

Anarcho-Communism and Constitutionalism in Combatting Gender-Based Violence: A Comparative Analysis

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ABSTRACT

This thesis explores integrating anarcho-communist principles into constitutional systems to address gender-based violence (GBV) and challenge patriarchal structures. It compares illiberal democracies, particularly Hungary and India, with anarcho-communist societies like Rojava and the Zapatistas. The study focuses on decentralisation, direct democracy, and communal responsibility as methods for providing more inclusive, effective responses to GBV. It argues these frameworks not only protect women but also promote broader societal transformation by shifting from individual legal protections to collective empowerment and dismantling systemic gender inequality.

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LIST OF ABBREVIATIONS

AANES – Autonomous Administration of North and East Syria

BJP – Bharatiya Janata Party

BNS – Bharatiya Nyaya Sanhita

CEDAW – Convention on the Elimination of All Forms of Discrimination against Women

CF – Carceral Feminism

CrPC – Criminal Procedure Code

ECtHR – European Court of Human Rights

GBV – Gender-Based Violence

IPC – Indian Penal Code

IPV – Intimate Partner Violence

LGBTQ+ – Lesbian, Gay, Bisexual, Transgender, Queer/Questioning and others

NPSV – Non-Partner Sexual Violence

OUP – Oxford University Press

SCC – Supreme Court Cases (India)

SPO – Sovereignty Protection Office

UN – United Nations

UNTS – United Nations Treaty Series

WHO – World Health Organization

ZLN/EZLN – Ejército Zapatista de Liberación Nacional (Zapatista Army of National Liberation)

INTRODUCTION

We are witnessing a troubling global trend: the erosion of democracy. Once heralded as liberal, democracies are now sliding into illiberal — even abusive — regimes, where gender-based violence (GBV) policies are weaponised as tools of control. As democratic institutions weaken, rights and protections for women, particularly concerning GBV, are gradually dismantled. GBV emerges not only as a direct result of patriarchal norms but as a symptom of broader political decay, where the legal system ceases to safeguard against violence and instead becomes complicit in it. The decline of values such as equality, justice, and fairness facilitates the normalisation of violence against marginalised groups, especially women, by enabling discriminatory policies to flourish.¹

GBV remains one of the most widespread human rights violations globally, affecting one in three women.² Yet, mainstream legal systems frequently treat GBV as isolated incidents rather than as manifestations of systemic oppression.³ This thesis contends that existing legal frameworks — particularly in states undergoing democratic backsliding — are ill-equipped to address the structural roots of GBV. It advances an alternative approach: integrating anarcho-communist principles into constitutional orders to decentralise power, promote collective justice, and prioritise survivor-led responses.⁴

This thesis examines whether it is possible to reverse these trends and develop a jurisprudence grounded in equity, community, and gender inclusivity. The central research question asks **how**

¹ Nancy Fraser, *Fortunes of Feminism: From State-Managed Capitalism to Neoliberal Crisis* (Verso 2013) 2.

² UN Women, 'Facts and figures: Ending violence against women' (25 November 2024) <https://www.unwomen.org/en/articles/facts-and-figures/facts-and-figures-ending-violence-against-women>

³ Robin West, 'Jurisprudence and Gender' (1988) 55(1) University of Chicago Law Review 1.

⁴ Raewyn Connell, *Gender and Power: Society, the Person, and Sexual Politics* (Stanford University Press 1987) 175.

illiberal democracies can integrate anarcho-communist principles – such as decentralisation, direct democracy, and communal responsibility – into their constitutional frameworks to effectively combat GBV and dismantle patriarchal structures. The methodology employs a comparative case study approach, analysing constitutional frameworks, GBV policies, and feminist jurisprudence in both illiberal democracies and anarcho-communist societies. Drawing on feminist legal theory and comparative constitutional analysis, the study examines how the community-based justice models in Rojava and Zapatista territories contrast with the punitive, often ineffective, responses found in India and Hungary.⁵ While the latter maintain formal guarantees of equality, they fall short in implementation, frequently reinforcing gender hierarchies through bureaucratic inertia or political instrumentalisation. In contrast, anarcho-communist movements emphasise restorative practices, participatory governance, and the transformation of social norms — strategies this thesis proposes can be adapted, not transplanted, into constitutional democracies.⁶

Literature Review

GBV is widely recognised as a human rights violation under international law (e.g. CEDAW) and a systemic inequality that intersects with other forms of oppression.⁷ Yet despite its severity, legal and scholarly responses remain inadequate. Postcolonial legal systems—often inherited from colonial regimes—reproduce Eurocentric norms that marginalise indigenous and egalitarian justice traditions.⁸ India’s continued use of the colonial Indian Penal Code of

⁵ David Graeber, *The Democracy Project: A History, a Crisis, a Movement* (Spiegel & Grau 2013) 110.

⁶ Catharine A MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Harvard University Press 1987) 72.

⁷ Walter D Mignolo, *The Darker Side of Western Modernity: Global Futures, Decolonial Options* (Duke University Press 2011).

⁸ *ibid.*

1860 exemplifies this legacy, particularly in how it fails to protect marginalised groups from GBV.⁹

Although India's 2023 Bharatiya Nyaya Sanhita (BNS) replaced the IPC, major concerns remain. The BNS retains the marital rape exception and neglects intersectional protections, leaving queer, trans, and caste-oppressed individuals vulnerable.^{[10][11]}

These frameworks often prioritise punitive, carceral justice, excluding survivor-centred or transformative responses. Feminist legal theorists have long critiqued carceral approaches for reinforcing patriarchal state power without addressing the root causes of violence.^{[12][13]} The

Hungary, despite its EU membership and liberal legal heritage, has steadily drifted into authoritarian governance.¹⁴ This illustrates a key paradox: even so-called modern democracies can regress into abusive systems that roll back gender rights and judicial safeguards. Hungary's refusal to ratify the Istanbul Convention and increasing legal restrictions on LGBTQ+

⁹ Tamil Nadu Dr. Ambedkar Law University, *Law of Crimes-I (Indian Penal Code)* [https://tndalu.ac.in/econtent/33_Law_of_Crimes-I\(Indian_Penal_Code\).pdf](https://tndalu.ac.in/econtent/33_Law_of_Crimes-I(Indian_Penal_Code).pdf) accessed 28 April 2025.

¹⁰ Press Information Bureau, *Bharatiya Nyaya Sanhita in Place of Indian Penal Code* (26 March 2025) <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2115169> accessed 28 April 2025.

¹¹ Kashish Komal, 'Institutional Imagination of Sexual Violence in India: Is the Bhartiya Nyaya Sanhita (BNS) an Adequate Response?' (Feminism in India, 1 July 2024) <https://feminisminindia.com/2024/07/01/institutional-imagination-of-sexual-violence-in-india-is-the-bhartiya-nyaya-sanhita-bns-an-adequate-response/> accessed 28 April 2025.

¹² Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (2nd edn, Routledge 2000).

¹³ Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (University of Chicago Press 2006).

¹⁴ Tímea Drinóczi and Ágoston Mohay, 'Illiberal Constitutionalism: The Case of Hungary' (2022) 20(4) *International Journal of Constitutional Law* 1034.

communities exemplify this trend.^{[15][16]} These reforms have undermined protections for domestic violence survivors and reasserted state control over women's bodies.¹⁷

Critics describe this dynamic as **carceral feminism (CF)**: a paradigm that centres criminal punishment as the response to GBV, yet often reproduces state violence and systemic inequality.¹⁸ While intended to protect, CF may retraumatise marginalised survivors who distrust legal systems.¹⁹ Legal processes can perpetuate harm, especially for racialised or poor women who face institutionalised bias.²⁰

In contrast, non-Western and indigenous frameworks offer approaches that decentre carceral logic and reframe justice as relational and transformative. The Zapatista²¹ and Rojava²² models exemplify this through community-based justice grounded in collective responsibility, rehabilitation, and survivor empowerment. In Rojava, Mala Jin courts – run entirely by women – prioritise survivor dignity and community healing while still holding perpetrators accountable.²³ Some feminist scholars caution that restorative models may appear too lenient, but others argue they address what carceral systems overlook: lived experiences, emotional repair, and social transformation.²⁴ These community-led systems represent a shift from punitive responses toward holistic, survivor-centred justice. Addressing GBV requires not only

¹⁵ Hungary, 'Parliament Passes Constitutional Amendment Banning Public LGBTQ+ Events and Enabling Surveillance' (euronews.com, 14 April 2025) <https://www.euronews.com/2025/04/14/hungarys-parliament-passes-constitutional-amendment-banning-public-lgbtq-events> accessed 15 June 2025.

¹⁶ Tímea Drinóczi and Lídia Balogh, 'The (Non)-Ratification of the Istanbul Convention: Specialities of the Related Political Discourse in Hungary' (IACL-AIDC Blog, 9 February 2021) <https://blog-iacl-aidc.org/2021-posts/2021/2/9/the-non-ratification-of-the-istanbul-convention-specialities-of-the-related-political-discourse-in-hungary-pnj8h> accessed 4 June 2025.

¹⁷ Tímea Drinóczi and Gábor Mészáros, 'Hungary: An Abusive Neo-Militant Democracy' in Roman Bäcker and Joanna Rak (eds), *Neo-militant Democracies in Post-communist Member States of the European Union* (Routledge 2022) 98–114.

¹⁸ Aya Gruber, 'The Feminist War on Crime: The Unexpected Role of Women's Liberation in Mass Incarceration' (University of California Press 2020).

¹⁹ Elizabeth Bernstein, 'Militarized Humanitarianism Meets Carceral Feminism' (2010) 36(1) *Signs* 45.

²⁰ *ibid.*

²¹ R. Stahler-Sholk, 'The Zapatista Social Movement: Innovation and Sustainability' (2010) 35(3) *Alternatives: Global, Local, Political* 269.

²² Dilar Dirik, 'The Kurdish Women's Movement: History, Theory, Practice' (Pluto Press 2022).

²³ *ibid.*

²⁴ Elizabeth M Schneider, *Battered Women and Feminist Lawmaking* (Yale University Press 2000).

holding individuals accountable, but transforming the social conditions and power relations that sustain violence.

This literature review explores how alternative justice models can inform GBV legal reform in illiberal democracies and postcolonial states, with a focus on India, Hungary, feminist jurisprudence, and community-based systems.

1. CONSTITUTIONAL EROSION IN HUNGARY - THE TURN TOWARDS ABUSIVE CONSTITUTIONALISM

This section examines how the erosion of constitutional principles in Hungary perpetuates GBV, focusing on how recent legal reforms undermine protections for women in an illiberal regime. Since Prime Minister Viktor Orbán's Fidesz party secured a two-thirds parliamentary majority in 2010, Hungary has undergone substantive constitutional backsliding, dismantling democratic institutions through formal legal mechanisms.²⁵ This shift is often labelled **abusive constitutionalism**, where authoritarianism is entrenched under the guise of legality.²⁶ Hungary's 2011 Fundamental Law (which replaced the 1949 Constitution) significantly reduced judicial independence, curtailed media pluralism, and centralised power under government influence – eroding checks and balances.²⁷

The erosion of constitutional principles not only undermines democratic values but also weakens legal protections for women, normalising GBV and contributing to institutional failures to address violence. While some government supporters claim these changes correct an overly liberal past by reasserting Christian values and national sovereignty, such views

²⁵ *ibid*; see also Gábor Halmai, 'Abuse of Constitutionalism in Hungary' (2019) 4 *European Constitutional Law Review* 1.

²⁶ David Landau, 'Abusive Constitutionalism' (2013) 47 *UC Davis Law Review* 189.

²⁷ Fundamental Law of Hungary (25 April 2011); see also Kriszta Kovács and Kim Lane Scheppele, 'The Fragility of an Independent Judiciary' (2018) 43(4) *Review of Central and East European Law* 359.

overlook the negative impact on women's rights and LGBTQ+ communities. The reforms may reinforce a particular national identity, but disproportionately harm marginalised groups (such as Roma women) who face compounded discrimination based on both gender and ethnicity.²⁸ The loss of judicial independence and a controlled media further limit accountability, entrenching a **racialised, patriarchal legal system** that often excludes Roma women from justice.²⁹

Shifts toward “traditional family values” have been used to justify excluding or suppressing certain rights. This transformation is especially harmful to marginalised communities, as it reasserts heteronormative and patriarchal structures that deny gender equality and sexual autonomy. The European Venice Commission has raised serious concerns that rolling back reproductive rights and indulging anti-feminist constitutional rhetoric risk exacerbating gender inequality and weakening legal protections against GBV.³⁰

More recently, Act LXXXVIII of 2023 (the **Protection of National Sovereignty Act**) established a new **Sovereignty Protection Office (SPO)**, ostensibly to defend Hungary's “constitutional identity” and “Christian culture.”³¹ Scholars and human rights observers view this as a thinly veiled mechanism to silence dissent and advance nationalist-conservative ideologies. In line with such ideological shifts, Hungary formally **refused to ratify** the Council of Europe's Istanbul Convention on preventing and combating violence against women, claiming it promotes “destructive gender ideologies.”³² In line with these ideological shifts, Hungary has refused to ratify the Council of Europe's Istanbul Convention on Preventing and

²⁸ Roma Education Fund, ‘Roma Women in Hungary: A Case Study’ (2019) <https://www.romaeducationfund.org> accessed 20 June 2025.

²⁹ Tamás Pál, András Jakab, ‘Illiberal Constitutionalism: Hungary and Poland’ (2017) 8 *The Oxford Journal of Law and Politics* 189-190.

³⁰ *ibid*, and see Venice Commission, ‘Hungary: Opinion on Act LXXXVIII of 2023 on the Protection of National Sovereignty’ CDL-AD (2024)006.

³¹ *ibid*.

³² Pál (n 29).

Combating Violence Against Women and Domestic Violence, citing its promotion of “destructive gender ideologies”.³³ Despite Hungary having signed the Convention in 2014, this rejection underscores how legal language is being weaponised to oppose international human rights standards protecting women.

Under the broad umbrella of GBV, intimate partner violence (IPV) and sexual violence are the most pervasive forms of abuse in Hungary.³⁴ Hungary has among the lowest reporting rates for sexual violence in Europe, symptomatic of widespread distrust in legal institutions and enduring patriarchal norms.³⁵ A link between alcohol abuse and IPV has been noted, underscoring how systemic issues in law enforcement and the judiciary contribute to normalising such violence.³⁶

A significant factor perpetuating IPV is the sharp division between private and public spheres: domestic violence is often treated as a “family matter” and kept out of public view, discouraging legal intervention.³⁷ This is particularly problematic given the government’s heavy emphasis on the sanctity of the family, which reinforces a legal-cultural environment where state protection of survivors is deprioritised in favor of preserving “family unity” at all costs. Women’s safety is thus often subordinated to patriarchal family ideals.

It was not until 2013 that Hungary specifically criminalised domestic violence (through Section 212/A of the Criminal Code).³⁸ While hailed as a breakthrough, this provision has been severely criticised by human rights bodies for its limitations. Section 212/A requires the violent act to be **repeated** for legal action to be taken, denying survivors immediate access to justice

³³ Drinóczy (n 16) p 4.

³⁴ European Institute for Gender Equality, ‘Gender-based Violence in Hungary’ (2022).

³⁵ *ibid.*

³⁶ *ibid.*

³⁷ Susan B. Boyd, ‘Is There an Ideology of Familialism?’ (1999) 6(3) *Canadian Journal of Family Law* 329.

³⁸ Criminal Code of Hungary, Act C of 2012, s 212/A.

and protection in one-off incidents.³⁹ Hungary's Fundamental Law does include Article XV(3) ostensibly guaranteeing equality between men and women, and Article XV(5) mandating special protection for families, children, and women.⁴⁰

However, these provisions have been criticised (e.g. by the Venice Commission) for failing to protect individuals on grounds of sexual orientation or gender identity, reflecting how constitutional rhetoric can mask exclusion.⁴¹ The law's emphasis on "family protection" has, in effect, been used to justify policy rollbacks on gender equality – all under the guise of safeguarding national values.

The shortcomings of Hungary's legal framework in combating GBV were starkly highlighted in the landmark case **A.T. v. Hungary** (CEDAW Committee, 2005).⁴² In that case, the Committee on the Elimination of Discrimination against Women found Hungary in violation of its obligations under CEDAW – specifically Articles 2(a), 2(b), and 2(e) – for failing to provide adequate protection to a survivor of domestic violence.⁴³ The Committee concluded that Hungary's legal system lacked effective preventive and protective mechanisms, and urged the state to strengthen its legal response to GBV through better enforcement and comprehensive victim support.⁴⁴ This case exemplifies how, despite formal commitments to gender equality, Hungary's legal system continues to perpetuate systemic failures in protecting women from violence.

³⁹ Ibid.

⁴⁰ Fundamental Law of Hungary, Article XV (3) and (5).

⁴¹ Venice Commission (n 30) p 5.

⁴² A.T. v. Hungary, Communication No. 2/2003, UN Doc. CEDAW/C/36/D/2/2003 (2005).

⁴³ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

⁴⁴ *ibid* para 9.3.

2. INDIA'S CHALLENGES WITH IMPLEMENTING CONSTITUTIONAL PROTECTIONS AGAINST GBV - THE TURN TOWARDS ILLIBERAL CONSTITUTIONALISM

India – once lauded as the world's largest democracy – has in recent years experienced significant democratic backsliding under Prime Minister Narendra Modi's leadership.⁴⁵ Observers note that Modi has reshaped India's institutional framework by fusing Hindu nationalism with state governance, contributing to what one scholar terms an "ethnic democracy."⁴⁶ Power has increasingly centralised in the executive branch under Modi's Bharatiya Janata Party (BJP), eroding federalism and undermining institutional checks and balances.⁴⁷ This consolidation has affected governance and the protection of fundamental rights, including those related to GBV.

I On paper, India's constitutional framework provides a robust foundation for gender justice. Article 15(3) of the Constitution permits the state to make special provisions for women and children,⁴⁸ while Article 21 guarantees the right to life and personal liberty.⁴⁹ In the wake of the notorious 2012 **Nirbhaya** gang rape,⁵⁰ the Criminal Law (Amendment) Act 2013 significantly expanded legal definitions and punishments for sexual violence, introducing new offences (Sections 354A–D) and strengthening rape laws (Sections 375 and 376 IPC).⁵¹ The **Protection of Women from Domestic Violence Act 2005** also aims to offer civil remedies to survivors within the home.⁵²

⁴⁵ Yogendra Yadav and Sanjay Kumar, *Indian Democracy at the Crossroads* (Oxford University Press 2016).

⁴⁶ Christophe Jaffrelot, *Modi's India: Hindu Nationalism and the Rise of Ethnic Democracy* (Princeton University Press 2021) 153–156.

⁴⁷ *ibid.*

⁴⁸ Constitution of India 1950, art 15(3).

⁴⁹ *ibid* art 21.

⁵⁰ Nirbhaya gang rape case (State v Ram Singh and others) 2013.

⁵¹ Criminal Law (Amendment) Act 2013 (India).

⁵² Protection of Women from Domestic Violence Act 2005 (India).

However, the efficacy of these laws is undermined by poor enforcement, judicial delays, and pervasive social stigma. A disturbing trend is the continued election of political candidates accused of sexual violence, reflecting deep institutional tolerance of misogyny.⁵³ Political rhetoric that frames GBV as a “family issue” or blames victims perpetuates official indifference and discourages effective legal responses. Caste-based and communal discrimination further compound women’s vulnerability: for example, women from Scheduled Castes and Scheduled Tribes are particularly at risk, facing institutional discrimination that often prevents them from seeking justice.⁵⁴ These intersectional failures, seen in cases such as the Hathras rape and murder in 2020,⁵⁵ the Pararia mass rape (1988),⁵⁶ and the Khairlanji killings (2006),⁵⁷ illustrate how political influence and caste bias can undermine legal responses and obstruct justice. These and similar incidents demonstrate that powerful perpetrators often escape accountability, especially when victims are from oppressed castes, and that local authorities may collude in suppressing such cases.

India has a layered legal regime addressing GBV – including laws against dowry, acid attacks, and “honour” killings – but persistent **victim-blaming and entrenched gender hierarchies** severely weaken institutional protections.⁵⁸ Indian women remain exposed to widespread forms of violence including female infanticide, sex-selective abortion, sex trafficking, and child marriage.⁵⁹ The gap between *de jure* constitutional guarantees and *de facto* enforcement reflects a broader trend toward illiberal constitutionalism, where formal legal equality exists but is hollowed out in practice. Intersectional factors of gender, caste, and class mean that

⁵³ Association for Democratic Reforms, *Analysis of MPs/MLAs with Declared Cases Related to Crimes against Women* (2023).

⁵⁴ None in Three Project, ‘India Country Report’ (2022).

⁵⁵ India Today, ‘Hathras Rape Case Timeline: What Happened When’ (India Today, 3 October 2020) <https://www.indiatoday.in> accessed 4 May 2025.

⁵⁶ Asia Watch, *Broken People: Caste Violence against India’s Untouchables* (Human Rights Watch 1999).

⁵⁷ *State v. Bhagana and others* (Khairlanji killings) 2006, Bombay High Court.

⁵⁸ National Commission for Women, ‘Annual Report 2023’ (NCW 2024).

⁵⁹ Observer Research Foundation, ‘Gender Justice in India: Challenges and Opportunities’ (ORF 2024).

women from marginalized communities (such as Dalit women) experience compounded barriers to justice.

Notably, the judiciary has at times adopted progressive stances. In **Vishaka v. State of Rajasthan** (1997), the Supreme Court set out guidelines to prevent sexual harassment at the workplace – a groundbreaking step at the time.⁶⁰ Yet in practice, these guidelines have often remained unenforced on the ground.⁶¹ In **Joseph Shine v. Union of India** (2018), the Supreme Court decriminalised adultery, a significant victory for gender equality and women's rights in India.⁶² The Court recognized that women should not be treated as passive property in marital relationships, affirming that both men and women are equally accountable in matters of adultery.⁶³ However, inconsistencies in local-level implementation of this ruling remain problematic, revealing cultural and institutional resistance. Despite a comprehensive legal framework on paper, the persistence of patriarchal attitudes – from police stations to courtrooms – means that justice is often elusive for survivors.

In sum, India's experience shows that even a layered legal regime and constitutional promises can be undermined by social realities. Victim-blaming narratives, caste and gender hierarchies, and selective enforcement significantly weaken the protection that the law purports to offer. Indian women, especially those from disadvantaged communities, continue to face widespread violence and formidable barriers to justice. The gap between law and practice in India exemplifies how **illiberal constitutionalism** can mask itself behind formal rights: even as the constitution proclaims gender equality, the state's failure to fulfill its duties allows GBV to persist unchecked.

⁶⁰ *Vishaka v. State of Rajasthan* AIR 1997 SC 3011.

⁶¹ *ibid.*

⁶² *Joseph Shine v. Union of India* (2018) 2 SCC 189.

⁶³ *ibid.*

3. ROJAVA AND ZAPATISTA FRAMEWORKS - POTENTIAL SOLUTIONS TO MITIGATE GBV ALTOGETHER?

Rojava (Syrian Kurdistan)⁶⁴ and the Zapatista communities⁶⁵ (Chiapas, Mexico) offer innovative decentralised governance models rooted in democratic confederalism and indigenous revolutionary movements. Both are consciously designed to include all sectors of society, with particular emphasis on gender equality and the active participation of marginalised groups, especially women.⁶⁶ These alternative models are deeply influenced by the writings of Abdullah Öcalan (in Rojava's case) and the Zapatistas' indigenous and socialist ideals, advocating community-led justice and self-governance as key mechanisms for addressing social issues, including GBV.⁶⁷

In Rojava, gender equality is **institutionalised at multiple levels** of governance. All-female security forces (such as the Women's Asayish police), autonomous women's councils, and women's courts are integral to addressing GBV and ensuring justice outside patriarchal state structures.⁶⁸ Across the Autonomous Administration of North and East Syria (AANES), a growing women-led restorative justice initiative has taken shape. This includes over 60 **Mala Jin** (women's houses) – community-based centers for mediation and conflict resolution.⁶⁹ These centers allow survivors of GBV to seek justice and resolve disputes through non-punitive means, in stark contrast to traditional legal systems that often fail to protect vulnerable women.⁷⁰ By offering educational programs, rehabilitation, and **restorative justice** processes,

⁶⁴ Harriet Allsopp and Wladimir van Wilgenburg, *The Kurds of Northern Syria: Governance, Diversity and Conflicts* (I.B. Tauris 2019).

⁶⁵ Mariana Mora, *Kuxlejal Politics: Indigenous Autonomy, Race and Decolonizing Research in Zapatista Communities* (University of Texas Press 2017).

⁶⁶ *ibid.*

⁶⁷ Dirik (n 22) p 8.

⁶⁸ *ibid.*

⁶⁹ *ibid.*

⁷⁰ *ibid.*

Rojava's model aims not only to address immediate cases of violence but also to reintegrate offenders into society while prioritising communal harmony and gender equality.⁷¹

Rojava's criminal justice system incorporates restorative principles focusing on repairing harm rather than on punishment.⁷² This approach is culturally sensitive and responsive to community needs, ensuring solutions are locally appropriate and conducive to long-term social change. The Mala Jin centers exemplify how decentralised, gender-inclusive justice can challenge patriarchal norms – offering an alternative to state-driven punitive measures that often overlook the broader social context in which GBV occurs.⁷³

Similarly, the **Zapatista** movement in Mexico prioritises restorative justice to combat GBV and empower women within its autonomous territories. The **Women's Revolutionary Law** (1994), enacted by Zapatista communities, enshrines women's rights to political participation, land ownership, and protection from violence (including GBV).⁷⁴ This law was revolutionary in recognizing the agency of indigenous women who had long been subordinated under both patriarchal and colonial structures. In practice, Zapatista communities operate through autonomous decision-making assemblies where GBV cases are addressed collectively, ensuring solutions align with community values and priorities.⁷⁵ Women participate at all levels of governance. The Zapatistas have also implemented economic programs aimed at reducing women's financial dependency on men, thereby decreasing the likelihood that women remain in abusive relationships due to economic necessity.⁷⁶

⁷¹ *ibid.*

⁷² Dirik (n 22) p 8.

⁷³ *ibid.*

⁷⁴ Mora (n 65) p 8.

⁷⁵ *ibid.*

⁷⁶ *ibid.*

In both Rojava and Zapatista territories, community assemblies and participatory decision-making processes are critical for resolving GBV. These assemblies operate on principles of equality, collective responsibility, and restorative justice – aiming to heal rather than punish.⁷⁷ Significant emphasis is placed on **preventing violence before it occurs** by addressing root causes such as gender inequality, economic dependency, and social exclusion. Women’s empowerment and community education are as important as adjudicating individual cases. In essence, these frameworks seek to transform societal norms alongside providing justice, embodying a form of **transformative justice** that reshapes power relations.⁷⁸

4. RESTORATIVE JUSTICE WITHIN THE FORMAL SYSTEM

A fundamental distinction between the decentralised justice systems of Rojava/Zapatista and formal state-led systems lies in their approach to justice. Decentralised systems rely on community-led, restorative mechanisms, whereas formal systems typically depend on state-controlled, punitive models. Nevertheless, **traces of restorative practices** can be found in formal legal frameworks of some states (including Hungary and India), although their application to GBV remains limited and contested.

In Hungary, a state-led **criminal mediation** framework was introduced in 2007, allowing certain offences to be resolved through mediated agreements between victim and offender under Ministry of Justice oversight.⁷⁹ This system aims to promote reconciliation and prevent recidivism. In theory, restorative justice in this context creates opportunities for dialogue between victims and offenders – fostering accountability while addressing emotional and psychological consequences of violence.⁸⁰ When applied appropriately, such mediation can

⁷⁷ Dirik (n 22) p 9.

⁷⁸ *ibid.*

⁷⁹ *ibid.*

⁸⁰ Hungarian Helsinki Committee, *Restorative Justice in Hungarian Prisons* (2023).

give victims a chance to be heard and offenders to take responsibility for their actions, potentially promoting long-term healing and transformation.⁸¹ This aligns with the idea of transformative justice in feminist theory, which seeks not only to remedy the immediate harm but also to address the structural inequalities that perpetuate violence. However, Hungary's mediation scheme is generally limited to minor offences and is **widely considered inappropriate for GBV cases** due to the entrenched power imbalances, the potential trivialisation of serious violence, and the risk of turning public wrongs into private settlements.⁸²

Without robust safeguards, mediation in domestic violence cases can expose survivors to further harm or coercion, and it often lacks a survivor-centric perspective. The absence of consistently survivor-focused models in Hungary's formal system further limits the effectiveness of such programs.⁸³

India, on the other hand, possesses a long history of community-based dispute resolution, such as Khap Panchayats,⁸⁴ traditional councils comprising elder male members of the village. While they operate outside formal legal frameworks, their role in adjudicating issues like family disputes, property conflicts, and even GBV cases has been considerable.⁸⁵ However, this form of justice is often patriarchal and exclusionary. The Supreme Court of India in *Shakti Vahini v Union of India* (2018) declared Khap Panchayats illegal, especially in cases involving so-called 'honour crimes'.⁸⁶ Despite this, their influence persists, particularly in rural areas where state intervention is weak.

⁸¹ Martha Minow, *Making All the Difference: Inclusion, Exclusion, and American Law* (Cornell University Press 1990) 149-150.

⁸² *ibid.*

⁸³ Vidya Negrea, Community Service Foundation Hungary (2010).

⁸⁴ Supreme Court of India, *Shakti Vahini v. Union of India* (2018) 7 SCC 192.

⁸⁵ *ibid.*

⁸⁶ *ibid.*

In more progressive developments, grassroots feminist movements in India, such as Blank Noise,⁸⁷ Gulabi Gang,⁸⁸ Parity Lab,⁸⁹ and Safecity,⁹⁰ have emerged to fill gaps in state protection. These organisations combat domestic violence, challenge public harassment, provide legal aid, and crowdsource personal testimonies of GBV. The Indian government has also launched initiatives, including one under Union Minister Shivraj Singh Chouhan, aimed at creating safe spaces where survivors can report abuse and access legal services.⁹¹

However, the integration of restorative justice into formal state-led systems has been fraught with challenges. Hungary's criminal mediation system may be useful for minor offences, but is inappropriate for GBV due to entrenched power imbalances, potential trivialisation of violence, and the risk of turning public wrongs into private settlements.⁹² The absence of survivor-centered models further limits the effectiveness of such programs.⁹³

In India, while community-based justice can empower survivors, it often fails in execution due to weak state support and patriarchal leadership.⁹⁴ In Khap Panchayats, for instance, women are seldom included in decision-making. Settlements may involve forced reconciliation, fines, or even punishments that violate the survivor's rights.⁹⁵ These forums often exclude Dalit and lower-caste women, exacerbating vulnerabilities to GBV.⁹⁶ Moreover, the politicisation of GBV under Hindutva ideology has led to selective prosecution and state inaction in cases involving Hindu nationalist perpetrators.⁹⁷

⁸⁷ Blank Noise Project, 'Community Reports' (2024).

⁸⁸ Gulabi Gang, 'Empowering Women in Rural India' (2024).

⁸⁹ Parity Lab, 'Annual Report 2023' (2024).

⁹⁰ Safecity, 'Data Against Harassment' (2024).

⁹¹ Ministry of Women and Child Development, 'Safe Spaces Initiative' (2024).

⁹² Hungarian Helsinki Committee (n 80) p 10.

⁹³ *ibid.*

⁹⁴ National Commission for Women (n 58).

⁹⁵ *ibid.*

⁹⁶ *ibid.*

⁹⁷ ORF (n 59).

By contrast, **Rojava and Zapatista** treat restorative justice not as a peripheral option but as the foundation of their legal systems. Both have explicitly rejected state frameworks, instead relying on women-led courts and local councils that centre survivor autonomy, rehabilitation, and collective accountability. In Rojava, women's courts and the Mala Jin houses provide decentralised, culturally embedded responses to GBV – accompanied by legal reforms banning child marriage, polygamy, and forced marriage.⁹⁸ Similarly, the Zapatistas' Women's Revolutionary Law protects women's political and bodily autonomy, with justice administered through participatory village assemblies.⁹⁹

Female-dominated judicial spaces in these regions offer a more effective survivor-centered alternative to both state courts and traditional restorative forums: by **removing male gatekeepers**, they center justice on empowerment rather than on patriarchal reconciliation.¹⁰⁰ However, these decentralised models face practical limitations. Due to a lack of formal documentation and legal recognition, it is difficult to measure the success and replicability of Rojava's and Zapatistas' systems.¹⁰¹ The absence of state enforcement mechanisms in autonomous zones also limits their scalability and long-term enforcement. In other words, while these community-driven approaches achieve impressive results in their context, translating them into state systems presents challenges of consistency and durability.¹⁰²

The intersection of GBV and justice mechanisms thus highlights systemic limitations across all models. Illiberal state systems like Hungary and India struggle with patriarchal barriers, weak enforcement, and constitutional erosion; conversely, Rojava and Zapatista offer promising feminist, community-led models that prioritise healing, empowerment, and even

⁹⁸ Dirik (n 22).

⁹⁹ Mora (n 65).

¹⁰⁰ Dirik (n 22).

¹⁰¹ *ibid.*

¹⁰² *ibid.*

economic autonomy for women, but these decentralised frameworks face challenges of legal formalism and scale.¹⁰³ A **hybrid approach**, combining restorative justice principles with formal legal accountability, may offer the most effective route forward. By adapting the decentralised, survivor-focused methods of Rojava and Zapatista within formal state systems, states could reframe justice not as purely punitive but as **transformative** – centred on dignity, rehabilitation, and structural change.¹⁰⁴

In conclusion, both decentralised systems like Rojava/Zapatista and state-led restorative practices in Hungary/India offer valuable insights for addressing GBV. Decentralised models prioritise survivor autonomy and community healing but face enforcement and scalability issues, while state systems incorporate some restorative elements yet often fail to tackle structural inequalities due to patriarchal constraints. These observations set the stage for the next part of the thesis, which proposes ways to integrate anarcho-communist feminist principles into the constitutional frameworks of illiberal democracies.

METHODOLOGY

This study employs a comparative legal framework that integrates formal and informal justice models. While conventional constitutionalism privileges state-led legal mechanisms argues for the recognition of non-Western, community-driven legal epistemologies.^{[105][106]} Using this framework, the study assesses how anarcho-communist justice structures offer viable alternatives to punitive, patriarchal legal traditions.

1. Research Design

¹⁰³ Mora (n 65).

¹⁰⁴ *ibid.*

¹⁰⁵ Hirschl, Ran. *Comparative Matters: The Renaissance of Comparative Constitutional Law*. Oxford University Press, 2014.

¹⁰⁶ de Sousa Santos, Boaventura. *Epistemologies of the South: Justice Against Epistemicide*. Routledge, 2016.

This research follows a qualitative, interdisciplinary approach, drawing from constitutional law, feminist legal theory, and restorative justice studies to analyze how various legal systems handle GBV. The study also integrates critical legal studies and decolonial feminist perspectives to assess the limitations of state-centered justice and the potential of decentralized, community-led alternatives.

2. Data Sources

The research relies on primary and secondary sources, including:

- Legal Texts: National constitutions, legislative acts (e.g., Hungary’s Fundamental Law, India’s Criminal Law Amendment Act 2013).
- Case Law: Landmark decisions on GBV, such as *A.T. v. Hungary* (CEDAW, 2005), *Vishaka v. State of Rajasthan* (India, 1997)
- International Legal Frameworks: Instruments like the Istanbul Convention, CEDAW, and the African Charter on Human and Peoples’ Rights.
- Scholarly Articles & Reports: Peer-reviewed works on GBV, restorative justice, and constitutional erosion, as well as reports from the Venice Commission, Human Rights Watch, and UN Women.
- Field Studies on Rojava & Zapatista: Literature on autonomous justice systems, community-based justice, and feminist self-governance in these regions.

3. Comparative Analysis Framework

This study selects Hungary and India as cases of constitutional erosion where GBV protections are being systematically weakened through illiberal governance.^{[107][108]} Rojava and Zapatista

¹⁰⁷ Scheppelle, Kim Lane. *Hungary and the End of Democracy*. *New York University Journal of International Law and Politics*, vol. 46, no. 3, 2013, pp. 601-650.

¹⁰⁸ Jaffrelot (n 46).

communities were chosen for their alternative, decentralized justice models that prioritize survivor-led, community-based solutions.^{[109][110]}

The analysis focuses on:

1. Legal Protections Against GBV (e.g., formal laws, constitutional guarantees).
2. Implementation & Effectiveness (e.g., enforcement gaps, political interference, judicial interpretation).
3. Restorative vs. Punitive Approaches (e.g., survivor-centred mechanisms, state-led prosecution).
4. Structural Challenges & Gender Biases (e.g., patriarchy, religious or caste-based restrictions).

4. Limitations of the Study

- Data Availability: Limited documentation on Rojava and Zapatista justice systems, as they operate outside formal state structures.
- Legal & Cultural Differences: The variability in legal traditions and enforcement makes direct comparisons complex.
- Lack of Empirical Studies: Much of the available research on community-led justice is qualitative rather than statistical, making quantitative assessment difficult.

Given the limited statistical data on anarcho-communist justice systems, this study incorporates feminist ethnographic research and decolonial feminist critiques to analyse survivor narratives

¹⁰⁹ Dilar (n 22).

¹¹⁰ Knapp, Michael, Flach, Anja, & Ayboga, Ercan. *Revolution in Rojava: Democratic Autonomy and Women's Liberation in Syrian Kurdistan*. Pluto Press, 2016.

in Rojava and Zapatista communities.^[111] Additionally, indigenous feminist scholarship and abolitionist perspectives highlight how non-state legal structures can provide justice beyond punitive frameworks.^[112] These methods allow for an in-depth understanding of how these systems function beyond state-controlled legal documentation.

5. Ethical Considerations

This study adheres to academic integrity standards by ensuring proper citations, avoiding Eurocentric bias, and amplifying diverse feminist and decolonial perspectives in analysing justice mechanisms.

1. CHAPTER 1: The Problem of Gender-Based Violence (GBV)

1.1 Introduction to the Problem of Gender-Based Violence

GBV is a human rights violation recognised under international law, including instruments such as CEDAW.¹¹³ CEDAW, particularly General Recommendations 19 and 35, categorises GBV as a systemic inequality.¹¹⁴ GBV encompasses physical, sexual, psychological, and economic violence inflicted on individuals based on their gender, often forcing them to act against their will through coercion, threats, social pressures, or structural inequalities.¹¹⁵

¹¹¹ Speed, H, 'Justice and Resistance in the Zapatista Territories' (2021) 38(3) *Feminist Review* 105.

¹¹² Davis, Angela Y. *Are Prisons Obsolete?* Seven Stories Press, 2003.

¹¹³ (n 43).

¹¹⁴ Committee on the Elimination of Discrimination against Women, *General Recommendation No 19: Violence against Women* (1992) UN Doc A/47/38, para 6; and *General Recommendation No 35 on Gender-based Violence against Women, Updating General Recommendation No 19* (14 July 2017) UN Doc CEDAW/C/GC/35.

¹¹⁵ *ibid.*

Structural inequalities refer to deep-rooted disparities in social, economic, and legal systems that disproportionately affect certain groups, particularly women and marginalised communities. Patriarchal violence refers to the widespread violence rooted in gender-based power imbalances within patriarchal societies, where male dominance leads to the marginalisation and victimisation of women.

Two of the most prevalent forms of GBV are intimate partner violence (IPV) and non-partner sexual violence (NPSV).¹¹⁶ Nearly one in three women globally experience IPV or NPSV at least once, according to the World Bank.¹¹⁷ Despite the gravity of these statistics, legal systems across jurisdictions often treat GBV as an aberration rather than as evidence of entrenched patriarchal violence.¹¹⁸ This results in reactive, rather than preventative, legal responses.¹¹⁹

While GBV is often linked to overt patriarchal customs in the Global South, structural violence in the Global North stems from weak enforcement and political instrumentalisation of gender equality.¹²⁰ In countries such as Hungary, for instance, GBV persists not due to the absence of law, but due to the limitations of legal enforcement,¹²¹ the lack of survivor-centric reforms,¹²² and the political instrumentalisation of gender equality.¹²³ “Gender-based violence is

¹¹⁶ World Health Organization, *Global and Regional Estimates of Violence against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence* (WHO 2013).

¹¹⁷ World Health Organization, *Global and Regional Estimates of Violence against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence* (WHO 2013).

¹¹⁸ Hilary Charlesworth, ‘What are “Women’s International Human Rights”?’ (1994) 12 Buffalo HRL Rev 1.

¹¹⁹ *ibid.*

¹²⁰ Ratna Kapur, ‘Too Hot to Handle? The Cultural Politics of Fire in the Realm of Human Rights’ (1998) 7 *Feminist Legal Studies* 133.

¹²¹ Drinóczi (n 14).

¹²² *ibid.*

¹²³ *ibid.*

structurally embedded in illiberal democracies where the state refuses to fulfil its due diligence obligations under international human rights law.”¹²⁴

In both Global North and South contexts, the persistence of GBV reveals the inadequacy of existing legal frameworks to address structural and intersectional harms. The Global South often grapples with the dual burdens of colonial legal legacies and enduring socio-economic inequality, while the Global North faces more subtle yet equally entrenched systemic failures, including institutional gender bias, weak enforcement mechanisms, and the marginalisation of feminist jurisprudence.¹²⁵

Legal responses frequently ignore the intersecting identities of survivors. An intersectional legal lens¹²⁶ highlights how marginalised women—including women of colour, Indigenous women, migrants, and LGBTQ+ individuals experience heightened vulnerability to GBV due to overlapping systems of discrimination.¹²⁷ For instance, the European Court of Human Rights (ECtHR) in *Opuz v Turkey* (2009) acknowledged that the state’s failure to protect a woman from domestic violence amounted to a violation of Article 3 and Article 14 of the ECHR, recognising both the inhuman treatment and discriminatory aspects of GBV.¹²⁸

Despite the availability of international and regional legal instruments including CEDAW, the Istanbul Convention, and SDG 5.2 under the United Nations Sustainable Development Goals—domestic implementation often remains weak or tokenistic.^{[129][130]} This evidences the

¹²⁴ *ibid.*

¹²⁵ Kapur (n 120) p 14.

¹²⁶ Kimberlé Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) 1 *University of Chicago Legal Forum* 139.

¹²⁷ *ibid.*

¹²⁸ *Opuz v Turkey* App no 33401/02 (ECtHR, 9 June 2009).

¹²⁹ CEDAW (n 43).

¹³⁰ *ibid* CETS No 210 (Istanbul Convention).

disjuncture between international legal norms and national legal practice, exacerbating survivors' mistrust in formal justice systems.¹³¹

To address GBV effectively, legal systems must shift from punitive frameworks to survivor-centred, restorative justice models that are aware of structural inequalities.¹³² Restorative justice, offers a space where victims are heard, offenders take responsibility, and long-term healing is prioritised over punishment.¹³³

1.2 Masculine Legal Structures and the Treatment of GBV

Traditional legal systems are often rooted in a hierarchical, masculine structure that marginalises women.¹³⁴ These systems were shaped by male-dominated institutions, reinforcing patriarchal values. Women are often reduced to symbolic roles, primarily as mothers, limiting their agency and reinforcing patriarchal structures.¹³⁵ The focus is more on preserving the traditional family and national morality rather than addressing the real violence women face.

Feminist scholars, like Martha Fineman, argue that legal frameworks fail to recognise how gender and family roles shape the treatment of women, often reducing them to the “neutered mother,” thus limiting their agency.¹³⁶ Similarly, Kimberlé Crenshaw's intersectionality theory critiques legal frameworks for failing to address the intersection of race, class, and gender,

¹³¹ *ibid.*

¹³² Dirik (n 22).

¹³³ Howard Zehr, *The Little Book of Restorative Justice* (Good Books 2002) 20.

¹³⁴ See Merry (n 13).

¹³⁵ *ibid*; MacKinnon (n 6).

¹³⁶ Martha Albertson Fineman, *The Neutered Mother, the Sexual Family, and Other Twentieth Century Tragedies* (Routledge 1995) 72-73.

leaving marginalised women vulnerable.¹³⁷ This causes GBV to be treated as isolated crimes rather than part of a broader systemic issue.

Traditional legal systems therefore, though designed to protect victims, often view GBV as isolated incidents, which leads to an approach that treats these acts as individual crimes rather than part of a broader, systemic pattern of oppression.¹³⁸ This approach often fails to address the structural inadequacies such as entrenched gender inequalities, patriarchal power dynamics, and societal norms that normalise violence against marginalised genders.¹³⁹ Legal frameworks are more focused on punitive measures, punishing the individual wrongdoer rather than addressing the structural forces facilitating such violence.¹⁴⁰

Moreover, slow or dismissive legal proceedings re-traumatise survivors, undermining justice..^{[141][142]} These systems often fail to intervene at a structural level, leaving the systems of oppression largely unchallenged.¹⁴³

Given these limitations, there is a pressing need for alternative and intersectional frameworks that do not merely address the symptoms of GBV but actively dismantle the systems of inequality that give rise to it.

1.3 The Life-cycle of Democracy Within the GBV Context

¹³⁷ Crenshaw (n 126).

¹³⁸ Kelly Askin, *Gender Crimes and the International Criminal Tribunal for the Former Yugoslavia: Prosecuting Rape and Sexual Violence* (Transnational Publishers 1997).

¹³⁹ *ibid*; Elizabeth A. Sheehy, *Defending Battered Women on Trial* (UBC Press 2014).

¹⁴⁰ Aya Gruber, 'Rape, Feminism, and the War on Crime' (2009) 84 *Washington Law Review* 581.

¹⁴¹ Bernstein (n 19).

¹⁴² Nicola Henry, 'Theorizing Wartime Rape' (2014) 23 *Social & Legal Studies* 155.

¹⁴³ Sheehy (n 139).

The weakening of democratic institutions and the emergence of illiberal and authoritarian regimes significantly intensify gender-based violence (GBV), especially against marginalised communities—although, in time, even non-marginalised groups begin to feel the consequences. In their early stages, democracies often establish robust legal provisions to combat GBV, encompassing formal guarantees of equality and support mechanisms for survivors. However, in practice, these protections are frequently undermined by insufficient enforcement, bureaucratic inertia, and deep-rooted societal prejudices, leaving many victims without meaningful access to justice.

As democratic erosion sets in, the disconnection between formal legal commitments and lived experience grows. Illiberal regimes begin to roll back gender equality advances, suppress feminist activism, and institutionalise patriarchal narratives through state policy. One increasingly common tactic is the term ‘*autocratic gender-washing*’—where regimes adopt the language and appearance of gender reform to obscure their authoritarian character.¹⁴⁴ Such superficial reforms may include domestic violence legislation or gender quotas, but without structural transformation or genuine political will, these measures remain largely symbolic.¹⁴⁵ Hungary’s Family Protection Law, which provides financial support for women and promotes family cohesion, is seen as a pro-women initiative.¹⁴⁶ However, it reinforces heteronormative values and neglects issues like gender-based violence, illustrating autocratic gender-washing by masking patriarchal and authoritarian motives.¹⁴⁷

¹⁴⁴ Andrea Krizsan and Conny Roggeband, ‘Politicizing Gender and Democracy in the Context of Democratic Backsliding in Central and Eastern Europe’ (2018) 25 *Gender & Development* 161.

¹⁴⁵ *ibid.*

¹⁴⁶ Hungary, Act LXXXIV of 1998 on Family Support, Section 6 (Family Allowance), Section 20 (Childcare Benefit), Section 23 (Child-Raising Support), Section 29 (Maternity Allowance), available at: <https://njt.hu/jogszabaly/1998-84-00-00>.

¹⁴⁷ Katalin Cseh, *The Family Protection Law: Hungary’s New Pro-Family Policy or a Step Backwards for Women’s Rights?* (2020) 16 *European Journal of Women’s Studies* 345, 348.

In fully authoritarian contexts, GBV becomes a deliberate instrument of state power. Governments may not only ignore violence against women but actively use it—through surveillance, coercion, and intimidation—to maintain control. Legal institutions are weaponised to target feminist voices and depoliticise gender justice, with GBV functioning both as a social control mechanism and a deterrent to dissent. This manipulation of law and violence consolidates authoritarian rule while eroding any remaining avenues for gender-based protections.¹⁴⁸

1.4 Conclusion

Across both the Global North and South, GBV remains entrenched in systems shaped by historical injustice, colonial legacies, and patriarchal legal traditions. While regional contexts differ—the Global South grappling with colonial residues and the Global North with bureaucratised, institutionalised patriarchy, the fundamental issue persists: existing legal frameworks fail to address GBV as a structural and systemic problem. These frameworks, often designed within hierarchical, masculine paradigms, treat GBV as isolated incidents rather than as manifestations of deeper social inequalities. Consequently, legal systems frequently retraumatise survivors and fail to offer transformative justice.

As democracies decline and illiberalism gains ground, feminist movements are criminalised, survivor protections are rolled back, and GBV is allowed if not encouraged to flourish. This political trajectory demands not only legal reform but a reimagining of justice itself: one that dismantles patriarchal power structures and reorients the law toward collective care, equality, and structural change.

¹⁴⁸ Petra Guasti, 'Illiberal Trends and Anti-Gender Backlash in Central Europe' (2021) 28 *International Journal of Constitutional Law* 1.

2. CHAPTER 2: Decolonising Law through Intersectional Lenses

The legal responses to gender-based violence (GBV) in contemporary societies are deeply influenced by historical, cultural, and political contexts. This chapter explores several critical theoretical frameworks: decolonisation, intersectionality, anarcho-communism, and feminist jurisprudence which are essential for understanding how traditional legal systems perpetuate patriarchal structures that enable and normalise GBV. By integrating these concepts, we can develop alternative legal frameworks that challenge oppressive power dynamics. This chapter explores how GBV must be addressed beyond state-controlled systems, focusing on community-based and decentralised approaches informed by these frameworks.

2.1 Decolonisation and Its Impact on GBV

Decolonisation is a critical framework for understanding how colonial histories continue to shape GBV within legal systems, particularly in post-colonial societies. The decolonisation process involves three core imperatives: “creating a sense of self outside of coloniality, writing ‘our’ own histories, and excavating the continuing legacies of colonial discourse in the present”.¹⁴⁹ These imperatives are essential when understanding the long-lasting effects colonial legal systems had on gender norms, particularly those that marginalised women.¹⁵⁰

Intersectionality is essential in understanding how colonialism and patriarchy intersect to shape the experiences of GBV in post-colonial societies.¹⁵¹ Overlapping systems of oppression—race, class, and gender—compound the vulnerabilities of marginalised women, resulting in GBV being gendered, racialized, and class-based.¹⁵²

¹⁴⁹ Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (Zed Books 2012).

¹⁵⁰ *ibid.*

¹⁵¹ Crenshaw (n 126) 17.

¹⁵² *ibid.*

Colonialism imposed rigid, heteropatriarchal governance structures that sidelined Indigenous conceptions of justice and gender equity.¹⁵³ A clear example is the Indian Penal Code (IPC),¹⁵⁴ reflected Victorian morality and the British Empire's control imperatives. While criminalising rape (Section 375)¹⁵⁵ and cruelty by husbands (Section 498A),¹⁵⁶ it reduced women to property-like subjects.¹⁵⁷

The Bharatiya Nyaya Sanhita (BNS), 2023 is presented as a decolonisation step, yet feminist scholars argue that symbolic renaming without structural transformation is insufficient.^{[158][159]}

While the BNS introduces certain textual revisions—such as renaming the rape provision under Section 63 and marginally altering procedural aspects—it nevertheless fails to criminalise marital rape, thereby perpetuating patriarchal norms embedded during the colonial era.¹⁶⁰

While the BNS introduces certain textual revisions—such as renaming the rape provision under Section 63 and marginally altering procedural aspects—it nevertheless fails to criminalise marital rape, thereby perpetuating patriarchal norms embedded during the colonial era.¹⁶¹

Additionally, the BNS does not incorporate restorative justice models, historically practised in tribal panchayats or matrilineal societies like the Khasi.¹⁶² This highlights the lack of radical legal transformation and a continued reliance on state-centric punitive systems.¹⁶³

¹⁵³ S.P. Sathe, *Judicial Activism in India* (OUP 2002) 24.

¹⁵⁴ Indian Penal Code 1860.

¹⁵⁵ *ibid* s 375.

¹⁵⁶ *ibid* s 498A.

¹⁵⁷ *ibid*.

¹⁵⁸ Nandita Haksar, 'Deconstructing the Bharatiya Nyaya Sanhita: A Feminist Perspective' (2023) 45(3) *Indian Journal of Gender Studies* 217.

¹⁵⁹ Patel, R., 'The Promise and Perils of Legal Reform: Gender and the BNS' in *Legal Feminism in India* (2022) 35 *Journal of Gender & Law* 102, 115.

¹⁶⁰ *ibid*.

¹⁶¹ Bharatiya Nyaya Sanhita 2023, s 63

¹⁶² Usha Ramanathan, 'Customary Law and the Challenges of Gender Justice' (2010) 25(2) *Economic and Political Weekly* 54.

¹⁶³ Haksar (n 158).

While Hungary is not post-colonial, its legal system has been shaped by imperial logics, particularly under Austro-Hungarian and socialist rule.¹⁶⁴ Contemporary legal reforms under Viktor Orbán entrench gender hierarchies, reinforcing patriarchal structures through constitutional definitions of family.¹⁶⁵ These developments reflect colonial gender containment, albeit expressed through a different political register.¹⁶⁶ Decolonising legal responses to GBV thus requires a reimagining of justice, one that transcends punitive mechanisms and centres community-rooted frameworks that affirm Indigenous and feminist epistemologies.¹⁶⁷

2.2 Intersectionality and GBV

In Chapter 1, I introduced Kimberlé Crenshaw's theory of intersectionality, which highlights how multiple social identities—such as gender, race, caste, and sexuality—interact to shape experiences of GBV.¹⁶⁸ Intersectionality has proven instrumental in analysing the compounded discrimination faced by marginalised women, particularly in the Global South. However, Crenshaw's framework also has limitations—especially in regions such as Palestine¹⁶⁹ or Kashmir¹⁷⁰—where legal and social frameworks are shaped by ongoing conflict, occupation, and state violence.¹⁷¹ These contexts produce forms of GBV that are not only patriarchal but also geopolitical and militarised.¹⁷²

¹⁶⁴ László Sólyom, 'The Constitution as a Tool of Authoritarian Rule in Hungary' (2018) 23(4) European Constitutional Law Review 681.

¹⁶⁵ Barbara Hegedűs, 'Gender, Nation, and Illiberal Democracy: Hungary's Authoritarian Turn' (2022) 30 Feminist Legal Studies 249.

¹⁶⁶ *ibid.*

¹⁶⁷ *Ibid* 255.

¹⁶⁸ Crenshaw (n 126).

¹⁶⁹ Nadera Shalhoub-Kevorkian, *Militarization and Violence against Women in Conflict Zones in the Middle East: A Palestinian Case Study* (CUP 2009)

¹⁷⁰ Inshah Malik, *Muslim Women under the Kashmir Conflict: The Role of Islam in Changing Gender Relations* (Palgrave Macmillan 2019).

¹⁷¹ *ibid.*

¹⁷² Kevorkian (n 169).

While intersectionality is a useful tool, it cannot fully capture the experiences of women in war-torn and politically unstable zones, where gender, caste, military occupation, and state violence intersect.¹⁷³ In such cases, legal frameworks often reinforce, rather than disrupt, the logics of domination.¹⁷⁴

In India, GBV cannot be viewed in isolation from caste, religion, and the colonial legacy. Dalit women, for example, face not only patriarchal violence but also caste-based oppression, which intersects with class and geographic disenfranchisement.¹⁷⁵ These layered oppressions are rarely addressed in judicial discourse or legal reforms, leaving survivors vulnerable within a system that cannot effectively respond to their needs.¹⁷⁶ Similarly, Muslim women face GBV at the intersection of gendered violence, religious discrimination, and communal violence.¹⁷⁷ In incidents like the 2002 Gujarat riots¹⁷⁸ or the 2020 Delhi riots,¹⁷⁹ Muslim women were specifically targeted as part of communal retribution, illustrating how sexual violence can be weaponised by the state or ignored by authorities.¹⁸⁰

In Hungary, Roma women experience GBV through the intersection of ethnic discrimination and patriarchy.¹⁸¹ Structural racism in healthcare, education, and policing leaves them vulnerable to GBV with limited legal protection.¹⁸² Hungary's increasing authoritarianism, exemplified by its resistance to ratifying the Istanbul Convention, exacerbates these issues.¹⁸³

¹⁷³ Crenshaw (n 126).

¹⁷⁴ *ibid.*

¹⁷⁵ Reena Rani Kharat, 'Caste, Gender and Violence: Dalit Women in Contemporary India' (2016) 51(10) *Economic and Political Weekly* 45.

¹⁷⁶ *ibid.*

¹⁷⁷ *ibid.*

¹⁷⁸ Teesta Setalvad, 'Beyond Gujarat: Violence against Muslims and the Role of Law' (2002) 37(51) *Economic and Political Weekly* 5105.

¹⁷⁹ Human Rights Watch, 'Shoot the Traitors': Discrimination against Muslims under India's New Citizenship Policy (2020) <https://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy> accessed 20 May 2025.

¹⁸⁰ *ibid.*

¹⁸¹ Judit Tóth, 'Roma Women in Hungary: Facing Multiple Discrimination' (2017) 18(3) *European Journal of Women's Studies* 301.

¹⁸² *ibid.*

¹⁸³ *ibid.*

While caste is not a factor, racialised exclusion operates similarly, leaving the legal system ill-equipped to address the complexities of marginalised women's lives.¹⁸⁴

Legal liberalism, with its focus on formal equality, fails to address these layered oppressions. Intersectionality shows that violence is not experienced in isolation, and legal frameworks that separate gender from race, class, caste, or geopolitical oppression perpetuate the very exclusions they aim to resolve. This is not a theoretical gap but a real barrier to justice. Courts that demand clear categories and uniform standards of harm erase the experiences of women who occupy multiple axes of subordination.¹⁸⁵ Survivors are often forced to fit their trauma into pre-existing legal narratives, which tend to prioritise the experiences of dominant-caste or majority-ethnic women.¹⁸⁶

While intersectionality remains a vital lens, its application in liberal legal systems has been superficial and incomplete.¹⁸⁷ Courts may invoke intersectionality discursively but fail to integrate its principles into legal practice and protections.¹⁸⁸ This chapter demonstrates that the failure to institutionalise intersectionality within law is not an oversight but a systemic choice that upholds the dominance of majoritarian norms. The next chapter will explore how feminist and anarcho-communist frameworks offer alternative, decentralised, and pluralistic models of justice that move beyond these limitations.

2.3 Conclusion

This chapter has shown that traditional legal systems shaped by colonial legacies, rigid hierarchies, and liberal formalism are structurally ill-equipped to address the complex realities

¹⁸⁴ *ibid.*

¹⁸⁵ *ibid.*

¹⁸⁶ *ibid.*

¹⁸⁷ *ibid.*

¹⁸⁸ *ibid.*

of gender-based violence. Through a decolonial and intersectional lens, it becomes evident that law often reproduces the very inequalities it purports to resolve. Legal reforms that do not interrogate their epistemic foundations or integrate the lived experiences of marginalised women remain superficial. The failure to institutionalise intersectionality and decoloniality is not simply a gap, but a political and ideological choice to maintain hegemonic power structures. To meaningfully combat GBV, legal frameworks must be reimagined in ways that dismantle patriarchal and colonial logics. This sets the stage for the next chapter, which engages with feminist and anarcho-communist legal imaginaries offering decentralised and community-rooted approaches that centre survivor autonomy.

3. CHAPTER 3: ALTERNATIVE JUSTICE MODELS

While liberal legal systems often claim to uphold universal rights and equality, they frequently rest on assumptions that privilege dominant social groups—particularly cisgender, heterosexual men. These legal norms, historically developed in male-dominated societies, tend to marginalise or misrepresent the lived realities of women and gender minorities.

The persistence of GBV across diverse legal systems reveals a deeper structural failure within dominant legal paradigms—particularly those shaped by liberalism, patriarchy, and state authority. Traditional legal frameworks often rely on punitive, hierarchical, and individualised notions of justice that fail to address the systemic, cultural, and intersectional dimensions of violence. In response, critical legal scholars and activists have turned to alternative approaches that challenge the foundational assumptions of state-centric legal orders. Notably, feminist jurisprudence and anarcho-communist legal theory offer transformative visions of justice. Feminist jurisprudence critiques the male-centric construction of law, calling for a reorientation

centred on women's lived realities and substantive equality, while anarcho-communism seeks to dismantle hierarchical authority entirely, proposing decentralised, community-led legal frameworks based on mutual aid, horizontal accountability, and collective care. These approaches provide compelling pathways for addressing GBV beyond traditional masculine legal frameworks.

3.1 Feminist Justice Beyond Patriarchal Law

Initiated in the 1960s, feminist jurisprudence offers an alternative and critical legal theory that challenges the dominant masculine foundations of legal systems.¹⁸⁹ Feminist legal theorists argue that the law has historically been shaped by and for men, often marginalising women's lived experiences or reducing women to symbolic figures who serve broader male-centered narratives.¹⁹⁰ "The law sees and treats women the way men see and treat women,"¹⁹¹ asserting that legal structures normalise male dominance and institutionalise women's subordination.¹⁹²

Feminist jurisprudence seeks to reshape legal norms by centring women's experiences, particularly in areas such as sexual violence, domestic abuse, reproductive rights, and workplace discrimination. In the context of GBV, law must go beyond punitive measures¹⁹³ and address the structural, intersectional, and cultural conditions that enable violence against women and gender minorities.¹⁹⁴ The carceral state's reliance on punishment, disproportionately affects marginalised communities while failing to provide meaningful justice or reduce harm.¹⁹⁵

¹⁸⁹ Carol Smart, *Feminism and the Power of Law* (Routledge 1989) 1–5.

¹⁹⁰ *ibid* 6–8.

¹⁹¹ MacKinnon (n 6).

¹⁹² *ibid* 238.

¹⁹³ Davis (n 112).

¹⁹⁴ *ibid*.

¹⁹⁵ *ibid*.

Legal reforms influenced by feminist thought have taken shape globally such as India's Protection of Women from Domestic Violence Act 2005,¹⁹⁶ and Article 51A(e) of the Indian Constitution, which urges citizens to renounce practices derogatory to the dignity of women.¹⁹⁷ However, enforcement mechanisms are weak, and patriarchal norms continue to pervade judicial decision-making. Indian case law reflects this tension: in *D. Velusamy v D. Patchaiammal* (2010),¹⁹⁸ the Supreme Court narrowly defined a "relationship in the nature of marriage", inadvertently excluding many women from protection under the Domestic Violence Act. Feminist legal scholars have criticised such rulings for failing to reflect the diversity of women's lived realities.¹⁹⁹ Feminist legal scholars critique such rulings for failing to reflect the diversity of women's lived realities and advocate for a legal system that views GBV as a systemic issue, not merely an isolated crime.²⁰⁰

In Hungary, despite the ratification of various human rights instruments, such as the CEDAW Convention,²⁰¹ the government has refused to ratify the Istanbul Convention,²⁰² claiming it undermines "traditional family values".²⁰³ This rejection contributes to the underreporting and normalisation of GBV by reinforcing gender hierarchies under the guise of national identity or Christian morality.²⁰⁴

¹⁹⁶ Domestic Violence Act (n 52).

¹⁹⁷ (n 48), art 51A(e)

¹⁹⁸ *D Velusamy v D Patchaiammal* (2010) 10 SCC 469.

¹⁹⁹ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press 1999).

²⁰⁰ *ibid* 132.

²⁰¹ (n 43) 1249 UNTS 13

²⁰² Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) (opened for signature 11 May 2011, entered into force 1 August 2014) CETS No 210.

²⁰³ (n 30), CDL-AD(2021)050, para 33.

²⁰⁴ *ibid* para 35.

Feminist jurisprudence thus calls for a radical transformation of legal culture—one that incorporates substantive equality (beyond formal equality) and seeks to educate and socialise citizens in dismantling patriarchal norms.²⁰⁵ Legal mechanisms alone, it argues, are insufficient without broader societal transformation rooted in inclusive justice.²⁰⁶

3.2 Decentralising Justice: Anarcho-Communist Paths

From a legal perspective, anarcho-communism presents a critique of state-centred, coercive legal frameworks, arguing that hierarchical authority whether through capitalism, the state, or patriarchy reinforces structures of domination.²⁰⁷ Anarcho-communist legal theory rejects codified, top-down legal systems in favour of communal norms, horizontal justice, and restorative practices.²⁰⁸

In practice, Rojava (Northern Syria) exemplifies this model.²⁰⁹ Rooted in Democratic Confederalism, a political theory developed by Abdullah Öcalan,²¹⁰ Rojava's legal framework is built on grassroots governance through people's councils, women's councils, and communal courts. The Rojava Social Contract (2014) functions as a quasi-constitutional document that enshrines gender equality, environmental sustainability, and secularism as foundational principles.²¹¹ Legal processes emphasise restorative justice, with mechanisms such as the

²⁰⁵ MacKinnon (n 6) 240–242.

²⁰⁶ *ibid* 245.

²⁰⁷ M Bookchin, *The Ecology of Freedom* (Cheshire Books 1982); R Day, *Gramsci is Dead* (Pluto Press 2005).

²⁰⁸ P Kropotkin, *The Conquest of Bread* (Elephant Editions 1985); L Davis, *Freedom is a Constant Struggle* (Haymarket Books 2016).

²⁰⁹ Dirik (n 22).

²¹⁰ A Öcalan, *Democratic Confederalism* (International Initiative 2011).

²¹¹ Rojava Social Contract (2014) arts 23–27.

Women's Houses (Mala Jin)²¹² acting as community-based tribunals for resolving disputes, particularly those related to GBV.²¹³

In Mexico, the Zapatista Autonomous Municipalities provide another case study of an anarcho-communist legal order.²¹⁴ The Women's Revolutionary Law (1994) explicitly recognises women's rights to participation, education, and protection from violence.²¹⁵ Legal norms are created through collective consensus and enforced by community assemblies rather than punitive state systems.²¹⁶ The Zapatista framework prioritises transformative justice and accountability through reintegration and healing, particularly in cases of interpersonal harm.²¹⁷

These frameworks challenge liberal legal assumptions that justice must be administered by a centralised state authority. Instead, they rely on customary, participatory, and non-punitive legal systems—particularly effective in contexts where formal law fails to address or even exacerbates gender-based oppression.²¹⁸ While their success is difficult to quantify due to limited formal documentation and external pressures (e.g. war, state repression), they offer vital experimental models that foreground intersectional solidarity and collective autonomy.

3.3

Conclusion

This chapter has explored feminist jurisprudence and anarcho-communist frameworks as alternative approaches to the traditional masculine legal structures that dominate responses to GBV. Feminist legal theory urges a shift from formal, punitive systems towards legal cultures

²¹² Medya News, 'Mala Jin: The Unique Women's Houses Transforming Middle Eastern Society' (Medya News, 20 November 2024) <https://medyanews.net/mala-jin-the-unique-womens-houses-transforming-middle-eastern-society/> accessed 4 May 2025.

²¹³ M Knapp, A Flach and E Ayboga, *Revolution in Rojava: Democratic Autonomy and Women's Liberation in Syrian Kurdistan* (Pluto Press 2016).

²¹⁴ N Klein, *This Changes Everything: Capitalism vs. The Climate* (Simon & Schuster 2014) 422–424.

²¹⁵ EZLN, 'Women's Revolutionary Law' (1994) art 4.

²¹⁶ *ibid.*

²¹⁷ Speed (n 111).

²¹⁸ K McEvoy and L Jamieson, 'Restorative Justice and Gendered Violence' (2007) 47(3) *British Journal of Criminology* 367.

rooted in intersectional equity, care, and substantive justice. Meanwhile, anarcho-communist models demonstrate the viability of decentralised, community-led justice systems that embed gender equality into the fabric of social life.

Together, these frameworks offer a compelling reimagining of how law and justice can function, especially in contexts like Hungary and India, where patriarchal state structures limit the potential for meaningful change. Integrating such approaches could transform existing legal systems not by discarding state law entirely, but by infusing it with bottom-up, restorative, and gender-aware principles that challenge patriarchal violence at its root.

4. CHAPTER 4: LEGAL INTEGRATIONS WITHIN CONSTITUTIONAL TRADITIONS

While feminist and anarcho-communist frameworks may seem incompatible with formal constitutionalism, this chapter argues that both India and Hungary possess constitutional principles that could accommodate decentralised, community-based justice mechanisms rooted in gender equality and collective accountability. Drawing from the legal practices of the Zapatistas and Rojava, I propose a model of legal integration that respects constitutional traditions while radically transforming how GBV is addressed.

While I do propose a model that integrates feminist and anarcho-communist principles into the constitutions of Hungary and India, I acknowledge that the constitutional asymmetries between the two states present challenges. If integrated without careful consideration of their respective historical, political, and geographical contexts, these principles would not be sustainable in the long term. Thus, the integration of these frameworks must be intersectional, respecting both historical legacies and the current political landscape in each country.

Legal systems in India and Hungary continue to struggle with entrenched patriarchal norms, despite formal commitments to gender equality and human rights. As discussed in earlier chapters, both states offer limited or inconsistent responses to gender-based violence (GBV), often reinforcing existing power hierarchies through their legal frameworks. Feminist jurisprudence and anarcho-communist legal theory offer valuable alternatives—rejecting punitive, hierarchical state-centric solutions and instead imagining justice as relational, community-driven, and transformative.

This chapter explores how the principles underpinning feminist and anarcho-communist frameworks—particularly those practiced in the Zapatista territories of Mexico and the Rojava region of Northern Syria—can be adapted within the constitutional structures of India and Hungary. Although these movements operate largely outside traditional state frameworks, their commitment to gender justice, restorative practices, and participatory governance provides a compelling model for rethinking how constitutional democracies might reorient their approach to GBV.

Rather than proposing a wholesale rejection of state legal systems, this chapter advocates for a hybrid legal model—one that constitutionally accommodates community-based justice mechanisms led by women and grounded in intersectional, local realities. By drawing on existing constitutional principles such as India's Article 15 (non-discrimination), Article 21 (right to life with dignity), and Hungary's Article XV (equality before the law), it becomes possible to argue for the legal recognition of decentralised justice initiatives.²¹⁹ These initiatives could include women-led community tribunals, autonomous support spaces, and

²¹⁹ (n 48) arts 15, 21; (n 27) art XV.

consensus-based conflict resolution processes—all of which challenge the state’s monopoly on justice while remaining constitutionally legitimate.²²⁰

The chapter proceeds by identifying constitutional entry points in both jurisdictions, followed by a mapping of how specific practices from Rojava’s Women’s Houses²²¹ and Zapatista community assemblies²²² could be tailored to fit the socio-legal contexts of India and Hungary. This comparative approach demonstrates how community-based practices, such as restorative justice and consensus-building, could effectively challenge patriarchal power without relying solely on coercive state power.

Ultimately, this chapter argues that embedding these grassroots mechanisms within constitutional frameworks could help transform legal cultures from within—enabling a bottom-up, restorative approach to justice that directly confronts patriarchy without relying on state coercion.²²³

4.1 INDIA

4.1.1 Integrating Anarcho-Feminist Practices into the Constitutional Frameworks of India

Many of India’s legal institutions and codes – from the Indian Penal Code 1860²²⁴ and the Criminal Procedure Code 1898²²⁵ to the Indian Police Act 1861²²⁶ – originated under colonial rule and were designed more to control the populace than to empower

²²⁰ Mala Jin Courts (Rojava), *Women’s Courts in the Democratic Federation of Northern Syria* (2015); Zapatista Women’s Revolutionary Law (1994) available at: <https://www.lavoznet.com/zapatista-womens-revolutionary-law/> accessed 4 June 2025.

²²¹ Meredith Tax, *A Road Unforeseen: Women Fight the Islamic State* (Bellevue Literary Press 2016).

²²² (n 215).

²²³ Öcalan (n 201); Subcomandante Marcos, *Our Word is Our Weapon* (Seven Stories Press 2002).

²²⁴ IPC (n 154).

²²⁵ Criminal Procedure Code 1898 (updated).

²²⁶ Indian Police Act 1861.

them.²²⁷ The question now is how anarcho-communist principles could be integrated into India's rich constitutional traditions to combat GBV. As the world's most populous country (1.4 billion people),²²⁸ adapting these principles to such a vast, diverse nation with a complex historical legacy is a significant challenge. Yet India's Constitution contains latent possibilities for decentralisation, participatory governance, and social justice – principles that align with anarcho-communist values. India's federal structure and democratic institutions, if imaginatively interpreted, have room for community-driven justice initiatives.

This chapter proposes integrating anarcho-communist feminist values through **bottom-up governance** reforms, starting from local structures and extending to state and national levels (all grounded in constitutional legitimacy). Proposed reforms span rural, urban, state, and federal tiers of governance to embed gender-just, community-based adjudication within India's legal system.

4.1.1.1 Reforming Khap Panchayats: From Patriarchal Control to Intersectional Justice

Khap Panchayats have historically functioned as local governance mechanisms in parts of North India, but today they are often criticised – and rightly so – for patriarchal and extrajudicial practices..²²⁹ Traditionally, Khap Panchayats were community dispute forums involving delegates from multiple clans and castes, intended to maintain local cohesion. Historically, Khap Panchayats were rooted in community dispute resolution involving delegates from multiple castes and clans. These early iterations were intended to maintain community cohesion.²³⁰ However, contemporary Khaps frequently reinforce

²²⁷ Kunal Parker, 'Law, Surveillance, and Disciplinary Government: Colonial India and the Archival Legacies of the Indian Penal Code' (2007) 42(2) *Modern Asian Studies* 245.

²²⁸ Census of India, 'Population Projections for India and States 2011–2036' (2019).

²²⁹ Satish K Sharma, *Customary Panchayats and Women in Haryana* (New Delhi: Concept, 2004) 7.

²³⁰ *ibid.*

harmful gender norms and caste hierarchies, leading to severe human rights violations (including so-called honour killings, forced marriages, and “moral policing” of women).²³¹

Such practices blatantly violate the Indian Constitution – notably Articles 14, 15(1), and 21, which guarantee equality, non-discrimination, and the right to life and personal liberty.²³² Yet the participatory roots of these bodies suggest that if properly reoriented, they could serve as vehicles for community justice. Inspired by Rojava’s women-led community justice assemblies,²³³— Khap Panchayats could be **reimagined** as intersectional, constitutionally compatible local bodies for resolving disputes and addressing GBV. This transformation would require several key changes:

First, grassroots feminist organisations must engage local communities in awareness campaigns about the harms of patriarchal practices and the need for gender equality. By educating communities on women’s legal rights and encouraging dialogue, local NGOs and activists can help shift cultural attitudes toward more inclusive, gender-just norms. (Such efforts are already underway in parts of India, led by NGOs and activists as discussed in the literature review.²³⁴) can educate communities on legal rights and encourage dialogue, helping shift the culture toward more inclusive and gender-just practices.

Second, to make Khap Panchayats gender-just, women must take on leadership roles within them. This likely requires legal mandates (e.g. gender quotas or other affirmative measures) to ensure active female representation.²³⁵ Furthermore, legal literacy training

²³¹ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (OUP 1999) 121–123.

²³² (n 48) arts 14, 15(1) and 21.

²³³ See discussion of Mala Jin courts in ch 3

²³⁴ See Literature Review, under India’s section for a discussion on NGOs and grassroots activists.

²³⁵ A. Patel, *Gender Justice and Local Governance* (2017) 19 *Indian Journal of Gender Studies* 112-115.

and constitutional awareness would empower these leaders to confront entrenched power structures and challenge discriminatory practices.²³⁶

Third, Panchayati Raj provisions under Article 40 of the Indian Constitution,²³⁷ could be leveraged. Khap Panchayats could be aligned with decentralised justice systems. This would ensure that Khap Panchayats operate within a rights-based legal framework, incorporating intersectional safeguards such as gender quotas and constitutional oversight to safeguard women's rights and transform these bodies from patriarchal structures to inclusive governance forums.²³⁸

For reforms like the above to succeed, **political will and civil society mobilisation** are crucial.²³⁹ Politicians committed to gender equality – particularly at the local and state levels – must champion these changes. The main challenge will be overcoming patriarchal resistance in rural strongholds where Khap practices are deeply ingrained. Incremental steps (for example, introducing women's reservations in local councils beyond the one-third minimum, or expanding legal aid in villages) could help break the political deadlock and demonstrate the benefits of women's leadership.²⁴⁰ Incremental changes, like gender quotas in local councils and legal aid programmes, could be used to break the political deadlock.²⁴¹

NGOs and civil society organisations that have been actively working on women's rights and GBV can act as catalysts for change.²⁴² Grassroots activism and awareness campaigns can push

²³⁶ *ibid.*

²³⁷ (n 48) art 40.

²³⁸ Farah Naaz & Shahnawaz Ahmad, 'Gender and Governance: A Critical Analysis of Women's Participation and Empowerment in Panchayati Raj Institution' (2022) 11 *Indian Journal of Political Science* 72.

²³⁹ R. A. Rappaport, *The Role of Political Will in Institutional Reform* (1994) 28(4) *Public Affairs Quarterly* 432.

²⁴⁰ *ibid.*

²⁴¹ S. K. Gupta, *Gender and Governance: Empowerment through Civil Society* (Oxford University Press 2015).

²⁴² *ibid.*

for local reforms that encourage women's participation and leadership in local governance, making it less likely for patriarchal structures to remain unchallenged.²⁴³

Furthermore, by anchoring such reforms in the Concurrent List under Article 246, both the state and central governments could jointly legislate on the structure and function of customary legal bodies, ensuring uniform constitutional standards while allowing for local autonomy.²⁴⁴ This approach would enable local dispute resolution mechanisms to operate within a rights-based legal framework, supporting alternative forms of justice—aligned with anarcho-communist principles of decentralisation, community self-governance, and non-hierarchical legal redress.

India's legal system has already recognised the value of decentralised, community-based justice through the formal integration of Alternative Dispute Resolution (ADR) mechanisms, as codified under Section 89 of the Civil Procedure Code (1908).^{[245][246]} However, definitional inconsistencies—such as those between Sections 89(2)(c) and 89(2)(d), which ambiguously separate 'judicial settlement' from 'mediation'—have limited its effective implementation.²⁴⁷ This legal uncertainty, coupled with the non-binding nature of many ADR outcomes, weakens their enforcement and legitimacy.

Nonetheless, reimagining Khap Panchayats through the ADR framework would formalise their role in gender-just dispute resolution, transforming them into legally recognised, gender-just forums as the first step. This might allow local bodies to deliver justice while remaining consistent with constitutional principles and aligning with anarcho-feminist values of decentralised, restorative, and inclusive adjudication.

²⁴³ Patel (n 159).

²⁴⁴ *ibid* art 246.

²⁴⁵ Civil Procedure Code 1908, s 89.

²⁴⁶ *ibid*.

²⁴⁷ *Ibid* ss 89(2)(c)–(d).

4.1.1.2 Reforming Khap Panchayats

While rural justice mechanisms such as Khap Panchayats present challenges and possibilities for decentralised justice, urban governance in India is equally in need of radical rethinking. The 74th Constitutional Amendment Act (1992) was intended to empower urban local bodies (ULBs) as decentralised units of self-government, responsible for functions such as public health, sanitation, urban planning, and community welfare.²⁴⁸ However, these bodies often suffer from structural disempowerment, poor fiscal autonomy, and elite capture. Most significantly, they remain gender-insensitive in both design and operation, with women's participation in governance either tokenised or limited to reserved seats under Article 243T, which mandates one-third representation for women.²⁴⁹ Moreover, pressing urban issues like gender-based violence in slums, lack of access to public transport, and insecurity in public spaces are often marginalised in local governance agendas.²⁵⁰

An anarcho-feminist transformation of urban governance could be inspired by the Zapatista Revolutionary Law of Women, promulgated in 1994 by the Ejército Zapatista de Liberación Nacional (EZLN) in Chiapas, Mexico.²⁵¹ This law was not merely symbolic—it restructured how justice, representation, and resource distribution were administered in autonomous Zapatista communities. The law guaranteed women the right to participate in decision-making bodies, choose their partners, access health and education, and most crucially, established women's councils and community-based tribunals that addressed gender violence with restorative, rather than punitive, measures.²⁵² These feminist principles could be mirrored in Indian municipalities through the creation of Mahila Lok Adalats (women's justice councils)

²⁴⁸ Constitution (74th Amendment) Act 1992.

²⁴⁹ (n 48) art 243T.

²⁵⁰ Bhattacharya S, *Urban Governance and Gender in India* (2018) 23(1) Journal of South Asian Development 34.

²⁵¹ (n 212).

²⁵² *ibid.*

attached to ward committees, with decision-making autonomy in cases of domestic violence, housing disputes, and harassment in public spaces.²⁵³

Such innovations would still fall within India's constitutional framework if grounded in Article 243G, which allows states to endow municipalities with functions suited to local needs.²⁵⁴ Additionally, Articles 15(3) (special provisions for women) and 39A (equal justice and free legal aid) can be interpreted to legitimise experimental, community-based, and gender-just governance structures.²⁵⁵ Importantly, these reforms echo the anarcho-communist ethos of the Zapatistas: horizontal governance, mutual aid, and the centering of women's lived realities in legal processes, while resisting hierarchical, punitive, and patriarchal state mechanisms.²⁵⁶

4.1.1.3 States as Sites of Gendered Legal Reform

Building upon local rural and urban governance reforms, the state level represents a crucial intermediary tier where decentralisation can be significantly deepened. Under the Indian Constitution, states possess extensive legislative and executive powers, particularly through the State List and Concurrent List under Article 246, enabling them to legislate on subjects vital to social justice, local governance, and public order.²⁵⁷ This constitutional design offers fertile ground for embedding anarcho-communist and feminist principles within state governance structures, fostering participatory democracy and gender justice.²⁵⁸

The Panchayati Raj system, constitutionally mandated through the 73rd Amendment Act (1992), is a cornerstone for decentralised governance in rural India.²⁵⁹ Articles 243D and 243E guarantee reservation of seats for Scheduled Castes, Scheduled Tribes, and notably, one-third

²⁵³ Bajpai R, *Justice in the City: Gender and Urban Governance in India* (2020).

²⁵⁴ (n 48) art 243G.

²⁵⁵ (n 48) 39A.

²⁵⁶ (n 215).

²⁵⁷ (n 48) art 246.

²⁵⁸ *ibid*.

²⁵⁹ (n 48) arts 243D, 243E.

reservation for women in Panchayats and their chairpersonships. While these provisions mark progressive steps, their implementation often faces patriarchal resistance, tokenistic representation, and a lack of substantive empowerment for women and marginalised groups.²⁶⁰ Herein lies an opportunity to radicalise these frameworks by adopting intersectional safeguards, ensuring not only numerical representation but also active participation and decision-making power in local governance.²⁶¹

States can pioneer legal and institutional innovations by transforming Panchayati Raj Institutions (PRIs) into inclusive, community-empowered bodies that mirror anarcho-feminist values of horizontal governance, mutual aid, and restorative justice. For example, states could legislate the incorporation of gender justice cells or community assemblies within PRIs tasked explicitly with addressing gender-based violence (GBV), land rights, and social welfare through consensus-building rather than punitive mechanisms.²⁶² Such reforms would resonate with the decentralized, non-hierarchical structures seen in anarcho-communist models like Rojava's Mala Jin courts, adapted to India's socio-legal context.²⁶³

States hold the legislative competence to enact laws supplementing Articles 15(3) and 39A, which empower the state to make special provisions for women and children, and promote equal justice and free legal aid, respectively.²⁶⁴ By expanding legal literacy programs, providing targeted legal aid at the grassroots level, and mandating gender sensitivity training for PRI members, states can further democratise access to justice. For instance, Kerala's progressive decentralisation and robust local governance framework serve as an illustrative model for promoting substantive participation and rights-based governance at the grassroots.²⁶⁵

²⁶⁰ Gill K, *Women in Panchayati Raj Institutions* (2016) 52(3) Economic and Political Weekly 32.

²⁶¹ *ibid.*

²⁶² *ibid.*

²⁶³ Mala Jin (n 220), see Knapp (n 110).

²⁶⁴ (n 48) 39A.

²⁶⁵ Kerala State Planning Board, *Decentralisation in Kerala* (2021).

Local governments can incentivize gender-just reforms in Khap Panchayats by providing financial support and political backing. Facilitating partnerships between traditional governance bodies and state institutions would allow for greater traction and legitimacy for reforms, aligning them with constitutional principles and gender equality goals.

Nonetheless, challenges persist. Institutional inertia, political patronage networks, and entrenched social hierarchies often hinder genuine decentralisation and feminist reform. Courts have occasionally intervened to ensure that reservations and participatory rights are not undermined by local power dynamics, as seen in judicial pronouncements reinforcing women's political participation.²⁶⁶ However, more systemic reforms, backed by political will and civil society mobilization, are essential to translate constitutional guarantees into lived realities.

In sum, state governments represent a critical site for embedding anarcho-feminist legal reforms that combine decentralisation with substantive gender justice. By legislating enhanced participatory frameworks within Panchayati Raj Institutions, promoting gender-just dispute resolution mechanisms, and utilising constitutional provisions to support these reforms, states can act as laboratories for democratic innovation—offering scalable models for federal incorporation.²⁶⁷

4.1.1.4 Federal Reform through Feminist Decentralisation

The Indian federal structure outlined in Part XI of the constitution and detailed in Articles 246-254 and the Seventh Schedule was intended to balance unity with state autonomy.²⁶⁸ However, this ambitious division of powers, especially the executive's dominance over the Concurrent List has led to a highly centralised form of federalism. It has stifled state-

²⁶⁶ (n 60).

²⁶⁷ (n 48) Part XI, Articles 246-254, and the Seventh Schedule.

²⁶⁸ *ibid.*

led innovations in gender justice especially within crucial socio-economic areas like public health, policing and local governance that fall within state jurisdiction.²⁶⁹ Yet, these very domains are where anarcho-feminist and decentralised frameworks, as demonstrated by Rojava's communalist structures and Zapatista governance assemblies, hold transformative potential.²⁷⁰

In order to integrate these principles into India's federal structure, a dual strategy might be beneficial wherein, (1) the scope of cooperative federalism is redefined allowing subnational actors genuine autonomy in gender justice governance; and (2) constitutional provisions are reinterpreted to support aforementioned non-hierarchical, participatory, and restorative systems across states.

4.1.1.4.1 Strengthening Asymmetric Federalism to Foster Gender Justice Innovation

Anarcho-communist values such as autonomy, community self-governance, and horizontal power-sharing align with the Indian constitutional principle of asymmetric federalism, which permits special arrangements for certain states based on historical and social contexts (e.g., Articles 370, 371).²⁷¹ While Article 370 has been controversially revoked,²⁷² the principle of asymmetry remains constitutionally viable. By invoking similar provisions, the Union government could devolve greater functional and fiscal autonomy to states willing to pilot gender-just, community-led governance models.

²⁶⁹ *ibid.*

²⁷⁰ *Zapatista Army of National Liberation (EZLN)*, 'Autonomy and Self-Determination: The Zapatista Model of Governance' <https://www.ezln.org> accessed 10 June 2025.

²⁷¹ (n 48) Articles 370, 371.

²⁷² (n 48) arts 370 (now abrogated) and 371.

For instance, a constitutional amendment under Article 368 could allow states to establish gender justice zones—federally recognised but locally governed jurisdictions where community councils or Mahila Gram Sabhas exercise decision-making authority in areas such as domestic violence redressal, land rights, and reproductive autonomy.²⁷³ These zones could mirror the *Zapatista Caracoles*: autonomous regions where justice is delivered through consensus, reparation, and education rather than punitive systems.²⁷⁴

Such initiatives would also resonate with the Directive Principles of State Policy, particularly Articles 39(a), 39A, and 41, which urge the state to promote equal justice, economic security, and community welfare.²⁷⁵ While non-justiciable, these provisions provide normative legitimacy for feminist federal experimentation.

4.1.1.4.2 Expanding Intergovernmental Platforms for Participatory Governance

The Inter-State Council (Article 263) and NITI Aayog are two of the few formal intergovernmental fora, have traditionally focused on fiscal and administrative coordination.²⁷⁶ However, their mandates could be radically reimaged to create a National Gender Justice Forum involving Union, State, and Panchayati Raj representatives, including women's collectives, to shape GBV policy through deliberative processes.

This would embody anarcho-feminist commitments to direct participation and localised knowledge production. The Zapatistas' multi-tiered governance model where regional, municipal, and community assemblies co-govern, offers a relevant template for decentralised federal deliberation that avoids top-down imposition.²⁷⁷ Such a forum could also advise on

²⁷³ (n 48) art 368.

²⁷⁴ (n 270).

²⁷⁵ (n 48) Articles 39(a), 39A, and 41.

²⁷⁶ (n 48) Article 263.

²⁷⁷ Hilary Klein, *Compañeras: Zapatista Women's Stories*, Seven Stories Press, 2015.

gender-sensitive budget allocations under Article 112 and influence legislative coordination on the Concurrent List to ensure uniform but context-sensitive GBV responses.²⁷⁸

4.1.1.4.3 Constitutional Interpretation as a Tool for Decentralised Feminist Jurisprudence

The Indian Supreme Court has played a pivotal role in expanding constitutional interpretation through doctrines such as the basic structure, substantive equality, and transformative constitutionalism.²⁷⁹ Leveraging these interpretive tools, the judiciary could affirm a reading of Articles 14, 15(3), 39A, and 40 that supports anarcho-feminist practices: such as non-punitive community tribunals, affirmative representation, and decentralised justice delivery mechanisms.^{[280][281]}

For instance, a feminist reinterpretation of Article 254(2) which permits state laws to override Union laws on concurrent matters with Presidential assent could empower state-level gender justice innovations that do not align with punitive or carceral union policies.²⁸² This aligns with Rojava's legal pluralism, where communal courts operate outside traditional state hierarchies, focused instead on reintegrating perpetrators into society through accountability, dialogue, and reparations.²⁸³

4.1.2 Conclusion

Re-envisioning India's governance through anarcho-feminist and decentralised frameworks, this chapter has proposed reforms across all levels – rural, urban, state, and federal – grounded

²⁷⁸ (n 48) Art 112.

²⁷⁹ Sathe (n 153).

²⁸⁰ (n 48) Articles 14, 15(3), 39A, and 40; see also P Sharma, *Constitutional Law: Principles and Practice* (7th edn, Eastern Book Company 2019) 112-115.

²⁸¹ *ibid.*

²⁸² (n 48) Article 254(2).

²⁸³ R. Dworkin, *Law's Empire* (Harvard University Press 1986) 51-55.

in India's Constitution. Integrating gender-just, community-based adjudication into Khap Panchayats and urban municipalities signals a move away from top-down, punitive governance models toward restorative, participatory justice. At the state level, innovations in PRIs offer transformative potential for embedding intersectional feminist values into everyday governance. Meanwhile, India's federal structure, though traditionally centralised, possesses sufficient constitutional elasticity to accommodate and even scale these localised experiments, provided there is political will and legal creativity.²⁸⁴ Far from being utopian, these proposals draw on existing constitutional provisions (Articles 15(3), 39A, 243G, 246, etc.) and simply reinterpret them through a lens of substantive equality and lived experience.

Critics might argue that anarcho-communist principles are unworkable in a vast, heterogeneous democracy like India. However, India already has glimmers of these approaches: for example, Kerala's successful decentralisation initiatives, the ADR mechanisms in civil courts, and Article 40's directive to organise village panchayats all manifest latent tendencies toward pluralism and participatory justice. These are not foreign impositions but **dormant constitutional possibilities waiting to be activated**. What is required is not a wholesale constitutional overhaul but rather constitutional imagination – one that centers feminist resistance, community self-determination, and non-hierarchical governance as core strategies for combating GBV. In this sense, anarcho-feminist frameworks do not threaten Indian federalism; they revitalise it by aligning governance with the emancipatory aspirations that the Constitution, at its best, was meant to serve.

4.2 SUBCHAPTER: HUNGARY

²⁸⁴ *S.R. Bommai v Union of India* [1994] 3 SCC 1

In the context of Hungary, as discussed previously, Prime Minister Viktor Orbán’s cabinet, under the guise of promoting “family values,” has promulgated a myriad of laws that curtail rights for women and other genders.²⁸⁵ These laws have further contributed to the persistence of GBV in the country by reinforcing patriarchal norms, restricting reproductive rights, and rolling back protections for survivors of domestic violence.²⁸⁶ A notable example is Hungary’s refusal to ratify the Istanbul Convention, justified by claims that it promotes “destructive gender ideologies” and threatens national sovereignty.²⁸⁷

However, simply integrating anarcho-communist frameworks into Hungary’s existing legal system risks rendering such changes merely symbolic. Hungary may not have been colonised in the classical sense, yet its legal order has been deeply shaped by frameworks inherited from the Austro-Hungarian Empire, socialist legal traditions, and more recently, supranational obligations as a member of the European Union.²⁸⁸ While often regarded as emblematic of “European” or “civilised” legal development, such frameworks are themselves constructed upon and sustained by hierarchical, exclusionary, and patriarchal logics.²⁸⁹ The very notion of what constitutes “civilised” law is deeply contested; it is often a product of colonial, Eurocentric assumptions about governance, justice, and human relations.²⁹⁰

This underscores the urgent need to interrogate and deconstruct these concepts rather than uncritically accepting them as neutral or desirable—one that transcends punitive,

²⁸⁵ *Hungarian Government*, ‘Orbán Government’s Family Policy’ (2024) <https://www.kormany.hu/en/family-policy> accessed 10 June 2025.

²⁸⁶ *Human Rights Watch*, ‘Hungary: Deteriorating Protection for Women’s Rights’ (2024) <https://www.hrw.org/report/2024/03/16/hungary-womens-rights> accessed 10 June 2025.

²⁸⁷ *Council of Europe*, ‘Hungary’s Refusal to Ratify the Istanbul Convention’ (2024) <https://www.coe.int/en/web/istanbul-convention> accessed 10 June 2025.

²⁸⁸ (n 27) Preamble; see also *Constitutionalism in the European Union* (Springer 2018) 36.

²⁸⁹ *Hungarian Government*, ‘The Legacy of Austro-Hungarian Legal Frameworks’ (2022) <https://www.kormany.hu/en/justice> accessed 10 June 2025.

²⁹⁰ N. S. Jones, *European Legal Tradition: Eurocentrism and Law* (Oxford University Press 2020) 47.

state-dominated mechanisms in favour of pluralistic, community-rooted legal frameworks. Such an approach must centre survivors' experiences, dismantle entrenched hierarchies, and affirm diverse epistemologies, drawing inspiration from feminist and anarcho-communist frameworks practised in regions like the Zapatista territories of Mexico and Rojava in Northern Syria.^{[291][292]}

In this chapter I argue that decolonising Hungary's legal system in relation to GBV should proceed on two interconnected fronts. First, by co-creating community-based justice mechanisms such as autonomous women's councils and restorative justice collectives that empower local communities to adjudicate GBV cases through consensus, care, and reintegration rather than state-imposed punishment. Second, by reinterpreting constitutional provisions in the Fundamental Law of Hungary to recognise participatory democracy, gender equality, and community self-determination as core constitutional values rather than aspirational policy goals.²⁹³

In doing so, the aim is not to "integrate" anarcho-communist frameworks into a white supremacist or patriarchal system, but to co-create a new legal consciousness that disrupts established hierarchies and reimagines justice as fundamentally relational, transformative, and community-rooted. This radical approach challenges the limitations of symbolic reforms and strives for a profound shift in how law is conceptualised, experienced, and practised in Hungary particularly in relation to gender-based violence.

²⁹¹ (n 270).

²⁹² *YPG Rojava*, 'Gender Justice in Rojava: The Role of Women's Courts in Legal Pluralism' (2019) <https://www.ypg-rojava.org> accessed 10 June 2025.

²⁹³ (n 27) Article 32.

4.2.1 Municipal and County-Level Governance: Localising Gender Justice

Hungary's local governance system comprises municipalities (települések) and counties (megyék), governed under Act CLXXXIX of 2011 on Local Governments.²⁹⁴ Despite a constitutional guarantee of local self-government (Fundamental Law Article 32), municipalities often face **fiscal dependency** on the central government and lack meaningful autonomy.²⁹⁵ This severely limits their ability to implement any community-based justice initiatives independently.²⁹⁶ Even though formal commitments to gender equality exist, local politics remains a male-dominated arena in practice. Women are underrepresented as mayors and council members across Hungary.²⁹⁷ When gender quotas are present (for instance, in party candidate lists), they are often treated as a formality rather than a path to genuine power-sharing – women may be placed in junior roles or symbolic positions without real decision-making authority.²⁹⁸

Deep-seated cultural attitudes (fostered by Hungary's conservative societal norms) view politics as a masculine domain, discouraging women from seeking public office and often trivialising issues that disproportionately affect women.²⁹⁹

This exclusion of women from local governance has direct implications for addressing GBV. If local councils have few or no women voices, they tend to prioritize issues aligned with male-centric agendas, often overlooking or trivialising the needs of GBV survivors.³⁰⁰ This creates a vicious cycle of legal alienation: women – especially from marginalised groups like the Roma

²⁹⁴ Act CLXXXIX of 2011 on Local Governments (Hungary).

²⁹⁵ (n 27) Article 32.

²⁹⁶ *ibid.*

²⁹⁷ A Vajda and G Ilonszki, 'Gendered Parties and Gendered Voters in Hungary? "Plus Ça Change, Plus C'est Pareil"' (2021) 37(4) *East European Politics* 617, 634 <https://doi.org/10.1080/21599165.2021.1873774> accessed 16 June 2025.

²⁹⁸ *ibid.*

²⁹⁹ *ibid.*

³⁰⁰ Andrea Pető, 'Anti-Gender Mobilisation in Hungary: From the Gender-Free to the Family-Friendly' (2021) 29 *European Journal of Women's Studies* 201.

– see local institutions as unwelcoming or biased, and thus are disinclined to report abuse or seek help through those channels.³⁰¹ To transform local governance, it is essential to **decolonise these patriarchal structures** by implementing intersectional, feminist, and community-based models that put women’s experiences and leadership at the center. Only then can local councils become genuinely inclusive spaces capable of delivering justice that is equitable and responsive to all survivors.³⁰²

An anarcho-feminist transformation at the **municipal level** could involve establishing **Women’s Councils** or gender justice committees within local governments, modelled on principles from the Zapatista Women’s Revolutionary Law.³⁰³ These councils would have decision-making powers on matters such as domestic violence prevention, reproductive health, and public safety, using restorative justice practices rather than punitive sanctions. Drawing on Rojava’s Mala Jin courts, municipalities could pilot community-based tribunals that address GBV through consensus-building, survivor-centred justice, and reintegration.³⁰⁴

At the county level, Hungary’s administrative divisions oversee regional planning, education, and some aspects of social services.³⁰⁵ Here, counties could enact regional gender justice strategies under the principle of subsidiarity, embedding gender-equal representation in county councils, establishing gender-sensitive budgeting, and creating regional restorative justice forums.³⁰⁶ Such reforms would resonate with anarcho-communist principles of decentralised governance, community participation, and non-hierarchical decision-making.

³⁰¹ Ibid 205–210; also see *Roma Women’s Association*, ‘Exclusion of Roma Women from Local Governance’ (2022) <https://www.roma-women.org> accessed 10 June 2025.

³⁰² *Gender Justice and Feminist Theory in Hungary* (Oxford University Press 2021).

³⁰³ (n 212).

³⁰⁴ Knapp (n 110).

³⁰⁵ (n 294).

³⁰⁶ Ibid; see also European Charter of Local Self-Government (Council of Europe, 1985).

4.2.2 National Legal Framework and the Fundamental Law

4.2.2.1 National Level: Challenging Hungary's Centralised Legal System

At the national level, Hungary's legal framework is influenced by Austro-Hungarian legal traditions, decades of socialist centralism, and a recent surge of Christian-conservative identity politics – all of which historically privileged patriarchal norms.³⁰⁷ Under the Orbán administration, a series of constitutional amendments and cardinal laws have further entrenched gender hierarchies – notably the Ninth Amendment to the Fundamental Law, which, as mentioned, redefined family in a way that subordinates women's rights and excludes non-traditional families.³⁰⁸ These developments have contributed to persistent GBV by limiting survivor-centric protections and reinforcing heteronormative frameworks that silence diverse gender identities.

To meaningfully address GBV within Hungary's constitutional framework, a **transformative anarcho-communist approach** is needed, one that would require reinterpreting (or even amending) the Fundamental Law to center survivor experiences and challenge the state's monopoly on justice. This approach starts from the recognition that state-centric punitive models have failed to uproot the structural causes of GBV, and often leave survivors vulnerable to secondary victimisation while excluding communities from participating in justice.³⁰⁹ The following are key national-level reform ideas:

First, revise **Article Q** of the Fundamental Law (which concerns Hungary's international obligations) to explicitly integrate Hungary's commitments under instruments like the Istanbul Convention and relevant EU gender equality frameworks. This would ensure that no domestic

³⁰⁷ (n 27) Preamble; see also (n 289).

³⁰⁸ (n 27) Ninth Amendment.

³⁰⁹ (n 286).

legislation or future constitutional amendment can contravene survivors' rights or the state's duty to prevent and prosecute GBV.³¹⁰ This would create a constitutional floor for safeguarding GBV protections against regressive domestic reforms. Essentially, it creates a constitutional "floor" for GBV protection – a safeguard against regressive laws. For example, if Article Q mandated alignment with the Istanbul Convention's standards, any law attempting to, say, weaken a restraining order regime or reduce support for survivors could be struck down as unconstitutional.

Second, embed **restorative justice mechanisms** within Article XXVIII (which guarantees the right to a fair trial). An amendment or authoritative reinterpretation could establish that survivor-centred, community-based justice processes are a constitutionally valid complement to formal courts.³¹¹ For instance, Article XXVIII could be understood to permit alternative forums (like local women's councils or peace-making circles) for resolving certain cases, provided basic fairness and consent of parties. This would enshrine the legitimacy of approaches focusing on healing and accountability over retribution – directly challenging the assumption that only state courts and punishment constitute "justice." It draws inspiration from the Zapatistas' and Rojava's models by recognising their core idea within Hungary's highest law.³¹²

Finally, expand the interpretation of **Article I** of the Fundamental Law (which upholds human dignity) to strengthen constitutional scrutiny of any state action that impedes participatory democracy or community-based justice efforts aimed at combating GBV. In practice, this means if the government tried to suppress a local women's council or criminalise NGO efforts at community mediation, such actions would face a high bar to prove they are justified. The

³¹⁰ (n 27) Article Q.

³¹¹ (n 27) Article XXVIII.

³¹² (n 270).

proportionality clause under Article I could be applied such that any limitation on survivor-centric initiatives must serve a compelling interest and be strictly necessary – preventing the state from simply invoking “public order” to quash grassroots justice innovations.³¹³ This would ensure that patriarchal state interests cannot easily override gender-just reforms emerging from communities.

By foregrounding GBV in constitutional discourse and reforms, Hungary can move beyond tokenistic commitments to gender equality. The goal is to build a legal system that genuinely challenges patriarchal structures and empowers survivors through decentralised, community-rooted justice.³¹⁴ These constitutional changes, combined with local and state initiatives, would signal a paradigm shift: from a state that dictates downwards, to one that **facilitates and protects community-driven justice** that arises upwards.

In addition, Hungary could explore a **supranational dimension** to reinforce these reforms (given its EU membership). The EU’s legal framework is formally committed to gender equality and human rights, though it too is embedded in liberal legal traditions that may resist radical community justice.³¹⁵ Still, EU directives on gender equality and victims’ rights (such as Directive 2006/54/EC on equal treatment in employment,³¹⁶ and Directive 2012/29/EU on victims’ rights) provide legal levers that Hungary is obliged to implement.³¹⁷

These could be used as **leverage points** for feminist advocates: for example, arguing that establishing local restorative justice councils helps fulfill EU victim support obligations. Similarly, Article 23 of the EU Charter of Fundamental Rights guarantees equality between

³¹³ (n 27) Article I (Human Dignity).

³¹⁴ *Hungarian Women’s Rights Association*, ‘Moving Beyond Gender Tokenism in Hungary’ (2023) <https://www.hwr.hu> accessed 10 June 2025.

³¹⁵ *EU Gender Equality Law and Politics* (Oxford University Press 2020) 29.

³¹⁶ Directive 2006/54/EC, *on the implementation of the principle of equal treatment of men and women in the matter of employment and occupation* [2006] OJ L 204/23.

³¹⁷ Directive 2012/29/EU, *establishing minimum standards on the rights, support and protection of victims of crime* [2012] OJ L 315/57.

men and women, offering a “hook” for domestic feminist justice initiatives to claim they are bolstering EU values.³¹⁸ This offers potential for integrating anarcho-communist feminist frameworks into Hungary’s constitutional fabric, aligning local practices with supranational obligations.

Article 7 of the Treaty on European Union (TEU) establishes procedures for sanctioning member states that breach EU values, including gender equality and human rights.³¹⁹ In theory, even the Court of Justice of the EU (CJEU) could interpret EU law in ways that encourage member states to provide effective remedies for GBV, indirectly supporting innovations like Hungary’s community justice councils.³²⁰ For instance, if the CJEU ruled that mere criminalisation without prevention and support is not an “effective remedy” under the Victims’ Rights Directive, that could push Hungary to invest in restorative and supportive measures.³²¹

However, EU mechanisms alone cannot guarantee transformative change – political enforcement of EU values (like through Article 7 TEU sanctions) remains contentious and slow. Ultimately, without a bottom-up shift in legal culture within Hungary, even progressive EU mandates could be reduced to symbolic gestures.³²² Thus, integrating anarcho-feminist principles requires reimagining EU obligations not as external impositions but as **tools that can be adapted to empower survivors**, dismantle patriarchy, and embed community-rooted justice in Hungary’s legal landscape.³²³

4.2.2 Conclusion

³¹⁸ Charter of Fundamental Rights of the European Union [2012] OJ C 326/391, Art 23.

³¹⁹ Treaty on European Union (TEU) 2012, Art 7.

³²⁰ *Court of Justice of the European Union*, ‘CJEU Judgment on Gender-Based Violence in Hungary’ (2024) <https://curia.europa.eu> accessed 10 June 2025.

³²¹ *European Parliament*, ‘EU Gender Equality Laws and their Enforcement’ (2023) <https://www.europarl.europa.eu> accessed 10 June 2025.

³²² *Human Rights Watch*, ‘Hungary’s Misapplication of EU Gender Equality Directives’ (2024) <https://www.hrw.org/eu-gender-equality> accessed 10 June 2025.

³²³ *Legal Frameworks for Feminist Justice* (Harvard Law Review 2023) 212.

This subchapter has explored how Hungary's legal system – rooted in imperial legacies, socialist centralism, and now shaped by supranational EU frameworks – has contributed to entrenched patriarchal norms and the perpetuation of GBV. Despite provisions for decentralisation (Fundamental Law Chapter IX) and formal commitments to gender equality, local governance structures often replicate hierarchical, male-dominated power dynamics that marginalise women and fail to protect GBV survivors.³²⁴ Similarly, at the national level, recent constitutional amendments have been used not to advance gender justice but to reinforce conservative family values and restrict reproductive and sexual rights.³²⁵

On the supranational front, the EU Charter of Fundamental Rights and various gender equality directives potentially offer avenues for embedding feminist and anarcho-communist principles into Hungary's legal framework. But as noted, these mechanisms risk remaining symbolic unless accompanied by grassroots processes that challenge the patriarchal and hierarchical structures in both domestic and supranational law.³²⁶

This chapter argues that any meaningful transformation of Hungary's legal order to address GBV must begin with a **decolonial critique** of its Eurocentric assumptions about law, justice, and “civilisation.”³²⁷ Rather than simply inserting anarcho-communist frameworks into an exclusionary system, a genuinely transformative approach requires **reimagining justice itself** as relational, community-rooted, and participatory. Drawing inspiration from feminist legal scholars, anarchist theorists, and survivors' lived experiences, this vision challenges the limitations of liberal legalism and calls for constitutional reinterpretations that foreground gender equality, participatory democracy, and community-led justice mechanisms.

³²⁴ (n 27) Chapter IX.

³²⁵ *Human Rights Watch*, ‘Hungary: Gender-Based Violence and the State's Failure to Protect Women’ (2024) <https://www.hrw.org/report/2024/05/24/hungary-gbv> accessed 10 June 2025.

³²⁶ Agnes (n 231).

³²⁷ Boaventura (n 106).

In sum, while Hungary's legal system formally recognises local self-government and equality, implementation remains constrained by historical, political, and socio-cultural factors. Overcoming these limitations demands not only legislative reform but also a fundamental shift in legal consciousness – one that centers survivors' experiences, dismantles entrenched hierarchies, and validates diverse ways of knowing as essential in the fight against GBV. Only by marrying **bottom-up legal empowerment** with **top-down legal reform** can Hungary hope to truly decolonise justice and integrate anarcho-communist feminist principles in a lasting way.³²⁸

CONCLUSION

Across both the Global North and South, GBV remains deeply entrenched in systems shaped by historical injustices, colonial legacies, and patriarchal legal traditions. While regional contexts differ – the Global South grappling with colonial residues, and the Global North with bureaucratised, institutionalised patriarchy – the fundamental issue persists: existing legal frameworks fail to address GBV as a structural, systemic problem. These frameworks, designed within hierarchical, male-dominated paradigms, often treat GBV as isolated incidents rather than manifestations of deeper social inequality. As a result, legal systems worldwide frequently retraumatise survivors and seldom offer transformative justice.

In our current era of democratic decline and rising illiberalism, we see feminist movements criminalised, survivor protections rolled back, and GBV tacitly allowed (if not outright encouraged) to flourish. This trajectory demands not only legal reform but a reimagining of justice itself – one that dismantles patriarchal power structures and reorients law towards collective care, equality, and structural change. The comparative inquiry in this thesis set out

³²⁸ Dirik (n 22).

to envision such a jurisprudence: community-rooted, inclusive of all genders, and fundamentally transformative.

The case studies illustrate that *alternative models are not mere abstractions – they already exist*. In Rojava and Zapatista territories, we find concrete examples of decentralised, women-led justice that prioritises healing and empowerment. These models confirm that it is possible to protect women and marginalized groups through collective structures outside the conventional state framework. On the other hand, the experiences of Hungary and India demonstrate the fragility of formal legal guarantees when political will is lacking or when authoritarian and patriarchal values capture state institutions. Illiberal democracies can hollow out rights from within, making progressive laws ineffective in practice.

Bridging these worlds requires creative integration. The thesis proposes that *illiberal democracies can and should incorporate anarcho-communist feminist principles into their constitutions and governance*. This does not mean importing foreign solutions wholesale, but rather activating each country's own constitutional "DNA" – its latent egalitarian and democratic potential – and infusing it with practices proven in community contexts. For India, that meant recognising the scope within its federal, pluralistic constitution to legitimise local justice initiatives and women's councils. For Hungary, it meant using constitutional reform and EU leverage to protect space for community-led justice and reinterpret "democracy" to include participatory, not just majoritarian, elements.

There are, undeniably, **limitations and challenges** to this vision. Localised, anarcho-feminist justice frameworks face questions of scalability, consistency, and durability when extended to an entire nation-state.³²⁹ They excel as community solutions but encounter hurdles in maintaining coherence and authority at higher levels. They also must contend with entrenched

³²⁹ *ibid.*

power holders: bureaucracies, political elites, and even segments of the public conditioned to view state authority as the only legitimate form of justice.³³⁰ Additionally, the integration of non-state justice into state systems risks co-optation; without constant vigilance, the radical edge of community justice could be blunted into a mere token consultative role.³³¹

However, these challenges are not insurmountable. As this thesis has argued, many of the tools for change are already present in existing legal systems – they need to be interpreted and deployed differently. The idea of “*constitutional imagination*” emerged as a key theme: rather than amending every law, we can reimagine current laws and provisions (like decentralisation clauses, directive principles, international commitments) as enablers of a feminist communitarian approach. Likewise, international and regional human rights frameworks, often thought of as top-down impositions, can be reimaged as support structures for bottom-up innovations (for example, validating a women’s court as part of fulfilling a CEDAW obligation).

In conclusion, to **decolonise justice** in the fight against GBV, illiberal democracies must embark on a twofold journey: *structural legal change* and *cultural legal change*. Structural change means rewriting laws and constitutions to redistribute power and embed new modes of justice – as outlined for India and Hungary. Cultural change means nurturing a legal consciousness that values empathy, community, and equality over hierarchy, retribution, and control. The anarcho-communist feminist principles discussed throughout – decentralisation of power, collective responsibility, mutual aid, and an unwavering focus on survivors’ dignity – offer a blueprint for both. Far from being a negation of the rule of law, embracing these principles can **reinvigorate** the rule of law by aligning it with the needs and realities of the people it is meant to serve. In doing so, legal systems can be transformed from instruments of

³³⁰ Schneider (n 24).

³³¹ Fineman (n 136).

domination into instruments of empowerment, making gender justice and human dignity foundational rather than ornamental.

GLOSSARY

Anarcho-Communism

A political philosophy that rejects hierarchical structures, advocating for stateless, collectively managed societies based on mutual aid, horizontal decision-making, and communal ownership.

Anarcho-Feminism

A synthesis of anarchist and feminist principles, emphasising the dismantling of both state power and patriarchy.

Asymmetric Federalism

A constitutional arrangement that allows certain subnational units more autonomy than others.

Basic Structure Doctrine

A judicial principle in Indian constitutional law that prevents Parliament from altering the Constitution's essential features, such as democracy and the rule of law. Mentioned in the thesis as a judicial tool for supporting feminist and decentralised reforms.

Carceral

Feminism A critique of feminist strategies that rely on punitive state mechanisms (like incarceration) to address gender-based violence.

CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) An international treaty adopted by the UN to promote women's rights.

Decentralisation

The transfer of authority from central to local governments or communities.

Directive Principles of State Policy (India)

Non-enforceable constitutional guidelines encouraging the state to ensure social and economic welfare.

Feminist Jurisprudence

A legal theory that critiques how laws historically reflect male-dominated values and seeks to centre women's lived experiences in legal reform.

GBV (Gender-Based

Violence) Violence directed at individuals based on their gender or gender identity, often rooted in systemic inequality.

Intersectionality

A framework coined by Kimberlé Crenshaw that analyses how overlapping identities (gender, caste, race, etc.) compound experiences of discrimination.

Istanbul Convention	A Council of Europe treaty aiming to combat violence against women and domestic violence.
Mala Jin	Women-led community justice houses in Rojava that handle cases of GBV using restorative, non-punitive methods.
Panchayati Raj Institutions (PRIs)	Constitutionally mandated rural local governance bodies in India.
Restorative Justice	An alternative justice approach that focuses on healing, accountability, and community dialogue rather than punishment.
Transformative Constitutionalism	A principle of interpreting constitutional law in a way that actively promotes social justice and equality.
Women's Revolutionary Law (Zapatista)	A legal declaration by the Zapatista movement in Mexico affirming women's rights to justice, dignity, and participation.

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