



## Prominent judgements that have transformed gender justice in India- A review

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### Abstract

The courts are one of the most important agents of social transformation. This paper throws light on major legislations passed by the Supreme Court of India which has transformed gender justice in India by also taking into account the movements and incidents which caused them. It describes in detail those legislations which could be called as landmark in correcting gender inequality by preserving a woman's right to equality. So in a way, We have tried to see how the idea of gender justice has evolved over the years. The paper also talks about the role civil society organisations has played in the enactment of these legislations.

We also discuss an alternate view that court's idea of gender justice apparent from the legislations enacted may be reinforcing gender stereotypes and traditional gender roles and therefore can they be truly making historically disadvantaged women equal to men? Also, the enactment of legislations are not a sufficient condition for ensuring that gender inequalities are corrected in the system. One, there are gaps in the existing legislations. Secondly, despite the presence of legislations, in practice, women do not exercise their rights or seek justice due to family or societal pressures. Therefore, the study provides important suggestions to correct for gaps in the legislations as well as deal with the impediments to women asserting their rights and attaining equality in the true sense. The study also makes recommendations to attain a more gender -neutral judiciary so that "gender justice" is felt by the masses and is not just present in the legal documents.

**Keywords:** legislations, legal rights of women, gender justice

### Introduction

*"Each time a woman stands for herself, she stands for all women."*

Maya Angelou

Women constitute half of India's population and all the legislations aimed for providing gender justice are rightly aimed at them since women are considered to be a historically disadvantaged group. The courts have been one of the very important agents of social transformation by bringing about legislations to protect human rights of women from time to time. Despite the presence of these legislations, not only the crimes against women have been on a rise but have also become more barbaric. The crimes against women is a huge impediment on the path of gender equality and empowerment of women. Not only is this an individual and social problem but also act as a deterrent for women to contribute productively in the economy and so also poses an economic cost.

### Objectives

At a point in time, judiciary was considered to be one of the weakest institution but the important judgments reviewed in this paper removed this myth and established the power of judiciary. The present paper review the crime against women statistics as well landmark judgements which bring hope to several women facing circumstances that undermine their dignity and their fundamental right to equality. This

paper is based on secondary data including reports and research papers. This paper highlights the role of the Supreme Court and how it has protected the constitutional rights of the women over the course of history.

### Crime against women

Despite various legislations, the crimes against women have been on rise. According to the National Crime Records Bureau (NCRB) data, the crime rate per lakh women population rose to 62.4 in 2019 as compared to 58.8 in 2018. Figure 1 shows the crime rate in the worst performing states and Union Territories as well all India figures. Majority of cases under crimes against women out of total IPC crimes against women were registered under 'Cruelty by Husband or His Relatives' (31.9%) followed by 'Assault on Women with Intent to Outrage her Modesty' (27.6%), 'Kidnapping & Abduction of Women' (22.5%) and 'Rape' (10.3%) (NCRB, 2018). In addition to this, what also indicates a very sorry state of women's safety in India is the fact that most of the cases of violence against women in India are not reported and poor conviction rate of the perpetrators of the crime. The conviction rate stands at 27.2 for rape cases according to the latest NCRB report. The charge-sheeting rate and pendency rate of the police and courts continued to remain poor in 2018. 33.6% cases were pending police investigation and 90.7% of cases were pending trial in courts at the end of 2018.

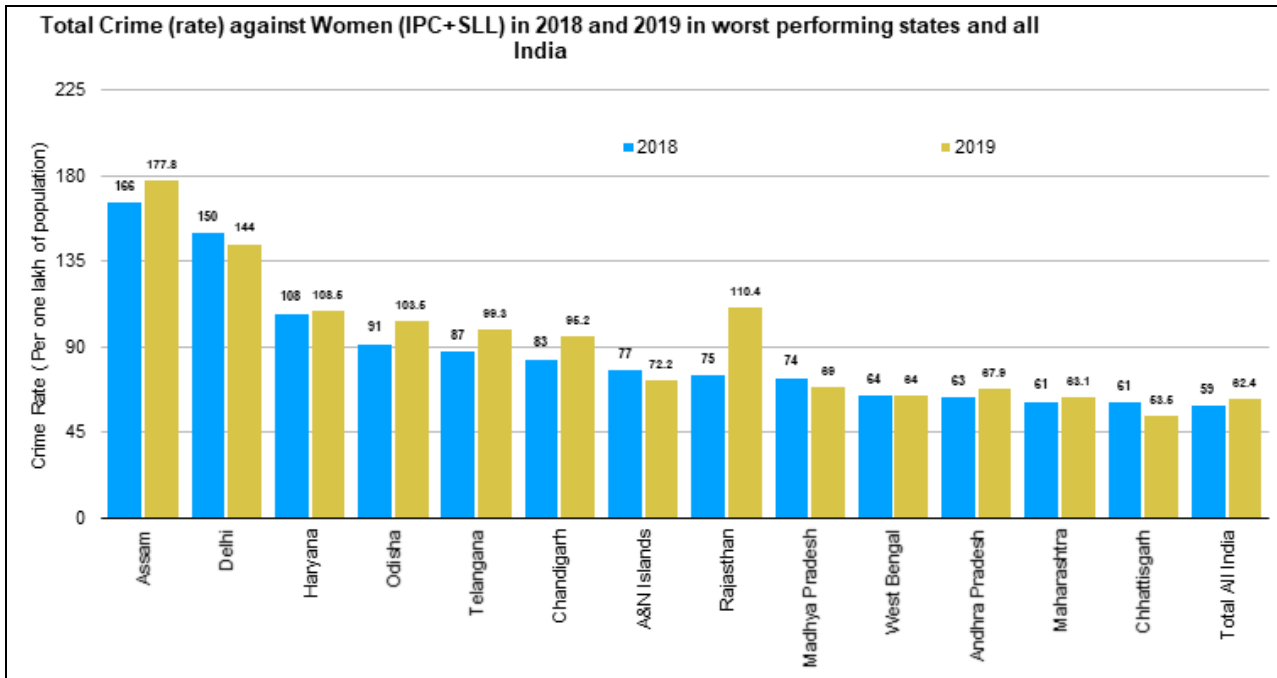


Fig 1

**Landmark Judgements**

The judiciary in India has been passing legislation from time to time to protect the interest of women who have been historically a disadvantaged section of the population. These important legislations are discussed below.

**1. Vishaka Vs State of Rajasthan**

Bhanwari Devi, an employee of the Rajasthan state government who was gang-raped by five men for preventing a child marriage as part of her duties as a worker of women development program. She decided to go to court but all five accused were acquitted. Vishaka, a Group for Women’s Education and Research, took up her case and filed a petition before the Supreme Court of India on the issue of sexual harassment at the workplace along with four other women’s organisations,. On August 13, 1997, the Supreme Court commissioned the “Vishaka” guidelines that defined sexual harassment and put the onus on the employers to provide a safe working environment for women. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 defines sexual harassment at workplace and lays down preventive measures for the same putting the responsibility of women’s safety at workplace on the employer. According to the judgement, “Sexual harassment includes such unwelcome sexually determined behaviour as physical contacts and advance, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment.” The judgement notes that gender equality includes protection from sexual harassment and right to work with dignity and creates a safe and health working environment.

**2. Mary Roy Vs State of Kerala**

Mary Roy, a woman's right activist and educator challenged

property inheritance rights of women in Syrian Christian community in Kerala. Due to patriarchy, women were prevented from inheriting property. Marry Roy filed a case against her elder brother when she was denied equal share in the family's inheritance, after her father's demise. In 1986, the Supreme Court delivered a landmark judgment that granted Syrian Christian women the right to seek an equal share in their father's property.

**3. Air India Vs Nargesh Meerza**

‘Air India’, a State-owned Aviation Company by a service regulation, mandated the air hostesses to retire if they reach the age of 35 or conceive a child or on marriage, whichever occurs earlier. This was clearly derogatory and discriminatory practice. These offending provisions were challenged and later struck down on grounds of arbitrariness and abhorrence in a civilised society. In this gender-bending judgement by the Supreme Court, an inclusive reading of Article 14 was done and it was decided that employment cannot be denied to any person on the grounds of sex. etc.

**4. Lata Singh Vs State of Uttar Pradesh**

Lata Singh was an adult when she left her family home to marry a man from a lower caste. Unhappy with this matrimonial alliance, her brothers filed a false report that their sister has been abducted and missing from house. As a result, three people from her husband's family were arrested. In order to get the charges dropped, Lata Singh filed a petition which resulted in the landmark judgment by the Supreme Court that allowed an adult woman the right to marry or live with anyone of her choice. The court further ordered that the police initiate criminal action against people who commit violence against those who decide on inter-religious or inter-caste marriages.

**5. Roxann Sharma Vs Arun Sharma**

Roxann was involved in a bitter child custody battle with her estranged husband. A court in Goa granted her interim custody of their child, but Arun Sharma whisked their son away and refused to let Roxann meet the child. She filed a

case against him, which led to the landmark judgment pronounced by the apex court regarding children caught in a legal battle between parents. The Supreme Court ruled that when estranged parents are involved in a legal tussle over the custody of a child who is under the age of five years, the custody of the child will remain with the mother.

#### **6. Tamil Nadu Vs Suhas Katti**

This case led to the first conviction under the Information Technology Act, 2000. The victim, a divorced woman, was being harassed by the accused, Suhas Katti, when she refused to marry him. The accused humiliated due to rejection by the women, harassed her by sending defamatory and obscene messages to her online on public platforms. To add to her agony, she began to receive phone calls from unknown people soliciting sex work. The victim filed a complaint in February 2004, and the accused was convicted under Section 67 of the IT Act and other relevant sections of I.P.C.

#### **7. Laxmi Vs Union of India**

In 2006, Laxmi, an acid attack victim, filed a petition seeking measures to regulate the sale of acid and provide adequate compensation to the victim. Taking cognizance of the number of cases relating to acid attacks against women on the rise, the Supreme Court imposed stringent regulations on the sale of acid in 2013. The ruling banned over the counter sale of acid. Dealers can sell the acid only if the buyer provides a valid identity proof and states the need for the purchase. It is mandatory for the dealer to submit the details of the sale within three days to the police. It also made it illegal to sell acid to a person below 18 years. This decision paved way for the legislature to introspect and enforce harsher punishments for offenders committing such horrendous crimes.

#### **8. Shayara Bano v. Union of India**

Another judgement which garnered applause from the masses was the Muslim Women (Protection of Rights on Marriage) Act, 2019. The inhuman Islamic practise of Talaq-e-biddat, wherein men could irrevocably divorce their wives by uttering the word 'talaq' thrice, was adjudged unconstitutional by a 5-judge bench of Supreme Court. The Supreme Court, by passage of this act, made any pronouncement of instant divorce (talaq) by a Muslim husband upon his wife illegal and void. The Muslim husband who pronounce triple talaq upon his wife in any form, is liable for imprisonment and fine under the new law. This celebrated judgment emboldened the movement towards gender equality.

#### **9. State v. Ram Singh and others (Nirbhaya Rape Case)**

The barbaric and gruesome Nirbhaya incident sparked hue and cry for the need of establishment of stricter rape laws in the country. The social outrage was ignited by the sexual violation and genital mutilation of an innocent girl. The Court was clear in stating that the crime committed by the accused was not deserving of any sympathy as it shook the conscience of the society. The SC bench of three judges unanimously upheld death penalty of all the accused who exploited the victim's identity and dignity. The crime touched the 'rarest of rare' threshold and is by far the worst our nation has ever seen. The Nirbhaya case verdict of death

warrant being issued to the perpetrators of the crime on 13th March, 2013 was a landmark judgement of our judiciary, however, there were delays in the implementation of the verdict due to legal loopholes. Another rape and murder case reported in November 2019 which created outrage throughout the country was that of a 26 year old veterinary doctor in Hyderabad. After this incident, Andhra Pradesh Criminal Law (Amendment) Act 2019 was enacted which amended the IPC, 1860 so that investigation is completed in 7 days and the trial in 14 working days as well as death penalty to guilty where there is adequate conclusive evidence. In September 2018, the Supreme Court said that the ban on women and girls aged between 10 and 50 entry into the Sabrimala temple was illegal and unconstitutional and lifted it by a 4:1 majority ruling.

#### **10. Right to women to an equal share in father's property, 2005**

Another landmark judgment in order to remove gender discriminatory provisions in the Hindu succession act, 1956 was Right to women to an equal share in father's property, 2005. In the year 2005, an amendment was made by making women equal co-parceners in the same manner as sons in the HUF family. With this legislation, women gets an equal right in the ancestral property by birth. Her marital status makes no difference in her right to property. The country also crystallised this law by granting justice in 2018 to Savadi sisters who filed a suit to claim a share in their late father's property.

#### **11. Indian Young Lawyers Association v. State of Kerala**

A Constitutional bench of SC, headed by CJI Dipak Misra, lifted the age-old ban on entry of women between the ages of 10-50, inside the Sabrimala temple where Lord Ayyappa is worshipped. The long-awaited judgement was pronounced amid protests in the state of Kerala. Devotion and faith must not be subjected to gender discrimination, as analysed by the honourable judges. Stereotyping menstruating women in the present times would permit the religious patriarchy to flourish. The restriction on entry was a violation of the right to worship of woman, as assured by Article 14 and 25 of the Constitution. This decision advanced gender justice and equality in the most significant manner.

#### **Role of Civil Organisations**

The presence of these laws does not by themselves guarantee the rights to women. Most women lack awareness regarding these laws and give in to societal and family pressures by willingly not asserting her rights. The experience of strategic litigations in India have shown that the success of these litigations depends upon campaigning and momentum on the ground i.e. when it gets the support from civil organisations. The judgement on the Shayara Bano vs Supreme Court of India was led by a strong women's movement including those who were sufferers of this practice.

#### **Gaps in recent legislations**

Few examples of the recent judgements on atrocities against women exhibit that there are serious gaps in the legislations which needs to be corrected in order to achieve a just society.

1. The verdict on the Nirbhaya case clearly showed that there exist legal loopholes in execution of death verdict. The accused of the case made a mockery of the entire case and filed mercy plea one by one to delay the execution of the death sentence. The death verdict has been delayed thrice. Also, the court refused to allow separate death penalties. The example of Nirbhaya case and verdict shows why people have lost faith in the legal system. There is a need to sit down and reframe the legislations so that once evidence is collected and judgement given, this delay of justice does not happen. The loophole is that Delhi jail manual is silent on mercy petition. Also Shatrughan Chauhan's guidelines were evoked.
2. Disha act has also been criticised for being unrealistic. The deadline of 21 days given to the police for completing the investigation and the courts to convict the culprits in rape cases is unrealistic and is expected to reduce the conviction rate. This is because the police will be incentivised to reduce the filing of FIR's owing to the pressures of completing the investigation within 21 days.

### **Why crimes against women are on a rise despite legislations?**

In discourses on the legislations relating to women, there is an alternative view that judiciary in India does not understand the women's issues adequately and the legislations have been promoting gender stereotypes and traditional gender roles (Bajpai, 2018). It is apparent from the judgements on certain cases that the judiciary misses out on the very essence of gender equality. For instance, in a recent judgement by the Supreme Court of India in the *Narendra vs. K Meena* case, the bench opined that separating a husband from his parents amounts to cruelty by the wife. According to the judgement, under normal circumstances a wife should not insist her husband to get separated from his family as after marriage she becomes a part of her husband's family. By passing this judgment the Supreme Court has just shown that it is not gender-neutral. They consider it fine for the woman to leave her house and parents, however, insisting her husband to do the same shall amount to cruelty. For parents who have only daughters and no sons, we think this kind of judgment is extremely biased. This leads to parents having a strong preference for sons than daughters as the former along with his wife, shall take care of them in the old age. This is just societal norms and customs which has no justification. The parents of a daughter also have an equal right to be looked after by their daughter and son-in-law as the parents of the son.

It is very contradictory that the women who is suffering from domestic violence goes against the family and husband whom she has to live. The victim and her family don't want to break the relations with the family and suffer. Till women get any space and be more vocal, she won't be able to assert her rights. One of the reasons why crimes against women keeps happening is because the perpetrators of the crime know that will definitely get out or at least delay the punishment. Judges and lawyers are not updated with the new laws and amendments. There is a need to increase the number of judges for fastback resolution of pending cases. There is a lack of forensic labs and doctors causing delay in the prosecution. Witness is not given proper protection. Statement given by the victim should be recorded so that it

cannot be manipulated or tampered with later. Fast track right now is 90 days. It should be 15- 20 days. Trial also should be for 30 days. Police and lawyers keep on adjourning the matter to earn money and are not emotionally sensitive and are highly unprofessional. If any lawyer adjourns the matter, they should be held accountable. Also they should not be given more cases than a limit. Evidence act and juvenile justice act also suffers from problems. Juveniles should be assessed for their level of understanding and his state of mind should be a basis for determining whether he should be put to trial under juvenile or adult. No medical or psychological research is there what is the state of mind of the criminals. The case should be reopened. Empowerment can happen only when a victim can be provided security. There has to be a bridging of gap by communicating with the perpetrators of the crime. Women security is not an issue for poor but also for rich and affluent. In *Sunanda Pushkar* case, one cannot find what type of poison was given to her. Nirbhaya fund was made to be used for spending in the welfare of daughters of the nation. The money was not used because they did not have a proper roadmap for women safety and due to insensitivity towards women rights. Government should make a proper road map to use the fund properly. Victim should be given a right to sit for their hearings.

### **Conclusion**

The courts in India have been working on the principle of substantive equality by providing for protective discrimination of women. There needs to be improvement in the present judicial system. What we largely need is not a plethora of laws but effective implementation of the existing laws. India needs to remove the roadblocks on the path to timely justice to women. We need to invest in infrastructure and ensure speedy investigations, trials and judgements to strengthen people's trust on the judiciary and install fear in the minds of the prospective perpetrators of crimes.

Laws alone cannot change the state of gender justice in our country. For achieving gender equality in the true sense efforts have to be made at the individual, family, institutional and society level. There is a need to bring about a change in the mindset so that society and especially men are willing to accept and respect a woman's individuality. Gender sensitisation programs are the need of the hour which should aim at making the masses aware of the idea of gender equality. There needs to be awareness programs highlighting that woman just like men should be respected for her accomplishments in life and not judged on the basis of her marital status, attire etc. The society has to understand that women needs to feel appreciated and respected and want to fulfil her desires as well rather than being portrayed as the "idol of sacrifice" who works relentlessly for the family ignoring her health and other desires. Achieving absolute gender justice in India is complicated because of the rigid traditions and diverse cultures. Poor enforcement of laws, deep-seated patriarchy, lack of financial dependence and awareness among women is to be accounted for the deplorable state of females in our society. Several NGOs, Human Rights advocates, UN and other governmental agencies have raised their voices against gender intolerance. Quite simply, equal treatment of all genders is a prerequisite for any welfare state. The Indian judiciary, however, shapes the discourse of and keeps revising the gender justice theory based on norms accepted

worldwide. The Courts have addressed all human rights violations and directed the government to act against it. The only recourse for them is to stay loyal to the Constitution and avoid judicial over activism.

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