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## **LAWS RELATED TO VIOLENCE IN INDIA**

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### **INTRODUCTION**

The current climate of violence and the rise in the number of crimes committed against women is something that every person on the face of the earth is witnessing in some form or another. It's a sign of how massive and weighty the atrocities against women have become in recent years. This assertion can be corroborated by the worldwide movement to put an end to all forms of "violence against women". Changes in living standards, changes in lifestyle, imbalances in economic growth, shifts in social ethos, and a lack of care for moral values all contribute to a malevolent attitude towards women, which in turn contributes to an increase in the number of crimes committed against women. In addition, the occurrence of such events is cause for serious worry, and the structure in question is unquestionably essential in order for the women of India to be able to live with respect, honour, dignity, freedom, and peace in an environment free from horrors, denigration, and horrible crimes<sup>1</sup>. There are a number of statutory laws that result in the imposition of punishments on offenders who commit offences against women<sup>2</sup>. The IPC though, offers provisions for women as a victim of various crimes such as murder, robbery, theft, etc. yet there are certain crimes which are radically characterised against the women called as 'Offences Against Women'. As a result of the urgent nature of the situation, numerous new socioeconomic offences have been passed, and numerous changes have been made to the laws that are now in place, all with the intention of combating these crimes in an efficient manner.

### **CLASSIFICATION OF LAWS RELATED TO CRIME AGAINST WOMEN**

The following are two categories that can be used to classify the laws that are linked with crimes committed against women: Violations of Women's Rights that are Punished by Special and Local Laws (SLL) The immoral and sinful behaviours as well as the exploitation of women

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<sup>1</sup> Martin Rew, Geetanjali Gangoli & Aisha K. Gill, 'Violence between Female In-laws in India', 14 Journal of International Women's Studies 9 (2013).

<sup>2</sup> Press Information Bureau, Ministry of Women and Child Development, *Measures to Check Violence Against Women*, 29 February 2008, available at <https://pib.gov.in/newsite/erecontent.aspx?relid=35773..>

in the society are the target of the criminal offences against women that are provided for in the Special and Local Laws<sup>3</sup>. These laws are examined and revised on a regular basis in order to ensure that they remain in step with any developing need. The following is a list of acts that have particular measures designed to safeguard women and their interests:

### **The Immoral Traffic (Prevention) Act, 1956<sup>4</sup>**

The Act defines Trafficking in persons as:

Trafficking In Persons Shall Mean the Recruitment, Transportation, Transfer, Harboursing Or “Receipt of Person, By Means of The Threat or Use of Force or Other Forms of Coercion, Of Abduction, of Fraud, of Deception, of the Abuse of Power or of a Position of Vulnerability or Of the Giving or Receiving of Payments or Benefits to Achieve the Consent of a Person Having Control Over Another Person, For the Purpose of Exploitation<sup>5</sup>. Exploitation Shall Include, At A Minimum, The Exploitation of The Prostitution of Others or Other Forms of Sexual Exploitation, Forced Labour or Services, Slavery or Practices Similar to Slavery. Servitude or the Removal of Organized.”

#### Forms Of Trafficking

- Sexual Exploitation Forced Prostitution Social and Religious Forms of Prostitution (Devadasis, Joginis, Murali’s Etc.)
- Sex Tourism Pornography
- Illegal Activity Begging, Organ Trade, Drug Peddling and Smuggling
- Labour Bonded Labor, Domestic Work, Agricultural Labour, Construction Work, Carpet Industry
- Entertainment Camel Jockey, Bar Girls, Adoption.

### **The Dowry (Prohibition) Act, 1961<sup>6</sup>**

The Dowry Prohibition Act of 1961 was a landmark legislation aimed at curbing the practice of dowry. It made the giving and taking of dowry illegal and punishable by law. The Act also mandated stringent penalties for those found guilty of dowry-related offences, including

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<sup>3</sup> Vikaspedia, 'Criminal Law and Women' (Vikaspedia, 4 June 2019) <https://vikaspedia.in/social-welfare/women-and-child-development/women-development-1/legal-awareness-for-women/criminal-law-and-women> accessed 16 April 2025.

<sup>4</sup> The Immoral Traffic (Prevention) Act, 1956, Act No. 104 of 1956.

<sup>5</sup> **Citizen Rights Protection Council**, *What Are Your Rights against Trafficking*, Citizen Rights Protection Council, <https://crpc.in/YOUR%20RIGHTS%20AGAINST%20TRAFFICKING.php> (last visited April 16, 2025).

<sup>6</sup> The Dowry Prohibition Act, 1961, Act No. 28 of 1961 (India).

imprisonment and fines<sup>7</sup>. As per Sec. 2 of the Dowry Prohibition Act 1961 "Dowry" means any property or valuable security given or agreed to be given either directly or indirectly."

(a) By one party to a marriage to the other party to the marriage, or

(b) By the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before ... or any time after the marriage ... in connection with the marriage of the said parties.

The primary objective of the Dowry Prohibition Act is to outlaw the practice of giving or taking dowry in connection with marriage. Sec. 3 of the Act explicitly prohibits both the giving and receiving of dowry. The Act prescribes stringent penalties for violations. Anyone found guilty of giving or taking dowry, as well as those who demand dowry, directly or indirectly, can face imprisonment for up to five years and a fine of up to Rs. 15,000 or the value of the dowry, whichever is higher. The Act places responsibility on parents or guardians of the bride and groom to ensure compliance with the prohibition of dowry<sup>8</sup>. They are required to make a declaration in writing to the authorities that no dowry has been given or received in connection with the marriage. Sec. 8 of the Act mandates that any person having information about the giving or receiving of dowry must report it to the nearest magistrate or police officer. Failure to do so is punishable by law. The Act also addresses cases of dowry-related deaths. Sec. 304B of the IPC (IPC), which was inserted by an amendment in 1986, deals specifically with dowry deaths. If a woman dies within seven years of marriage and it is shown that she was subjected to cruelty or harassment for dowry, her death is considered a dowry death, and those responsible can face imprisonment for a minimum of seven years, extendable to life. The Act includes provisions for the protection of victims of dowry harassment. It empowers courts to issue protection orders and injunctions to prevent further harassment or violence against the victim. In cases of dowry-related offences, the burden of proof lies on the accused. They are required to prove their innocence, rather than the victim having to prove the offences.

### **The Child Marriage Restraint Act, 1929<sup>9</sup>**

The Child Marriage Restraint Act was enacted on 28 September 1929. The legislation established the minimum age for marriage as 14 years for females and 18 years for males. The legislation is commonly referred to as the Sharda Act, named after its proponent, Harbilas

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<sup>7</sup> Upendra Baxi, *On how not to judge the judges: Notes towards evaluation of the Judicial Role*, 25 *Journal of Indian Law Institute* 211 (1983).

<sup>8</sup> LawCrust, *Dowry Prohibition Act, 1961*, LawCrust.com, accessed 16 April 2025, <https://lawcrust.com/dowry-prohibition-act-1961/>.

<sup>9</sup> The Child Marriage Restraint Act, 1929, Act 19 of 1929.

Sarda. The Prohibition of Child Marriage Act, 2006, currently establishes the legal marriageable age as 18 for girls and 21 for boys. The aim is to eradicate the specific harm that poses risks to the life and well-being of a young girl, who may not be able to endure the pressures of marriage, thereby preventing premature fatalities among such young mothers. The Child Marriage Restraint Act represents a significant milestone as the initial social reform initiative addressed by an organized women's group in India<sup>10</sup>. This group exerted significant influence on numerous politicians to endorse the act through organized picketing of their delegations, displaying placards, and vocalizing slogans. The proponents of this act held the conviction that its enactment would demonstrate to the international community India's commitment to advancing social reforms. By demonstrating their support of this act, women in India were fighting the inequities established by the ancient Shastras. The women's organization announced their intention to establish their own regulations, independent of male influence, thereby advancing liberal feminism to a prominent position. While this represented a significant achievement for the women's movement in India, the legislation ultimately fell short of its intended goals. During the two years and five months that the bill was active, there were a total of 473 prosecutions, with only 167 resulting in success. The counting continues with 207 acquittals, alongside 98 cases that remain unresolved as of August 1932. Among the 167 successful prosecutions, merely 17 or so completed either the whole or a portion of their sentence<sup>11</sup>. The predominant number of cases occurred in Punjab and the United Provinces. Nevertheless, the Act was not enforced during the colonial era of British governance in India. According to Jawaharlal Nehru, this was primarily due to the inaction of the British colonial government in promoting awareness, particularly in the smaller towns and villages of India. In his autobiography, Nehru clarifies that this was primarily because the British sought to avoid incurring the discontent of the communal factions among Hindus and Muslims. During the 1930s, the sole groups in India that maintained a loyalty to British governance were these communal organizations. The British government aimed to retain its backing. Consequently, they entirely refrained from enacting this and comparable social reforms, choosing instead to concentrate their efforts on suppressing the Indian freedom movement. Consequently, their notorious "Dual Policy" obstructed any meaningful social reform in India.

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<sup>10</sup> BYJU'S. "Child Marriage Restraint Act, 1929." *BYJU'S Free IAS Prep*, 5 February 2020, <https://byjus.com/free-ias-prep/child-marriage-restraint-act-1929/>.

<sup>11</sup> LawBhoomi, "Child Marriage Restraint Act, 1929 [Sarda Act]," *LawBhoomi*, 1 Mar. 2025, <https://lawbhoomi.com/child-marriage-restraint-act/>.

**The Indecent Representation of Women (Prohibition) Act, 1986<sup>12</sup>**

The Indecent Representation of Women Act addresses inappropriate portrayals of women that imply a woman's image, including her physical form and any aspect of her body, in a manner that encourages immorality or degradation, or that undermines, mistreats, or compromises societal morals or ethical standards. The regulation seeks to govern the representation of women across different types of public media in India, while also acknowledging the nation's socioeconomic framework<sup>13</sup>. The Act became essential due to the recognition of the necessity for specific legislation. In reaction to a women's movement, the Rajya Sabha Bill concerning the Indecent Representation of Women was introduced in 1986, calling for legislative measures to tackle the degrading depictions of women in the country. Margaret Alva introduced the legislation in the Rajya Sabha, which received approval in October 1987. The Act aimed to regulate the depiction of women in media and various popular platforms<sup>14</sup>. It was established to ensure that advertisements, magazines, publications, and artistic works do not depict women in a derogatory way. The phrase "indecent representation" pertains to the "indecent depiction of women" in any form that may be considered indecent or derogatory towards women, or that could undermine public morals or contribute to moral decline, as outlined in Sec. 2(c) of the relevant Act. Women's organizations criticized inappropriate representations in the 1970s and 1980s, primarily addressing nudity and the excessively stereotypical or sexually suggestive portrayals of women. Consequently, this underscored the idea that the expression of sexuality—particularly when it pertains to women—can be deemed inappropriate. Obscenity can be recognized by its ability to degrade and corrupt discerning individuals who are vulnerable to such unethical influences and who may come into possession of a publication of this kind. If it does, applicable regulations regarding indecency come into play. The concept of "obscurity" lacks a definitive interpretation as it continually adapts to mirror shifts within society. Nonetheless, the IPC, 1860 fails to provide a definition for the term "obscene." The authors of the Code chose not to provide a precise definition of "obscurity," likely acknowledging that its interpretation is contingent upon the prevailing moral standards of contemporary society. The concepts of morality and propriety can fluctuate depending on the

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<sup>12</sup> The Indecent Representation of Women (Prohibition) Act, 1986, Act No. 60 of 1986.

<sup>13</sup> **The Indecent Representation of Women (Prohibition) Act, 1986, Act No. 60 of 1986**, available at <https://www.indiacode.nic.in/handle/123456789/1768>.

<sup>14</sup> Damyanti Agarwal, *Indecent Representation of Women in India*, (2023) 8(1) *IJNRD* 220, available at: <https://www.ijnrd.org/papers/IJNRD2301327.pdf>.

context and circumstances. Consequently, judicial bodies in India have established a definition of obscenity, given that the IPC of 1860 does not provide one.

This Act has penalties for the indecent representation of women, defined as any portrayal of a woman's figure, form, or body that is deemed indecent, derogatory, or humiliating, or that may undermine public decency or morals. It states that it is not permissible to print, facilitate publication, or engage in the exhibition of any advertisement that portrays women in an inappropriate manner in any form.

Sec. 292 and 293 of the IPC 1860 were incorporated in alignment with the ruling established by the “International Convention for the Suppression and Circulation of, and Traffic in, Obscene Publications”, which was signed in Geneva on September 12, 1923. The revisions to Sec.s 292 and 293 of the IPC (Amendment) Act of 1969 were implemented to enhance the clarity and understanding of the existing law<sup>15</sup>. The term "obscenity" is defined in clause 1 of Sec. 292 of the Criminal Code. According to Sec. 292(2), the court is required to impose a more severe penalty for offenses related to the distribution of objectionable materials or goods. Distribution of adult content and related materials. - This Sec. consists of two components. The initial Section of the article addresses a publication, brochure, document, composition, illustration, artwork, depiction, or any other item that is deemed indecent or caters to an inappropriate interest. The subsequent Section of the article addresses the scenario where the aforementioned materials comprise two or more separate items<sup>16</sup>. It examines the overall impact of any single item, which, when considered collectively, has the potential to morally degrade and corrupt individuals who are reasonably expected, given all pertinent circumstances, to engage with the content presented within it. It is necessary to establish, in line with Sec. 292, that “the material in question was sold, distributed, imported, printed, or displayed, or that the accused had either attempted such actions or made an offer to engage in them.” In light of these limitations, there is a growing prevalence of inappropriate representations or references to women in media, particularly in advertisements, which

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<sup>15</sup> Department-related Parliamentary Standing Committee on Human Resource Development, *The Indecent Representation of Women (Prohibition) Amendment Bill, 2012*, Report No. 258, Rajya Sabha Secretariat, New Delhi, 2013, available at [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2012/SCR-Indecent\\_Representation\\_of\\_Women.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2012/SCR-Indecent_Representation_of_Women.pdf).

<sup>16</sup> Nishith Desai Associates, *Prevention of Sexual Harassment at the Workplace (POSH) — India Legal & HR Considerations* (December 2023). [https://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/Research%20Papers/Prevention\\_of\\_Sexual\\_Harassment\\_at\\_Workplace.pdf](https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf)

undermine women's dignity and are disrespectful to standards of decency. The content of these commercials, publications, and other materials possesses a potentially harmful or corrupting influence, regardless of any explicit intent associated with them. To effectively address the unclear portrayal of women in advertisements, publications, brochures, and various forms of media, the implementation of distinct regulations is essential.

### **The Commission of Sati (Prevention) Act, 1987<sup>17</sup>**

The Commission of Sati (Prevention) Act of 1987 Part I, Sec. 2(c) defines Sati as: “The burning or burying alive of – (i) Any widow along with the body of her deceased husband or any other relative or with any article, object or thing associated with the husband or such relative; or (ii) Any woman along with the body of any of her relatives, irrespective of whether such burning or burying is claimed to be voluntary on the part of the widow or the women or otherwise.”

The practice of sati is reported to have been undertaken voluntarily according to existing accounts, and many of these instances indeed occurred with consent. The actions of widows in certain communities may have been anticipated, and the degree to which societal pressures or perspectives amount to coercion has been a topic of considerable discussion in contemporary discourse. There were also instances where the widow's desire to commit sati was not supported by others, and where efforts were made to prevent the death. Typically, a funeral is conducted within a day following the death, necessitating timely decisions regarding the associated rites. In the event of the husband's death in a different location, the widow could potentially face immolation at a later time.

Sati frequently highlighted the union between the widow and her late spouse. For example, instead of wearing mourning attire, the future sati was frequently adorned in bridal garments or other elaborate clothing. In the initial stages of the associated act of Jauhar (or Saka), it has been documented that both husbands and wives carry their wedding attire and reenact their marriage ceremony prior to facing their individual fates. Reports detail a wide variety of sati rituals. The accounts predominantly depict the woman positioned either seated or reclined on the funeral pyre adjacent to her deceased husband. Numerous accounts detail instances of women entering or leaping into the flames once the fire was ignited, with some accounts recounting women positioning themselves on the funeral pyre and subsequently igniting it themselves.

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<sup>17</sup> Commission of Sati (Prevention) Act, 1987, Act No. 3 of 1988 (India).



The Commission of Sati (Prevention) Act, 1987<sup>18</sup>, says, "...sati or the burning or burying alive of widows or women is revolting to the feelings of human nature and nowhere enjoined by any of the religions of India as an imperative duty."

If the offender survives, she gets a one-year jail term and a fine. Those who abet sati "either directly or indirectly, shall be punishable with death or imprisonment for life or shall also be liable to fine". Act of abetment include "making a widow or woman believe that ...sati would result in some spiritual benefit to her or her deceased husband or relative... encouraging a widow or woman to remain fixed in her resolve to commit sati; preventing or obstructing the widow or woman from saving herself from being burnt or buried alive".

### **Protection of Women from Domestic Violence Act, 2005<sup>19</sup>**

Domestic violence impacts individuals across all social backgrounds, regardless of age, religion, caste, or class. This act constitutes a serious offense that impacts not only the individual and her offspring but also carries broader consequences for the community at large. While the underlying cause of the offense may be complex, specific factors contributing to the aggression can be linked to the perpetuation of gender stereotypes and the allocation of power<sup>20</sup>. The understanding of violence has transformed over time, now encompassing not just physical acts but also "emotional, mental, financial, and various other forms of harm." Consequently, the concept of domestic violence encompasses actions that inflict harm or pose a threat to the health, safety, life, physical integrity, or overall wellbeing (both mental and physical) of the victim, or that have the potential to do so. This includes inflicting: "physical harm, sexual harm, verbal harm, emotional harm, and financial harm, carried out by any individual who is or has been in a domestic relationship with the victim". Prior to the implementation of the "Protection of Women from Domestic Violence Act, 2005", the victim had the option to seek legal redress u/s. 498-A of the IPC, 1860. This provision addresses the issue of cruelty inflicted by a husband or his relatives on a woman, offering a limited scope of legal recourse specifically related to the mistreatment of married women. All other occurrences of domestic violence within the household must be addressed according to the offenses defined

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<sup>18</sup> The Commission of Sati (Prevention) Act, 1987, Act No. 3 of 1988.

<sup>19</sup> **The Constitution (First Amendment) Act, 1951**, available at: <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-first-amendment-act-1951> (last visited on April 16, 2025).

<sup>20</sup> Shubhodip Chakraborty, *Law on Domestic Violence (Protection of Women from Domestic Violence Act, 2005)*, SCC Online (July 27, 2020), available at: <https://www.scconline.com/blog/post/2020/07/27/law-on-domestic-violence-protection-of-women-from-domestic-violence-act-2005/>.

by the respective acts of violence under the IPC, irrespective of the victim's gender. To alleviate the burdensome nature of legal frameworks, whether procedural or substantive, the DV Act was established to safeguard women from instances of domestic violence.

The term “domestic relationship” as outlined in the DV Act is comprehensive: when a definition clause specifies “means” a particular interpretation, it is inherently restrictive and all-encompassing. In *Indra Sarma versus K.V Sarma*, the SC stated that “the term domestic relationship refers to a relationship that possesses certain inherent or essential characteristics akin to marriage, even if it is not one that is formally recognized by law.” The phrase “relationship in the nature of marriage” must not be interpreted in isolation<sup>21</sup>. It should be understood within the context in which it is presented and applied, considering the intent and objectives of the DV Act, as well as the interpretation of the phrase “in the nature of marriage<sup>22</sup>.” “Relationship in the nature of marriage” refers to a situation similar to a common law marriage, which necessitates that the individuals involved have willingly cohabited and presented themselves to others as if they were spouses for a considerable duration. The involved parties must also maintain a “shared household” as outlined in Sec. 2(s). Simply spending weekends or a single night together does not qualify as a “domestic relationship” as defined u/s. 2(f). It was further determined that not every live-in relationship qualifies as one “in the nature of marriage,” as various criteria must be met to establish such a relationship.

### **Crimes Against Women Under The IPC, 1860 (IPC)**

The IPC, 1860 which was passed in 1860, has provisions that make it possible to punish those responsible for horrific crimes committed against women<sup>23</sup>. Several different provisions of the IPC deal explicitly with offences of this nature.

- Acid Attack (Sec. 326A and 326B)
- Rape (Sec. 375, 376, 376A, 376B, 376C, 376D and 376E)
- Attempt to commit rape (Sec. 376/511)
- Kidnapping and abduction for different purposes (Sec. 363–373)
- Murder, Dowry death, Abetment of Suicide, etc. (Sec. 302, 304B and 306)

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<sup>21</sup> Shubhodip Chakraborty, *Law on Domestic Violence (Protection of Women from Domestic Violence Act, 2005)*, SCC Online (July 27, 2020), available at: <https://www.sconline.com/blog/post/2020/07/27/law-on-domestic-violence-protection-of-women-from-domestic-violence-act-2005/>.

<sup>22</sup> Sri M. Chandrasekhara Reddy, *Domestic Violence Act, 2005* (2024) (Unpublished manuscript, Civil Judge (Junior Division), Pulivendula).

<sup>23</sup> Indian National Bar Association, *Crimes Against Women – A Legal Perspective* (Indian National Bar Association, 2013) <https://www.indianbarassociation.org/crimes-against-women-a-legal-perspective/> accessed 16 April 2025.

- Cruelty by husband or his relatives (Sec. 498A)
- Outraging the modesty of women (Sec. 354)
- Sexual harassment (Sec. 354A)
- Assault on women with intent to disrobe a woman (Sec. 354B)
- Voyeurism (Sec. 354C) Stalking (Sec. 354D)
- Importation of girls up to 21 years of age (Sec. 366B)
- Word, gesture or act intended to insult the modesty of a woman (Sec. 509).

### *Sexual Offences Against Women*

In the IPC, sexual offences committed against women are classified under a separate heading. This head includes a comprehensive list of sexual offences, each of which has its own Sec.:

Sec. 375, IPC defines rape. In its most basic form, the crime of rape refers to the act of sexually assaulting a woman against her will and using coercion, deception, or fear to do so<sup>24</sup>. Carnal knowledge, also known as penetration of any degree of the male reproductive organ, can be defined as the act of any woman being subjected to physical coercion in order to acquire sexual experience against her will<sup>25</sup>. It is the worst kind of abomination, because it compromises a woman's dignity and breaches her right to privacy. In addition to being degrading and perverted, this kind of behaviour constitutes an unlawful intrusion into a woman's private life, dealing a devastating blow to her reputation, pride, and sense of self-worth. This heinous act not only harms the victim physically, but it smears shame and degradation over a woman's treasured self-respect and sense of worth.

### *Essential Ingredients of Rape*

Sec. 375 has the following two essential ingredient-

**Actus Reus:** It is required that a man engage in sexual activity with a woman, with that sexual activity being interpreted in light of the provisions of Sec. 375 (a) to (d).

**Mens Rea:** Any one of the seven scenarios outlined in Sec. 375 must be present during the sexual encounter in order for it to count. Punishment for Rape (Sec. 376)

A person who commits the heinous crime of rape is subject to the penalties outlined in Sec. 376. This Sec. is broken up into two sub-Secs for your convenience. Under subsect. (1) of Sec.

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<sup>24</sup> Devgan, Raman. "Section 375: Rape." *Indian Penal Code*, Devgan.in, 30 Oct. 2024, <https://devgan.in/ipc/?a=ipc&q=rape>.

<sup>25</sup> Vikaspedia, 'Legal Provisions Related to Sexual Offences Against Women' (Vikaspedia, 2025) <https://socialwelfare.vikaspedia.in/viewcontent/social-welfare/social-awareness/legal-awareness/legal-provisions-related-to-sexual-offences-against-women?lgn=en> accessed 16 April 2025.

376, the offender faces a mandatory minimum term of seven years in prison, which may be increased to a fine or possibly life in prison<sup>26</sup>.

The punishment for violating Sec. 376(2) is a minimum of ten years in jail, but it can go as high as life in prison or even the death penalty, in addition to a fine. Gang Rape (Sec. 376D) The penalties for gang rape are outlined in Sec. 376D of the Criminal Code. When multiple people raped a woman in furtherance of a shared goal, all of them should be held criminally responsible. The minimum sentence for rape is twenty years in jail, but the maximum is life behind bars and a hefty fine.

### **Constitutional Provisions**

The Constitution of India ensures that women are treated equally and authorizes the State to implement affirmative actions aimed at addressing the various socio-economic, educational, and political challenges that women encounter. The essential rights guarantee that all individuals are treated equally under the law and receive equal protection; they forbid discrimination based on religion, race, caste, gender, or place of birth, and ensure that all citizens have equal opportunities in employment matters. The provisions outlined in Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c), and 42 of the Constitution hold significant relevance in this context.

*“i. Equality before law for women (Article 14)*

*ii. The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (Article 15 (i))<sup>27</sup>*

*iii. The State to make any special provision in favour of women and children (Article 15 (3))*

*iv. Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (Article 16)*

*v. The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood (Article 39(a)); and equal pay for equal work for both men and women (Article 39(d))*

*vi. To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (Article 39 A) vii. The*

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<sup>26</sup> Devgan, R., *Section 375 – Rape*, (n.d.), available at <https://devgan.in/ipc/?a=ipc&q=rape> (last visited on April 16, 2025).

<sup>27</sup> **Indian Kanoon, Article 14 in Constitution of India**, available at (last visited Apr. 16, 2025).

*State to make provision for securing just and humane conditions of work and for maternity relief (Article 42)*

*viii. The State to promote with special care the educational and economic interests of the weaker Sec.s of the people and to protect them from social injustice and all forms of exploitation (Article 46)*

*ix. The State to raise the level of nutrition and the standard of living of its people (Article 47)*

*x. To promote harmony and the spirit of common brotherhood amongst all the people of*

*xi. India and to renounce practices derogatory to the dignity of women (Article 51(A) (e))<sup>28</sup>*

*xii. Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat (Article 243 D(3))*

*xiii. Not less than one- third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women (Article 243 D (4))*

*xiv. Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality (Article 243 T (3))*

*xv. Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide (Article 243 T (4)).”*

## **WOMEN’S RIGHTS UNDER CONSTITUTION**

The Indian Constitution is the supreme law of India; all other laws get authority from the provisions of the Constitution. ‘Indian constitution secures for all its citizens “Justice” - social, economic and political, “Liberty” - of thoughts, expression, belief, faith and worship, “Equality” - of status and of opportunity.....and dignity of the individual and the integrity of the nation<sup>29</sup>.’ The language used in the preamble of the Indian constitution guarantees the fundamental rights of all individuals, regardless of gender. The constitution of India is recognized for its principle of equality between men and women. Nevertheless, specific

<sup>28</sup> Constitution of India, Article 51A.

<sup>29</sup> National Human Rights Commission, *Women’s Rights in India*, Research Division, National Human Rights Commission, 2021, available at

[https://nhrc.nic.in/sites/default/files/Women%E2%80%99s%20Rights%20in%20India%20complete\\_compressed.pdf](https://nhrc.nic.in/sites/default/files/Women%E2%80%99s%20Rights%20in%20India%20complete_compressed.pdf).

safeguards have been established for women under constitutional provisions aimed at protecting them from acts of violence.

**1. Right to Equality u/a 14:** Article 1 of the UDHR states that all individuals are born free and equal in dignity and rights, while Article 7 ensures equality under the law. According to the constitutional framework of India, women hold the same status as men in the eyes of the law, as the state is prohibited from denying any individual equality before the law or equal protection of the laws within the territory of India.

In *E.P. Royappa v. State of T.N.*<sup>30</sup> propounding that equality is the antithesis of inequality, the SC held: *“Equality is a dynamic concept with many aspects and dimensions and it cannot be cribbed, cabined and confined with traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore violative to Article 14.....”*

In established equality theory, discrimination involves treating an individual with similar rank, status, or qualities as if they differ from others within that group. However, if an individual does not belong to that group, they are not considered comparably similar to others within it and may be subject to different treatment, which is perceived as justifiable and not arbitrary. It is simply recognizing them for their true identity. This approach to equality may align with current social hierarchies, thereby endorsing them instead of confronting them, and provides a rationale for racial segregation.

The alternative conception of equality theory, developed by groups marginalized due to race and gender, asserts that equality is not based on uniformity or undermined by diversity. Instead, it is a manifestation of social hierarchy, reflecting a status of inferiority and superiority, shaped by historical structures of power. From its perspective, the antithesis of equality is not difference but rather a structured ranking<sup>31</sup>. Equality necessitates the advancement of status for historically marginalized groups, working towards the elimination of hierarchical structures among groups.

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<sup>30</sup> AIR 1974 SC 555

<sup>31</sup> Parpart, Jane L., Connelly, M. Patricia & Barriteau, V. Eudine (eds.), *Theoretical Perspectives on Gender and Development* (International Development Research Centre, Ottawa, 2000).

In *State of Karnataka v. B. Suvarna Malini*<sup>32</sup> the SC while explaining the concept of equality, observed that the principle of equality before the law does not suggest that absolute equality among individuals is achievable, as such a notion is inherently unattainable. Article 14 ensures that there is a similarity in treatment, which is distinct from the notion of identical treatment. Equality before the law signifies that individual of similar standing should be subject to the same legal standards and that comparable cases should receive uniform treatment. Things that are distinct from one another should not be treated as if they were identical just because they are equal in the eyes of the law. Objectivity is needed in order to ensure equality. Justice Claire L'Heureux Dube of Canada has observed:

*"Equality is not simply about equal treatment, and it is not a mathematical equation waiting to be solved. It is about human dignity and full membership in society. It is about promoting an equal sense of self-worth. It is about treating people with equal concern, equal respect and equal consideration. Those are the values that underline equality. Those are the values that are offended when we discriminate, consciously or not."*

Article 14 acknowledges that not all statutes need to be universally applicable and that different laws may pertain to different individuals. Therefore, it allows for the differential treatment of individuals when circumstances necessitate such an approach<sup>33</sup>.

Although it allows "reasonable classification of individuals, objects, and transactions to achieve specific ends, it prohibits "class legislation which adopts a discriminatory approach by conferring particular privileges upon a class of persons."

In *Kedar Nath Bajoria v. State of West Bengal*<sup>34</sup> the court accepting the principle of reasonable classification, stated that equal protection of laws guaranteed by Article 14 of the Constitution does not mean that all the laws must be general in character and universal in application and that the State is no longer to have the power of distinguishing and classifying the persons or things for the purpose of legislation.

Gender based classification is already entrenched deep into the minds of men as well as women. However, classification of women for a different treatment is to be made not because they are

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<sup>32</sup> AIR 2001 SC 606

<sup>33</sup> Article 14 in Constitution of India

<sup>34</sup> AIR 1953 SC 404

women but because they as women have certain characteristics which justify different treatment. While applying the test of equality, care has to be taken that gender-based stereotyping enjoyed by the patriarchal ideology does not predetermine which is reasonable classification.<sup>35</sup> The very nature of women requires such special treatment, and the same is not violative to the concept of equality embodied in Article 14 of the Constitution. In *Muller v. Oregon* it was observed that, —women’s physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence and her physical well-being becomes an object of public interest and care in order to preserve the strength and vigor of the race.”

In *Bodhisattwa Gautam* case referring to the pitiable condition of women in society Sagir Ahmad, J., observed that regrettably, a woman in our nation is part of a demographic that faces significant challenges due to various societal obstacles and constraints. Consequently, she has become a target of oppression by men with whom she, paradoxically, is said to have equal standing under the Constitution. The court acknowledged the equal status of women as a fundamental human right, emphasizing that, in addition to being enshrined in the constitution, women are entitled to respect and to be treated as equal citizens.

**2. Right against Discrimination:** Article 2 of the UDHR guarantees that all individuals are entitled to rights and freedoms without any form of discrimination. Article 7 addresses the principle of equal protection from discrimination.

**ARTICLE 15(1)** states that *“Indian citizens shall not face discrimination based on sex by any government authority, as the state is prohibited from discriminating against any citizen solely on the grounds of religion, race, caste, sex, place of birth, or any combination thereof. Furthermore, No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to: (a) Access to shops, public restriction, hotels and places public entertainment or (b) The use of wells, tanks, bathing Ghats, roads and places of public resort maintain wholly or partly out of state funds or dedicated to the use of the general public. Nonetheless, the state has the authority to establish particular laws for women under clause (3) of the article, serving as exceptions to the principles of non-discrimination.”*

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<sup>35</sup> S. P. Sathe, *Gender, Constitution and the Courts* in Amita Dhanda and Archana Parashar (eds.), *Engendering the Law: Essays in Honour of Lotika Sarkar* 123 (Eastern Book Co., Lucknow, 1999).



**3. Right to Equal opportunity in Public Employment:** Women are afforded equal opportunities in public employment, as there exists a principle of fairness for all citizens, regardless of gender, in relation to employment or appointments to any state office. No individual may be deemed ineligible or face discrimination in employment or office under the state based solely on religion, race, caste, sex, descent, place of birth, residence, or any combination thereof. Nonetheless, the government possesses the power to establish regulations regarding reservation.

The provision of equal opportunities enables women to select the options that align with their best interests, as well as those of their families and communities. However, opportunities for women are not equal where gender differences are prevalent. Such restrictions limit women's capacity to engage in economic decision-making in numerous ways, potentially leading to significant repercussions. Not only that, but they have actual monetary consequences also.<sup>36</sup> Women are recognized as an oppressed and weakened Sec. of the society. Therefore, in order to bring about equality it is necessary to give some special privileges in favour of women. It has been argued that women will be taken seriously only when they have these economic rights. In view of the above felt need for providing special privileges to women, the Constitution (1st Amendment) Act, 1951<sup>37</sup> amended Article 15 of the Constitution to include special provision for women. Thus, this Article empowers the state to make special provisions for women to improve their status and bring them equal to that of men.<sup>38</sup> Article 15(2) specifically bars any classification on the ground only of religion or caste or race or sex or place of birth. However, Article 15(3) empowers the State to make special provisions giving special treatment to the women. In *State of Andhra Pradesh v. P.V.B. Vijoy kumar*<sup>39</sup> the SC held that “*the State has the power to give priority to women to men in Government services, if the women is equally capable or qualified equally with man, but if the vacancies are limited and all women and men candidates cannot be appointed, then in such case women can be given priority.*”

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<sup>36</sup> The World Bank, *Report: Women, Business and the Law 2016–Getting to Equal*, 4 (September 2015), available at: <http://wbl.worldbank.org/~media/WBG/WBL/Documents/Reports/2016/Women-Business-and-the-Law-2016.pdf> (Visited on November 15, 2024).

<sup>37</sup> The Constitution (First Amendment) Act, 1951, available at: <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-first-amendment-act-1951> (last visited on April 16, 2025).

<sup>38</sup> B. P. Dwivedi, "The Family Court in India: Equality and Gender Justice", 34 Ban. L.J. 135 (2005).

<sup>39</sup> AIR 1996 SC 1648

In *State of Punjab v. Ramdev Singh*<sup>40</sup> the Court observed that “sexual violence apart from being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self- esteem and dignity - it degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman; it is a crime against the entire society. The Court emphasized that the judiciary should deal with the cases of sexual violence sternly and severely as it is a crime against the basic human rights.”

In *Jugendra Singh v. State of U.P.*, while commenting on rape as one of the most heinous crime the Court observed: “Rape or an attempt to rape is a crime not against an individual but a crime which destroys the basic equilibrium of the social atmosphere. The consequential death is more horrendous. It is to be kept in mind that an offence against the body of a woman lowers her dignity and mars her reputation. It is said that one's physical frame is his or her temple. No one has any right of encroachment. An attempt for the momentary pleasure of the accused has caused the death of a child and had a devastating effect on her family and, in the ultimate eventuates, on the collective at large. When a family suffers in such a manner, the society as a whole is compelled to suffer as it creates an incurable dent in the fabric of the social milieu.”

In *The Deputy Inspector General of Police and Anr. v S. Samuthiram* while dealing with the issue of eve teasing the Court observed:

“Eve teasing today has become pernicious, horrid and disgusting practice. .... We notice that there is no uniform law in this country to curb eve-teasing effectively in or within the precinct of educational institutions, places of worship, bus stands, metro-stations, railway stations, cinema theatres, parks, beaches, places of festival, public service vehicles or any other similar place. Eve-teasing generally occurs in public places which, with a little effort, can be effectively curbed. Consequences of not curbing such a menace, needless to say, at times disastrous. There are many instances where girls of young age are being harassed, which sometimes may lead to serious psychological problems and even committing suicide. Every citizen in this country has right to live with dignity and honour which is a fundamental right guaranteed w/a 21 of the Constitution of India. Sexual harassment like eve-teasing of women amounts to violation of

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<sup>40</sup> (2004) 1 SCC 421

*rights guaranteed u/a 14, 15 as well. We notice in the absence of effective legislation to contain eve-teasing, normally, complaints are registered u/s 294 or Sec. 509 IPC....The burden is on the prosecution to prove that the accused had uttered the words or made the sound or gesture and that such word, sound or gesture was intended by the accused to be heard or seen by some woman. Normally, it is difficult to establish this and, seldom, woman files complaints and often the wrong doers are left unpunished even if complaint is filed since there is no effective mechanism to monitor and follow up such acts. The necessity of a proper legislation to curb eve-teasing is of extreme importance.”*

The Court gave certain directions in public interest as urgent measures so that it can be curtailed to some extent before undertaking suitable legislation to curb eve-teasing.

**4. Right to Freedom of Speech and Expression:** Every individual is entitled to the freedom of opinion and expressions as stipulated in article 19 of the Universal Declaration of Human Rights. Women have the ability to stand up for issues that impact them by exercising their rights as outlined in Article 19 (1) (a) of the Indian Constitution, which ensures the freedom of speech and expression for all citizens.

**5. Right to work:** Article 23(1) of the UDHR affirms that everyone has the right to work, the right to freely choose their employment, the right to reasonable and favorable working conditions, and the right to protection against unemployment. As a result of the Indian Constitution's recognition of such a right within its framework, Indian women are granted the right to work through article 19 (1) (g), which guarantees freedom of occupation, profession, and business for all people.

**6. Right against Exploitation:** Article 5 of the UDHR safeguards individuals from torture or any form of cruel, inhuman, or degrading treatment. The Indian Constitution, through article 23, provides protection against human trafficking and bonded labour, serving as a safeguard for women's safety and affirming their right to work. To put the concept of this article into practice, the Indian parliament passed the Suppression of “Immoral Trafficking in Women and Girls Act, 1956, which was subsequently renamed the Immoral Trafficking (Prevention) Act,

1956<sup>41</sup>. The framework established by the DPSP mandates the state to ensure the recognition of women's rights within society.

**7. Right to Livelihood:** Article 39 (a) stipulates that all citizens, regardless of gender, possess an equal right to sufficient means of livelihood. The same entitlement is acknowledged u/a 23(3) of the UDHR, which states that every individual engaged in work is entitled to equitable and suitable remuneration.

**8. Equal Pay for Equal Work:** According to article 39 (d) of the Indian Constitution, the state is mandated to direct its policy to ensure equal pay for equal work for both men and women. The UDHR, in article 23(2), also establishes this right.

**9. Right to Health:** Article 39(e) of the Constitution of India ensures that the state shall specifically direct its policy towards safeguarding the health and strength of workers, both men and women, as well as protecting children from exploitation. It mandates that none should be compelled by economic necessity to engage in occupations that are inappropriate for their age or physical capacity. Article 25(1) of the UDHR establishes the entitlement to a standard of living that is sufficient for health and well-being.

**10. Equal Justice and Free Legal Aid:** Article 39A of the Constitution offers support to individuals who cannot bear the costs associated with legal representation. The state is responsible for ensuring that the functioning of the judicial framework fosters fairness, grounded in equal opportunity. It shall specifically offer free assistance through appropriate laws or programs, or by any other means, to guarantee that no citizen is deprived of the chance to attain justice due to financial or other limitations.

**11. Just and Human Conditions of Work and Maternity Relief:** Article 42 of the Constitution mandates that the state shall ensure the establishment of fair and humane working conditions, as well as provisions for maternity relief.

**12. Right of Constitutional Remedies:** In the event of a breach of any of these essential rights, the affected woman has the option to approach the SC and HC to file a writ petition u/a 32 and

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<sup>41</sup> **The Immoral Traffic (Prevention) Act, 1956**, Act No. 104 of 1956

Article 226 in a search for a remedy. However, there exists no similar mechanism for the DPSP, as these are not enforceable by any court within the framework of writ jurisdiction. The state is obligated to enforce these principles via its policy. Therefore, the DPSP create a duty for the state to ensure their execution.