”<sup>12</sup>

This clause is not a deviation from the principle of equality entrenched in Article 14; instead, it reinforces the idea of equality. Indian Constitution, through this clause, recognizes that equal

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<sup>6</sup> Supra Note 2

<sup>7</sup> *Maneka Gandhi v. Union of India* AIR 1978 SC 597.

<sup>8</sup> India Constitution. art. 14.

<sup>9</sup> Neeraj Kumar, “Article 14 of the Indian Constitution” 3 IJALR (2023)

<sup>10</sup> *Air India vs Nargesh Meerza* 1981 AIR 1829

<sup>11</sup> Debt vs Equity in the Digital Finance Era: Assessing the Capital Structure-Financial Performance Nexus in Fintech Companies in India. AEIDA [Internet]. 2024 Jul. 1 [cited 2025 Jul. 8];1(2):7-16. Available from: <https://aeidajournal.org/index.php/AEIDA/article/view/7>

<sup>12</sup> India Constitution. Art. 15(3)

treatment not always produces equal outcomes; sometimes there is a need to provide special protection to groups who are historically marginalized, such as women and children.

**Case Study:** Prime Minister Citizen Assistance and Relief in Emergency Situation for Children (PM CARES) is a significant initiative by the government of India that reflects their commitment under Article 15(3) of the Indian Constitution, which empowers the state to make special provisions for children and women. This scheme was launched in May 2021 to provide support to the children who lost their parents or legal guardians during COVID-19. The Scheme provides financial assistance up to the age of 23, free schooling, scholarships, health insurance, etc, to ensure their holistic development and protection of vulnerable children<sup>13</sup>. This scheme reflects the evolving dynamics for protecting children in this modernized world in response to pandemics, digital risks, etc.

#### **Article 24: Prohibition of Children in Hazardous Work**

In this modern era, where exploitation of children has been expanded beyond traditional practices such as online abuse, child trafficking, and exploitation of children in the informal sector, the Constitution of India acts as a living and protective instrument. Article 24 of the Indian Constitution is central for the protection and development of children both physically and morally.

Article 24 of the Indian Constitution states, “No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.”<sup>14</sup>

This Article was one of the child-centric fundamental rights in the Indian Constitution, and negative as it imposes a direct obligation on the state and individuals not to engage children below the age of 14 years in any hazardous factories or dangerous work. In this modernized world, the definition of “hazardous work” is also rapidly evolving and can include: Fireworks factories, crackers units, chemical factories, online scams run by children, etc. However, these are not included in the old laws. Still, this article empowers the judiciary and state to act constitutionally and beyond the legislative gaps to protect children's rights.

**Case study:** In August 2024, officials in Uttar Pradesh’s Sambhal District rescued Eight Child Labourers from an illegal E-Waste Factory; all of them are under the age of 14 years. These are children who were forced to work under hazardous conditions, which include handling of toxic metals and dismantling of electrical equipment without any protection. This incident was a clear violation of Article 24 of the Indian Constitution, as the e-waste factory, by its very own nature, was hazardous, as it exposed workers to lead, mercury, and other substances, which were constitutionally hazardous. This rescue operation reflects how the constitution protects the rights of children when law enforcement and implementation were delayed.<sup>15</sup>

#### **Article 42: Ensuring Just and Humane Conditions of Work Women At Work (Maternity Leave)**

Even though DPSP, which were in Part IV of the Indian constitution, were not directly enforceable in a court of law, the state can make laws on it to make it enforceable. Article 42 is one of them, which reflects a constitutional commitment to protect the dignity and health of women.

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<sup>13</sup> PM CARES for Children, About Us, <https://pmcaresforchildren.in/aboutus> (last visited May 23, 2025).

<sup>14</sup> India Constitution. Art. 24

<sup>15</sup> PTI, “Eight Child Labourers Rescued from Illegal E-Waste Factory in UP’s Sambhal”, The New Indian Express (Aug. 13, 2024), <https://www.newindianexpress.com/nation/2024/Aug/13/eight-child-labourers-rescued-from-illegal-e-waste-factory-in-ups-sambhal>.

Article 42 states, “*The State shall make provision for securing just and humane conditions of work and for maternity relief*”.<sup>16</sup>

In this modern age, where the gig economy and hybrid jobs have rapidly expanded, the definition of Just and Humane Conditions is also growing. Today, women are increasingly participating in organized and informal sectors; Article 42 provides the framework for making policies to protect women.

**Case Study:** In August 2020, Zomato became one of the 1<sup>st</sup> major Indian companies to make a provision related to paid period leave, offering 10 days per year for women facing menstruation. It also includes transgender and non-binary individuals. This move by Zomato recognized that menstrual health is one of the major concerns for women in the workplace. Although the Indian constitution did not mandate it, the voluntary step taken by Zomato is constitutionally valid and aligns with the vision of Article 42 of the Indian constitution.<sup>17</sup>

### **Legislative Mandates: Safeguarding Women and Children in India**

In the Indian landscape, protection of women and children has evolved from constitutional ideas to legislative responses. The challenges posed in this 21<sup>st</sup> century necessitate legislative safeguards to tackle the emerging issues, such as cybercrime, digital child exploitation, etc. Although the Indian Constitution guarantees various protections such as equality, dignity, etc, translating these protections into lived experience requires decisive legislative actions. Major legislative enactments such as the Protection of Children from Sexual Offenses (POCSO) and the Child Labour (Prohibition and Regulation) Act 1986, operationalizing constitutional safeguards, form the cornerstone of Indian legislative safeguards.

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

The POSH Act was enacted with a vision to provide a safe working environment for women and address sexual harassment cases in the workplace. As per this act, it defines sexual harassment as any act, either physical, verbal, or non-verbal misconduct for sexual favors or any other misconduct that is sexual that comes into this definition of sexual harassment.<sup>18</sup> It requires an employer to constitute an “Internal Complaint Committee” among their officers when there are at least 10 employees. Apart from the employers, this act also obligates the Government to set up a “Local Complaint Committee” at the district level to look into the complaints of sexual harassment at places where ICC has not been set up due to fewer than 10 employees.<sup>19</sup>

This act was effective in addressing complaints regarding the sexual harassment of women. In FY 2013-14, when the 1<sup>st</sup> time act came into force, the total number of cases reported by all companies was 161, of which 109 complaints were resolved. Within a year, the number of cases

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<sup>16</sup> India Constitution. Art. 42

<sup>17</sup> Puja Changoiwala, “Zomato’s Decision to Grant Period Leaves Is a Step in the Right Direction”, Indian Express (Aug. 18, 2020, 8:55 AM), <https://indianexpress.com/article/opinion/zomatos-decision-to-grant-period-leaves-is-a-step-in-the-right-direction-6581781/>.

<sup>18</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Sec. 2(n), No. 14, Acts of Parliament, 2013 (India).

<sup>19</sup> India's POSH Act: “Key Compliance Requirements for Employers”, Lexology (May 15, 2023), <https://www.lexology.com/library/detail.aspx?g=e411077d-5594-439d-9bfa-499f8c8c66f0>. (last visited May 21, 2025)



rose to 465, of which 406 were resolved.<sup>20</sup> This shows the effective implementation of the Act as it not only looks into the harassment complaints but also resolves them.

### **The Medical Termination of Pregnancy (Amendment Act, 2021)**

The Medical Termination of Pregnancy (Amendment Act, 2021) represents a significant milestone in expanding safe and legal abortion rights while expanding and recognizing women's autonomy by expanding abortion rights from 20 to 24 weeks for specific categories such as rape survivors, minors and women with fetal abnormalities it address significant legal gap that exist in previous legislation particular for vulnerable groups who need more time for informed decisions. Apart from this, replacing the term "married women and her husband" with "women and her partner" also extends the abortion rights to unmarried women as well.<sup>21</sup> This change is crucial in response to changing social realities and respecting the reproductive healthcare of women irrespective of marital status.

**Case Study:** In 2024 Supreme Courts allows 30 week abortion for rape survivors stating "very exceptional cases where we must protect her". This landmark decision by the apex court showcases that amended act provisions can be interpreted progressively to protect women's dignity and reproductive rights even beyond 24 weeks in exceptional cases. The court stressed that forcing a minor to undergo an unwanted pregnancy was a violation of Article 21 right to bodily autonomy.<sup>22</sup>

### **Child Labour (Prohibition and Regulation) Act 1986 (Amended 2016)**

The Child Labour (Prohibition and Regulation) Act 1986 is one of the key frameworks in India to protect children against economic exploitation and ensure that they enjoy their childhood with dignity. Initially, this law was framed to regulate the working conditions of children, mainly those engaged in work which can be labeled as hazardous. The law was amended in 2016 to align with the constitutional ideas and ideals outlined in international conventions such as the UN Convention on the Rights of the Child.<sup>23</sup> Section 2 (ii) of this act defines "child" as a person who has not completed the age of fourteen or at the age specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more.<sup>24</sup> The amended act prohibits the employment of children below the age of 14, irrespective of whether the work is hazardous. This is one of the major child-centered legislations that measures and upholds children's right to education by not diverting their time and energy into labour during their growing period. This supports Article 21A of the Indian Constitution, which ensures free and compulsory education.<sup>25</sup>

**Case Study:** The National Human Rights Commission (NHRC) initiated suo motu cognizance in July 2024 to rescue 23 children engaged in complex and hazardous work in the Saraswati Vihar North-West District, Delhi. These children had been brought from neighbouring states in violation of the Child Labour (Prohibition and Regulation) Act 1986, as amended in 2016.

<sup>20</sup> A Decade of the POSH Act: "What the Data Tells Us About How India Inc. Has Fared", Centre for Econ. Data & Analysis, Ashoka Univ. (Feb. 28, 2023), <https://ceda.ashoka.edu.in/a-decade-of-the-posh-act-what-the-data-tells-us-about-how-india-inc-has-fared/>. (last visited May 21, 2025)

<sup>21</sup> Nitika Sharma, "The Medical Termination of Pregnancy (Amendment) Act, 2021 with Special Reference to Reproductive Rights in India", 10 International Journal of Law. 64 (2024).

<sup>22</sup> The Indian Express, "SC Allows 30-Week Abortion for Rape Survivor" (July 2024), <https://indianexpress.com/article/india/supreme-court-abortion-rape-survivor-30-week-pregnancy-9283907> (last visited May 22, 2025)

<sup>23</sup> S. Panneer Selvam et al. "Rights of Children in India: Constitutional Provisions and Policies" 13 Internal Journal of Creative Research Thoughts, 420, 422-423 (2025)

<sup>24</sup> Child Labour (Prohibition & Regulation) Amendment Act, No. 35 of 2016, Section 2(ii) India Code (1986).

<sup>25</sup> India Constitution. Art. 21A

NHRC's notice to the government of the National Capital Territory (NCT) of Delhi, and the Police Commissioner, recognizing that the situation was grave and required urgent response, provided NCT and the Police Commissioner with two weeks to take action. Action by the NHRC to issue this notification acknowledges enforcing children's rights granted under the Indian Constitution.<sup>26</sup>

### Judicial Activism in Advancing Women's Rights

The judiciary has been a transformative institution for justice for victims by extending the boundaries of rights and justice, often activated by judicial activism. This was primarily through PILs and by offering liberal civil liberties principles of the law and constitutional guarantees in favour of the public. The judiciary has intervened in cases to slowly protect women's fundamental rights without legislation. This will ensure that once again, when the parliament refuses to protect citizens' liberties, the ordinary citizen will have a way to search for justice.

One such landmark judgement is *Vishaka v. State of Rajasthan*, which laid down the guidelines for sexual harassment that women faced in the workplace when no specific law existed. This judgement was decided in 1992, when Bhanwari Devi, a Dalit social worker and human rights activist in Rajasthan, was gang raped in an attempt to stop child marriage. In addition, the court described sexual harassment broadly, as any unsolicited physical, verbal, non-verbal, or visual behavior of a sexual nature, including quid pro quo threats, and also a hostile work environment, meaning it was an all-encompassing act.<sup>27</sup>

Following the *Vishaka* guidelines, the Supreme Court has made progressive judgments involving complex gender and human rights issues. In *Independent Thought v. Union of India* (2017), an NGO working towards child rights challenged whether Exception 2 to section 375 of the Indian Penal Code that permitted a husband to engage in non-consensual sexual intercourse with his wife where the wife is above the age of fifteen effectively amounting to legalizing the rape of minor girl children between the ages of 15-18. The petitioner successfully contended that the arbitrary and impugned section disenfranchised minor girls, in violation of their rights under Articles 14, 15, and 21 of the Constitution. The petitioner also asserted that Exception 2 was inconsistent with child protection laws such as the POCSO Act, which defined an age of consent of 18 years. The Court examined legal inconsistencies and the overall impact of this exception. The Court concluded that, prima facie, an arbitrary exception in this manner was unconstitutional and violated the fundamental rights of all women.<sup>28</sup>

Another central instance of judicial activism is *Joseph Shine v. Union of India* (2018), where the Court decriminalized adultery by striking down Section 497 of the IPC. This decision by the Supreme Court was grounded because the section treated women as property of their husbands and violated the principles of equality, autonomy, and dignity. The court further reiterated that adultery was a private wrong, which could be a ground for divorce, and that it could not account for criminal punishment.<sup>29</sup> This judgement is a significant move in abolishing patriarchal systems in our society, while ensuring that outdated Victorian laws are repealed and a novel legal framework that respects bodily autonomy and individual dignity replaces them.

### Systemic Barriers in Effective Implementation

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<sup>26</sup> National Human Rights Commission, "NHRC India Takes Suo Motu Cognizance of Reported Rescue of 23 Child Labourers", NHRC (July 17, 2024), <https://nhrc.nic.in/media/press-release/nhrc-india-takes-suo-motu-cognizance-reported-rescue-23-child-labourers>. (last visited May 22, 2025)

<sup>27</sup> *Vishaka V. State of Rajasthan* AIR 1997

<sup>28</sup> *Independent Thought v. Union of India* AIR 2017

<sup>29</sup> *Joseph Shine v. Union of India* AIR 2018

While these judgements and legislative frameworks are clear instances to combat crime against women and children, their actual impact on the lives of citizens and timely disposal of justice has been restricted due to bureaucratic inefficiencies, delayed reporting, social and cultural barriers, and overburdened courts.

### Escalating Crime and Judicial Backlogs: A Crisis In the Delivery of Justice

India reported 4,45,256 crimes against women in 2022, a 4% rise from the preceding year, according to the National Crime Records Bureau (NCRB).<sup>30</sup> Further, 1,62,449 crimes against children have been reported<sup>31</sup>, an indicator of the deplorable number of such crimes. But even more alarming is the pendency of court cases and the gigantic judicial arrears. As of the end of 2022, 17,33,813 instances of crimes against women,<sup>32</sup> and 3,60,227 cases of crimes against children were pending trial in courts.<sup>33</sup> This is a clear indicator that judgments are not delivered promptly and that crime and violence victims have to wait years or decades before decisions are made in their favor. The conviction rates also show the ineptness of the system. Conviction rates for crimes against women are only 23.2%, and for crimes against children, 27.4%. This indicates that most cases do not result in a conviction..<sup>34</sup> Further, according to the National Family Health Survey (NFHS-5) conducted between 2019 and 2021, the number of married women who have faced spousal violence has escalated in 5 states, with Karnataka seeing an increase in violence from 21% to 44%. High pendency and low rate of conviction indicate that, despite the availability of laws, their enforcement is weak, and the legal process is slow and cumbersome, ultimately failing to deliver time-bound justice or deterrence, and leaving women and children exposed to repeated violence and exploitation.

### Structural and Administrative Gaps in Enforcement

Key institutional mechanisms are hampered by critical issues, leading to several points of failure in the justice delivery system for women and children in India. One major problem faced by victims of violence is that the police often display apathy, compounded by a lack of education on gender sensitivity, and there are no mechanisms to hold them accountable. Many victims report being discouraged from filing complaints or being subjected to victim-blaming attitudes. For example, according to the National Commission for Women (NCW) annual report of 2022-2023, there were 1496 reported cases of police apathy towards victims.<sup>35</sup> This is blatant evidence that a large number of women in India still experience apathy or inaction by the authorities in case of distress.

In addition, schemes by the government, such as one-stop centres or OSCs across India, cannot also make their intended impact. They remain understaffed, poorly maintained, and face frequent blackouts and infrastructural issues. For example, only two out of 19 OSCs can access helplines in Jammu and Kashmir.<sup>36</sup> In addition, government schemes such as “*Beti Bachao, Beti Padhao*” have not met their objectives, with a parliamentary committee finding that the government has spent 78.91% of the 446.72 crore budget on advertisements rather than the

<sup>30</sup> National Crime Records Bureau, Crime In India 2022, at 211 (Ministry of Home Affairs, Govt. of India 2023)

<sup>31</sup> Id at 317

<sup>32</sup> Id at 242

<sup>33</sup> Id at 350

<sup>34</sup> Id at 242

<sup>35</sup> National Commission for Women, “Annual Report 2022-23 (2023)”. [https://ncwapps.nic.in/pdfReports/AnnualReport2022\\_2023\\_Eng.pdf](https://ncwapps.nic.in/pdfReports/AnnualReport2022_2023_Eng.pdf) (last visited May 22, 2025)

<sup>36</sup> Farheen Nahvi, “In the Shadow of Conflict: An Overview of Support Services of Gender-Based Violence in Kashmir; Plus a Directory of Resources”, THE PRAJNYA TRUST (Apr. 25, 2022), <https://prajnya.in/storage/app/media/kashfar.pdf>. (last visited May 22, 2025)



scheme itself.<sup>37</sup> These statistics suggest that legislation is in place and schemes identified, yet significant deficiencies in implementation and ground realities exist.

### **Cultural barriers: Understanding of Underreporting**

Socio-cultural factors play an essential role in impeding the effective implementation of women's and children's violence laws and policies.. This explains why states like Rajasthan, which are characterized by extreme gender inequality, poverty, and illiteracy, tend to have high gender motivated crime rates, despite the presence of constitutional safeguards. The root causes identified are patriarchal family structures, which have time and again deprived women of economic, political, and educational rights and reinforced male domination. Social customs such as the dowry system, purdah (veiling), and child marriage further perpetuate that women are economic liabilities and that their sole purpose of existence is marriage, and that their role in families is limited to domestic work. These socio-cultural systems discourage women from reporting crimes committed against them, and often condition them into justifying the same. For example, according to an NFHS-5 report (2019-21), 45.4% of women and 44.2% of men in India believe a husband is justified in beating his wife under certain circumstances, such as if she argues, neglects the house, or refuses sex, etc.<sup>38</sup> The report also mentions that while 17.2% of women living in urban areas have sought help against violence, only 13% of women living in rural areas have ever asked for help or reported crimes committed against them.<sup>39</sup>

## **A Roadmap for Reform: Advancing Legal Protection for Women and Children in India**

### **Legal reforms**

The judicial backlog against women is a serious impediment to delivering justice to the victims. According to the 2022 (NCRB) Report, the pendency percentage was 94.5% of the cases against children and 95.5% of cases recorded against women..<sup>40</sup> The situation of an avalanche of cases increases the trauma for victims. It prevents their access to justice, plus a perpetrator of the violence is not being held accountable appropriately, and the victim has completely abandoned or lost faith in the judicial system. To alleviate this issue, I recommend fast-track courts for gender-based violence complaints and the imposition of statutory timeframes for the passing of judgments. This will establish the need for more resources (judges, managers, prosecutors, findings assistant staff, etc.) and identify a deterrent for victims of violence and children as well. Finally, the study recommends a rethink of penalties, to impose harsher penalties on offenders, clients could consider existing statutory law to see that the punishment is appropriate and has an educational function, which is to deter others from taking similar acts of violence. Similarly, the study also recommends a system of greater compensation for victims, such as a system that would initiate medical treatment, psychological therapy, living expenses, vocational rehabilitation, and compensation available to victims at the central and state levels, with accompanying clear and practicable protocols to ensure timely and adequate compensation.

<sup>37</sup> Sneha Biswas, “*Beti Bachao, Beti Padhao*’ Failed To Show Desired Results: Parliamentary Committee Report”, Republicworld. (Dec. 10, 2021), <https://www.republicworld.com/india/beti-bachao-beti-padhao-failed-to-show-desired-results-parliamentary-committee-report>. (last visited May23, 2025)

<sup>38</sup> International Institute for Population Sciences (IIPS) & ICF, “*National Family Health Survey (NFHS-5)*”, India, 2019-21, at 622 (2021) <https://dhsprogram.com/pubs/pdf/FR375/FR375.pdf>

<sup>39</sup> Id at 673

<sup>40</sup> National Crime Records Bureau Crime in India 2022, at 305, 353 (Ministry of Home Affairs, Govt. of India 2023).

### **Institutional measures**

Based on the research, it is revealed that in India, only 3.5% of women who experience domestic violence report to the police.<sup>41</sup> Women can be reluctant to report because they do not trust the police and also accept abuse as usual based upon their socialization and culture, not to mention the gender biased structure of many institutions. To combat these issues, this paper recommends both ongoing gender-sensitization training sessions for all the judiciary members, those who prosecute, and the police, hiring more female police to work with women, developing women's help desks at all police stations, and providing support to victims of domestic assault..

### **Social Interventions**

Social interventions such as awareness campaigns should be launched in multiple languages through TV, radio, social media, newspapers, and other forms of communication to dismantle patriarchal mindsets, misogynist thinking, and disseminate healthy attitudes towards combating gender induced violence. Such campaigns must also encourage reporting of violence by not only victims, but also bystanders of the same. The government must also incorporate modules and subjects that teach gender equality, children's rights, and respect for bodily autonomy and consent from an early age. This can be done through psychological methods of teaching, such as social learning and modeling, where students can observe and imitate positive gender-equitable behaviors. Furthermore, positive reinforcement (praise and reward) can be incorporated into school curricula to challenge gender based stereotypes and stand up for equality in peer interactions.

### **Grassroots Monitoring**

Grassroots monitoring, through NGOs and community watchdogs, is an essential measure to prevent crimes against women and children. To boost the effectiveness of NGOs, governments must provide financial and logistical support to them so that they can effectively work with survivors, monitor local justice delivery, and offer legal aid. Furthermore, this paper suggests the formation of local safety committees, self-help groups, and women's groups that may be able to act as first responders and safe spaces. These groups can hold regular community forums to look at protection gaps and develop locally relevant solutions. Lastly, this research also recommends expanding helpline networks to ensure that even victims living in remote areas have coverage and access to help. Women's helplines and shelter homes often do not have enough resources and are extremely overcrowded. Expanding their capacity, ensuring long-term stays, and providing vocational training can help survivors rebuild their lives. To speed up the recovery process for victims, well-trained staff in counselling and establishing a healthy environment are essential.

### **Conclusion**

The study highlights several notable accomplishments concerning the Indian Constitution and legislative protections to protect, secure, and empower women and children. While this is an admirable accomplishment, putting it into action and the real world has been variable due to structural barriers. The study highlights several notable accomplishments concerning the Indian Constitution and legislative protections to protect, secure, and empower women and children. While this is an admirable accomplishment, putting it into action and the real world has been

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<sup>41</sup> Reach Alliance, *Why Women's Police Stations in India Fail to Mitigate Violence Against Women* 8 (2021), <https://reachalliance.org/wp-content/uploads/2021/03/WPS-Final-March29-1.pdf> (Last visited May 23, 2025)

variable due to structural barriers.. The constitutional judgments and legislative measures expanded the landscape of the rights-based guarantees available to women and children, which were subsequently undermined by institutional and bureaucratic ineffectiveness, legal impediments, etc. It is important to note that even though there is the promise of empowering women and children through constitutional and legislative guarantees, true independence or empowerment will never occur when an efficient judicial and enforcement apparatus is not in place. Thus, this bridges the gap between constitutional notions of empowerment, protections of women and children, and the reality on the ground, rather than the institutional, legislative intention and text. Furthermore, laws alone are necessary but inadequate; getting people rightfully held accountable requires further reforming the legal and enforcement apparatus. True normative and institutional meanings for protecting women and children as encoded in various Indian laws and judicial pronouncements will only be realized through all stakeholders' partnership and collective responsibility to align the law and its implementation, pronounced and in practice.