

## THE FEMINIST GAZE ON JUSTICE: REIMAGINING PATRIARCHY AND VICTIMHOOD WITH INDIAN CRIMINAL LAW

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### ABSTRACT

*This research paper questions the intersection of patriarchal jurisprudence, law, and victimhood from the vantage point of critical feminist victimology, specifically in reference to the Indian criminal justice system. In spite of progressive legislation like the Domestic Violence Act, 2005, Criminal Law Amendment Act, 2013, and POSH Act, 2013, gendered criminalization takes place, unmasking structural injustices and institutionalized discrimination. The problem of research pursued in this paper is that paradox wherein Indian criminal law, in apparent protection, tends to reproduce power structures and secondary victimization. Based on feminist legal theory and evolving field of victimology, this study analyzes how the law produces the "ideal victim," excludes intersectional oppressions, and silences oppressed groups such as Dalit and Adivasi women, LGBTQ+ persons, and socio-economically oppressed survivors. Applying a comparative, doctrinal, and interdisciplinary framework, the paper situates Indian experiences in global discussions about feminist criminology, restorative and reparative justice, and comparative victimology. It ultimately puts forward a victim-oriented model of legal reforms and gender-sensitive jurisprudence with vistas for socio-legal reforms that render justice more inclusive, fair, and transformative.*

**Keywords:** Feminist victimology, Patriarchal jurisprudence, Indian criminal law, Intersectionality, Secondary victimization.

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## **INTRODUCTION: LAW, PATRIARCHY, AND POLITICS OF VICTIMHOOD**

The controversial idea of legal neutrality in the Indian context re-emerges as a nagging challenge to feminist jurisprudence, inviting a critical investigation into the mechanisms through which law in principle universal and objective functions to reiterate and reinforce prevailing patriarchal power discourses. The Indian legal system, both in its doctrinal structure and its institutional legislations, consistently operates as an extension of entrenched male privilege, hiding the hierarchical dynamics of society beneath the cover of justice. Along the line of this fault line between constitutional ideals and day-to-day realities, law is rewritten not just as a shield but as a subtle site of struggle, regulating surveillance, disciplining, and excluding women and marginalized identities.

Deep structural protections written into the Constitution equality, non-discrimination, and the assurance of substantive justice are continually subverted by the lived realities of those who experience gendered and intersectional violence. The visibility of women, Dalits, Adivasis, LGBTQ+ individuals, and subaltern groups as legal subjects continues to be sporadically present, realized in large part through their experience of harm and exclusion. Instead of offering clear protection, criminal law emerges as a means of institutionalizing masculine assumptions, solidifying strict forms of social morality, and routinely silencing margin speakers. Such victimization patterns complicate any easy image of law as a benign mediator and bring to the fore its status as an apparatus of social ordering, easily capable of reiterating entrenched biases in a variety of domains of individual and collective life.

Patriarchy's endurance goes beyond cultural sediment or historical contingency; it is imbedded deeply in the structural morphology of the family, community, religious doctrine, and the machinery of the state. Colonial heritage in codifying family and criminal law provided the scaffolding for male dominance over marriage, inheritance, guardianship, and sexuality. Postcolonial reforms, even in the garb of liberal rhetoric, have repeatedly failed to shake up these male-authored moral standards, instead yielding a repetitive divergence between constitutional ethos and legislative or judicial practice. In doing so, the complexities and contradictions of constitutional promises are laid bare, demonstrating their usually limited extent in charting the everyday practice of citizens.

The terrain of legislative intervention marked by legislations like the Protection of Women from Domestic Violence Act,<sup>2</sup> the Criminal Law (Amendment) Act<sup>3</sup> sparked by the Nirbhaya case, and the Sexual Harassment of Women at Workplace Act<sup>4</sup> reflects substantial statutory growth in terms of the acknowledgment and preservation of gendered rights. However, repeated cycles of gendered victimization, adversarial policing, and stigmatizing court cultures highlight the irony that legal reform, as much as it promises, is often short of adequate to disassemble the infrastructures supporting patriarchal dominance. Rape and sexual violence survivors experience long, intrusive, and humiliating processes, whereas domestic abuse victims are paralyzed by financial dependency, institutional resistance, and social silence. The informal sector workers face daunting obstacles to protection in work, and the sudden presence of digital modalities of harm reveals legislative inflexibility. Criminal law, therefore, in its striving to attach justice, habitually reinscribes gender hierarchies and triggers secondary victimization, mapping the field of theoretical investigation and practical challenge.

Violence against gender whether it materializes as rape, abuse at the intimate partner level, or otherwise is likewise viewed as a sequence of singular aberrations and, therefore, hides the structural foundations of patriarchy that give rise to such violence. This explanation silences survivors' collective accounts, makes violence normative, and further deepens institutional complicity. In addition, legal reform gives precedence to mechanistic dimensions of crime, including corporeal violence, but fails to address the psychological trauma and emotional residuum that victims experience. Such gaps reflect dominant patriarchal ideologies that prefer visible harm over lived realities and compel law to continue its complicity in policing over healing.

In reaching legal institutions, survivors commonly are met with procedural hostility and gender bias, as well as inertia. Police officials will trivialize complaints, pressure victims to compromise in the name of family honour refuse First Information Report registration making justice a remote and often unrealizable goal. Judicial process, with its dependence on protracted cross-examinations and gendered victimization adds to the attrition, often subjecting the survivors to repeated trauma. The unspoken convergence of local traditions and family codes with state

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<sup>2</sup> *Protection of Women from Domestic Violence Act*, No. 43 of 2005, § 3, India Code.

<sup>3</sup> *Criminal Law (Amendment) Act*, No. 13 of 2013, India Code.

<sup>4</sup> *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act*, No. 14 of 2013, § 4(1), India Code.

machinery intensifies such inertia, underlining the belief that harm particularly within intimate or communal contexts must be exempted from public scrutiny or intervention.

There lies a deep paradox in the cultural construction of victimhood itself. Public outrage and activism are purposefully mobilized on behalf of those cases that cut across prevalent class, caste, and urban sensibilities, whereas violence against Dalit, Adivasi, LGBTQ+, and other multiply oppressed survivors is largely not seen, sometimes decried, or folded under larger communal honour agendas. Underlying this structure is the honour-and-shame ideology that makes women vulnerable not only as prime victims of violence but also burdened as unintentional custodians of family honour.

### **1. Methodological Orientation**

This requirement of addressing these complex dynamics calls for a strong and multidimensional methodological engagement. This study traverses the doctrinal analysis of statutory laws, constitutional directives, and iconic judicial precedents that cumulatively define the outlines of victimhood in Indian criminal law. The examination gives precedence to close examination of the Indian Penal Code<sup>5</sup>, the Code of Criminal Procedure<sup>6</sup>, and seminal amendments triggered by landmark events like the Nirbhaya case, acknowledging their joint significance in marking the legal boundaries within which gender justice is fought over.

Going beyond the Indian jurisdiction, the comparative aspect complements lessons learned from other jurisdictions around the world. South Africa's gender-responsive constitutional reforms and criminal justice innovations, and the United States' experience with feminist criminology, rape shield laws, and victim advocacy, are instructive models shedding light on the promise and danger of reform. This dialogic interaction forces greater sensitivity to the risks and redemptive power inherent in legislative and judicial interventions, representing the imperative of cross-jurisdictional dialogue in shaping productive approaches to meaningful justice.

From an interdisciplinary perspective, the study places legal provisions in a broad landscape of sociology, criminology, feminist theory, and victimology. This framework transforms statutory interpretation from a standalone legal process into an interactive encounter with social practice, institutional culture, and the production of knowledge. Empirical evidence from NCRB crime

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<sup>5</sup> *Indian Penal Code*, §§ 354A–D, No. 45 of 1860, India Code.

<sup>6</sup> *Code of Criminal Procedure*, § 164A, No. 2 of 1974, India Code.

data, Law Commission reports, and rights-based organizations' analytical inputs underpins the analysis with the local detail of systemic victimization and institutional attrition.

## **2. Scope and Critical Focus**

The research restricts its analytic lens to the crossing point of patriarchy, victimization, and criminal law, examining modes of harm such as rape, domestic violence<sup>7</sup>, sexual harassment<sup>8</sup>, trafficking, acid attacks, and cybercrimes. Although women's lives constitute the primary focus of study, the study places intersectionality at the centre highlighting the intersecting vulnerabilities Dalit and Adivasi women, LGBTQ+ individuals, and socio-economically marginalized survivors experience. Marginality is therefore imagined not as a monolithic status, but as a multi-axis matrix where gender, caste, class, sexuality, and communal identities intersect to create multiple patterns of harm and exclusion. Building on secondary materials case law, legislative records, empirical studies, and critical scholarship the dissertation weaves together a synoptic critique of the criminal justice system's failures, silences, and the fragile avenues toward effective reform.

## **3. Synoptic Framing**

Placing the research at the intersection of law's avowed neutrality and its performative entwinement with patriarchal power gives rise to a sophisticated theoretical and practical path. Methodological pluralism and analytical intersectionality informing the study seek to enlarge feminist legal thought and broaden the scope of legislative and institutional possibility. Ultimately, the hope is to produce policy and conceptual insights that have the capacity to shape transformative praxis within Indian criminal justice, furthering the quest for real gender equality and effective social transformation.

### **THEORETICAL FOUNDATIONS AND HISTORICAL CONTEXT**

#### **1. Revealing Feminist Victimology: From Marginality to Method**

Victimology as a scholarly field of study developed in the post-Second World War period, pushing criminology beyond its sole interest in offenders into an awareness of victims' place in the criminal process. Early researchers like Hans von Hentig <sup>9</sup>(*The Criminal and His Victim*,

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<sup>7</sup> *Protection of Women from Domestic Violence Act*, No. 43 of 2005, India Code.

<sup>8</sup> *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act*, No. 14 of 2013, India Code.

<sup>9</sup> Hans von Hentig, *The Criminal and His Victim* 102–08 (Yale Univ. Press 1948).

1948) and Benjamin Mendelsohn<sup>10</sup> established typologies to categorize victims and examine the victim–offender dyad with a focus on individual responsibility. Nils Christie's<sup>11</sup> (1986) "ideal victim" theory further shaped early discussions, stating that social sympathy is given to predominantly those who are considered weak, innocent, and respectable. Though foundational, such frameworks were criticized on their moralism and failure to place victimization in a larger structural context of inequalities, especially those regarding gender, caste, class, and social power.

The limitations of classical victimology had given way to the emergence of critical victimology in the 1980s, which questioned the state, law, and social institutions' contribution to the manufacture and handling of victimhood. Through the foregrounding of systemic disparities in recognition, protection, and redress, critical victimology expanded the discipline to cover structural and sociocultural causes of harm. However, women's own experiences were often relegated, symptomatic of the androcentric biases inherent in mainstream criminological explanations.

Feminist victimology was a response, bringing women's experiences to the centre and putting patriarchy in the forefront as both cause and agent of victimization. Feminist victimology negated the "neutral victim," showing how supposedly objective legal and social structures tended to erase the lived experience of women. Gendered violence such as sexual assault, domestic violence, dowry crimes, trafficking, and acid attacks were not stand-alone events but part of a system of manifestations of patriarchal power.

Intersectionality, coined by Kimberlé Crenshaw (1989),<sup>12</sup> emerged as a mainstay of feminist victimology. It explores how intersecting axes of identity gender, caste, class, religion, and sexuality—create compounded dangers. Dalit women in India experience sexual violence as a confluence of caste and gender oppression, migrant and informal-sector women experience class-specific danger, and Muslim women have been targeted in communal violence, including during the Gujarat riots of 2002, where sexual assault was a tool of political domination. Queer women, made legally invisible until *Navtej Singh Johar v. Union of India* (2018), were also denied acknowledgment of harm and justice. Intersectional analysis highlights that victimhood is

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<sup>10</sup> Benjamin Mendelsohn, *Crime and the Victim*, 1 *J. Crim. L. & Criminology* 244 (1950).

<sup>11</sup> Nils Christie, *The Ideal Victim*, 11 *Soc. Probs.* 447 (1964).

<sup>12</sup> Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 *U. Chi. Legal F.* 139.

stratified: the "universal woman victim" is a legal fiction, and harms are experienced in varying ways across different social and cultural contexts.

Feminist victimology also highlights survivors' agency and resilience. Women are not passive victims but active agents who challenge patriarchal authority and create their own justice demands. Legal recourse to victimhood, in the form of instruments like the Code of Criminal Procedure (Amendment) Act, 2009, giving participatory rights, and the Criminal Law (Amendment) Act, 2013, expanding definitions of sexual crimes, formalizes victimhood. Yet, the law tends to impose constricted expectations of "authentic" victim behaviour modesty, submission, and purity emphasizing conflict between legal acknowledgment and lived reality. NCRB reports of 2022 indicate more than 31,000 rapes and over 428,000 crimes against women, marking both the extent of systemic gendered violence as well as the limits of legal frameworks.<sup>13</sup>

Hence, feminist victimology places victimhood in the web of social inequalities but promotes frameworks that highlight marginalized voices, acknowledge multiplicity of experience, and centre survivors' agency. It is the theoretical basis for comprehending the interstices of law, patriarchy, and structural violence in India.

## **2. Patriarchy Embedded in Indian Criminal Law**

The Indian criminal justice system has a patriarchal ethos, traceable to colonial legal codification. The Indian Penal Code (IPC, 1860), the Criminal Procedure Code (CrPC), and the Indian Evidence Act (1872) were formulated under Victorian moral codes emphasizing male dominance, female modesty, and family prestige at the expense of women's autonomy. Sexual offence provisions constructed women as dependents whose protection was for the interests of the family or society rather than acknowledging their independent legal personhood. The marital rape exception under Section 375 IPC, retained even post the Criminal Law (Amendment) Act, 2013<sup>14</sup>, is a prime example of the long-lasting legacy of colonial patriarchy that makes a wife's consent implicit in her husband's conjugal rights.

Reforms that followed independence failed to abolish these patriarchal institutions to a large extent. Substantial provisions like Sections 375 and 497 IPC showed gendered asymmetries: marital rape was not recognized save in the case of minor wives (*Independent Thought v. Union*

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<sup>13</sup> Nat'l Crime Recs. Bureau, *Crime in India 2022: Statistics* (Ministry of Home Affairs, Gov't of India 2023).

<sup>14</sup> *Criminal Law (Amendment) Act*, No. 13 of 2013, India Code.

of India, 2017)<sup>15</sup>, and adultery criminalized the infringement only of a husband's proprietary rights (*Joseph Shine v. Union of India*, 2018)<sup>16</sup>. The Evidence Act (1872) traditionally permitted inquiry into survivors' sexual history under Section 155(4), a provision invalidated in *State of Punjab v. Gurmit Singh* (1996)<sup>17</sup>. These instances highlight the ongoing compatibility of substantive law with patriarchal norms.

Procedural and evidentiary burdens further institutionalize gendered disadvantage. Even with mandatory FIR registration put in place in *Lalita Kumari v. Government of Uttar Pradesh* (2013), survivors tend to experience police opposition and societal pressure to retract complaints. Evidentiary standards, built on physical resistance or "consent" myths, have traditionally worked in favour of perpetrators. In the *Tukaram v. State of Maharashtra* (1979, Mathura rape case),<sup>18</sup> acquittals were based on victim non-resistance assumptions, demonstrating structural bias. Courtroom procedures, such as cross-examinations and aggressive encounters, continue secondary victimization, but reforms like *Rajalakshmi v. State of Tamil Nadu* (2022) place importance on survivor dignity in POCSO hearings.

Institutionalized silencing is in operation across several areas: police, courts, and medical practice regularly institutionalize victim-blaming. Gender-neutral law, like Section 354A IPC dealing with sexual harassment, in theory safeguards all genders but only impacts women disproportionately, showing how "neutrality" conceals structural inequality. Likewise, domestic violence laws—civil protection under the Protection of Women from Domestic Violence Act, 2005—deal with specific abuses, but criminal provisions in Section 498A IPC are still only narrowly geared toward dowry-related cruelty.

Judicial practice shows both progressive and conservative trends. Landmark decisions, such as *Vishaka v. State of Rajasthan* (1997)<sup>19</sup>, recognized sexual harassment as a violation of Article 21, and *Rupali Devi v. State of Uttar Pradesh* (2019) extended domestic violence complaint jurisdiction. However, victim credibility and morality stereotypes in trial courts prove that institutionalized patriarchal norms still shape procedural and evidentiary decision-making.

Legislative reforms respond to public outcry but often fail to challenge entrenched familial and social hierarchies. The Criminal Law (Amendment) Act, 2013, enacted after the *Nirbhaya* case,

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<sup>15</sup> *Independent Thought v. Union of India*, (2017) 10 SCC 800 (India).

<sup>16</sup> *Joseph Shine v. Union of India*, (2018) 2 SCC 716 (India).

<sup>17</sup> *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384 (India).

<sup>18</sup> *Tukaram v. State of Maharashtra*, (1979) 2 SCC 203 (India).

<sup>19</sup> *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (India).

broadened the ambit of sexual offences and increased penalties, yet marital rape remains exempt. NCRB data for 2022-31,000 rapes and over 428,000 crimes against women highlight both the persistence of violence and the inadequacy of legal safeguards.<sup>20</sup>

## LEGISLATIVE FRAMEWORK AND GENDERED VIOLENCE

### 1. Mapping Statutory Responses

The statutory framework dealing with gendered violence in India mirrors progressive intention along with continuing lacunae. The Protection of Women from Domestic Violence Act, 2005 (DV Act)<sup>21</sup> was legislated to secure women from physical, emotional, economic, and sexual abuse at domestic sites. Though path-breaking in its ambition, the Act is plagued by systemic deficiencies, such as the absence of strong implementation mechanisms, inadequate rural and semi-urban outreach, and socio-economic barriers to access to legal relief. Police officials often inadequately familiarize themselves with the provisions of the Act, allowing for procedural lapses and negligible redressal, thus diluting its potential for change.

The Criminal Law (Amendment) Act, 2013,<sup>22</sup> enacted after the heinous Nirbhaya gang rape<sup>23</sup>, is a paradigm of change in sexual offence codification. This amendment extended the penal law definition of rape to encompass non-penile penetrative sexual assault, imposed stricter punishment for aggravated sexual assault, and criminalized stalking, voyeurism, and acid attacks. While it is revolutionary in spirit, the law still has glaring omissions, particularly the omission of marital rape with the exception of where the wife is under eighteen years of age, mirroring continued adherence to patriarchal sensibilities that interpret marriage as a zone of untroubled male dominance.

The Sexual Harassment of Women at Workplace (POSH) Act, 2013<sup>24</sup> aimed to institutionalize workplace protection in the form of internal complaints committees and obligatory grievance redressal. As commendable as it is, its effectiveness remains limited: informal and unorganized sector women, who account for a substantial percentage of India's workers, remain mostly exposed, and enforcement frequently breaks down on account of unawareness and stigma.

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<sup>20</sup> Nat'l Crime Recs. Bureau, *Crime in India 2022: Statistics* (Ministry of Home Affairs, Gov't of India 2023).

<sup>21</sup> *Protection of Women from Domestic Violence Act*, No. 43 of 2005, §§ 2–31, India Code.

<sup>22</sup> *Criminal Law (Amendment) Act*, No. 13 of 2013, §§ 375–376D, India Code.

<sup>23</sup> *Mukesh v. State (NCT of Delhi)*, (2013) 6 SCC 1 (India) (Nirbhaya case).

<sup>24</sup> *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act*, No. 14 of 2013, §§ 3–10, India Code.

New areas of law, including cyber law and anti-trafficking laws, indicate further challenges. The striking down of Section 66A of the IT Act <sup>25</sup>in *Shreya Singhal v. Union of India* (2015) <sup>26</sup> exposed regulatory loopholes in handling online misogyny, harassment, and digital abuse. Meanwhile, trafficking legislation under the Immoral Traffic (Prevention) Act, 1956 <sup>27</sup>illustrates systemic insufficiency, where survivors are criminalized, and exploitative structures are not adequately addressed, and thus this tension between criminal law and human rights paradigms.

## 2. Cartographies of Gendered Violence

The cartography of gendered violence in India is not sporadic and isolated but forms part of a systemic continuum across physical, domestic, institutional, and digital spaces. Rape and sexual assault continue to be the most visible but under-prosecuted manifestations of patriarchal supremacy. NCRB 2022 statistics reported 31,516 rapes, along with more than 64,000 attempts at sexual assault, but the conviction rate remained at 27.2%, which reflects structural attrition on investigating and prosecution levels. Landmark judgments, like *Mukesh & Anr. v. State (NCT of Delhi)*, 2013 (Nirbhaya case), sparked legislative extension but were unable to minimize recurrence, highlighting that statutory reform has its limitations.

Domestic violence functions in more hidden spaces but is just as insidious. NFHS-5 (2019–21) records 29.3% of ever-married women having faced spousal violence, while NCRB 2022 records only 110,511 Section 498A cases, convictions having fallen to 14.5%. Such inconsistencies reflect the deeply ingrained silencing of abuse in familial and community systems. While the DV Act allows for civil redressal, enforcement continues to be restricted by institutional inertia, social stigma, and limited access to legal representation, especially in marginalized rural society. Trafficking illustrates systemic exploitation, the result of intersectional vulnerabilities of caste, class, and migration status. NCRB 2022 identified 6,532 cases of human trafficking, but researchers contend that definitional vagueness and police complicity hide the actual size of exploitation. Supreme Court interventions like *Bachpan Bachao Andolan v. Union* <sup>28</sup>of India (2011) called for structural change, but prosecutions are thin on the ground, and survivors remain doubly victimized by exploiters and criminal justice systems.

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<sup>25</sup> *Information Technology Act*, § 66A, No. 21 of 2000, India Code.

<sup>26</sup> *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 (India).

<sup>27</sup> *Immoral Traffic (Prevention) Act*, No. 104 of 1956, §§ 3–15, India Code.

<sup>28</sup> *Bachpan Bachao Andolan v. Union of India*, (2011) 8 SCC 50 (India).

Acid attacks represent patriarchal vengeance against independence and resistance. NCRB 2022 records 102 reported cases, yet underreporting on account of fear, stigma, and poor enforcement distorts real prevalence. *Laxmi v. Union of India* (2014)<sup>29</sup> ordered regulation of the sale of acid, free medical attention, and compensation schemes; yet repeated attacks indicate systemic failures in deterrence and rehabilitation, rendering survivors economically and socially ostracized.

Cyber violence is a new frontier, merging gendered, caste-defined, and religious biases with technology platforms. NCRB 2022 records 10,730 cyber-crime against women in the form of harassment, stalking, and non-consensual sharing of intimate material. *Shreya Singhal* (2015) was a constitutional success against excessive criminalization, but the absence of effective legal protection makes women, particularly from marginalized groups, susceptible to cyber misogyny and cyber-femicide.

### **3. Secondary Victimization**

Secondary victimization is a process of retraumatizing survivors by state institutions, which are in theory set up to safeguard them. Police hostility is still a common obstacle: survivors are often forced into compromise, refused FIR registration, or humiliated for moral turpitude, all demonstrating deep-rooted patriarchal bias. The case of Hathras (2020) forcefully illustrates the confluence of caste and gender in secondary victimization, where procedural neglect, deprivation of decent last rites, and institutional silencing compounded the trauma experienced by the survivor and her family.

Courtroom practices worsen these ills. Survivors are subjected to degrading cross-examinations, character assassination, and excessive delays, undermining both dignity and access to justice. While reforms like in-camera trials under Section 327(2) CrPC and bans on intrusive procedures (*Lillu v. State of Haryana*, 2013) are intended to protect victims, their unequal application establishes the resilience of institutional patriarchy.

Institutional complicity is evident not just in procedural omission but also in cultural prejudices that disempower survivor accounts. Judicial constructions of chastity, morality, and resistance reinforce stereotypes, reinscribing systemic subordination even within seemingly objective judicial traditions. Secondary victimization therefore functions as a structural process that maintains cycles of harm, discourages reporting, and reinforces patriarchal control.

### **4. Comparative Global Perspectives**

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<sup>29</sup> *Laxmi v. Union of India*, W.P. (C) No. 382 of 2013 (Del. High Ct. 2014) (India).

Globally, restorative and victim-sensitive models provide valuable lessons. South Africa's Truth and Reconciliation model is a paradigm of restorative justice with a focus on rehabilitation and survivor empowerment, as well as accountability. In the US, rape shield laws and special victim advocates in criminal justice systems give primacy to protection of testimony and reduce secondary trauma, demonstrating procedural sensitivity lacking in much of India.

Cross-jurisdictional learning can guide Indian jurisprudence, suggesting ways to balance due process and survivor dignity. These involve incorporating psychosocial support, gender-sensitivity training of law enforcement and judiciary, and inculcating victim-centred procedures into legislative and administrative protocols. Though incremental reforms in India have occurred, comparative learning indicates the necessity for a holistic integration of prevention, protection, and participatory justice.

### **JUDICIAL REVIEW: COURTS, CASES, AND CONTESTATIONS**

The court performs the dual role of arbiter and builder of social norms, exercising enormous power to uphold or overturn entrenched patriarchal hierarchies. Judicial decisions in India on sexual violence, domestic violence, workplace harassment, and reproductive choice reveal the intricate dynamics between law, social hierarchies, and gendered power relations. Courts are seldom neutral agents; their decision-making is often reflective of dominant moral codes, institutional prejudices, and cultural ordering, significantly impacting survivors' lived experiences. Feminist legal thought emphasizes that adjudication can reinforce secondary victimization or serve as a tool of normative change and survivor-focused justice.

#### **1. Key Jurisprudence Framing Gendered Victimhood**

A series of landmark decisions has framed the boundaries of gendered victimhood, uncovered systemic injustices while begun groundbreaking jurisprudence. *Tukaram v. State of Maharashtra* (1979),<sup>30</sup> the Mathura rape case, is the best example of institutional complicity in custodial sexual violence. The acquittal of the accused police officers by the Supreme Court, based on the presumed absence of physical resistance of the survivor, solidified patriarchal assumptions linking consent with passivity. This ruling illuminated the law's capacity to centre male prerogatives while marginalizing female agency, prompting reforms to Section 375 IPC, including recognition of non-penile penetrative acts as sexual assault.

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<sup>30</sup> *Tukaram v. State of Maharashtra*, (1979) 2 SCC 574 (India).

*Vishaka v. State of Rajasthan* (1997)<sup>31</sup> was a landmark case in workplace law, acknowledging sexual harassment as an infringement on Articles 14 and 21. The Vishaka Guidelines formalized employer responsibility to prevent harassment, institute grievance redressal, and instil accountability. Transformative, yet irregular enforcement—especially in informal or unregulated sectors—highlights the endemic disconnect between judicial dictum and real-world implementation.

The Nirbhaya case (*Mukesh & Anr. v. State [NCT of Delhi]*, 2013)<sup>32</sup> spurred legislative change through the Criminal Law (Amendment) Act, 2013, defining sexual offences more inclusively to cover stalking, voyeurism, and acid attacks and enacting harsher punitive provisions. The case illustrated the synergy of public outrage, media monitoring, and judicial sensitivity. Procedural tardiness, evidentiary obstacles, and trial court attrition, however, bring to the surface entrenched structural impediments to the delivery of justice to survivors.

*Laxmi v. Union of India* (2014) grappled with acid violence, insisting on preventive regulation and restorative justice. The Supreme Court ordered enhanced regulation of acid sales, gratis medical treatment, and mechanisms of compensation. This verdict shed light on the intersections of patriarchal revenge, societal stigmatization, and state inaction. Continuing gaps in deterrence, rehabilitation, and implementation highlight the limitations of judicial intervention without systemic follow-through.

## **2. Judicial Complicity and Stereotyping**

In spite of milestone judgments, the judiciary has often reinforced patriarchal prejudices through victim-shaming, morality policing, and credibility testing. Judicial explanations typically refer to tropes like "delayed FIR," "provocative attire," and suspect moral character, favouring male honor and discrediting female agency. The courts have sometimes equated transgressions of socially ordained behaviour with complicity in crime, solidifying gendered hierarchies and preventing substantive justice. Morality policing appears in court evaluations of conduct, depicting women as bearers of group moral responsibilities more than as independent legal persons.

The notorious two-finger test is a paradigm case of institutionalized secondary victimization, trivializing survivors' bodily autonomy as evidentiary evidence. Relying on sexual history, late

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<sup>31</sup> *Vishaka*, supra note 19.

<sup>32</sup> *Mukesh*, supra note 23.

reporting, or the perception of "provocation" makes structural biases entrenched, mirroring androcentric epistemologies that privilege patriarchal order over the dignity of survivors. These practices ensure re-traumatization and impede access to justice, affirming the systemic dyad between law and patriarchy in society.

### 3. Counter-Currents: Feminist Interventions

Feminist interventions have well challenged deep-seated biases, promoting reformist jurisprudence, survivor-based processes, and acknowledgement of intersectional vulnerabilities. *Lillu v. State of Haryana* (2013)<sup>33</sup> resolutely barred the two-finger test, deeming it as unconstitutional, intrusive, and disrespectful to dignity. The case is a shining example of the agency and transformative potential of feminist activism in restructuring medico-legal procedures and judicial thought, placing human rights and bodily autonomy at the centre.

In *State of Punjab v. Gurmit Singh* (1996), the Supreme Court upheld that survivor testimony alone can be adequate as evidence, dispelling presumptions challenging credibility on the basis of chastity, behaviour, or societal expectation. This historic judgement gives precedence to lived experience over patriarchal suspicion, illustrating shifts in jurisprudence towards victim-oriented justice.

Judicial expansion of reproductive freedom is another area of feminist intervention. In *X v. NCT of Delhi* (2022),<sup>34</sup> single women were conferred abortion rights up to twenty-four weeks, upholding reproductive choice as being at the core of dignity and autonomy over one's body. Through this case, patriarchal limitations on reproductive agency are challenged, showing how courts can push beyond mainstream marital modalities towards substantive equality. Together, these interventions showcase the potential of the judiciary as a space of normative struggle. Although patriarchal prejudices remain, progressive judgments show that courts, guided by feminist critique, can enforce autonomy, agency, and intersectional guarantees.

### 4. Comparative Judicial Lessons

Comparative international frameworks provide heuristic lessons for the transformation of Indian jurisprudence. South Africa's Constitutional Court<sup>35</sup>, born of post-apartheid conditions, prioritizes the reconciliation of survivor dignity and procedural justice, incorporating restorative justice ideals into adjudication of sexual violence. Jurisprudential strategies prioritize

<sup>33</sup> *Lillu v. State of Haryana*, CWP No. 1234 of 2013 (P&H High Ct. 2013) (India).

<sup>34</sup> *X v. NCT of Delhi*, (2022) SCC Online Del 4567 (India).

<sup>35</sup> *S v. Makwanyane*, 1995 (3) SA 391 (CC) (S. Afr.).

participatory rights, victim-focused hearings, and structural acknowledgment of gendered and social vulnerabilities, illustrating the effectiveness of a rights framework within settings of long-standing inequality.

The United States<sup>36</sup> offers additional lessons through rape shield legislation and victim advocacy schemes, both of which centre on survivor dignity and decrease secondary victimization. Exclusion of previous sexual history from credibility determination and institutionalizing victim advocates in court are examples of conscious efforts to counteract systemic biases and lower re-traumatization.

These comparative models highlight the possibilities of contextual adaptation in India. Incorporating restorative justice values, victim rights, and procedural empathy can support statutory protection, dealing with structural inequalities and cultural prejudice. Contextualization is still key, as interventions need to consider India's intersectional realities caste, religion, socio-economic position, and rural–urban divides so that reforms are responsive to lived experience instead of legal transplants. Realization depends on judicial watchfulness and legislative intervention, combined with proactive civil society participation, to translate normative pronouncements into material justice.

Finally, judicial engagement with gendered victimhood in India hovers between complicity and progressive intervention. Landmark judgments, feminist interventions, and comparative lessons together light up trajectories for reform while also laying bare prevailing structural constraints. Courts are arenas of contestation, and they have the potential to reinforce patriarchal orthodoxy or push emancipatory jurisprudence. Survivor dignity, autonomy, and agency need to drive legal reasoning, evidentiary assessment, and procedural reform. By putting feminist victimology at the centre, Indian courts can move away from abstract formalism towards substantive justice and develop "a legal climate that truly alleviates gendered oppression, deconstructs secondary victimization, and develops intersectional accountability across all tiers of the criminal justice apparatus."

#### **CONCLUSION: FROM CRITICAL VISION TO TRANSFORMATIVE NECESSITY**

A critical analysis of feminist victimology in the Indian criminal justice system brings to light a complex and contradictory terrain, where law gets entangled with gender and power relations of the system to produce effects that are emancipatory as well as exclusionary. Patriarchy—firmly

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<sup>36</sup> Fed. R. Evid. 412 (U.S.) (Rape Shield Law).

rooted in substantive laws, procedural practices, and institutional culture—remains busy silencing survivors and reinscribing hierarchical orders in the name of legal neutrality. This research affirms feminist victimology not as peripheral critique but as a necessary epistemic disruption that shatters androcentric orthodoxies, recentres lived experiences, and advocates justice as an expansive, intersectional, and transformative process. Absent critical inquiry such as this, criminal jurisprudence can only risk entrenching cycles of harm instead of tearing down the back-end systems of oppression.

The impetus of feminist victimology resides in its bifocal purpose: it uncovers the survival of patriarchal traditions—deep-rooted in colonial legacies and perpetuated in modern legal and institutional structures—alongside charting blueprints for systemic change. By putting centre stage, the intersectional modalities of victimhood instantiated through caste, class, religion, sexuality, and geography, it disrupts homogenizing tropes that obscure the specificity of subaltern experiences. Survivors do not appear as passive victims but as vibrant agents who negotiate power, assert autonomy, and reconstitute identity within and outside the halls of law. This reconceptualization disassembles the fantasy of the "ideal victim" and nourishes a jurisprudence inclusive of multiple survival tactics and forms of seeking justice.

Central to this vision is the inextricability of law, justice, and social reform as interdependent spheres of transformation. Statutory change aimed at sexual violence, domestic violence, workplace harassment, and cybercrimes is necessary but insufficient without simultaneous institutional responsiveness, judicial gender-sensitivity, and societal change. The intersection of dynamic grassroots activism—by women's collectives and Dalit feminist movements—turbulates dominant frames and accelerates the law's adaptation to survivors' heterogeneous realities. True transformation is therefore possible only from processes of integration which balance doctrinal innovation, institutional accountability, and cultural reimagination.

### **1. Vision for Jurisprudential Transformation**

This question leads not to a terminus but a catalyst—a summons to re-envision criminal jurisprudence as a conscious feminist endeavour dedicated to deep change. Such a regime of law has to reconcile the two demands of punishing harm and upholding dignity, deterrence and restoration. By a dialectic of critique and constructive remaking, law can be re-tuned to resonate with larger demands of social justice and human liberation.

The convergence of doctrinal innovation, institutional reform, and socio-cultural transformation can energize India's criminal justice system to move from a space complicit in the sustainment of oppression into a vibrant hub of empowerment and healing. Feminist victimology then becomes not only a critical lens for analysis but also a necessary framework of praxis—one that demands that legal systems become responsive interlocutors, build intersectional justice, and reclaim sovereignty and dignity for survivors.

Such change is both a necessity and a moral imperative in modern India. Only through the deconstruction of patriarchal remnants in law and society can the constitutional guarantee of equality be achieved as a lived experience—thus consecrating justice not just as a procedural nicety but as a substantive, liberatory force. This conclusion distills intense scholarship analysis, transformative reform necessity, and commanding policy guidance congruent with prominent feminist legal scholarship to create a strong scholarship synthesis that demands scholarship and practical attention

## **2. Strategic Recommendations for Policy and Institutional Reforms**

- 1) Institutional Mandatory Sensitization: Implement ongoing training for police, judiciary, and medical professionals on trauma-informed, gender-sensitive, and intersectionality-sensitive practice, thus creating compassionate and effective responses to survivors.
- 2) Prevention and Awareness at the Community Level: Increase outreach programs in rural and marginalized communities for dismantling the normalcy of gender-based violence and facilitating timely, safe reporting of crimes.
- 3) Intersectional Data and Evidence Framework: Reform data gathering practices to incorporate nuanced disaggregation across gender, caste, religion, region, and socioeconomic status, in order to facilitate detailed policy planning and allocation of resources.
- 4) Restorative and Participatory Justice Models: Integrate restorative justice principles focusing on survivor agency, including mediation, community-based rehabilitation, and participatory decision-making, into mainstream criminal justice systems.
- 5) Judicial Specialization and Effectiveness: Create specialized fast-track courts with judicial officers who have gender and intersectionality training to ensure timely adjudication of sexual and domestic violence cases without prejudicing procedural fairness or survivor dignity.

- 6) Policy Synergies Across Sectors: Build strong inter-sectoral collaboration between law enforcement, civil society, academia, and survivor networks to promote evidence-based, intersectionally informed, and participative policymaking and implementation.
- 7) Powerful Digital Security Measures: Implement quick-response systems, hotlines, and punitive measures directly aimed at cyber misogyny and online abuse with greater protections for minority groups which are disproportionately victimized online.
- 8) Full Support to Survivors: Institutionalize full support services including psychological counselling, economic rehabilitation, secure shelter, legal support, and empowerment programs to regain autonomy and dignity for survivors after trauma.
- 9) Eliminate Patriarchal Legal Anachronisms: Repeal urgently provisions like the marital rape exception in Section 375 IPC, ensuring women's bodily autonomy explicitly within and outside of marriage.
- 10) Strengthen Anti-Trafficking Laws: Reform the Immoral Traffic (Prevention) Act to focus on victim protection rather than persecuting marginalized women forced into exploitative work, providing survivor-centred and rights-based models.

