

Is Justice Truly Accessible in India? Examining Judicial Delays, Corruption, and Inequitable Access to Legal Representation among Marginalised Communities

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Abstract

The Indian Constitution guarantees every citizen equal access to justice under Articles 14, 21, and 39A, yet the machinery meant to deliver on that guarantee is straining under more than five crore pending cases, a well documented culture of bribery in police stations and lower courts, and a free legal aid system that reaches only a small fraction of those constitutionally entitled to it. This paper argues that judicial delay, everyday corruption, and inadequate legal aid should not be treated as three isolated administrative failures inside an otherwise neutral legal order. Drawing on Marxist legal theory, particularly Evgeny Pashukanis's account of the legal subject as a form borrowed from the commodity relation, on materialist feminist scholarship on unpaid social reproduction, on Indian feminist historiography concerning the relationship between caste and gender, and on B.R. Ambedkar's warning that India had achieved political democracy without social democracy, the paper argues that access to the formal legal system in India is systematically rationed along the lines of class, gender, and caste, and that this rationing is constitutive of how Indian law functions rather than incidental to it. It further argues that even where women do win in court, the social relations that produced their grievance frequently survive the judgment intact, and can be mobilised to undo it. The paper draws on government pendency data, national and international corruption surveys, legal aid budget analysis, and seven landmark Indian court cases, spanning the Mathura custodial rape case of 1972, through the Shah Bano maintenance case of 1985, to the Bilkis Bano remission case of 2024, to substantiate these claims empirically. It closes by considering serious objections to a purely structural account and by outlining what a genuinely redistributive, rather than merely procedural, reform agenda for access to justice in India would need to include.

I. Introduction

“Justice delayed is justice denied” is quoted so often in Indian political and judicial rhetoric that it risks becoming background noise, a phrase repeated at inaugurations and in newspaper editorials until it stops meaning anything specific. The scale of what it actually describes, however, is not rhetorical at all. As of December 2025, the Union Ministry of Law and Justice informed the Lok Sabha that 4,76,57,328 cases were pending in India's district and subordinate courts, with a further 63,66,023 pending in the High Courts and 92,101 in the Supreme Court itself.¹ These numbers had continued to grow, not shrink, over the preceding three years, despite repeated government assurances that reform was underway. Delay of this

¹ IANS, “Over 4.76 Crore Court Cases Pending Across India: Govt Informs Parliament,” *IANS Live*, February 13, 2026, reporting the reply of the Ministry of Law and Justice in the Lok Sabha.

magnitude does not fall evenly across Indian society. Nor does the informal economy of bribery that surrounds the police station and the district courthouse, nor the chronically underfunded architecture of free legal aid that Article 39A of the Constitution promises to what it calls “the economically or otherwise disadvantaged.”

This paper argues that judicial delay, everyday corruption, and unequal access to legal aid are best understood not as three separate malfunctions inside an otherwise fair legal system, but as interlocking mechanisms through which access to law itself is rationed along the lines of class, gender, and caste. The formal law extends identical abstract rights to a property developer in south Delhi and to a domestic worker from Meerut employed in his household. Substantively, however, the developer can absorb a decade of adjournments, retain senior counsel for the duration, and pay the informal costs of expediting his case without much difficulty, while the domestic worker very often cannot do any of these things. Read through a Marxist-feminist lens, this asymmetry is not simply a gap between law's stated promise and its imperfect execution. It is an expression of how law, understood as a historically specific social form, is structured from the outset by the very inequalities of capital and gendered labour that it presents itself as standing above and adjudicating fairly between.

The paper also makes a second, related argument. Reaching the courtroom is not the end of the problem. Even when a marginalised woman overcomes delay, corruption, and the absence of adequate counsel, and wins, the judgment frequently leaves untouched the economic dependency, the community sanction, and the caste and gender hierarchies that produced her grievance in the first place. B.R. Ambedkar anticipated precisely this gap when he warned the Constituent Assembly in November 1949 that India was about to “enter into a life of contradictions,” with equality in politics and inequality in social and economic life.² The Shah Bano case, in which a woman won maintenance in the Supreme Court in 1985 only to see the judgment disowned under community pressure and effectively reversed by Parliament within about a year, is perhaps the clearest single illustration of that contradiction in Indian legal history.

The argument proceeds in several stages. Section II sets out the theoretical framework, drawing together the Marxist legal theory of Evgeny Pashukanis, the sociological work of Marc Galanter on litigation, the materialist feminist account of social reproduction developed by Nancy Fraser, the Indian feminist legal scholarship of Flavia Agnes, Indian feminist historiography on caste and gender associated with Uma Chakravarti and Gopal Guru, and B.R. Ambedkar's distinction between political and social democracy. Sections III, IV, and V examine, in turn, judicial delay, corruption, and legal aid as three empirical registers in which this framework can be tested against real data; Section III also introduces the Shah Bano case as a concrete instance of delay in maintenance proceedings. Section VI turns to case level evidence, tracing four landmark Indian court cases across more than five decades to show what the statistics in the earlier sections look like as individual human experiences, and to demonstrate how gender and caste compound the class based barriers described earlier rather than simply adding to them. Section VII asks what happens after a woman wins, and argues, following Ambedkar, that legal victory frequently leaves the social order that produced the grievance intact. Section VIII considers the strongest objections to a wholly structural reading of Indian access to justice, and Section IX outlines the shape a genuinely redistributive reform agenda would need to take. The paper closes, in Section X, by drawing these threads together.

² B.R. Ambedkar, speech in the Constituent Assembly, November 25, 1949, *Constituent Assembly of India Debates (Proceedings)*, vol. 11, reprinted in *Dr. Babasaheb Ambedkar: Writings and Speeches*, vol. 13, ed. Vasant Moon (Bombay: Education Department, Government of Maharashtra, 1994).

II. Theoretical Framework

Law as Commodity Form: Pashukanis

The core Marxist claim this paper relies on comes from the Soviet legal theorist Evgeny Pashukanis, whose 1924 book *The General Theory of Law and Marxism* remains one of the most influential attempts to explain why law under capitalism takes the specific form it does.³ Pashukanis argued that the “legal subject,” the abstract, rights bearing individual whom law addresses and whom courts are built to serve, is not a timeless philosophical category discovered by jurists but a historically specific one, modelled directly on the figure of the commodity owner who enters the market as a formally free and formally equal party to exchange. In a market transaction, a wealthy buyer and an impoverished buyer are, in the narrow legal sense, perfectly equal: both are free to offer money for the same goods, and neither is legally privileged over the other. This formal equality, Pashukanis observed, conceals a deeper and entirely real inequality, since one party may have vastly more money to offer than the other, and the law has nothing to say about that disparity at all. Applied to access to justice, Pashukanis's insight suggests that the difficulty poor litigants face in Indian courts is not best understood as courts failing to live up to an otherwise sound legal ideal of equality before the law. It is better understood as revealing something about the legal ideal itself: a form of equality that was constructed, from its origins in market exchange, to fully benefit only those who already possess the resources to use it.

Repeat Players and One-Shotters: Galanter

A related but more empirically grounded account comes from the American legal scholar Marc Galanter, whose classic 1974 essay distinguished between what he called “repeat players” and “one-shotters” in litigation.⁴ Repeat players, such as large corporations, landlords, insurance companies, or government departments, litigate routinely as part of their ordinary business. Because they appear in court again and again, they can afford to lose individual cases without much consequence, they accumulate detailed knowledge of procedure and of which judges and lawyers to use, and critically, they can treat delay itself as a resource, using it to wear down opponents who cannot sustain years of litigation. One-shotters, typically ordinary individuals who go to court perhaps once in a lifetime, cannot spread risk across multiple cases, cannot easily absorb the cost of a protracted dispute, and are structurally disadvantaged at almost every stage of the bargaining that surrounds formal litigation. Galanter's later empirical research, conducted jointly with Jayanth Krishnan and focused specifically on the Indian legal system, extended this claim directly to the Indian context.⁵ Galanter and Krishnan argued that formal legal remedies function in India primarily as a resource for those who are already able to mobilise time, money, and information, and that for the poor, access to courts is mediated at every stage by intermediaries, by unavoidable delay, and by informal pressure to settle rather than litigate to a conclusion.

The Hidden Abode of Social Reproduction: Fraser and Agnes

This class centred account requires a feminist supplement, because the specific barriers facing poor women in India cannot be reduced to income alone. Nancy Fraser's influential argument about what she calls

³ Evgeny B. Pashukanis, *The General Theory of Law and Marxism*, trans. Barbara Einhorn, ed. Chris Arthur (London: Transaction Publishers, 2003), originally published 1924.

⁴ Marc Galanter, “Why the ‘Haves’ Come Out Ahead: Speculations on the Limits of Legal Change,” *Law & Society Review* 9, no. 1 (1974): 95–160.

⁵ Marc Galanter and Jayanth K. Krishnan, “‘Bread for the Poor’: Access to Justice and the Rights of the Needy in India,” *Hastings Law Journal* 55, no. 4 (2004): 789–834.

capitalism's "hidden abodes" is useful here.⁶ Fraser contends that the unpaid, heavily feminised work of social reproduction, including childcare, the care of the sick and the elderly, and the daily maintenance of households, functions as a background condition that makes capitalist production possible in the first place, even though mainstream economic analysis, and mainstream legal analysis alongside it, tends to treat this work as external to "the economy proper" rather than as one of its constitutive foundations. Applied to law, Fraser's argument implies that a woman's practical capacity to access courts is shaped by a set of material dependencies, on a husband's or father's income, on her own unpaid domestic labour, on her physical mobility and her freedom to travel unaccompanied, that are themselves produced by a gendered division of labour which the formal guarantee of legal equality does absolutely nothing to disturb. In the specific Indian context, the feminist legal scholar and activist Flavia Agnes has made a closely related argument at the level of doctrine rather than political economy. Agnes's long body of work on family law in India shows that maintenance provisions, domestic violence remedies, and inheritance rights formally recognise women's entitlements in considerable detail, but that the practical value of these entitlements depends heavily on resources, access to natal family support, an independent source of income, basic literacy in law, that remain unevenly distributed by class.⁷

Caste, Gender, and the Reproduction of Hierarchy: Chakravarti and Guru

A purely class and gender based framework, however, remains incomplete for the Indian context unless it is supplemented further by an account of caste, since caste in India is not a variable that simply sits alongside class and gender but is deeply entangled with the reproduction of both. The historian Uma Chakravarti has argued, in her influential study *Gendering Caste*, that the control of women's sexuality and the strict enforcement of caste endogamy, marriage within one's own caste group, are not peripheral features of the caste system but central mechanisms through which caste hierarchy itself is reproduced across generations.⁸ On this account, upper caste control over land and labour, the material basis of caste privilege that Marxist analysis is well equipped to describe, has historically depended on controlling women's marriage and reproductive choices in order to keep property, and the caste identity attached to it, within a bounded group. This means that violence against women, and particularly sexual violence, is frequently not incidental to caste conflict but a direct instrument of it, deployed specifically to enforce caste boundaries or to punish their transgression. The political theorist Gopal Guru has extended this line of argument by insisting that Dalit women's experience of both caste and gender oppression cannot be adequately captured by either mainstream, largely upper caste, Indian feminism or by Dalit politics organised primarily around Dalit men's experience. Guru's influential 1995 essay, "Dalit Women Talk Differently," argues that Dalit women face a form of subordination that is qualitatively different from, rather than simply an intensified version of, the subordination faced by upper caste women, since it combines caste based violence, economic dependency as agricultural or domestic labourers, and patriarchal control within their own communities in ways that neither a purely caste based nor a purely gender based analysis can fully explain on its own.⁹

⁶ Nancy Fraser, "Behind Marx's Hidden Abode: For an Expanded Conception of Capitalism," *New Left Review* 86 (2014): 55–72.

⁷ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (New Delhi: Oxford University Press, 1999).

⁸ Uma Chakravarti, *Gendering Caste: Through a Feminist Lens* (Calcutta: Stree, 2003).

⁹ Gopal Guru, "Dalit Women Talk Differently," *Economic and Political Weekly* 30, no. 41/42 (1995): 2548–2550.

Political Democracy without Social Democracy: Ambedkar

The final resource this paper draws on is Indian rather than European, and in some respects it anticipates the others. In his closing speech to the Constituent Assembly on 25 November 1949, B.R. Ambedkar, the chairman of its Drafting Committee, warned that the new Constitution would deliver formal political equality into a society organised around deep social and economic inequality:

On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value.¹⁰

Ambedkar went on to insist that “political democracy cannot last unless there lies at the base of it social democracy,” which he defined as “a way of life which recognizes liberty, equality and fraternity as the principles of life.”¹¹ A year earlier, introducing the Draft Constitution, he had made the same point more bluntly, describing democracy in India as “only a top-dressing on an Indian soil, which is essentially undemocratic.”¹²

Ambedkar's distinction bears directly on the argument of this paper, because courts belong squarely to the sphere he called political. They extend to every citizen the same formal standing, the legal analogue of “one man one vote.” What courts cannot do by themselves is enforce “one man one value” in the village, the household, or the caste community to which a litigant must return once the judgment is delivered. The parallel with Pashukanis is close but not exact, and the difference matters. Ambedkar was no Marxist, and in *Annihilation of Caste* he argued against Indian socialists that caste could not be treated as a mere reflection of economic class, since the caste system “is not merely division of labour” but “also a division of labourers,” graded hierarchically one above the other.¹³ Any programme of economic reform, he warned, would find that caste is “the monster that crosses your path.”¹⁴ Ambedkar therefore supplies something a purely Marxist account of law lacks: an explanation of why formal legal equality fails not only because of unequal economic resources, but because it is laid over social hierarchies, of caste and of gender, that are reproduced independently of the market and that can survive even favourable judgments.

Synthesis

Taken together, these theoretical resources, Pashukanis on the commodity form of the legal subject, Galanter on repeat players and one-shotters, Fraser on the hidden abode of social reproduction, Agnes on the gap between formal and substantive rights in Indian family law, Chakravarti and Guru on the structural entanglement of caste and gender, and Ambedkar on the gap between political and social democracy, suggest that the barriers documented in the remainder of this paper are not randomly distributed across the Indian population. They fall hardest on people who are already poor, and among the poor, they fall hardest of all on women, and among women, hardest of all on Dalit and Adivasi women, whose position sits at the compounded intersection of class, gender, and caste disadvantage simultaneously. Ambedkar's distinction adds a further claim, which Section VII develops: even where these barriers are overcome and

¹⁰ Ambedkar, speech, November 25, 1949.

¹¹ Ibid.

¹² B.R. Ambedkar, speech in the Constituent Assembly moving the Draft Constitution, November 4, 1948, *Constituent Assembly of India Debates (Proceedings)*, vol. 7.

¹³ B.R. Ambedkar, “Annihilation of Caste” (1936), in *Dr. Babasaheb Ambedkar: Writings and Speeches*, vol. 1, ed. Vasant Moon (Bombay: Education Department, Government of Maharashtra, 1979).

¹⁴ Ibid.

a judgment is won, the victory is won in the political sphere of formal rights, while the grievance continues to be lived in the social sphere that the judgment does not reach.

III. Judicial Delay as a Class Filter

Judicial delay in India is not a marginal inefficiency confined to a small number of unusually complicated cases. It is close to being the ordinary condition under which litigation of almost any kind proceeds. As already noted, government data placed the combined backlog in the district and subordinate courts at over 4.76 crore cases and in the High Courts at 63.66 lakh cases as of December 2025, with pendency having risen steadily across the preceding three years rather than falling in response to reform efforts.¹⁵ A significant part of the structural cause lies in judicial vacancy and long standing understaffing. India's sanctioned judge strength remains far below the 50 judges per million population that the Law Commission of India recommended as long ago as 1987, in its 120th Report on manpower planning in the judiciary; the actual ratio today is closer to 21 judges per million.¹⁶ The Law Commission returned to this problem in 2014, in its 245th Report on arrears and backlog, arguing that the judge to population ratio was itself too crude a measure and proposing instead a "Rate of Disposal Method" that would calculate the additional judicial capacity needed based on how quickly existing judges actually clear cases.¹⁷ More than a decade later, the pendency figures cited above suggest that whatever methodology is used to diagnose the problem, the practical resourcing of the judiciary has not kept pace with the volume of litigation entering the system.

From a Marxist standpoint, the significance of delay lies less in its scale than in how unevenly its costs are distributed. A dispute that takes ten or fifteen years to resolve does not cost all litigants equally, even when the formal legal fees involved are identical. A propertied litigant, or an institutional one such as a bank, a private employer, or a government department, can typically absorb the cost of repeated adjournments, retain counsel on a long term basis, and treat delay itself as a bargaining tool: stalling a claim until an economically weaker opposing party either settles for far less than she is legally entitled to or abandons the claim altogether out of sheer exhaustion.¹⁸ A daily wage worker, by contrast, or a woman seeking maintenance after separating from her husband, typically cannot do any of this. Each adjournment translates directly into a lost day's wages, an additional bus or auto fare to the courthouse, and a further postponement of income she may have no other legal means of securing. Delay, in other words, does not merely slow down the delivery of justice; it operates as a selection mechanism that systematically rewards the capacity to wait, and that capacity is itself, in the great majority of cases, a direct function of class position.

This is not a new observation, nor one confined to abstract theory. In 1979, the Supreme Court of India confronted precisely this dynamic in *Hussainara Khatoon v. State of Bihar*, a case brought on behalf of undertrial prisoners held in Bihar's jails, many of them illiterate, all of them too poor to afford bail or private counsel, who had been detained for periods that in several instances exceeded the maximum sentence they could have received had they actually been convicted of the offences they were merely

¹⁵ IANS, "Over 4.76 Crore Court Cases Pending."

¹⁶ Law Commission of India, *120th Report on Manpower Planning in the Judiciary: A Blueprint* (New Delhi, 1987).

¹⁷ Law Commission of India, *Report No. 245: Arrears and Backlog: Creating Additional Judicial (Wo)manpower* (New Delhi, July 2014).

¹⁸ Galanter, "Why the 'Haves' Come Out Ahead." On the Indian context specifically, see Galanter and Krishnan, "Bread for the Poor."

accused of. The Court held, in an opinion that remains a foundational statement of Indian constitutional law, that the right to a speedy trial forms an inseparable part of the right to life and personal liberty guaranteed under Article 21, and that the state cannot excuse years of pretrial detention by pointing to its own administrative or financial incapacity.¹⁹ The same basic pattern recurs in a very different setting: maintenance proceedings, in which a woman who has separated from her husband asks a court to order him to pay her a monthly sum sufficient to live on. If such a hearing is repeatedly adjourned over months or years, as routinely happens given the backlog figures described above, the delay does not merely postpone relief. For the duration of that delay, it functions as the practical equivalent of denying the relief altogether, since the applicant has no independent income to fall back on while she waits.

The best known instance of this dynamic in Indian legal history is the Shah Bano case. Shah Bano Begum married Mohd. Ahmed Khan, an advocate practising in Indore, in 1932, and they had five children. In 1975, after more than four decades of marriage, he turned her out of the matrimonial home. In April 1978, she filed a petition under Section 125 of the Code of Criminal Procedure, 1973, asking for maintenance of Rs. 500 a month. On 6 November 1978, while that petition was pending, Khan divorced her by irrevocable talaq, and then argued that because she had ceased to be his wife, his obligation to support her had ended with the maintenance he had paid and a sum of Rs. 3,000 deposited in court towards her *mehr*, or dower, during the period of *iddat*.²⁰ In August 1979, the magistrate ordered him to pay what the Supreme Court would later call “a princely sum of Rs. 25 per month”; in 1980, the High Court of Madhya Pradesh raised this to Rs. 179.20. Khan, whose professional income was alleged in the proceedings to be about Rs. 60,000 a year, appealed to the Supreme Court.²¹ A five judge bench dismissed his appeal on 23 April 1985, holding that Section 125 is a secular provision that applies to all persons regardless of religion, and that a divorced Muslim woman who is unable to maintain herself is entitled to claim maintenance under it.²²

Read through the framework set out in Section II, the case is a near perfect illustration of Galanter's distinction. On one side stood a litigant who was himself a lawyer, with the procedural knowledge, the professional standing, and the financial capacity of a repeat player; on the other stood a woman in her sixties with no independent income, whose claim was, in Fraser's terms, the residual value the law assigned to more than forty years of unpaid domestic labour. The sequence of events matters more than any inference about motive: the talaq was pronounced after the maintenance petition was filed, and it became the basis of the legal argument that the obligation had ended. The dispute, over a sum that was negligible to the husband and essential to the wife, then travelled through every tier of the judiciary and took seven years to resolve. The case is commonly remembered as a contest between religion and the Constitution, and the Court's own remarks on Article 44 and a uniform civil code, which were not necessary to its decision, encouraged that reading.²³ But the question the Court actually decided was narrower and more material: whether a destitute woman could claim maintenance under a provision of criminal procedure

¹⁹ *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1369.

²⁰ *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556, where these facts are recited in the judgment of Chandrachud C.J.

²¹ *Ibid*.

²² *Ibid*. Section 125 of the Code of Criminal Procedure, 1973 has since been replaced by Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023, in force from July 1, 2024. References in this paper are to Section 125 as the provision in force at the relevant time.

²³ *Ibid*. Article 44 of the Constitution directs the state to endeavour to secure a uniform civil code for citizens; the Court's observations on it were not necessary to the decision.

that applies to everyone. As Agnes's work on maintenance law suggests, the formal answer to that question was always less decisive than the practical capacity to secure and enforce it.²⁴ What happened to the judgment after it was delivered is taken up in Section VII.

This distributional reading of delay also clarifies why procedural reforms aimed only at reducing the raw number of pending cases, however necessary, cannot by themselves resolve the access to justice problem this paper is concerned with. A court system that clears its backlog twice as fast but continues to allow well resourced litigants to use adjournments strategically, and continues to impose the same relative cost of waiting on poor litigants as on wealthy ones, would still reproduce the same class based filtering described above, simply at a faster overall pace. Delay, on this account, is not simply friction to be minimised through better case management. It is one of the specific mechanisms through which formally equal legal rights are converted into substantively unequal legal outcomes.

IV. Corruption as a Regressive Tax

Corruption compounds the effects of delay by adding an informal, unofficial price to processes that are, on paper, entirely free of charge. Survey evidence consistently identifies the police and the judiciary as the two most corruption prone public institutions in India, across a range of methodologies and time periods. Transparency International's Global Corruption Barometer for Asia, published in 2020, found that 42 percent of Indian respondents who had contact with the police in the preceding year reported paying a bribe, the highest such rate recorded among the seventeen Asian countries surveyed, and that a further 38 percent reported relying on personal connections in order to navigate the courts successfully.²⁵ An earlier Transparency International household survey conducted across five South Asian countries found that the police and the judiciary were rated the two most corrupt public institutions in every country surveyed except Pakistan, and that Indian respondents who had actually interacted with the judiciary reported paying a bribe at a rate close to universal.²⁶

A Marxist reading treats this informal economy of bribery as functioning much like a regressive tax: a payment, whether fixed or negotiated case by case, that represents at most a minor inconvenience to a wealthy litigant but that can be prohibitively expensive, or simply impossible to raise, for a poor one. The mechanism through which this tax is collected is often the simple refusal to perform an ordinary legal duty unless paid to do so, and the most consequential version of this refusal, for the purposes of access to justice, is the refusal by police officers to register a First Information Report at all. The scale of this problem, and the Supreme Court's own attempt to address it, is visible in the 2014 case of *Lalita Kumari v. Government of Uttar Pradesh*. The case began when a father attempting to report that his minor daughter had been kidnapped found the local police station unwilling to register his complaint, and succeeded only after escalating the matter to a more senior officer; even then, the investigation stalled and neither the girl nor her alleged abductors were traced. The Supreme Court used the case to hold, definitively, that registering an FIR is not a matter of police discretion whenever the information received discloses a cognizable offence, a ruling that both acknowledged how routine this kind of gatekeeping had become

²⁴ Agnes, *Law and Gender Inequality*.

²⁵ Transparency International, *Global Corruption Barometer, Asia* (Berlin: Transparency International, 2020).

²⁶ Transparency International, *Corruption in South Asia: Insights and Benchmarks from Citizen Feedback Surveys in Five Countries* (Berlin: Transparency International, 2011).

and, in the years since, has needed repeated reaffirmation by lower courts precisely because informal refusal to register complaints has proven difficult to eliminate through a single judgment.²⁷

This pattern of informal gatekeeping becomes substantially worse for women reporting violence, and worse again where caste is also a factor. Survivors of domestic or sexual violence frequently encounter pressure, sometimes exerted informally by police themselves and sometimes by the family or community of the accused, to accept a monetary “settlement” in place of pursuing prosecution, particularly where the accused belongs to a locally influential family or a dominant caste group. Outright refusal to register a complaint, or its deliberate downgrading to a lesser and less serious offence, has been documented repeatedly by organisations working directly with survivors of caste based and gender based violence, and the historical case of Mathura, discussed in greater depth in Section VI below, shows that even where a complaint is registered and a prosecution does proceed, institutional bias can shape the outcome of the case itself rather than merely blocking access to it at the initial stage. In 1972, two policemen were accused of raping Mathura, an Adivasi girl of about fourteen to sixteen years old, inside the very police station where she and her family had gone to give statements in an unrelated matter. The trial court acquitted the accused; the Bombay High Court convicted them on appeal; and the Supreme Court, hearing a further appeal in 1978, acquitted them again, reasoning that the absence of visible injuries on Mathura's body indicated that she had probably consented.²⁸ The case did not involve a bribe in the narrow sense, but it illustrates a related dynamic this paper's framework predicts: institutional actors, including judges themselves, treating the claims of a poor, young, tribal woman with a degree of scepticism that would very likely not have been extended to a complainant from a more socially and economically secure background. Corruption is not, on this account, best understood primarily as a moral failing of individual police officers or court staff, although it is certainly that as well. It is better understood as a structural feature of a legal system in which the effective price of access is set informally, case by case, and paid disproportionately by those with the least capacity to pay it, in exactly the way Pashukanis's account of formal legal equality predicts it would be.

V. Legal Aid: Promise and Limits

Article 39A of the Constitution, inserted by the Forty Second Amendment in 1976, commits the state to ensuring that the operation of the legal system promotes justice on the basis of equal opportunity, and specifically directs the state to provide free legal aid so that no citizen is denied the opportunity to secure justice by reason of economic or other disability.²⁹ The Legal Services Authorities Act, 1987, gave this constitutional commitment institutional form by creating the National Legal Services Authority, known as NALSA, along with corresponding State and District Legal Services Authorities intended to deliver free legal aid at every level of the system.³⁰

In practice, this architecture has been chronically underfunded relative to the scale of its stated mandate for as long as reliable data has been collected. A Parliamentary Standing Committee reviewing the functioning of legal aid in India found that per capita free legal aid spending stood at approximately 0.75 paise per person per year in 2017 to 18, an amount so small it is difficult to render meaningfully in any

²⁷ *Lalita Kumari v. Government of Uttar Pradesh*, (2014) 2 SCC 1.

²⁸ *Tukaram v. State of Maharashtra*, (1979) 2 SCC 143.

²⁹ Constitution of India, art. 39A, inserted by the Constitution (Forty-second Amendment) Act, 1976.

³⁰ Legal Services Authorities Act, 1987.

currency at all.³¹ More recent analysis, drawing on the India Justice Report, puts per capita legal aid spending somewhat higher, at roughly three to seven rupees nationally in the 2022 to 23 financial year, but with sharp interstate disparities that themselves track existing patterns of regional inequality: Kerala and Haryana spent around sixteen rupees per capita, while West Bengal spent closer to two.³²

Rather than improving over time, the funding and delivery of legal aid appears, on the most recent evidence, to have deteriorated. The India Justice Report 2025 documents that NALSA's own central budgetary allocation fell from 207 crore rupees in 2017 to 18 to 169 crore rupees in 2022 to 23, even as state government contributions to legal aid roughly doubled over the same period, a shift in the funding burden away from the central government rather than an overall increase in resources. The same report finds that the rate at which allocated legal aid funds were actually spent, rather than left unused because of rigid administrative rules governing staffing and outreach, fell from 75 percent to 59 percent across the same five years. Outreach at the grassroots level has weakened in parallel: the number of trained Para Legal Volunteers, who typically form the only meaningful bridge between formal legal aid authorities and rural communities, fell by 38 percent between 2019 and 2024, and the report finds only one legal aid clinic for every 163 villages nationally, a ratio that makes it structurally difficult for legal aid to reach the rural poor at all, let alone rural poor women facing additional barriers of mobility and social sanction.³³ Separately, budgetary analysis conducted by Project 39A found that State Legal Services Authorities spent, on average, only 24 percent of their allotted funds on payments to the lawyers who actually represent legal aid clients in court, a distribution of spending consistent with the widespread perception among litigants that legal aid representation, where it is available at all, tends to be of markedly lower quality than privately retained counsel.³⁴

The gendered dimension of this underfunding deserves separate emphasis. Reaching a legal aid clinic or a Para Legal Volunteer typically requires the kind of independent mobility, freedom from unpaid caregiving obligations at the relevant hour, and freedom from social restriction on travelling alone that Fraser's account of the hidden abode of social reproduction identifies as unevenly distributed by gender in the first place. A legal aid architecture designed around fixed clinic locations and daytime office hours, without dedicated outreach adapted to the constraints many women actually face, will systematically underserve exactly the population it is constitutionally obligated to prioritise, even where funding levels are adequate in the aggregate. The 38 percent decline in trained Para Legal Volunteers between 2019 and 2024 is therefore not merely a funding statistic; it represents a corresponding decline in the specific kind of localised, relationship based outreach that women facing mobility and social constraints are most likely to depend on to access legal aid at all.

From the theoretical position developed in Section II, this pattern of underfunding is significant for reasons that go beyond its immediate practical effects on case outcomes. Legal aid, as currently structured and resourced in India, functions as a residual welfare benefit extended selectively to those who cannot afford private counsel, rather than as an entitlement that addresses the prior and more fundamental question of why so many people, disproportionately women economically dependent on a husband's or father's income, informal sector workers with no employment protections whatsoever, and Dalit and Adivasi

³¹ LiveLaw, "Majority Indian Population Eligible for Legal Aid: Parliamentary Committee Recommends Additional Posts in NALSA, Enhanced Funds," February 7, 2024.

³² *India Justice Report 2025* (Mumbai: Tata Trusts, 2025); LAEX, "Access to Free Legal Aid in India," 2025.

³³ *India Justice Report 2025*.

³⁴ Data for Justice, "Understanding Legal Aid Budgets in India," interview with Project 39A, 2021.

litigants facing caste based intimidation both inside and outside the courtroom, lack the resources to litigate on genuinely equal terms in the first place. A legal aid system built on the assumption that access to justice can be delivered simply by appointing a lawyer, without addressing the underlying economic dependency that made free legal representation necessary, treats a structural problem as though it were an individual misfortune to be remedied case by case, which is precisely the move Pashukanis's and Fraser's frameworks would predict a capitalist legal order to make.

VI. When Gender and Caste Combine: Four Cases Across Five Decades

The theoretical claims developed above, and the aggregate data on delay, corruption, and legal aid presented in Sections III through V, can be tested against individual cases, and against caste disaggregated crime data, in ways that make the compounding effect described by Chakravarti and Guru concrete rather than abstract.

National Crime Records Bureau data for 2024 recorded that reported rape cases involving Dalit women and girls averaged close to twelve per day nationally across the year, that the conviction rate in such cases stood at only 29.8 percent, well below the conviction rate for rape cases generally, and that the pendency rate for these cases in the courts was 93.3 percent, meaning the overwhelming majority remained unresolved at year's end.³⁵ Prosecutions under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act tell a broader version of the same story: cases pending trial under the Act reached 2,87,694 by 2024, even as the annual number of convictions had risen in absolute terms over the preceding five years, an apparent improvement better read as evidence of a growing backlog than of an improving system.³⁶ Regional studies of NCRB data have found conviction rates for atrocities against Scheduled Castes and Scheduled Tribes as low as single digits in several southern states, alongside pendency rates consistently above 80 percent.³⁷

Four individual cases, spread across more than fifty years of Indian legal history, show what these aggregate figures look like as lived experience, and each illustrates a different mechanism described earlier in this paper.

The earliest is the case of Mathura, discussed briefly in Section IV above. In March 1972, Mathura, an Adivasi girl of roughly fourteen to sixteen years old who worked as a labourer, was allegedly raped by two policemen inside Desai Ganj police station in Maharashtra, where she had been called along with her family to give a statement in an unrelated dispute. The trial court acquitted the accused; the Bombay High Court convicted them on appeal, holding that passive submission out of fear is not the same thing as consent; and the Supreme Court, in 1978, reversed the High Court and acquitted the accused a second time, on the reasoning that the absence of visible injury on Mathura's body suggested she had not actually resisted. This judgment, from the country's highest court, illustrates precisely the compounding this paper's theoretical framework predicts: a poor, young, Adivasi complainant's account of custodial rape, allegedly committed by state agents inside a police station, was met with a legal standard of proof that effectively demanded evidence of physical resistance her social and economic position gave her very limited power to provide against two armed policemen. The public outrage that followed the judgment, including open letters from law professors and sustained nationwide protest by women's organisations, directly led to the

³⁵ The Mooknayak, "What the NCRB 2024 Data Says About the Lives of Dalit Women," 2025.

³⁶ SCC Online, "More Convictions, Fewer Arrests: What Five Years of NCRB Data Show on SC/ST Atrocities," 2025.

³⁷ Centre for Law and Policy Research, "Caste Discrimination in South India: A Study of NCRB Data (Part III)," accessed 2026.

Criminal Law (Amendment) Act, 1983, which for the first time created a specific statutory offence of custodial rape and shifted the burden of proving consent onto the accused in such cases.³⁸ The reform, in other words, came from outside the legal system, through political mobilisation, rather than from the judiciary correcting itself.

Twenty years later, in 1992, a rural development worker in Rajasthan named Bhanwari Devi was gang raped by a group of men from a locally dominant landowning community, in what was widely understood as retaliation for her work, as a government employed social worker, attempting to stop a child marriage in their family. A trial court acquitted her attackers for lack of evidence. It was only after a coalition of women's rights organisations filed a public interest litigation directly before the Supreme Court, under the collective name Vishaka, that any further legal development occurred, and even then the result was not justice for Bhanwari Devi in her own case, which remained unresolved, but a new set of binding national guidelines addressing workplace sexual harassment for women more generally, later codified in the Sexual Harassment of Women at Workplace Act of 2013.³⁹ The case therefore illustrates a genuine, if partial and displaced, success within the same legal system that had failed the individual complainant at its centre: systemic reform emerged, but not through the ordinary channel of Bhanwari Devi's own criminal case reaching a just outcome.

A very different pattern is visible in the 2012 gang rape and murder of a young woman on a Delhi bus, a case that became known publicly by the pseudonym Nirbhaya and that produced sustained nationwide protest on a scale rarely seen in independent India's history. Precisely because of this pressure, the case was fast tracked through the courts to an extent almost no ordinary case is: a special fast track court delivered convictions and death sentences within roughly nine months of the crime, and the Delhi High Court upheld the verdict soon after. Even so, the case took a further four years to work through the Supreme Court's confirmation of the death sentence, review petitions, curative petitions, and mercy petitions to the President, with the convicts finally executed in March 2020, more than seven years after the crime itself.⁴⁰ If the single most politically visible and institutionally prioritised criminal case in recent Indian history still required more than seven years to reach a final resolution, the implication for the far larger number of cases that never attract comparable public attention, and are therefore never fast tracked in the same way, is sobering rather than reassuring.

The most recent of the four cases, that of Bilkis Bano, illustrates how delay and institutional bias can combine even after a conviction has been secured. Bilkis Bano was gang raped, and fourteen members of her family were murdered, during the communal violence that followed the Godhra train burning in Gujarat in 2002. Fearing that a fair trial was impossible in Gujarat given the political climate, the Supreme Court transferred the case to a special court in Mumbai, where a trial that began in 2004 produced convictions in 2008. The Bombay High Court upheld those convictions on appeal only in 2017, a full sixteen years after the crime. In 2022, the Gujarat state government granted all eleven convicts early release under a remission policy, a decision that provoked national outrage and a further legal challenge; it took the Supreme Court until January 2024 to quash the remission as unlawful, finding that Gujarat was not even the correct authority to have granted it in the first place, by which point the case as a whole

³⁸ *Tukaram v. State of Maharashtra*; Criminal Law (Amendment) Act, 1983, which inserted Section 376(2) into the Indian Penal Code, 1860 and Section 114A into the Indian Evidence Act, 1872.

³⁹ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241; Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

⁴⁰ *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1.

spanned twenty two years from the original crime.⁴¹ The case shows that judicial delay is not confined to reaching an initial verdict; it can recur at later stages of the same proceeding, including at the stage of sentence execution and remission, in ways that impose a further, cumulative burden on survivors who might reasonably have believed the legal process had already concluded in their favour.

Read together, these four cases, and the aggregate NCRB and SC/ST Atrocities Act data presented at the start of this section, demonstrate why it is analytically inadequate to speak of “women” in the Indian access to justice literature as a single undifferentiated category facing one uniform set of legal barriers. A wealthy, upper caste, urban woman and a poor, rural, Dalit or Adivasi woman are formally protected by the identical constitutional and statutory provisions. In practice, as Guru's concept of Dalit women needing to “talk differently” suggests, the latter confronts a distinct and compounded set of obstacles: the class based cost of delay described in Section III, the risk of bribery, under registration, or outright institutional scepticism described in Section IV, a legal aid system with limited rural reach described in Section V, and a judiciary that, the conviction and pendency data above suggest, treats caste based and gender based violence together with markedly less institutional urgency than violence against more socially secure complainants. Two of these cases, Bhanwari Devi's and Bilkis Bano's, also show that the story does not end with the judgment, which is the subject of the next section.

VII. Winning in Court, Losing in Society: The Limits of Legal Victory

Sections III through VI have treated access to justice largely as a problem of getting into court and getting a verdict. Ambedkar's distinction between political and social democracy suggests that this is only half of the problem. A judgment operates in the sphere of formal, political equality; the woman who wins it must return to a household, a village, a caste, and often a religious community in which, to use his phrase, the principle of “one man one value” continues to be denied.⁴² Galanter made a related observation in sociological terms: changes in legal rules that favour those without resources tend to be absorbed and blunted at the level of implementation, because the institutions and social arrangements that determine whether a rule is actually enforced are left unchanged by the rule itself.⁴³ Fraser's distinction between injustices of distribution and injustices of recognition helps clarify why. Many of the harms at issue in the cases discussed in this paper are at once economic, rooted in dependency, and matters of status, rooted in caste and gender hierarchies that devalue certain people; a judgment that awards a sum of money or convicts an offender addresses neither dimension at its source.⁴⁴ This section traces that gap through the aftermath of Shah Bano, the aftermaths of two of the cases discussed in Section VI, and the longer history of statutory reform in women's property and marriage law.

The Aftermath of Shah Bano

The Shah Bano judgment is the clearest instance. Within months of the decision, it became the focus of a sustained campaign led by the All India Muslim Personal Law Board and sections of the Muslim religious leadership, who argued that the Court had interfered with Muslim personal law. The government initially defended the judgment in Parliament, where Arif Mohammad Khan, then a minister, spoke in its support. In November 1985, Shah Bano herself issued a public statement disowning the judgment delivered in her

⁴¹ *Bilkis Yakub Rasool v. Union of India*, 2024 INSC 24.

⁴² Ambedkar, speech, November 25, 1949.

⁴³ Galanter, “Why the ‘Haves’ Come Out Ahead.”

⁴⁴ Nancy Fraser, “From Redistribution to Recognition? Dilemmas of Justice in a ‘Post-Socialist’ Age,” *New Left Review* 1/212 (1995): 68–93.

favour and asking that it be set aside.⁴⁵ The government then reversed its position, and Parliament enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986, which provided that a divorced Muslim woman was entitled to “a reasonable and fair provision and maintenance to be made and paid to her within the period of iddat by her former husband,” and which shifted responsibility for a woman unable to maintain herself after that period to her relatives and, failing them, to the State Waqf Board.⁴⁶ Arif Mohammad Khan resigned from the government in protest. The reversal has been widely read as electorally motivated, though the government presented it as respect for the autonomy of minority personal law.⁴⁷

The legal story did not end in 1986, and its later course complicates any simple narrative of defeat. In *Danial Latifi v. Union of India* in 2001, the Supreme Court upheld the 1986 Act but read the phrase “reasonable and fair provision” to require the husband to make provision for the woman's future beyond the iddat period, payable within it.⁴⁸ Agnes has argued that lump sum awards made under the Act, as the courts came to interpret it, sometimes served divorced women better than the small monthly amounts typically ordered under Section 125.⁴⁹ And in *Mohd. Abdul Samad v. State of Telangana* in 2024, the Supreme Court held that a divorced Muslim woman may claim maintenance under Section 125 notwithstanding the 1986 Act, restoring, nearly four decades later, the core of what Shah Bano had won in 1985.⁵⁰

This arc is itself the point. It took thirty-nine years, a statute, and two further Supreme Court judgments for the law to return to where it had stood on the day Shah Bano won, and she did not live to see it. None of these legal developments altered the social conditions that had made her claim necessary in the first place: the economic dependency of a woman whose decades of domestic labour had produced no property in her own name, and the authority of a community able to bring a woman to disown a judgment in her own favour. The judgment changed the law. It could not change the terms on which she lived with it.

Bhanwari Devi and Bilkis Bano after Judgment

A similar gap appears in the aftermath of Bhanwari Devi's case. The Vishaka guidelines that emerged from her experience transformed the law on workplace sexual harassment for millions of women. Bhanwari Devi herself, however, saw her attackers acquitted by a trial court whose reasoning, as widely reported, included the proposition that men of a dominant caste would not have raped a woman of a lower caste. That reasoning takes the purity norms of caste hierarchy, which Chakravarti identifies as an instrument of control over women's bodies, and treats them as evidence that the violence could not have occurred. Bhanwari Devi also faced social ostracism in her own village, and the State's appeal against the acquittal has remained pending in the Rajasthan High Court for decades.⁵¹ The law changed for women in general; the social order of the village in which she continued to live did not.

⁴⁵ [Citation to be added: a contemporaneous press report of Shah Bano's statement of November 1985.] See also Agnes, *Law and Gender Inequality*.

⁴⁶ Muslim Women (Protection of Rights on Divorce) Act, 1986, ss. 3–4. Section 5 permitted the parties, by joint declaration, to opt to be governed by Section 125 of the Code of Criminal Procedure.

⁴⁷ Agnes, *Law and Gender Inequality*. [Citation to be added: a source for the parliamentary history of 1985–86, including Arif Mohammad Khan's speech and resignation and the government's stated rationale.]

⁴⁸ *Danial Latifi v. Union of India*, (2001) 7 SCC 740.

⁴⁹ Agnes, *Law and Gender Inequality*. [Add a page reference.]

⁵⁰ *Mohd. Abdul Samad v. State of Telangana*, 2024 INSC 506.

⁵¹ [Citation to be added: the trial court judgment of 1995 or a reliable secondary account of its reasoning, and a source for the current status of the State's appeal in the Rajasthan High Court.]

The aftermath of the Bilkis Bano case shows the same gap in a sharper form. When the eleven men convicted of her gang rape and of the murder of members of her family were released under the Gujarat government's remission order in August 2022, they were publicly welcomed and garlanded outside the jail.⁵² A conviction secured after years of litigation, and upheld on appeal, had not altered the social standing of the convicts among those who received them, nor reduced the danger in which the survivor continued to live. The Supreme Court's 2024 judgment restored the legal position; it could not restore the social one.

Statutory Reform and Social Persistence

The pattern extends well beyond individual cases. The Hindu Succession (Amendment) Act, 2005 made daughters coparceners in joint family property with the same rights as sons, and in *Vineeta Sharma v. Rakesh Sharma* in 2020 the Supreme Court confirmed that this right arises by birth.⁵³ Yet Bina Agarwal's foundational work on gender and land in South Asia showed that women's legal entitlements to land have repeatedly failed to translate into effective ownership and control, in part because women face sustained social pressure to relinquish their shares to brothers in exchange for the continued support of their natal families, support that a married woman may later need precisely if her marriage breaks down.⁵⁴ The Dowry Prohibition Act has been in force since 1961, and the National Crime Records Bureau continues to record several thousand dowry deaths every year.⁵⁵ The Criminal Law (Amendment) Acts of 1983 and 2013, each passed in response to the mobilisation that followed a notorious case, strengthened the law on rape considerably.⁵⁶ The conviction and pendency figures for rape cases involving Dalit women cited in Section VI show how much of the distance between statute and outcome remains.

Political Victory, Social Precarity

Ambedkar's warning was that a political democracy built on an undemocratic social base would remain precarious. The evidence of this section suggests a corresponding claim about law: legal victories won by women, and especially by poor, Dalit, Adivasi, and minority women, remain precarious when the social relations that produced the grievance are left untouched. They can be disowned under pressure, as Shah Bano's was; reversed by legislation; neutralised by social boycott; or mocked by the public reception of those they convicted. This does not make such victories worthless, and Section VIII takes seriously the ways in which they have produced real gains. It does mean that an account of access to justice which ends at the courtroom door, or at the moment of judgment, describes only the political half of what Ambedkar called a life of contradictions.

VIII. Fair Objections to This Argument

A wholly structural account risks overstating its own case, and several counter currents deserve serious acknowledgment rather than a token mention. Institutional reform in India has produced measurable, if partial and unevenly distributed, improvement over the period covered by this paper. The e-Courts project has brought every tier of the judiciary, including the Supreme Court itself as of January 2024, onto a single

⁵² [Citation to be added: a press report of the convicts' release and reception in August 2022.] On the remission and its quashing, see *Bilkis Yakub Rasool v. Union of India*.

⁵³ Hindu Succession (Amendment) Act, 2005; *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1.

⁵⁴ Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge: Cambridge University Press, 1994).

⁵⁵ Dowry Prohibition Act, 1961; National Crime Records Bureau, *Crime in India* (New Delhi: Ministry of Home Affairs, annual). [Add the specific year and figure relied on.]

⁵⁶ Criminal Law (Amendment) Act, 1983; Criminal Law (Amendment) Act, 2013.

National Judicial Data Grid, which has at minimum made the scale of the pendency problem visible, trackable, and harder for the state to ignore or understate than it was even a decade ago.⁵⁷ Schemes such as Tele-Law, which connects citizens in rural areas to legal aid lawyers through video consultation, and the Legal Aid Defence Counsel system, which has begun providing dedicated, salaried legal aid lawyers in criminal cases rather than relying solely on private lawyers appointed case by case, represent genuine attempts to widen the reach of the legal aid architecture described in Section V, even where their coverage remains incomplete.⁵⁸ Public interest litigation, for all its own well documented limitations of access and its tendency to favour causes with existing organisational backing, has historically secured real and significant victories for exactly the marginalised groups this paper is concerned with, the Vishaka guidelines discussed in Section VI being one clear example among many, which complicates any account that treats the higher judiciary as uniformly closed off to the interests of the poor.⁵⁹ Grassroots legal literacy movements, women's rights groups such as MAJLIS in Mumbai, and networks of trained paralegals have also demonstrably helped many individual women, and individual Dalit and Adivasi litigants, obtain real results within a system this paper otherwise describes as structurally stacked against them, which suggests that structural constraint, while genuinely powerful, does not fully determine every individual outcome in advance.

The later history of Shah Bano's claim, traced in Section VII, also cuts both ways. If the 1986 Act shows how a legal victory can be reversed by political pressure, *Danial Latifi* and *Abdul Samad* show that sustained legal argument can, over time, recover much of the ground that was lost. A reading of Section VII that treated legal victories as simply futile would therefore be as one sided as a reading that treated them as self executing.

A structural reading must also guard carefully against treating “the poor,” or “women,” or “Dalit and Adivasi litigants,” as passive categories simply acted upon by an unchanging legal system, rather than as agents who negotiate, resist, organise, and sometimes succeed even within a system stacked against them in the aggregate. The theoretical frameworks this paper draws on, Pashukanis's commodity form theory of law in particular, have themselves been criticised within Marxist legal scholarship for reducing law too completely to its underlying economic form, at the expense of law's relative autonomy from that form and its occasional, real capacity to be turned against the very class interests it was originally designed to serve. The legal scholar Roelof Koen, for instance, has argued that a purely instrumental reading of law as nothing more than an expression of class interest cannot easily explain why courts sometimes do rule against powerful litigants, or why legal reform movements, including several of the ones traced through the case studies in Sections VI and VII, have been able to use formally neutral legal language to win concrete gains for groups the law was not originally designed to protect.⁶⁰ Ambedkar's own career, as the principal draftsman of a Constitution he simultaneously warned was insufficient on its own, is perhaps the best Indian illustration of the view that law is neither a mere instrument of domination nor a sufficient means of liberation.

This paper's claim, properly stated, is accordingly a claim about tendency, pattern, and distribution rather than a claim of total determination. It holds that court delay, everyday corruption, and inadequate legal

⁵⁷ Supreme Court of India, “Onboarding of Supreme Court of India on NJDG,” press release, January 16, 2024.

⁵⁸ PMF IAS, “Legal Aid in India,” 2026.

⁵⁹ *Vishaka v. State of Rajasthan*.

⁶⁰ Roelof Koen, “All Roads Lead to Property: Pashukanis, Christie and the Theory of Restorative Justice,” *Potchefstroom Electronic Law Journal* 16, no. 3 (2013): 232–265.

aid systematically and measurably disadvantage the poor, and that within the poor, they disadvantage women more than men, and within women, they disadvantage Dalit and Adivasi women most severely of all. It holds, further, that legal victories won by these litigants are unusually vulnerable to being hollowed out by the social relations they leave intact. It does not hold that no marginalised litigant ever obtains justice in an Indian court, that every judge is corrupt or biased, or that institutional reform is inherently futile and therefore not worth pursuing. The Vishaka case itself, discussed above, is a useful illustration of how both claims can be true simultaneously: the system failed Bhanwari Devi as an individual litigant seeking justice for the crime committed against her, while at the same moment producing a genuine structural reform, the Vishaka guidelines, that has since benefited a great many other women. A framework capable of holding both of these facts together, rather than collapsing into either uncomplicated pessimism or uncomplicated faith in legal reform, is more useful analytically than either alternative taken on its own.

IX. Toward a Redistributive Reform Agenda

If the diagnosis offered in this paper is correct, a reform agenda adequate to it needs to move well beyond the procedural fixes that have dominated Indian policy discussion for the past several decades, important as those fixes remain on their own terms. Four implications follow directly from the argument developed above.

First, judicial reform aimed only at increasing the raw speed of case disposal, through methods such as the Law Commission's Rate of Disposal approach discussed in Section III, needs to be paired explicitly with attention to who benefits from that increased speed. A faster court system that continues to allow well resourced litigants to use adjournments strategically will simply reproduce the same class based filtering at a faster pace, as argued in Section III. Reform should therefore prioritise categories of case, such as maintenance applications and cases involving undertrial detention, where delay imposes the most severe and time sensitive costs on the poorest litigants, rather than treating all pending cases as equally urgent regardless of who is waiting and what they are waiting for. The seven years Shah Bano spent pursuing a maintenance claim of a few hundred rupees a month is precisely the kind of delay such prioritisation would be designed to prevent.

Second, addressing corruption in access to the legal system requires treating the initial point of contact, the police station and the FIR desk, as at least as important a site of reform as the courtroom itself. The *Lalita Kumari* judgment discussed in Section IV established a clear legal rule; the persistence of informal gatekeeping in the years since suggests that rule alone, without independent mechanisms for monitoring and enforcing compliance at the level of individual police stations, is insufficient. Expanding the jurisdiction and staffing of independent police complaints authorities, and building institutionalised, rather than case by case, partnerships between police stations and women's rights and Dalit rights organisations, would target the specific mechanism of exclusion this paper has identified rather than addressing corruption only in the abstract.

Third, legal aid needs to be reconceived as a structural entitlement addressing the underlying economic dependency documented in Section V, rather than as residual charity extended to those who cannot afford a private lawyer. This would mean, at minimum, restoring and substantially increasing NALSA's central funding beyond its 2017 level in real terms, reversing the decline in Para Legal Volunteer numbers documented by the India Justice Report, and redesigning outreach specifically around the mobility and time constraints that Section V identified as unevenly distributed by gender, rather than continuing to rely

on fixed clinic locations and standard office hours that systematically underserve exactly the women most in need of free legal representation.⁶¹

Fourth, and following from Section VII, reform cannot stop at the moment of judgment. Maintenance orders need enforcement mechanisms that do not require a woman to return to court each time payments stop. Survivors who win need protection against social boycott and retaliation, which the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act already treats as an offence when directed at Dalit and Adivasi persons, but which remains largely unaddressed for women outside its scope.⁶² And legal aid needs to be connected to forms of economic support, including housing and livelihood, so that a woman who wins a judgment is not forced back into the dependency that made her claim necessary in the first place.

None of these four changes, on its own, would fully dissolve the class, gender, and caste based rationing of access to justice this paper has described, since that rationing is rooted in economic and social structures well beyond the legal system's own control. That is Ambedkar's point, and it is the point of the Marxist and feminist frameworks this paper has drawn on as well. But each change would represent a genuine, measurable movement away from treating access to justice as a matter of individual charity and toward treating it as the constitutional entitlement Article 39A already, on paper, declares it to be.

X. Conclusion

Court delay, everyday bribery, and underfunded legal aid are frequently discussed in Indian public debate as three separate governance failures, each amenable in principle to its own narrow technical fix: appoint more judges, prosecute corrupt officials, increase the legal aid budget by some additional percentage each year. This paper has argued that a Marxist-feminist reading, tested against government pendency data, national corruption surveys, legal aid budget analysis, and seven landmark court cases spanning more than fifty years of Indian legal history, reveals a considerably more integrated picture than that framing suggests. Delay operates as a filter that systematically rewards the capacity to wait, and that capacity is, in the great majority of cases, a direct function of class position, exactly as Galanter's distinction between repeat players and one-shotters predicts and as Shah Bano's seven year pursuit of maintenance against a lawyer husband illustrates. Corruption operates as a regressive tax whose burden falls heaviest on those with the least capacity to pay it, and whose most consequential form, the informal refusal to register a complaint at all, disproportionately affects exactly the population the *Lalita Kumari* and Mathura cases illustrate. Legal aid, chronically underfunded and structured as residual welfare rather than as the constitutional entitlement Article 39A declares it to be, fails to compensate meaningfully for either problem, and its declining outreach capacity falls hardest on precisely the women whose access to courts, per Fraser's account of social reproduction, was already most constrained to begin with.

Where gender and caste intersect with class, as the case level evidence on violence against Dalit and Adivasi women demonstrates across five decades from Mathura in 1972 to Bilkis Bano in 2024, these barriers compound rather than simply add together, in precisely the way Chakravarti's and Guru's accounts of the structural entanglement between caste and gender would predict. And even where those barriers are overcome, the victory is fragile. Shah Bano's judgment was disowned and legislatively reversed; Bhanwari Devi's ordeal produced a national reform while her own case and her own village remained unchanged;

⁶¹ *India Justice Report 2025*.

⁶² Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, as amended by the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

the men convicted of crimes against Bilkis Bano were garlanded on their release. Each of these is an instance of what Ambedkar, on the eve of the Republic, called a life of contradictions: equality secured in the political sphere of formal rights, and denied in the social sphere where the grievance is actually lived. A reform agenda genuinely adequate to this diagnosis needs to move beyond the procedural horizon of more judges and faster case management, important as those measures remain, toward a redistributive one: toward structural change in the economic dependency, the gendered division of unpaid labour, and the caste based social power that jointly determine, in practice rather than merely on paper, who is able to use the formal promise of equal justice before the law, and what that promise is worth once a judgment has been won. Ambedkar's own prescription was direct: "We must make our political democracy a social democracy as well."⁶³ Until that redistributive agenda is taken seriously alongside the procedural one, the gap between India's constitutional promise of equal access to justice and its practical delivery is likely to remain what this paper has argued it already is: not an unfortunate accident, but a structural feature of how Indian law, under current conditions, actually works.

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