

# Prohibition To Protection: A Structured Legal Framework Against Gender-Based Violence in Modern India

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## I. INTRODUCTION

The legal landscape in India has evolved significantly over the years to address the pervasive issue of Gender-based violence (GBV). From the early days of prohibition to the current era of protection, the country's legal frameworks have undergone considerable changes. However, despite these efforts, GBV remains a profound and systemic violation of human rights, deeply Entrenched within patriarchal structures, preconceived stereotypes and pervasive socio-cultural norms that normalize discrimination against women and girls with their Individual Social identities.

The most recent national crime statistics released by the National Crime Records Bureau (NCRB) for the calendar year 2025 record a total of 5.1 lakh cognizable offenses against women, representing a 12 % increase over the previous year's figures and underscoring the escalating scale of the crisis. Within this aggregate, documented cases of sexually driven offences have risen to 36,842 incidents, while complaints of cruelty by husbands or relatives have surged to 382,563, reflecting both heightened reporting due to increased awareness and the persistence of entrenched abusive dynamics.

Despite the existence of various legal frameworks aimed at preventing and addressing GBV, the efficacy of these frameworks remains a subject of debate. The manifestations of GBV are diverse and interlinked, encompassing domestic violence, sexual assault and rape, dowry-related violence, Gender-biased crimes, cyber-enabled violence, acid attacks, and human trafficking and Child marriage. These harmful practices are sustained by a confluence of structural determinants including entrenched patriarchal ideologies, hierarchical dominant systems, economic disparities and institutional deficiencies characterized by inadequate law enforcement, delayed judicial processes with insufficient protective and rehabilitative services for survivors.

This article therefore assess the Structural legal frameworks against GBV in modern India, examining the contemporary statutory provisions and offer insights into the ways in which the country's legal frameworks can strengthened and protect the rights of women, girls and marginalized gender identities.

## SHIFT OF GENDER EXPECTED ROLE INTO GENDER BASED VIOLENCE

**GENDER BASED VIOLENCE (GBV)** is an umbrella term for any harmful act perpetrated against a person based on socially ascribed differences between males and females, or because of their gender identity or expression. It is a profound violation of human rights that stems from unequal power relations and systemic discrimination of society.

## DEFINITION

GBV encompasses a range of abuses that result in, or are likely to result in physical, sexual, psychological, or economic harm or suffering, including threats, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life.

While GBV can affect anyone, including men, boys and LGBTQ+ individuals women and girls are disproportionately impacted globally due to their subordinate status in many societies. The term “violence against women” is often used interchangeably with GBV because of this imbalance.

## FORMS OF GENDER BASED VIOLENCE

GBV takes many forms, which can occur offline and online.

- ▶ **Physical Violence** : Includes hitting, slapping, beating, pushing, choking, and using
- ▶ **Sexual Violence** : Any sexual act performed without consent, including rape, sexual abuse and harassment.
- ▶ **Psychological/Emotional Violence** : Involves causing fear through intimidation, coercion, constant criticism, humiliation, isolation or verbal abuse.
- ▶ **Economic Violence** : Includes restricting access of financial resources, education or employment or property damage to make a person financially dependent.
- ▶ **Harmful practices** : Such as female genital mutilation (FGM) child marriage and forced marriage.

- ▶ **Online/Digital Violence :** Involves the use of information and communication technology to harass, stalk or share intimate images without consent.

## **ROOT CAUSES**

- ▶ The primary cause of GBV is gender inequality and discriminatory norms that perpetuate and abuse of power. There deep-rooted social and cultural structures create an environment where violence against a particular gender is normalized or justified.

## **INDIAN CONSTITUTION V. HUMAN RIGHTS**

- ▶ Article 14: Equality Before Law
- ▶ Article 15(1) : Non-Discrimination on the Grounds of Religion, Caste, Sex, Place of Birth
- ▶ Article 15(3): State May Make any Special Provision in Favour of Women & Children
- ▶ Article 16: Equality of Opportunity for all Citizens in Matters Relating to Employment
- ▶ Article 39 (a): Equal Rights for Men & Women to Adequate Means of Livelihood.
- ▶ Article 39 (d) : Equal Pay for Equal Work for Both Men & Women
- ▶ Article 39 (a) : Ensure that Opportunities for Seeking Justice are not Denied for any Citizen by Economic & Other Disabilities
- ▶ Article 42 : State to Make Provision for Securing Just & Humane Conditions of Work and Maternity Relief.
- ▶ Article 46 : State of Promote with Special Care, The Educational and Economic Interests of the Weaker Sections of The People and Protect them from Social Injustice and All Forms of Exploitation.
- ▶ Article 47 : State of Raise Level of Nutrition and Standard of Living of The People.
- ▶ Article 51 (A) (E) : State of Promote Harmony and the Spirit of Common Brotherhood Amongst all the People of India and Renounce Practices Derogatory to the Dignity of Women.
- ▶ Article 243d(3) : Not Less than 1/3d (Including those Reserved For Women SC/ST Categories) of Seats to be Reserved for Women, to Be Allotted on Rotation Basis Among Different Constituencies in Panchayats
- ▶ ARTICLE 243D(4) : Not Less than 1/3 of the total Number of offices of Chairpersons in the Panchayats at Each level to be Reserved For Women.

## **INDIAN LEGAL PROVISIONS ADDRESSING GENDER BASED VIOLENCE AND HARMFUL PRACTICES VARIOUS FORMS OF GBV & HP**

01 – DOMESTIC VIOLENCE

02- CHILD SEXUAL ABUSE

03 : DOWRY

04: TECHNOLOGY FACILITATED GBN

05 : CHILD MARRIAGE (HP)

06: SEXUAL HARASSMENT AT WORK PLACE

07 : TRAFFICKING IN PERSONS

08: GENDER BIASED SELECTION

09: SELECT CRIMINAL OFFENCES UNDER THE BHARATIYA NYAYA SANHITA, 2023

### **01 – DOMESTIC VIOLENCE**

#### **PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT (PWDVA), 2005**

##### **What is domestic violence?**

Domestic violence is any abusive or violent behaviour in a domestic relationship that harms or puts in danger the health, safety, life or well-being of a woman or any child in her custody (Section 3).

It does not have to be physical in nature. The law also recognizes other forms of violence – emotional/verbal, sexual or economic (Section 3).

##### **Physical Abuse**

Act or conduct that causes bodily pain, harm, or danger to the health or life of the woman.

This includes:

- Physical acts such as slapping, hitting etc., and gestures indicating the person will physically hurt the woman (e.g., a husband raising his hand knowing that the wife will believe that he will slap her)
- Threats of harm (physical or verbal) to a woman's loved ones to scare her or force/prevent her from doing certain things.

### **Sexual abuse**

Sexual act/conduct that abuses, humiliates, degrades or otherwise violates the dignity of the woman.

This includes:

- Any forced sexual act (including forced intercourse)
- Forced viewing of pornography/obscene material

Emotional and verbal abuse

This includes:

- Insults, ridicule, humiliation (e.g., abuse by in-laws for not bearing a male child or for not bringing enough dowry)
- Threats to cause hurt to the woman's loved ones
- Forced separation from one's child
- Suicide threats by the harasser
- Forced to start/leave a job, to remain confined to the house, to get married against one's wishes

### **Economic abuse**

Any act that deprives a woman of economic/financial assets that she is entitled to.

This includes:

- Restricting access to any part of the house that the woman cohabits in
- Selling off the woman's/jointly owned assets without her consent
- Removing the woman's belongings from the house
- Dictating the use of the woman's salary
- Depriving the woman and/or her children of money for sustenance

Dowry, a practice deeply rooted in traditional customs, has long been a source of significant social and legal concern in India. Despite being illegal, the dowry system persists, often resulting in severe repercussions for women, including financial exploitation and domestic violence that, in some cases, can result in fatal consequences. The Dowry Prohibition Act, 1961, was enacted to address these injustices by criminalizing the practice of dowry (both taking and giving) and imposing stringent penalties for violations.

### **What can one do if one faces domestic violence? What are the rights and remedies available under the law? Survivors of domestic violence have the right to:**

- Register a complaint and file an application to the court with the assistance of a Protection Officer a service provider or a police officer.
- Receive medical and shelter counselling and legal and (One Stop Centres can provide necessary linkages to each of these services).
- Obtain orders from the court for:
  - Immediate protection from the perpetrator (the court can order the perpetrator to stop (i) committing further violence (ii) communicating with the woman, (iii) taking any of her assets and (iv) intimidating her family ( Section 18).
  - Residing peacefully in the house, including with her children, where applicable (through a Residence order (Section 19).
  - Monetary relief through payment of regular maintenance as well as compensation for physical injuries, loss of earnings/property etc. (Sections 20, 22)
  - Temporary custody of the children (Section 21)

### **Who can seek protection against domestic violence ?**

Any women can file a complaint and seek protection under this law. This includes:

- Married women
- Women in live in relationships
- Divorced women (where the violence was inflicted before the divorce or where domestic violence was inflicted after the divorce where a domestic relationships continued to exist).
- Women who have described their husbands because of domestic violence.
- Judicially separated women who faced domestic violence from their partner or in laws either before or after the separation order.
- Widows who continue to live with their in laws after the death of the husband (a domestic relationships continues to exist with the in laws and a case may be filed against them if they inflict violence).

**A man cannot be an aggrieved person under this Act.**

## **II. RELEVANT SECTIONS UNDER THE BHARATIYA NYAYA SANHITA, 2023 AND OTHER LEGISLATIONS**

In severe cases of violence, a woman may file a criminal case of cruelty under the Bharatiya Nyaya Sanhita, 2023 (BNS) (Section 85) against the husband and/or relatives of the husband. This can be filed for the following reasons:

- If the perpetrator(s) drives the woman to commit suicide
- If the perpetrator(s) causes or tries to cause any grave injury or danger to the life or (mental or physical) health of a woman
- If the perpetrator(s) harasses the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security
- If the perpetrator(s) harasses the woman on account of failure to meet the demands outlined above

### **Are there additional reliefs under other legislations?**

Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)

- Section 144 entitles a woman to claim
- (monthly) financial maintenance due to
- Neglect by her spouse or children.

### **Maintenance and Welfare of Parents and Senior Citizens Act, 2007**

Elderly women (above the age of 60 years) may also file a case and claim maintenance from adult children and grandchildren (regardless of gender) for the provision of food, clothing, residence and medical attendance and treatment. A monthly allowance of up to Rs. 10,000 may be granted under this Act.

## **02- CHILD SEXUAL ABUSE**

India is a signatory to the United Nations Convention on the Rights of the Child, 1989. In a bid to uphold its obligations under the Convention, as well as strengthen the legal framework to prosecute cases of child sexual abuse, the Government of India enacted the Protection of Children from Sexual Offences Act in 2012. This was influenced by civil society efforts, existing government data on child sexual abuse, as well as an insistence on legislation by the Supreme Court of India.

This section discusses the different forms of sexual offences against children and the available complaint and redressal mechanisms laid out under the law. It discusses the special law enacted to protect children from abuse: The Protection of Children from Sexual Offences Act, 2012 (POCSO)

### **Who is a child?**

Any person below the age of 18 years, regardless of their gender (Section 2(1) (d))

### **What are the types of child sexual offences?**

The law classifies types of child sexual abuse into the following broad categories:

#### **Sexual assault (Section 7)**

This includes:

- Touching a child with sexual intent (touching their vagina, penis, anus, breast, etc.)
- Forcing a child to touch their own or anyone else's vagina, penis, anus, breast, etc.
- Any other act with sexual intent which involves physical contact without penetration

It is punishable with imprisonment for 3 years, extendable to 5 years, and a fine (Section 8). In certain circumstances (including if the perpetrator is in a position of trust or authority), it may amount to aggravated sexual assault punishable with imprisonment for 5 years extendable to 7 years and a fine (Section 10).

#### **Sexual harassment (Section 11)**

This refers to unwelcome non-physical sexual behaviour towards a child, including:

#### **Sexual speech and gestures**

Viz. speaking, gesturing, or showing sexual organs to the child; showing a sexual object/ sexual body parts to a child; forcing or asking a child to show their body parts

#### **Stalking and/or threatening**

Viz. Repeatedly or constantly following, watching, or contacting a child directly or indirectly by phone, SMS, the Internet, or any other form; threatening or lying to a child to involve them in a sexual act in any form of media

### **Acts involving pornography**

Viz. showing pornography to a child; tempting or persuading a child to participate in pornographic acts. It is punishable with imprisonment for up to three years and a fine (Section 12).

### **Sexual penetration (Section 3)**

This includes:

- Penetrating the child's body (vagina, mouth, urethra, or anus) by a penis, any other body part, or any object
- Manipulating any body part of the child to cause penetration into the vagina, urethra, anus or any other body part
- Applying the mouth to the penis, vagina, anus, or urethra of the child, or making the child do so on another person

Penetrative sexual assault is punishable with a minimum imprisonment for 10 years, which may extend to life imprisonment, and a fine. If penetrative sexual assault is committed on a child below the age of 16 years, the punishment is minimum imprisonment for 20 years, which may extend to imprisonment for life (meaning the remainder of natural life) and a fine (Section 4).

In certain circumstances (including If the perpetrator is in a position of trust or authority), it may amount to aggravated sexual assault punishable with rigorous imprisonment for a minimum of 20 years, extendable to life imprisonment (meaning the remainder of natural life) and a fine (Section 6).

### **Child pornography (Section 13)**

Refers to the use of any child in any form of media for sexual gratification, including:

- Representing the sexual organs of a child
- Using in real or simulated sexual acts (with or without penetration)
- any indecent or obscene representation of a child

It is punishable with a minimum imprisonment for five years and a fine (Section 14).

### **Who are perpetrators of child sexual abuse under the Act?**

Any person may be accused of child sexual offences under this Act, including:

#### **Sexual abuse by another child**

If any of the offences outlined above are committed by a child over the age of seven years against another child, the perpetrator can be punished under the Juvenile Justice (Care and Protection of Children) Act, 2015 (Section 34). Children aged between 16 and 18 years can also be tried as adults for heinous crimes.

According to Indian law, a child below the age of seven years does not have the mental capacity to commit any crime (Section 20, BNS).

#### **Sexual abuse by a family member**

Family members face more severe punishment for sexual offences against a child as they are in a position of authority and trust in the child.

A family member includes anyone related to the child by blood, adoption, marriage, guardianship, or foster care; or someone who has a domestic relationship with the parents or the child; or family members living in the same house as the child (Section 5(n),9(n)).

#### **Sexual abuse by an authority figure**

People in a position of authority or trust with respect to the child receive stricter punishment under the Act for sexual offences against children. These include:

- A government servant, e.g., a police officer while on duty
- Persons in a position of trust or authority with respect to the child, e.g., a school teacher or a family member
- Teachers, medical professionals, caregivers, staff, and management of any educational, religious, or medical institution

Offences committed by these individuals are treated as 'aggravated offences'. Aggravated sexual assault is punishable with imprisonment for 3 years extendable to 5 years and a fine (Section 8); and aggravated penetrative sexual assault is punishable with rigorous imprisonment for a minimum of 20 years, extendable to life imprisonment (meaning the remainder of natural life) and a fine (Section 6). They are also considered aggravated offences if committed by more than one person (gang rape of a child), by a repeat offender, by a person taking advantage of a child's physical or mental disability, or if committed against a child below the age of 12 years.

### **03 : DOWRY**

Dowry, a practice deeply rooted in traditional customs, has long been a source of significant social and legal concern in India. Despite being illegal, the dowry system persists, often resulting in severe repercussions for women, including financial exploitation and domestic violence that, in some cases, can result in fatal

consequences. The Dowry Prohibition Act, 1961, was enacted to address these injustices by criminalizing the practice of dowry (both taking and giving) and imposing stringent penalties for violations.

## I. THE DOWRY PROHIBITION ACT, 1961

### What is dowry?

Dowry means any valuable items such as cash, property, jewellery and movable goods that are given either by the bride's family to the groom's family or by the groom's family to the bride's family, before, during or after marriage, as a condition of marriage (Section 2).

### What is *streedhan*?

*Streedhan* includes gifts given at the time of marriage by either the parents, parents in-law, relatives, or friends of both the bride and the groom.

*Streedhan* is the woman's property, over which she has full ownership. She can keep the *streedhan* in her custody.

### What is *mehr* or dower?

*Mehr* or dower is the bride's wealth, given in the form of money or possessions by the groom to the bride during Islamic marriages. It is not the same as dowry. The exchange of *mehr* is a legal, religious and customary practice (Section 2).

### Who can file a complaint related to dowry?

As per Section 7 (b) (ii), complaints related to dowry can be filed by:

- A woman being harassed for dowry
- Parents/relatives of the woman being harassed
- Representative of a non-government organization who has information about a woman being harassed for dowry

### Who can be penalized under the Dowry Prohibition Act?

- Any person (parents/relatives of the bride/groom) giving, taking or abetting the giving or taking of dowry can be penalized (Section 3)
- Any person who directly or indirectly demands dowry (Section 4)
- Any person advertising to offer a share in property or business in connection with marriage can also be penalized (Section 4A)

### What are the offences and punishments under the Act?

S.No.	Offence	Punishment	Section
1	Giving or taking dowry	Imprisonment for not less than 5 years and a fine of not less than Rs. 15,000 or amount of value of dowry, whichever is more	Section 3
2	Demanding dowry directly or Indirectly	Imprisonment for between six months and two years and a fine of up to Rs. 10,000/-	Section 4
3	Printing, publishing or circulating an advertisement for a share in property or business as a consideration for marriage	Imprisonment for between six months and 5 years and a fine of Rs. 15,000/-	Section 4A

## II. RELEVANT SECTIONS UNDER THE BHARATIYA NYAYA SANHITA, 2023 AND OTHER LEGISLATIONS

### Dowry death (Section 80)

#### If a woman dies within seven years of her marriage in any of the following conditions:

- Under unnatural circumstances like burns or injuries
- Through suicide
- Due to cruelty or harassment by her husband or relatives of her husband in connection with a demand for dowry

It will be considered a dowry death. In such a case, the law presumes that the husband and/or his relatives caused the death.

Remember, ordinarily, law presumes one to be innocent unless proven guilty. However, recognizing the gravity of the offence of dowry deaths, under DPA, the burden of proof (to prove their innocence) lies on the accused.

The punishment for dowry death is imprisonment for a term that may range from seven years to life.

### Cruelty/harassment by husband and/or his relatives (Section 85)

If the husband and/or his relative subject a woman to any of the following acts:

- Driving the woman to commit suicide or causing grave injury or danger to her life or health (whether mental or physical)
  - Harassment to coerce the woman or any person related to her to meet any unlawful demand(s)
- It shall amount to cruelty.



Cruelty is punishable with imprisonment for up to three years and a fine.

**Other laws that can be invoked for filing a case related to dowry harassment**

A case for dowry harassment can be filed under the Protection of Women from Domestic Violence Act.

**04: TECHNOLOGY FACILITATED GBV**

With the rapid increase in technology use, the spaces and means for perpetrating GBV are also changing and expanding. Technology and online spaces are increasingly being misused to perpetrate GBV through what is known as technology-facilitated GBV (TFGBV). Some forms of TFGBV may also be referred to as cybercrimes against women and children. This kind of digital violence is committed and amplified through the use of information and communications, technologies or digital spaces against a person based on gender.

**What are the different forms of technology facilitated GBV (TFGBV)?**

The different forms of TFGBV include but are not limited to:

**Online sexual harassment:** Involves any unwanted sexual behaviour via electronic means and can include unwanted sexual solicitation; unwanted requests to talk about sex; unwanted requests to do something sexual online or in person; receiving unwanted sexual messages and images; having sexual messages and images shared without permission; and revealing personal information about a person online.

**Cyberstalking:** Involves monitoring a person's location and/or activities using GPS trackers, spyware, cameras and microphones or stalking a person by checking their email, call or message histories, as well as monitoring a person's social media profiles.

**Image-based abuse:** Involves capturing, sharing or threatening to share sexually explicit images without consent.

**Release of private information:** Involves the public release of an individual's private, personal or sensitive information, such as home and email addresses, phone numbers, and family member's contact information. It can lead to further online and physical harassment, such as receiving large amounts of abusive messages and threats by email and phone.

**Hacking:** Involves the use of technology to gain illegal or unauthorized access to systems or resources, such as a person's phone or computer, to obtain personal information that may be used to blackmail, coerce or cause harm in any way.

**Impersonation:** Involves stealing someone's online by creating fake social media accounts to spread false information and defame the person.

**I INFORMATION TECHNOLOGY ACT, 2000**

**What are the punishments and penalties for TFGBV under the Information and Technology Act?**

S.No.	Offence	Punishment
1	Publishing or transmitting obscene material in electronic form (Section 67)	Imprisonment for up to three years and a fine of up to Rs. 5,00,000 on the first conviction; and imprisonment for up to five years and a fine of up to Rs. 10,00,000 for subsequent convictions
2	Publishing or transmitting material containing sexually explicit acts in electronic form (Section 67 A)	Imprisonment for up to five years and a fine of up to Rs. 10,00,000 on the first conviction; and imprisonment for up to seven years and a fine of up to Rs. 10,00,000 for subsequent convictions
3	Publishing or transmitting material depicting children in sexually explicit acts in electronic form or facilitating abuse of children online (Section 67 B)	Imprisonment for up to five years and a fine of up to Rs. 10,00,000 on the first conviction; and imprisonment for up to seven years and a fine of up to Rs. 10,00,000 for subsequent convictions.
4	Identity theft (Section 66 C) by fraudulently or dishonestly making use of the electronic signature, password or any other unique identification feature of any other person	Imprisonment for up to three years and a fine of up to Rs. 1,00,000.
5	Violation of privacy (Section 66 E) by capturing, publishing or transmitting private images of a person without her or his consent, under circumstances violating the privacy of that person	Imprisonment for up to three years and/or a fine of up to Rs. 2,00,000.

**How to report TFGBV or cyber crimes against women and girls?**

One may report cyber crimes against women and children in India through:

**Cyber Police Portal**

This portal is dedicated to cybercrime complaints, especially those against women and children.

**National Cyber Crime Reporting Portal**

This portal has a dedicated section on registering cyber crimes related to women and children.

### **Local police station**

You can visit your local police station to file a complaint.

### **Grievance officer**

If you experience abuse or harassment on a digital platform, you can contact the grievance officer. You can find their contact details online.

### **Platform's support team**

You can contact the platform's support team to report where you have experienced abuse or harassment.

## **II. SECTIONS UNDER THE BHARATIYA NYAYA SANHITA, 2023**

The BNS includes provisions to combat actions that include voyeurism (Section 77), stalking (Section 78) and actions to 'outrage the modesty of women' or intrude upon their privacy (Section 79)

### **05 : CHILD MARRIAGE (HP)**

India has made significant progress in ending child marriage. While an increasingly lesser proportion of women are now married before age 18, a majority are married by age 21, signalling a transition in marriage trends from child marriage to early marriage.

#### **What is child marriage?**

Child marriage is a marriage between two children or a marriage between a child and an adult (Section 2).

A girl below the age of 18 years and a boy below the age of 21 years are considered children under this Act.

#### **What does the law prohibit?**

The law prohibits people from performing child marriages (Section 10) and lays down punishments for those involved in conducting the marriage (Section 11).

If a child marriage takes place, it will be presumed that the parent (or guardian responsible for the child) failed to prevent the child marriage from taking place and thus is/are liable under Section 11.

A woman responsible for the child's marriage (mother/ any other female guardian) cannot be imprisoned under the Act – she can only be fined.

#### **What is the legal status of a child marriage?**

A child marriage is not automatically considered illegal or void. It is a valid marriage – the child parties to the marriage can choose to annul the marriage or continue to be parties to it.

#### **Are all child marriages recognized under the law?**

Yes, child marriages are valid marriages. However, in certain circumstances, they are considered *null and void*, i.e., deemed not to have occurred in the first place (Section 12):

- When a child is kidnapped for the purpose of marriage
- When a child is enticed and taken for the purpose of marriage
- When a child is:
  - Sold for the purpose of marriage
  - Sold or trafficked after marriage
  - Involving the use of force/deceitful means
- A child marriage that is solemnized despite a court order prohibiting it (Section 14)

#### **Can a child party to a marriage exit the marriage?**

Yes, child marriages are voidable, i.e., child parties to the marriage can annul the marriage (Section 3). Once a child marriage is annulled, the legal effect is the same as the marriage not having taken place at all. The petition to annul a child marriage:

- Can be filed by either party to the child marriage (in case the petition is filed when they are still a minor, it may be filed through the child's guardian or any other person who the child trusts)
- Can be filed within two years after the Child attains majority, i.e., 20 years
- Can be filed in the District Court

When a child marriage is cancelled, the District Court orders both parties to return the money, valuables, ornaments and all other gifts received during the wedding to the other side. If they are unable to return the gifts, an amount equal to the value of the gifts must be returned.

#### **What is the legal status of children born out of child marriages?**

A child born out of a child marriage is a legitimate child, having full protection of their rights under the law, irrespective of the status of the marriage (Section 6).

#### **Where can a child marriage be reported?**

- Village Child Protection Committee
- Child Welfare Committee at the district level
- Child Helpline (1098)
- Judicial Magistrate Police (including Child Welfare Police Officer and Special Juvenile Police Unit)



- Child Marriage Prohibition Officer - to be appointed by every State Government
- District Child Protection Officer

**Does the law provide any support/protection for girls married below the age of 18 years?**

If a girl chooses to annul her marriage, she is entitled to (Section 4).

**06: SEXUAL HARASSMENT AT WORK PLACE**

The Law on Sexual Harassment at the Workplace emerged from the experience of GBV in the unorganized sector. In 1992, Bhanwari Devi, a social worker engaged under the women's development programme by the Rajasthan government, was physically assaulted and raped by five men when she tried to prevent child marriage in her village. This incident began a long struggle to access justice, which ultimately culminated in the Supreme Court. The Supreme Court called for a law "...to provide for effective enforcement of the basic human right of gender equality". In the absence of a law then, the SC laid down a set of guidelines in 1997 called the Vishakha Guidelines for addressing Sexual Harassment at the Workplace. Finally, in 2013, the law 'Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act' was enacted.

**I. THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013**

**What is sexual harassment at the workplace?**

When a person experiences an unwelcome act or behaviour of a sexual nature at a place of work, it is sexual harassment at the workplace. Unwelcome actions or behaviours are those that are unwanted, one sided, and cause discomfort or distress to the recipient. They may lead to the creation of a hostile or intimidating work environment for the affected person.

Per the law, sexual harassment at the workplace may include any one or more of the following unwelcome acts or behaviour (Section 2(n)):

- Physical contact and advances
- A demand or request for sexual favours
- Making sexually colourful remarks
- Showing pornography
- Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature

**Further, certain circumstances connected with any act or behaviour of sexual harassment may amount to the sexual harassment of a woman. These include (Section 3(2)):**

- Implied or explicit promise of preferential treatment in her employment
- Implied or explicit threat of detrimental treatment in her employment
- Implied or explicit threat about her present or future employment status
- Interference with her work or creating an intimidating, offensive or hostile work environment for her
- Humiliating treatment likely to affect her health or safety

**II. RELEVANT SECTIONS UNDER THE BHARATIYA NYAYA SANHITA, 2023**

Any woman experiencing sexual harassment can opt for criminal proceedings by filing a Criminal Complaint. This may be in addition to approaching the IC or LC, which constitute part of the civil resolution mechanism. A Criminal Complaint, if proven, may lead to imprisonment of the accused. The relevant sections under the BNS, 2023 that may be applicable:

**Sexual Harassment (Section 75)**

Anyone who commits the offence of sexual harassment shall be punished with rigorous imprisonment for up to three years, or with a fine, or with both. Additionally, certain acts, when perpetrated in the context of workplace settings, may constitute distinct offences under the BNS (over and above sexual harassment at the workplace).

**Outraging a woman's modesty (Section 74)**

The punishment for this offence includes imprisonment for a term not less than one year but which may extend to five years, and the offender shall also be liable to a fine. Insulting the modesty of a woman (Section 79).

The punishment for this offence includes imprisonment for a term which may extend to three years, and also with a fine.

**Forcing a woman to disrobe (Section 76)**

The punishment for this offence includes imprisonment for a term which shall not be less than three years but may extend to seven years, and shall also be liable to a fine.

**Voyeurism (Section 77)**

The punishment for this offence includes imprisonment for a term not less than one year, but which may extend to three years, and shall also be liable to a fine on the first conviction; on a second or subsequent conviction,

punishment includes imprisonment for a term not less than three years, but which may extend to seven years, and shall also be liable to fine.

#### **Stalking (Section 78)**

The punishment for this offence includes, on the first conviction, imprisonment for a term which may extend to three years and shall also be liable to a fine; a second or subsequent conviction attracts imprisonment for a term which may extend to five years, and shall also be liable to fine.

### **07 : TRAFFICKING IN PERSONS**

Trafficking in persons is one of the gravest human rights violations, involving the exploitation of vulnerable individuals for forced labour, sexual exploitation, and other forms of abuse. In India, the legal framework addressing human trafficking is comprehensive yet complex, reflecting the country's unique socio-economic challenges. To curb the practice of trafficking in persons for sex work, the Immoral Traffic Prevention Act of 1956 (amended in 1986) was enacted. Legal provisions to deal with the crime of trafficking in all its forms are primarily included in the BNS.

#### **What is trafficking?**

Trafficking is the recruitment, transportation, transfer, harbouring or receipt of people through any act of threat, force or inducement for exploitation. Inducement may include the exchange of payments or benefits to achieve the consent of any person having control over the person being trafficked (Section 143).

Remember, the consent of the victim is immaterial in determining the offence of trafficking.

#### **What are the common reasons for trafficking?**

Individuals can be trafficked for physical or sexual exploitation. This includes practices such as slavery, forced labour, domestic servitude, forced marriage, petty crimes, prostitution, child pornography, drug peddling, removal of organs, and other forms of exploitation. (Standard Operating Procedures for Combating Trafficking of Persons in India, NHRC, 2017 (Trafficking SoPs)).

#### **Who can file a complaint of trafficking?**

A complaint of trafficking can be filed by any of the following persons (Trafficking SoPs):

- The parent or guardian of the victim
- NGOs
- Social worker
- Labour Inspector/Labour Department
- Railway Police
- All public servants
- Nurse, doctor or management of a nursing home or hospital
- Any person who knows about the incident
- Any person concerned with the safety and well-being of an allegedly trafficked person
- The victim

#### **Other sections of BNS that can be invoked for filing a case related to trafficking**

95	Hiring, employing or engaging a child to commit an offence
139	Kidnapping a child for the purpose of begging
140(3)	Kidnapping/abduction with the intention of secret or wrongful confinement
87	Kidnapping, abduction, or inducing a woman to compel her marriage
96	Procurement of a child
140 (4)	Kidnapping or abducting in order to subject a person to grievous hurt, slavery
97	Kidnapping or abducting a child under 10 years with intent to steal from its person
145	Dealing in slavery
98	Selling children for the purpose of prostitution
99	Buying a child for prostitution
141	Importation of a boy or girl from a Foreign Country
146	Unlawful compulsory labour

### **08: GENDER BIASED SELECTION**

Gender-biased sex selection, driven by societal preferences for male children, remains a significant issue in India and other parts of the world. This practice, often facilitated by modern technology, has led to a skewed sex ratio, with far-reaching consequences for gender equality. The devaluation of female lives perpetuates harmful stereotypes, reinforces patriarchal norms, and exacerbates discrimination against women. Beyond individual families, it creates long-term social imbalances, contributing to increased violence against women and a

diminished role for women in public and economic life. Tackling gender-biased sex selection is crucial for fostering gender equality and building a more inclusive society.

# **I. PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX SELECTION) ACT, 1994 (AND ACCOMPANYING RULES)**

## **What is gender-biased sex selection?**

Gender-biased sex selection occurs when families use different methods, including pre-conception and prenatal diagnostic procedures, to ensure the birth of a boy or avoid the birth of a girl.

## **What are prenatal diagnostic procedures?**

Prenatal means before birth. As per the law, Section 2, techniques used to detect or diagnose any physical or mental conditions in a foetus are known as pre-natal diagnostic techniques or procedures or tests. These techniques involve the study of any body fluid, blood, cells or any tissue from a pregnant woman or the foetus. This can also be done through a visual image, as is done in ultrasonography, or by removing samples of amniotic fluid, blood or any other tissue or fluid of a person.

## **What are preconception procedures?**

Preconception (occurring before conception) procedures involve sperm sorting, i.e., separating sperm cells that carry the X chromosome from sperm cells that carry the Y chromosome. The law covers such preconception procedures that are meant to assign a particular sex for the embryo.

## **What are the offences and punishments under this law?**

Any violation of the law will attract the following punishments (Section 23)

S.No.	Offence	Punishment
1	Violation of the law by any medical practitioner or any person who owns a Genetic Counselling Centre, a Genetic Laboratory or a Genetic Clinic or anyone employed by such a Centre, Laboratory or Clinic	<ul style="list-style-type: none"> <li>➤ Imprisonment for up to three years and a fine of up to Rs. 10,000 for the first offence</li> <li>➤ On any subsequent conviction, imprisonment for up to five years and a fine of up to Rs. 50,000</li> </ul>
2	For doctors and registered medical practitioners: Suspension of the registration until the case is disposed of and, on conviction, removal of their name from the register for a period of five years for the first offence and permanently for the subsequent offence	<ul style="list-style-type: none"> <li>➤ Imprisonment for up to 3 years and a fine of Rs. 0,000 for first offence</li> <li>➤ Imprisonment for up to 5 years and a fine of Rs. 50,000 for subsequent offences</li> <li>➤ The medical practitioner's registration can be suspended from the State Medical Council on framing of charges and removed from the register for a period of 5 years for the first offence and permanently for subsequent offences</li> </ul>
3	Any person seeking the aid of a clinic, laboratory or counselling centre, or of any other person for purposes of sex selection sex, or for conducting prenatal diagnostic techniques for purposes other than those prescribed in the law	<ul style="list-style-type: none"> <li>➤ Imprisonment for up to 3 years and a fine of Rs. 50,000 for the first offence</li> <li>➤ Imprisonment for up to 5 years and a fine of Rs. 1,00,000 for subsequent offences</li> </ul>
4	Any person found to be advertising facilities for sex determination or sex selection	<ul style="list-style-type: none"> <li>➤ Imprisonment for up to three years and a fine of up to Rs. 10,000</li> </ul>

## **09: SELECT CRIMINAL OFFENCES UNDER THE BHARATIYA NYAYA SANHITA, 2023**

### **Select Criminal Offences Against Women and Girls under the Bharatiya Nyaya Sanhita, 2023**

The Bharatiya Nyaya Sanhita (BNS), enacted on 1 July 2024, supersedes the erstwhile Indian Penal Code. It is a part of the country's criminal code and consolidates and codifies offences punishable by law.

#### **Forceful sexual behaviour**

Forceful sexual behaviour is punishable under the Bharatiya Nyaya Sanhita, 2023(BNS). This includes, among others, the act of insulting or outraging the modesty of a woman (punishable with imprisonment for up to three years and five years, respectively, under Sections 79, 74); forcefully removing a woman's clothes (punishable with imprisonment for a minimum of 3 years, extendable to 7 years, and a fine under Section 76); and the more aggravated offence of rape.

## **Rape (Section 63)**

### **What is rape?**

Under Section 63, **a man commits the offence of rape if he:**

- Penetrates the body of the woman (vagina, mouth, urethra or anus) with his penis/ any other body part/any object; or forces her to do this with him or another person
- Manipulates any body part of the woman to cause penetration into the vagina, urethra, anus or any other body part; or forces her to do this with him or another person. This section discusses select offences against women and girls outlined in the BNS.
- Applies of mouth to the penis, vagina, anus, or urethra of the woman or forces her to do this with him or another person

### **Under any of the following circumstances:**

- Against the woman's will
- Without the woman's consent
- Consent obtained by putting the woman or any of her loved ones in fear of hurt or death
- If the man knows that he is not a woman's husband and that she has given her consent only because she thinks that the man is her (lawful) husband
- If the woman is unable to understand the nature and consequences of the act to which she gives consent due to unsoundness of mind or intoxication or because the man has given her an unwholesome substance (either directly or through another person)
- Where the woman is under 18 years of age (regardless of whether she consents to the act)
- When the woman is unable to communicate her consent

### **What is consent?**

Consent means an explicit **voluntary** agreement expressed by a woman through **words, gestures** or any other **verbal or non-verbal communication** to communicate her **willingness to participate** in a **specific sexual act** (Section 63).

The mere absence of physical resistance does not constitute consent.

### **What is the punishment for rape?**

The offence of rape is punishable with rigorous imprisonment for a minimum of 10 years, extendable to imprisonment for life and a fine (Section 64). The punishment is more aggravated in the following circumstances.

<b>S.No.</b>	<b>Offence</b>	<b>Punishment</b>
1	<ul style="list-style-type: none"> <li>➤ An offence committed by a person in a position of authority or trust concerning the woman</li> <li>➤ Rape on a woman with physical/ mental disability</li> <li>➤ Rape on a woman incapable of giving consent</li> <li>➤ Rape that causes grievous harm or endangers the life of the woman</li> </ul>	Rigorous imprisonment for a minimum of 10 years that may extend to life imprisonment (meaning the remainder of the person's life) and a fine
2	Rape on a girl under 16 years of age	Rigorous imprisonment for a minimum of 20 years, which may extend to life imprisonment (meaning the remainder of the person's life) and a fine
3	Rape on a girl under 12 years of age	Rigorous imprisonment for a minimum of 20 years, which may extend to life imprisonment (meaning the remainder of the person's life) and a fine
4	Rape causing death of a woman or leaving her in a permanent vegetative state	Rigorous imprisonment for a minimum of 20 years, which may extend to life imprisonment (meaning the remainder of the person's life) and a fine; or death
5	Gang rape	Each person is punishable with rigorous imprisonment for a minimum of 20 years, which may extend to life imprisonment (meaning the remainder of the person's life), and a fine
6	Gang rape of a girl under the age of 18 years	Each person is punishable with rigorous imprisonment for life (meaning the remainder of the person's life) or death

7	Repeat offence	Each person is punishable with rigorous imprisonment for life (meaning the remainder of the person's life) or death
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### **Voyeurism (Section 77)**

Voyeurism is the act of:

- Being watched in a private act Capturing private images of a woman without her knowledge and consent
- Distribution of private pictures and videos of a woman

The **punishment** for a first-time offender includes imprisonment for a term ranging from one to three years and a fine. For subsequent offences, the punishment is imprisonment for a term ranging from three to seven years and a fine. Stalking (Section 78)

### **Stalking includes the act of:**

- Following a woman or attempting to contact a woman despite a clear indication of disinterest by the woman
- Monitoring the use of the Internet, email or any other form of electronic communication by a woman

The **punishment** for a first-time offender includes imprisonment for a term of three years and a fine. For subsequent offences, the punishment is imprisonment for a term of five years and a fine.

Acid can include any substance that can cause bodily injury either through scars, disfigurement, or temporary or permanent disability.

### **Acid attack (Section 124)**

Acid attacks include voluntarily throwing or attempting to throw acid to cause hurt.

The **punishment** for acid attack is imprisonment for 10 years, which can extend to life imprisonment and a fine. The punishment for attempting to commit an acid attack is a minimum imprisonment for five years, which can extend up to seven years, and a fine. Section 124 is gender-neutral in its scope; it aims to prevent acid attack crimes against everyone.

## **II. CONCLUSION**

In the final analysis it's vivid that the evolution from mere prohibition to substantive protection marks a pivotal moment in India's legal engagement with gender-based violence. While an extensive body of protective legislation exists, the persistent gap between statutory promise and practical realization underscores the necessity for systemic recalibration. Effective transformation demands the reinforcement of enforcement institutions, the infusion of gender-sensitive training across the judicial and policing apparatus, and the acceleration of procedural timelines to ensure timely redress. Equally vital is the cultivation of a collaborative framework that harnesses the expertise of civil-society organizations, community leaders, and educational bodies, thereby fostering a cultural milieu that rejects impunity and upholds the dignity of survivors. A progressive legal order must therefore transcend punitive measures, embracing restorative principles that empower victims, promote equitable access to justice, and prevent recurrence. By aligning legislative intent with rigorous implementation and societal commitment, India can transition from a regime of formal prohibition to one of genuine, enduring protection for all individuals against gender-based violence.

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