

Protective Leviathanism

Abstract

This article develops protective Leviathanism as a theory of how rights against private domination can enlarge public power. Existing scholarship explains the paradoxes of rights, masculinist protection, governance feminism, carceral feminism, human rights penalty, and unequal surveillance. It does not fully explain the durable institutional capacities produced when protection is implemented through policing, accelerated procedure, data systems, and digital infrastructure. Using post-Nirbhaya India as its principal case, the article shows how women's safety was selectively translated into punishment, fast-track courts, emergency platforms, tracking, and urban surveillance. It uses the Convention on the Elimination of All Forms of Discrimination against Women and General Recommendation No. 35 as normative benchmarks, not historical causes. It then proposes an Autonomy-Power Test for distinguishing emancipatory protection from protective governance that strengthens the State faster than it strengthens women.

Keywords: carceral feminism, CEDAW, feminist legal theory, Hobbes, protective Leviathanism, surveillance

The Problem Protection Creates

Women's rights disturb the old liberal map. In the textbook story, rights are weapons against the State. The citizen stands here, the sovereign stands there, and the right is a shield. But women's rights have never fitted so neatly into that picture. The harms they answer are often not only governmental. They live in bedrooms, buses, kitchens, offices, caste networks, police stations, family WhatsApp groups, hostel gates, salary slips, public transport, dowry negotiations, and marriage itself.

To protect women, law must enter spaces liberalism once called private.

That is the first uncomfortable truth. Serious protection against gendered violence usually requires public power. Police must receive complaints. Courts must issue orders. Employers must investigate harassment. Magistrates must restrain violent spouses. Transport authorities must regulate vehicles. Shelters must be funded. Evidence must be collected. Officials who refuse to act must themselves become answerable.

This does not make protective law wrong. It makes protective law politically consequential in the exact way all necessary power is consequential.

The familiar liberal account of rights is organised around public domination. Rights restrain the sovereign from censoring speech, entering homes, detaining persons, confiscating property, or

Protective Leviathanism

monitoring private life. Yet many feminist claims concern domination exercised by formally private actors. The violent husband, the sexually coercive employer, the stalking stranger, the caste council, the family enforcing marriage, and the intimate partner controlling mobility are not made harmless by their distance from the State. Rights against them require intervention. The State must acquire duties, institutions, information, personnel, and often coercive authority.

Liberal constitutionalism therefore contains a recurrent asymmetry. Rights directed against public domination usually limit State capacity. Rights directed against private or social domination often require State capacity to expand. The right against arbitrary arrest restrains police. The right against domestic violence summons police. The right to privacy limits surveillance. The right to safety may be used to justify surveillance. The right against censorship requires governmental restraint. The right against threatening online abuse may require monitoring, identification, investigation, and removal.

Protective Leviathanism names the institutional danger within this asymmetry.

I define protective Leviathanism as a mode of rights implementation in which a claim against private or social domination is translated into durable and portable coercive, administrative, temporal, epistemic, or digital capacities of the State, legitimated through the language of care, while the autonomous capabilities of the intended beneficiaries expand less, unevenly, or conditionally.

The concept does not claim that protective rights inevitably become oppressive. Nor does it assume that State capacity and women's autonomy are always opposed. Public power can be essential to autonomy. A shelter, a residence order, a responsive police officer, accessible transport, legal aid, and an enforceable workplace duty can increase the practical range of a woman's choices. The argument is narrower and more demanding. Protective rights create an **institutional externality** that feminist legal analysis must track. Alongside the primary rights benefit, they may leave behind a residue of police jurisdiction, databases, cameras, accelerated procedures, administrative discretion, and technological infrastructure. These capacities can endure after the triggering crisis, travel beyond their initial purpose, and distribute their burdens unevenly.

The question is therefore not whether protection expands power. It often must. The question is what power is built, who controls it, how long it lasts, where it travels, and whether the protected acquire a corresponding increase in autonomy.

Post-Nirbhaya India makes that question unusually visible. The gang rape and murder of a young woman in Delhi in December 2012 became more than an individual atrocity. It became an indictment of public transport, policing, criminal procedure, urban space, and the State's failure to secure women's mobility. The Justice Verma Committee described the protests that followed

Protective Leviathanism

as a public response to a failure of governance to provide women with a safe and dignified environment.¹

The Criminal Law (Amendment) Act 2013 followed, amending substantive criminal law, evidence, and criminal procedure. It recognised or expanded offences concerning acid attacks, sexual harassment, voyeurism, stalking, trafficking, and rape. It also created liability for specified failures by public servants to record information concerning serious offences.² These reforms included genuine rights gains. They made harms legally visible and challenged institutional non-response.

The post-Nirbhaya response, however, did not remain inside the penal code. It grew into a safety architecture comprising Fast Track Special Courts, the Emergency Response Support System, One Stop Centres, Women Help Desks, Safe City projects, video surveillance, geographic crime mapping, GPS tracking, panic buttons, public transport monitoring, call centres, databases, and command platforms. The State did not only punish more. It learned to see, route, classify, map, and accelerate more.

So yes, the Leviathan grew.

But the slogan “State power is bad” is too clean for a country where private power has often been savage. A woman beaten by her husband is not free because the State remains outside the door. A student followed to college is not liberated by a theory of minimal government. A Dalit woman whose complaint is refused at the police station is not protected by constitutional poetry. A daughter threatened for choosing an inter-caste or interfaith relationship is not saved by the fiction that family authority is naturally benign.

When the State withdraws, another sovereign may enter. The father. The husband. The landlord. The employer. The caste council. The mob. Sometimes the family itself becomes a little Leviathan, only with worse paperwork.

The argument is therefore not anti-State. Such an argument would reproduce the liberal public-private division that feminist legal theory struggled to expose. Nor is it anti-rights. Critical race and feminist scholars have repeatedly shown that abstract suspicion of rights can be a luxury unavailable to those who need enforceable claims against entrenched power (Williams 1987). The argument instead concerns the **form** in which protection is institutionalised.

This article makes four contributions.

First, it identifies an institutional externality of protective rights that the existing literature has not adequately theorised. Rights scholarship has examined how rights emancipate, regulate,

Protective Leviathanism

individualise injury, and construct legal subjects. Protective Leviathanism asks a different question: what new capacities does the State retain after implementing a protective claim?

Second, the article distinguishes protective Leviathanism from the concepts nearest to it. Iris Marion Young explains how masculinist protection places the protector above a dependent protected subject. Governance feminism explains how particular feminist ideas enter State and quasi-State institutions. Carceral feminism and human rights penalty explain the turn to punishment. Securitisation theory explains how threats authorise exceptional politics. Feminist surveillance studies explains the gendered, racialised, and classed distribution of visibility. Protective Leviathanism connects these insights while identifying something none captures alone: the durable, portable, and multi-institutional accretion of State capacity generated through protective rights.

Third, the article proposes an **Autonomy-Power Test**. The test does not oppose autonomy to all State action. It compares the capacities created for the State with the capabilities secured for the protected, then examines distribution, safeguards, portability, participation, and reversibility.

Fourth, it reinterprets post-Nirbhaya India through this framework. The analysis does not treat Parliament or Indian feminism as monolithic. The parliamentary record contains punitive, egalitarian, procedural, and autonomy-centred positions. The argument is that the later institutional settlement selectively amplified those demands most compatible with existing techniques of government, including criminalisation, policing, speed, surveillance, and measurable administrative output.

A bad law is easy to criticise. A protective law arrives carrying the victim in its arms. That is precisely why feminist legal theory must examine it with care rather than gratitude alone.

What Existing Theory Sees, and What It Misses

Protective Leviathanism does not begin from an empty intellectual field. It intervenes in several mature conversations. Its contribution can be established only by showing both what those conversations already explain and what remains unexplained.

Rights as emancipation and regulation

Wendy Brown's account of rights as paradoxical provides one starting point. Rights can mitigate injury while fixing the injured identity through which legal recognition is obtained. A right may contest subordination yet also encode the subject in terms already shaped by that subordination.

Protective Leviathanism

The woman becomes legally intelligible as victim, the racialised subject through injury, and the marginalised group through a category administered by law (Brown 2000).

Brown helps explain why the protected woman can become a governed identity. She does not, however, principally examine the institutional capacities produced by implementing protective claims. The paradox she foregrounds concerns subject formation and political possibility. Protective Leviathanism moves from the legal subject to the institutional residue. It asks what police jurisdiction, administrative machinery, procedural authority, and informational infrastructure remain after the right has been recognised.

Patricia Williams supplies a necessary corrective to an overly totalising rights critique. For persons historically denied the legal standing that others take for granted, rights can be material, dignifying, and indispensable. The right to enter, own, work, speak, and demand protection is not simply an ideological trap. It can mark the transition from dependence on discretion to a claim that must be answered (Williams 1987). Crenshaw similarly demonstrates that apparently neutral frameworks can erase persons situated at intersecting structures of race and gender, while legal reform remains necessary to make those structures contestable (Crenshaw 1989).

Protective Leviathanism takes this warning seriously. It does not treat the expansion of State responsibility as presumptively suspect. Doing so would abandon women facing private violence to institutions that law has historically protected through inaction. The concept instead distinguishes the **rights gain** from the **capacity gain**. Both may occur simultaneously. The point is to evaluate their relationship.

This produces a different account of rights' paradox. The paradox is not only that rights emancipate and regulate. It is that a right can increase a claimant's formal protection while simultaneously furnishing institutions with powers that are more durable, more measurable, and more portable than the claimant's autonomy. The rights benefit may be case-specific. The camera, database, statutory offence, or police mandate can remain.

The sexual contract, the protector, and the responsive State

Carole Pateman's critique of the social contract shows how the public language of freedom can coexist with patriarchal authority in civil society and family life. The contract does not merely replace domination with consent. It can organise a gendered civil order in which women enter as wives, sexual subjects, and dependants rather than as equal authors of political society (Pateman 1988). This insight explains why a State confined to restraining itself cannot deliver feminist freedom. Private authority is political even when law calls it domestic.

Iris Marion Young comes closest to the present argument. Her logic of masculinist protection explains how an apparently benevolent protector acquires superior authority over those cast as

Protective Leviathanism

vulnerable. Protection offers safety in exchange for obedience, gratitude, and reduced democratic scrutiny. The State protector faces outward against danger and inward toward the management of those under its care. Fear can therefore weaken accountability even where the protector claims to act selflessly (Young 2003, 2-7).

Protective Leviathanism extends Young in three respects.

First, Young's primary object is the political relationship between protector and protected within a security regime. Protective Leviathanism centres the **institutional residue** of that relationship. It asks what capacities are created, where they are lodged, how long they endure, and whether they can be repurposed.

Second, Young analyses security mobilisation around war and external threat. Protective Leviathanism concerns ordinary rights implementation as well as emergencies. It can arise through a criminal amendment, a welfare-linked database, a specialised court, a municipal camera, or an emergency platform. It does not require suspension of ordinary law. It may be produced by ordinary law working efficiently.

Third, Young illuminates dependency but does not offer a method for distinguishing necessary protection from domination-producing protection. The Autonomy-Power Test is intended to provide that distinction.

Martha Fineman's vulnerability theory provides another essential counterweight. Vulnerability is universal, embodied, and institutionally mediated. Because individuals accumulate resilience through social institutions, the proper response is not a retreating State but a responsive one (Fineman 2010).

Protective Leviathanism does not reject Fineman's responsive State. It asks what makes responsiveness accountable. A State can respond to vulnerability by redistributing resources, building accessible services, regulating institutions, and increasing material resilience. It can also respond by intensifying policing, monitoring, and classification. Fineman establishes why public responsibility is necessary. Protective Leviathanism supplies a boundary question: when does responsiveness harden into durable control?

Feminist work on relational autonomy sharpens the standard. Autonomy does not require an isolated individual untouched by institutions. It depends on social relations, recognition, resources, and the absence of oppressive constraints (Mackenzie and Stoljar 2000). Nedelsky similarly treats autonomy as constituted through relationships rather than protected by withdrawal from them (Nedelsky 2011). Protective Leviathanism therefore does not measure freedom by the absence of government. It asks whether institutional relations expand the person's effective capacity to decide and act.

Protective Leviathanism

The theoretical opposition is not State versus liberty. It is **domination-producing protection versus autonomy-producing protection**.

Governance feminism, carceral feminism, and human rights penalty

Governance feminism scholarship asks what happens when some feminists and feminist ideas acquire institutional power. Halley, Kotiswaran, Rebouché, and Shamir show that feminist projects now operate through legislatures, prosecutors, international organisations, development institutions, courts, and bureaucracies. Feminist disagreements thus become struggles over governance rather than debates conducted outside power (Halley et al. 2018).

Kotiswaran's study of Indian rape law is particularly relevant. It tracks the postcolonial institutionalisation of feminist reform and the distributive consequences of translating feminist claims into criminal law (Kotiswaran 2018). Mehta and Tiwari similarly show that Indian feminist engagement with criminalisation contains a persistent tension between responding to sexual violence and preserving sexual autonomy (Mehta and Tiwari 2021).

Governance feminism explains **which feminist ideas enter institutions**, which actors acquire authority, and what distributive consequences follow. Protective Leviathanism asks a related but distinct question: **what durable capacities do institutions acquire through that entry?** The distinction matters because State expansion may exceed the intentions of the feminists whose demands initiate reform. Protective Leviathanism does not require that feminists desire surveillance, police expansion, or administrative control. It may result from the institutional translation of more complex demands into instruments that government already knows how to operate.

This is the mechanism I call **institutional affinity**. Governments tend to amplify demands compatible with existing legal and administrative techniques. An offence can be drafted. A court can be designated. A camera can be procured. A call can be counted. A case can be disposed. Economic independence, transformed gender norms, democratic participation, and freedom from caste authority are harder to package as discrete outputs. The claim is not that officials conspire to betray feminist movements. It is that institutions select and reshape claims according to their capacities, incentives, and measures of success.

Carceral feminism scholarship identifies one major result of this selection. Feminist campaigns against sexual and domestic violence can become aligned with policing, prosecution, imprisonment, and punitive governance. Bernstein traces the convergence between feminist anti-trafficking politics and carceral State projects (Bernstein 2012). Goodmark argues that criminalisation has dominated responses to intimate partner violence despite the limited capacity of criminal systems to deliver safety or survivor-defined justice (Goodmark 2018). Gruber examines how feminist anti-violence reform became entangled with the expansion of criminal

Protective Leviathanism

punishment (Gruber 2021). Loney-Howes, Longbottom, and Fileborn show how carceral approaches can compound colonial harms and marginalise Indigenous survivors' justice needs (Loney-Howes et al. 2024).

Protective Leviathanism incorporates that critique but is not reducible to it. Fast-track adjudication, centralised emergency dispatch, CCTV networks, geographic mapping, and interoperable data systems are not adequately described as imprisonment. They belong to a wider field of administrative, temporal, epistemic, and digital power. A State may become more Leviathanic without incarcerating more people.

The literature on coercive human rights moves closer to this wider problem. Positive human rights obligations can require States to investigate and penalise private violations. Mavronicola and Lavrysen identify the sharp edge of rights that mobilise criminal law rather than restrain it (Mavronicola and Lavrysen 2020). Mavronicola later argues that human rights penalty can undermine effectiveness, accountability, and equal protection, the very values invoked to justify it (Mavronicola 2024).

Tapia's anticolonial feminist critique is even more directly relevant. She argues that international human rights discourse can produce a rights-based penalty presented as progressive while reproducing colonial patterns, abstracting violence from its material and relational context (Tapia 2022). Her account of human rights penalty shows how violence against women becomes intelligible through a penal vocabulary that can displace embodied, redistributive, and non-carceral justice (Tapia 2025).

This scholarship powerfully explains the punitive translation of human rights. Protective Leviathanism adds three dimensions.

It includes non-penal capacity.

It examines how capacities survive and travel beyond the initiating claim.

It compares institutional expansion with the autonomous capability actually secured for intended beneficiaries.

Security, surveillance, and data power

Securitisation theory explains how political actors transform an issue into a security matter, thereby authorising measures that would not be accepted under ordinary politics. Security is not merely an objective condition. It is a mode of political classification with institutional consequences (Buzan et al. 1998).

Protective Leviathanism

The post-Nirbhaya discourse contains a securitising movement. Sexual violence became a crisis of national conscience, public order, and State legitimacy. Yet protective Leviathanism is broader than securitisation. It does not depend on a formally exceptional measure or an existential threat. Protection can expand government through ordinary procurement, routine administration, procedural targets, and platforms described as public service. The affect is often care rather than war. The mechanism is normalisation rather than declared exception.

Foucault's account of disciplinary power explains how institutions produce governable subjects through observation, classification, examination, and normalisation (Foucault 1977). Feminist surveillance studies adds that surveillance does not fall upon an abstract universal body. Gender, race, class, sexuality, disability, and coloniality shape who is watched, how bodies are interpreted, and what consequences follow (Dubrofsky and Magnet 2015).

Browne demonstrates that contemporary surveillance cannot be separated from the racial histories through which Black bodies were marked, tracked, and rendered governable (Browne 2015). Benjamin shows how apparently neutral technologies can reproduce and intensify racial hierarchy while presenting themselves as innovation (Benjamin 2019). D'Ignazio and Klein argue that data feminism must begin by examining power, including whose knowledge is counted, whose labour is hidden, and whose interests data systems serve (D'Ignazio and Klein 2020).

These works explain the unequal operation of surveillance and data. What they do not principally explain is why a **protective right** becomes the political warrant for building such systems. Protective Leviathanism identifies that warrant and links it to a comparative criterion. It asks not only whether surveillance is unequal, but whether its creation has outpaced the autonomy it was built to secure.

Taken together, the literature already tells us that rights can regulate, protectors can dominate, feminism can govern, human rights can punish, security can authorise exception, and surveillance can reproduce hierarchy. Protective Leviathanism contributes a theory of how these processes converge when protection against private domination produces durable State capacity.

The concept is needed not because existing theory is wrong, but because the phenomenon crosses the boundaries between those theories.

Hobbes and the Politics of Protective Authorisation

Hobbes is often reduced to a bargain in which people surrender liberty for security. That shorthand obscures the structure that makes Hobbes useful here.

Protective Leviathanism

The state of nature in *Leviathan* is not merely a place with many crimes. It is a condition in which no common authority can provide reliable assurance. Even a person who prefers peace must remain prepared for violence because others cannot be trusted to restrain themselves. Fear is therefore not simply an emotion felt before politics. It is an affective condition from which political authorisation becomes rational (Hobbes 1996, chaps 13-18).

The covenant creates a representative sovereign. Subjects authorise the sovereign's acts because fragmented private judgement cannot provide common security. Protection and representation are thus connected. The sovereign does not merely possess force. It acts in the name of those whose fear made authorisation necessary.

Three features of this structure matter.

First, insecurity is productive. It creates the conditions under which power appears necessary.

Second, sovereign authority is justified through the welfare of the protected. Power presents itself not as appetite but as service.

Third, failure of security does not ordinarily produce a demand for less sovereign capacity. It produces a demand that the sovereign become capable of fulfilling its promise.

Post-Nirbhaya discourse followed this grammar. A brutal act exposed the State's inability to make public space secure. The failure was not interpreted primarily as evidence that the State had too much power. It became evidence that the State had not acted with sufficient presence, speed, coordination, severity, or knowledge. The desired sovereign was not smaller. It was awake.

Hobbes also helps distinguish protective Leviathanism from ordinary paternalism. Paternalism concerns interference justified by a person's own good. Protective Leviathanism concerns the institutional capacities accumulated through the promise of safety. The issue is not only that the State restricts a woman "for her protection." It is that the protective project can build systems that observe, classify, prosecute, and manage populations, including persons who were never the original objects of protection.

Yet Hobbes cannot simply be exported into India as a universal political anthropology. His theory emerged from a particular European history and an abstract account of individuals whose formal equality obscures caste, colonialism, patriarchy, and material dependence. Pateman's sexual-contract critique reveals the gendered exclusions hidden inside contractarian universality (Pateman 1988). Rege's Dalit feminist standpoint warns against analyses in which "women" becomes a unitary subject detached from caste power (Rege 1998). Kapur's critique of

Protective Leviathanism

victimisation rhetoric shows how the postcolonial legal subject can be constituted through a rescue narrative that denies agency while authorising regulatory intervention (Kapur 2002).

Hobbes is therefore used here as a bounded analytic, not as a complete theory of Indian society. He identifies the grammar of fear-generated authorisation. Indian feminist and anti-caste scholarship identifies the social relations through which fear, protection, and policing are differentially distributed.

Young's work provides the bridge. The masculine protector promises safety from danger while placing the protected in a subordinate relation. The benevolence of the protector is precisely what shields authority from scrutiny. Under the logic of protection, criticism can be recoded as ingratitude or irresponsibility (Young 2003).

Protective Leviathanism begins where this insight leaves off. It asks what the protector builds.

A statute.

A police mandate.

A special court.

A database.

A camera network.

A dispatch platform.

A vocabulary of risk.

A metric of performance.

The modern Leviathan is not only a sovereign holding a sword. It is also a dispersed administrative formation holding a dashboard.

A Theory of Protective Leviathanism

Protective Leviathanism describes a tendency, not an iron law. It does not arise whenever the State protects, nor does it condemn every increase in public capacity. Five conditions distinguish it from ordinary rights enforcement.

The protective trigger

Protective Leviathanism

The initiating claim concerns protection from private, social, institutional, or infrastructural domination. Examples include domestic violence, sexual assault, trafficking, stalking, workplace harassment, online abuse, family coercion, and insecurity in public space.

The trigger matters because it supplies the moral reason for State intervention. The State does not present expansion as expansion. It presents expansion as the fulfilment of a duty owed to the vulnerable.

State-centred translation

The claim is translated primarily through State or State-like institutions. Criminal law, police, courts, ministries, municipal authorities, welfare agencies, regulatory bodies, and technology contractors become the principal agents of protection.

This does not require the exclusion of civil society. Non-governmental organisations may administer shelters, advise police, manage services, or participate in campaigns. What matters is that legal and administrative power remains centred in institutions able to compel, record, authorise, classify, and punish.

Durable capacity accretion

The protective response creates more than a single remedy. It produces durable capacity.

Capacity may be coercive, including offences, penalties, arrest powers, and investigation.

It may be administrative, including new offices, reporting duties, procedural discretion, and inter-agency coordination.

It may be temporal, including accelerated proceedings, deadlines, and throughput targets.

It may be epistemic, including categories of risk, hotspot maps, profiles, and official forms of knowledge.

It may be digital, including cameras, applications, databases, tracking devices, and interoperable platforms.

Durability distinguishes a temporary act of assistance from institutional transformation. A shelter bed used tonight may protect one person. A central database can reorganise future governance.

Autonomy lag

The autonomous capabilities of intended beneficiaries expand less, more slowly, more conditionally, or more unequally than State capacity.

Protective Leviathanism

Autonomy lag does not mean there is no benefit. A camera may assist an investigation. A helpline may produce rescue. A specialised court may reduce delay. The question is comparative. Are women also gaining material exit, privacy, mobility, control over legal processes, housing, income, accessible services, and political participation?

The hallmark of autonomy lag is that women's safety depends increasingly on compliance with the protective apparatus. Freedom becomes conditional upon reporting, tracking, documentation, institutional legibility, or respectable victimhood.

Moral insulation

The new power becomes difficult to contest because it is justified through safety, care, vulnerability, and protection.

Moral insulation does not eliminate debate. It changes the burden of argument. The critic of surveillance must prove that she takes violence seriously. The critic of harsh punishment must prove that she is not indifferent to victims. The critic of police expansion must explain how women will be protected without police. Protection supplies not merely a policy rationale but a moral shield.

These conditions generate several mechanisms.

Fear authorisation converts public insecurity into consent for institutional expansion.

Institutional affinity selects demands that fit existing governmental techniques.

Capacity accretion turns individual protection into durable institutional infrastructure.

Portability allows protective capacities to migrate beyond their original purpose. A camera installed for women's safety can technically be used for crowd control, protest monitoring, traffic enforcement, or general policing. Portability exists even where actual misuse has not been proven.

Metric substitution replaces the substantive objective with measurable institutional outputs. Cameras installed, calls received, cases filed, arrests made, and matters disposed become evidence of safety, even though they do not by themselves demonstrate expanded autonomy.

Distributional sorting separates those recognised as worthy of protection from those treated as risks. The respectable commuter may be imagined as the beneficiary. The sex worker, queer couple, Muslim youth, Dalit protester, street vendor, or woman resisting family authority may become the object of police attention.

Protective Leviathanism

Protective Leviathanism is therefore distinct from several neighbouring concepts.

It differs from masculinist protection because it focuses on durable institutional capacities rather than the protector-protected relation alone.

It differs from governance feminism because it centres what the State acquires, not only which feminist ideas gain governmental influence.

It differs from carceral feminism because it includes non-penal power.

It differs from human rights penalty because its concern extends beyond punishment to administrative and digital infrastructures.

It differs from securitisation because it can arise through ordinary governance without a declared exception.

It differs from paternalism because the State need not restrict the intended beneficiary directly. It may expand powers over wider populations in her name.

It differs from surveillance studies because the protective rights claim is part of the causal and justificatory structure, not merely the context in which watching occurs.

The theory's object is therefore not "more State" in the abstract. It is a particular pathway through which State capacity acquires feminist legitimacy.

CEDAW and the Problem of Protective Translation

The Convention on the Elimination of All Forms of Discrimination against Women is frequently described as the international bill of rights for women. That description can mislead if it suggests a catalogue of negative liberties. CEDAW requires legal, institutional, social, and cultural transformation. Article 1 defines discrimination through purpose or effect. Article 2 requires States to eliminate discrimination by public institutions and private actors. Article 5 targets prejudices and stereotyped roles. The treaty is therefore structurally incompatible with a State that excuses violence as private.³

CEDAW's importance to Indian feminist legality is established. In *Vishaka v State of Rajasthan*, the Supreme Court drew upon CEDAW to address workplace sexual harassment in the absence of enacted legislation.⁴ The case is important here because it demonstrates that international women's rights can be translated into duties of institutional design, not only punishment.

Protective Leviathanism

General Recommendation No. 35, adopted in 2017, clarifies that gender-based violence against women constitutes discrimination. It requires States to exercise due diligence to prevent, investigate, prosecute, punish, and provide reparation for acts by non-State actors. Yet its framework is wider than criminal enforcement. It addresses prevention, protection, access to services, remedies, reparation, data collection, discrimination, stereotypes, and intersecting forms of disadvantage.⁵

A chronological distinction is essential. General Recommendation No. 35 did not cause the Criminal Law (Amendment) Act 2013. This article does not suggest that Indian legislators failed to follow a recommendation that did not yet exist. General Recommendation No. 35 is used as a **retrospective normative benchmark**, the most developed articulation of CEDAW's approach to gender-based violence.

The relevant question is not whether India implemented General Recommendation No. 35 in 2013. It is whether the post-Nirbhaya trajectory, assessed against the mature CEDAW framework, reflects substantive and transformative equality or a narrower security translation.

Goldscheid and Liebowitz describe both the power and the peril of due diligence. The standard breaks the public-private divide by making State inaction legally significant. It can require prevention, services, investigation, and structural change. Yet it can also privilege criminal enforcement, marginalise survivor agency, and reinforce institutions that themselves produce violence (Goldscheid and Liebowitz 2015).

This duality permits two translations.

Hobbesian due diligence treats protection as a problem of sovereign insufficiency. Violence persists because punishment is weak, police are slow, courts are delayed, information is fragmented, and the State cannot see enough. The response is more coercion, greater speed, deeper data, stronger coordination, and wider visibility.

Feminist due diligence treats violence as a problem of unequal power. It asks whether women have material exit, institutional credibility, bodily and sexual autonomy, safe mobility, housing, income, privacy, accessible justice, and participation in the design of protective institutions. It also asks whether police, courts, families, employers, and digital systems reproduce gender, caste, class, religious, disability, and sexuality-based domination.

The difference is not State action versus inaction. Both require action. The difference concerns the object of intervention.

Hobbesian due diligence builds the State's capacity to manage danger.

Protective Leviathanism

Feminist due diligence builds women's capacity to live beyond it.

This distinction also clarifies what is meant by "capture." The claim is not that India explicitly cited General Recommendation No. 35 and deliberately distorted it. Capture is a mode of institutional translation. International norms enter domestic systems through organisations with pre-existing mandates, budgets, incentives, technologies, and measures of success. Police understand prevention through patrol, investigation, arrest, and information. Courts understand justice through filing and disposal. Ministries understand implementation through schemes, allocations, targets, and utilisation. Technology vendors understand safety through systems that can be purchased and deployed.

Feminists may demand freedom. The State hears administrable safety.

A partial CEDAW can therefore become an alibi for the Leviathan. A whole CEDAW becomes a discipline upon it.

The Autonomy-Power Test

Protective Leviathanism requires more than suspicion. It requires an evaluative method.

The Autonomy-Power Test asks whether a protective measure's expansion of institutional capacity is justified, bounded, and matched by an expansion of autonomous capability. It is not a numerical formula. Police powers and bodily autonomy cannot be reduced to a common unit. It is a structured qualitative comparison designed to make institutional effects visible.

The test proceeds through three stages.

The capacity ledger

The first stage identifies what the State or State-like institutions acquire.

The inquiry includes new offences, enhanced punishments, powers of investigation, duties to collect and share information, surveillance infrastructure, emergency platforms, data retention, algorithmic or geographic classification, procedural acceleration, inter-agency coordination, administrative discretion, procurement, and recurrent budgets.

Three features matter.

Durability asks whether the capacity survives the triggering crisis.

Portability asks whether it can be used beyond the original protective purpose.

Protective Leviathanism

Opacity asks whether affected persons can understand, challenge, and obtain remedies against its operation.

A measure that creates a temporary and narrowly confined service has a different capacity profile from a permanent camera network or interoperable database.

The autonomy ledger

The second stage identifies what intended beneficiaries acquire.

Autonomy is understood relationally rather than as isolation from institutions. The inquiry concerns the effective conditions under which persons can form and pursue their own purposes (Mackenzie and Stoljar 2000). It includes:

bodily and sexual autonomy

freedom of movement

control over personal information

material exit from violence

housing and income

access to healthcare and counselling

legal aid

control over participation in legal processes

freedom from institutional humiliation

meaningful choice among remedies

participation in policy design

freedom from moral policing

A measure may increase security while diminishing one dimension of autonomy. The test therefore resists a single aggregate claim that women are simply “safer.”

Distribution, safeguards, and reversibility

The third stage asks how benefits and burdens are distributed.

Protective Leviathanism

Who is imagined as the beneficiary?

Who becomes visible as a risk?

Can marginalised persons use the institution safely?

Are legality, necessity, proportionality, purpose limitation, access controls, retention periods, audit, independent oversight, and remedies built into the measure?

Can the power be narrowed or withdrawn when its purpose is not achieved?

Were intended beneficiaries involved in design and review?

A presumption of protective Leviathanism arises where four conditions converge:

the State acquires durable and portable capacities

autonomy gains are narrow, conditional, or unequally distributed

safeguards and participation are weak

success is measured mainly through institutional output rather than beneficiary capability

The presumption can be rebutted. An emergency response platform, for example, may provide substantial autonomy if users control activation, data use is tightly limited, assistance is rapid, oversight is independent, and the platform is linked to survivor-directed services. A specialised court may enhance autonomy if it reduces delay while preserving fair process, providing legal support, and respecting survivor choice.

The test therefore does not label technologies or institutions in advance. It examines their architecture.

A protective measure fails when its beneficiaries become safer only by becoming more governable.

Method and Materials

This article uses critical interpretive discourse and policy analysis. The description is deliberate. Earlier versions referred broadly to critical discourse analysis, but the present inquiry does not claim a comprehensive linguistic study of every parliamentary utterance. It studies how legal and

Protective Leviathanism

policy texts represent the problem of women's safety, construct subjects, privilege instruments, define success, and omit alternatives.

Fairclough's approach treats discourse as social practice embedded in institutional power rather than as language detached from material organisation (Fairclough 2010). Bacchi's "What's the Problem Represented to Be?" method asks how policy solutions construct the problem they purport to solve, which assumptions support that representation, what remains silent, and what effects the representation produces (Bacchi 2009).

The principal corpus comprises:

the official Rajya Sabha debate and synopsis concerning the Criminal Law (Amendment) Bill 2013

the Criminal Law (Amendment) Act 2013

the Justice Verma Committee Report

feminist submissions made to the Committee

official materials concerning the Nirbhaya Fund, Safe City projects, the Emergency Response Support System, and Fast Track Special Courts

independent empirical and policy studies concerning rape adjudication, policing, surveillance, and Nirbhaya Fund allocations

The analysis asks six questions of each site.

How is the problem represented?

What subject of protection is constructed?

What State instrument is treated as the natural response?

What counts as successful implementation?

Which alternatives receive less institutional attention?

How are the benefits and burdens distributed?

The parliamentary analysis does not reduce the debate to one punitive voice. It identifies competing frames. The policy analysis then asks which frames became durable institutions.

Protective Leviathanism

Official programme data is used to identify scale and declared function, not to infer effectiveness. Independent studies are used to test assumptions and expose distributive effects. No claim is made that cameras, fast-track courts, or enhanced offences caused an increase or decrease in violence. The question is institutional and normative: what capacities were built, what autonomy was secured, and how were these developments justified?

There are limits. This is not an ethnography of police stations or an evaluation across every Indian State. Safe City implementation varies between cities. Emergency response depends on local capacity. Courts differ in staffing, pendency, and practice. Rural, urban, conflict-affected, and metropolitan environments cannot be collapsed into one experience.

India is therefore not offered as a uniform pathology. It is the site through which a wider tendency becomes visible.

Post-Nirbhaya India and the Contested Meaning of Protection

Parliament was not one voice

The parliamentary record does not support a simple claim that legislators unanimously demanded a punitive security State. The debate contained at least three distinguishable problem representations.⁶

The first was a **sovereign repair frame**. Home Minister Sushilkumar Shinde presented the legislation as a response to a crime that had shaken the nation's conscience and emphasised stronger law, enhanced punishment, and speedy justice. Within this frame, sexual violence exposed institutional weakness. Legislative severity and procedural speed would restore authority.

The second was an **institutional accountability frame**. Members demanded compulsory registration of complaints, consequences for police refusal, greater numbers of women police personnel, improved medical response, compensation, and time-bound trial. Some of these demands expanded coercive capacity. Others sought to make existing power answerable.

The third was an **equality and autonomy frame**. D. Raja situated sexual violence within systematic inequality and criticised the haste with which the ordinance process had displaced parts of the Justice Verma Committee's work. T.N. Seema supported reform while questioning the failure to criminalise marital rape, the treatment of consensual adolescent relationships, and the law's possible use by families structured by caste and class authority. The debate therefore contained an awareness that protection could itself become coercive.

Protective Leviathanism

This contestation matters. The later security turn cannot be attributed to a unified “feminist” or parliamentary demand. The relevant question is one of selective institutionalisation.

The sovereign repair frame possessed strong institutional affinity. Parliament could enact offences and penalties. Ministries could create schemes. Courts could be designated fast-track. Police could be given mandates. Technology could be procured. The equality frame required more disruptive changes, including reform of marriage, caste-sensitive policing, economic autonomy, and redistribution of authority within families.

The State did not hear nothing else.

It heard some demands more fluently.

The 2013 Act as a mixed case

The Criminal Law (Amendment) Act 2013 should not be treated as a single Leviathanic object. Applying the Autonomy-Power Test produces a mixed result.

On the capacity ledger, the Act expanded offences, punishment, investigation, and procedure. Stalking and voyeurism were made criminally cognisable harms. Acid violence received specific recognition. Rape was defined more broadly. Public officials could incur liability for specified failures to record information. The Act also introduced severe punishments, including capital punishment in narrowly specified circumstances.⁷

On the autonomy ledger, legal naming mattered. Stalking and voyeurism concern practices through which women’s movement and privacy are controlled before physical assault. Their recognition can expand autonomy by making coercive conduct contestable. Liability for police non-registration can reduce dependence on official discretion.

The Act nevertheless retained the marital rape exception for adult wives. It translated sexual autonomy unevenly, recognising consent in some relationships while withholding it within marriage. It also adopted punitive measures that the Justice Verma Committee had opposed, including capital punishment, while failing to implement the Committee’s more transformative recommendations in full.⁸

The Act is therefore not evidence that every protective offence is Leviathanic. It demonstrates why the test needs both ledgers. Some provisions converted private domination into accountable public power. Others expanded punishment while leaving central structures of intimate subordination intact.

The finding is not that criminalisation had no feminist value. It is that the institutional expansion was more complete than the autonomy settlement.

Protective Leviathanism

The Justice Verma Committee as an alternative translation

The Justice Verma Committee Report is often remembered as the intellectual foundation of the 2013 reforms. It is better understood as a competing policy portfolio.

The Committee addressed rape law, sexual harassment, trafficking, child sexual abuse, medical examination, police reform, electoral accountability, education, public institutions, and violence embedded in family and community structures. It opposed capital punishment and chemical castration. It recommended removal of the marital rape exception. It treated gender violence as a constitutional failure rather than a problem exhausted by insufficient sentencing.⁹

The Report was not anti-coercive. It recommended criminal law and stronger institutional accountability. Nor was it free from tensions. Yet its overall portfolio linked protection to dignity, citizenship, education, police responsibility, political accountability, and survivor support.

This makes the Report an important counterfactual. It shows that the Nirbhaya moment did not logically require a surveillance-heavy or punishment-centred settlement. Alternative translations were available within the reform process itself.

Protective Leviathanism is therefore not the inevitable consequence of public outrage. It emerges through institutional selection.

Safe City and the Transformation of Visibility

The Safe City project is the strongest case for applying the theory.

Its official purpose is emancipatory. The Ministry of Home Affairs describes the project as creating safe, secure, and empowering public environments in which women can pursue opportunities without violence or harassment.¹⁰ That purpose should not be dismissed. Women's exclusion from public space is itself a form of inequality.

The project is also heterogeneous. Official descriptions include lighting, sanitation, help desks, police capacity, public transport safety, community interventions, geographic crime mapping, and video surveillance. In 2018, projects valued at approximately Rs 2,919.55 crore were appraised for Delhi, Mumbai, Chennai, Ahmedabad, Kolkata, Bengaluru, Hyderabad, and Lucknow.¹¹

The capacity ledger is substantial.

CCTV creates continuous visual capacity.

Protective Leviathanism

Geographic crime mapping creates epistemic capacity to classify space.

Computer-aided dispatch creates coordination capacity.

Integrated command centres centralise response.

Public transport tracking creates mobility data.

Police training and help desks increase organisational reach.

These are not interchangeable. Lighting and a camera do different things. A help desk and facial recognition do different things. The theory therefore does not condemn “technology” as one category. It asks which capacities are durable and portable.

Surveillance infrastructure has high durability. Once cameras, control rooms, communication networks, and analytic systems are procured, they become part of general administrative capacity. Their technical use need not remain confined to violence against women. This does not prove function creep in any particular city. It establishes the infrastructure’s portability, which creates a need for legal limitation.

The autonomy ledger is less clear.

Safer transport, quicker assistance, improved lighting, and evidence of an offence can expand mobility. Surveillance can also supply evidence where police disbelieve a complainant. Radhakrishnan’s project with the MIT Data + Feminism Lab expressly acknowledges that surveillance may sometimes help marginalised communities establish innocence or contest official narratives. It therefore refuses the easy claim that cameras are always oppressive (Radhakrishnan 2023).

Yet the same project’s analysis of Nirbhaya Fund data found that, as of April 2023, approximately 46 per cent of allocation was directed to surveillance and policing functions, compared with 35 per cent for survivor-centred assistance, 12 per cent for legislative or judicial measures, and 5 per cent for education and prevention training. This is an independent analytical classification, not an official government audit. It nevertheless provides evidence of priority rather than merely rhetoric (Radhakrishnan 2023).

The distribution question is central. Feminist surveillance scholarship rejects the assumption that visibility is evenly protective. A camera may assist a commuter and expose a queer couple. It may deter harassment and enable hostel authorities to monitor women’s associations. It may record an assault and expand police observation of street vendors, protesters, sex workers, or religious minorities.

Protective Leviathanism

The publicly available programme descriptions foreground installation, coordination, crime mapping, and response. They do not by themselves provide the detailed, system-wide account of retention periods, access controls, independent audit, purpose limitation, and remedies necessary to establish informational autonomy. The absence of those details in public descriptions does not establish that no local safeguards exist. It establishes that expansion is more visible than accountability.

Under the Autonomy-Power Test, Safe City produces a strong presumption of protective Leviathanism where surveillance infrastructure is durable and portable, autonomy benefits are conditional upon visibility, affected communities have limited design authority, and data safeguards are not comparably institutionalised.

Hobbes imagined a sovereign that made peace possible through superior authority. Safe City reimagines that authority as an infrastructure of visibility. The sovereign no longer merely watches over the city.

It makes the city watchable.

ERSS-112 and the Platforming of Distress

The Emergency Response Support System, ERSS-112, is a harder case.

The Ministry of Home Affairs describes it as a nationwide system receiving distress signals through multiple channels, including voice call, SMS, SOS, email, web request, chatbot, media crawler, internet-connected signals, WhatsApp, and external inputs, routed through a common State or Union Territory platform.¹²

The immediate autonomy benefit is serious. A person facing violence may need rapid police, medical, fire, or rescue assistance. Centralised dispatch may reduce confusion and delay. A feminist analysis that treats emergency response as merely disciplinary would turn theory into indifference.

The capacity ledger nevertheless matters.

ERSS converts distress into structured data.

It centralises incident information.

It links channels and agencies.

Protective Leviathanism

It creates records of location, time, communication, classification, and response.

It makes the State more capable of receiving and routing emergencies beyond the context of women's safety.

This portability is partly the system's value. A unified emergency platform should respond to many dangers. Yet portability also means that the protective rationale cannot alone settle questions of data governance.

Who can access a distress record?

How long is it retained?

Can information be used for unrelated investigation?

What happens when the danger comes from family members who claim authority over the caller?

Can an interfaith couple trust police response?

Can a queer person call without being returned to a hostile household?

Can a sex worker report violence without becoming the object of enforcement?

Under the Autonomy-Power Test, ERSS does not inherently produce protective Leviathanism. Its classification depends on governance. If activation is user-controlled, collection is minimised, secondary use is prohibited, records are protected, oversight is independent, and callers retain meaningful control over the response, State capacity can support autonomy.

If call volume, response time, and incidents closed become substitutes for user safety, privacy, and control, autonomy lag emerges.

Hobbes's sovereign concentrated authority. ERSS concentrates responsiveness. The sovereign now appears not only as command but as interface.

An interface can rescue. It can also remember.

Fast-Track Courts and the Sovereignty of Time

Fast-track adjudication is not surveillance, but it demonstrates why protective Leviathanism cannot be reduced to cameras or policing.

Protective Leviathanism

Delay in sexual violence proceedings can be devastating. It prolongs uncertainty, increases exposure to intimidation, weakens evidence, and subjects complainants to repeated institutional encounters. A demand for speed may therefore be an autonomy demand.

The Fast Track Special Court scheme created a dedicated adjudicative infrastructure for rape and offences under the Protection of Children from Sexual Offences Act. As of 30 June 2025, the government reported 725 operational Fast Track Special Courts, including 392 exclusive POCSO courts, with 334,213 cases disposed since the scheme began.¹³

The State's capacity gain is temporal and organisational. It can designate courts, allocate cases, prescribe performance expectations, track disposal, and present throughput as institutional response.

The autonomy gain depends on what speed contains.

A fast proceeding can reduce trauma. It can also compress preparation, intensify pressure to testify, and measure justice through disposal rather than the quality of participation. A court becomes autonomy-enhancing when speed is accompanied by trained judges, competent prosecution, defence fairness, legal aid, witness protection, counselling, accessible facilities, reasoned judgments, and control over unnecessary disclosure.

Dash's study of 1,635 Delhi rape judgments between 2013 and 2018 complicates the assumption that penal severity produces justice. Of 726 cases adjudicated under the earlier law, 16.11 per cent resulted in conviction. Of 909 cases adjudicated under the 2013 amendment, 5.72 per cent resulted in conviction. Dash does not establish a simple causal relationship between the amendment and acquittal. She demonstrates that mandatory punishment was introduced without adequate engagement with research linking the removal of sentencing discretion to unintended adjudicative consequences (Dash 2020).

The study does not prove that fast-track courts fail. It reveals why output cannot substitute for institutional analysis.

The stopwatch is not a feminist theory.

Under the Autonomy-Power Test, a specialised court is not Leviathanic merely because it increases State capacity. It becomes suspect when procedural speed is treated as the primary indicator of justice, while survivor support, fair process, reasoning quality, and accessibility remain underbuilt.

Hobbes's sovereign promises to end intolerable insecurity. The fast-track State extends that promise into time. Speed becomes proof that the sovereign is awake.

Protective Leviathanism

But justice is not only a State moving quickly.

It is a person being able to endure, understand, and shape the process through which the State moves.

Police, Caste, and the Distribution of Protection

Every protective criminal law eventually encounters the police. This makes the police not a neutral instrument but a distributional institution.

The Status of Policing in India Report 2019 found that 18 per cent of surveyed police personnel believed gender-based violence complaints were false and motivated to a very high extent, while another 21 per cent believed so to a high extent. The report also recorded substantial variation among States.¹⁴

This evidence matters because a law's protective promise is mediated by the institution that receives, records, investigates, classifies, and sometimes disbelieves the complainant. Expanding police jurisdiction can increase women's access to protection while increasing their exposure to prejudiced discretion.

Intersectionality is not an optional refinement here. Crenshaw's work shows how a single-axis legal subject can erase persons situated at intersecting structures (Crenshaw 1989). Rege argues that Dalit women's experience cannot be absorbed into a universal womanhood that leaves caste unexamined (Rege 1998). Browne and Benjamin demonstrate that surveillance and technology reproduce historical hierarchy rather than operating upon neutral bodies (Browne 2015). (Benjamin 2019).

The protected subject imagined by policy is not always the person most likely to encounter enforcement.

An urban middle-class commuter may be imagined as the beneficiary of visible police and cameras.

A street vendor may be treated as disorder.

A sex worker may be treated as both victim and offender.

An interfaith couple may encounter protection as family restoration.

A Muslim man accompanying a woman may become a suspicious body.

Protective Leviathanism

A Dalit woman reporting dominant-caste violence may confront the social power embedded inside the station.

A queer woman seeking help may be returned to a hostile family.

This does not mean that upper-caste or middle-class women are not genuinely exposed to violence. It means that the category “women” cannot itself establish the distributional justice of a protective institution.

Protective Leviathanism often operates through **protective sorting**. Some persons are constituted as worthy victims. Others are constituted as risks, unreliable complainants, disorderly subjects, or persons whose autonomy is itself treated as danger.

The question “does this protect women?” is therefore incomplete.

Which women?

From whom?

Through whose power?

At whose expense?

From Sovereign to Platform State

The post-Nirbhaya trajectory does not merely enlarge the State. It helps change its form.

Criminal law, police, and courts remain central. They are increasingly connected to digital and administrative infrastructures through which vulnerability becomes knowable.

Three processes should be distinguished.

Surveillance concerns the observation of bodies, spaces, conduct, and movement.

Datafication concerns the conversion of events, distress, risk, complaints, locations, and institutional action into data capable of storage, comparison, transfer, and analysis.

Platform governance concerns the coordination of agencies and decisions through applications, dashboards, call centres, mapping systems, and interoperable networks.

Safe City surveils and spatially classifies.

Protective Leviathanism

ERSS datafies distress and platforms response.

Fast-track systems render justice measurable through time and disposal.

These developments are related, but they are not the same.

Feminist surveillance studies shows that observation is embodied and unequal (Dubrofsky and Magnet 2015). Data feminism asks who creates categories, whose knowledge is absent, and how data projects allocate power (D'Ignazio and Klein 2020). Race-critical technology scholarship shows that technical systems can intensify existing hierarchies precisely because they are presented as neutral (Browne 2015). (Benjamin 2019).

Protective Leviathanism contributes the missing rights dimension. The digital capacity is not introduced merely as efficient government. It is morally authorised through the endangered subject.

The modern Leviathan no longer only holds the sword.

It holds the dashboard.

A Comparative Application of the Autonomy-Power Test

The post-Nirbhaya measures do not produce one uniform result.

The 2013 Act is a **mixed case**. It expanded penal capacity, but also recognised previously trivialised harms and imposed duties upon officials. Its failure lies not in criminalisation alone, but in uneven autonomy, including the continued marital rape exception and the priority given to punitive over structural reform.

The Justice Verma Committee's model is closer to **autonomy-producing protection**. It included coercive measures but situated them within institutional accountability, education, sexual autonomy, police reform, and constitutional citizenship.

Safe City presents the **strongest presumption of protective Leviathanism**. It creates durable and portable surveillance and coordination infrastructure. The programme also contains autonomy-supporting elements, but publicly visible safeguards and participatory control do not appear as institutionally prominent as deployment.

Protective Leviathanism

ERSS is **contingent**. It can materially increase autonomy through rapid, user-initiated rescue. Its classification depends on data limitation, secondary use, institutional trust, and control over response.

Fast-track courts are another **mixed case**. Dedicated adjudicative capacity can reduce the institutional violence of delay. It becomes Leviathanic where throughput substitutes for survivor agency, fair process, and quality.

Police expansion has the most pronounced **distributional risk**. Its effect depends on accountability, caste and communal power, gender bias, and whether persons historically targeted by police can safely invoke protection.

The value of the test is that it does not reach one predetermined answer. It identifies the features that a single language of “women’s safety” obscures.

Objections and Limits

Does the theory discourage necessary State action?

The most serious objection is that protective Leviathanism may reinforce the very public-private distinction feminism fought to dismantle. Officials may invoke anti-carceral critique to justify inaction. Violent men may welcome a theory suspicious of policing. Under-resourced States may describe neglect as respect for autonomy.

This objection is decisive against any anti-State reading.

Protective Leviathanism does not establish a presumption against intervention. Fineman’s responsive State and Williams’s defence of rights make clear why public institutions are necessary (Williams 1987). (Fineman 2010). The theory instead creates a presumption for **accountable and autonomy-producing intervention**.

A State that fails to fund shelters while invoking surveillance scepticism is not avoiding protective Leviathanism. It is abandoning its protective duty.

Can power and autonomy really be compared?

The Autonomy-Power Test does not produce a numerical ratio. Its language of comparison may nevertheless appear indeterminate.

Protective Leviathanism

Many legal tests compare incommensurable values. Proportionality compares rights burdens and public aims without reducing them to one unit. Equality analysis compares treatment, effect, and justification. Administrative review assesses reasonableness, relevance, and procedure.

The test structures judgement rather than eliminating it. It requires decision-makers to identify capacities that ordinary rights analysis treats as background. It also forces the State to explain why a durable power is necessary, what autonomy it secures, and what limits prevent its migration.

Its indeterminacy is preferable to the current tendency to count institutional outputs as self-validating proof of protection.

Is every protective institution Leviathanic?

No.

The necessary conditions exclude many measures. A survivor-controlled service that expands housing, income, healthcare, and legal choice without creating durable coercive or informational power is protective but not Leviathanic. A narrowly designed emergency platform with strict data limits, user control, independent oversight, and demonstrable autonomy gains may also avoid the classification.

The concept identifies a tendency and a risk, not a universal verdict.

Is Hobbes an inappropriate lens for postcolonial India?

Hobbes cannot explain caste, coloniality, communalism, or the specific history of Indian police. Nor can his abstract subject stand in for the differentiated persons who encounter Indian institutions.

The article therefore does not make India an illustration of a universal European theory. Hobbes supplies a limited account of fear, authorisation, and sovereign representation. Pateman, Young, Rege, Kapur, Kotiswaran, Tapia Tapia, and Indian feminist interventions expose the relations Hobbes leaves abstract.

The theory is strongest when Hobbes is provincialised rather than enthroned.

Does the article establish that surveillance reduced women's freedom?

No causal claim of that form is made.

Protective Leviathanism

The available evidence establishes institutional scale, declared functions, allocations, police attitudes, and adjudicative outcomes. It does not establish a national causal effect on safety or autonomy. The article's claim is architectural. Durable protective capacities require feminist evaluation even before misuse is proven, because design, portability, and distribution shape the conditions of future governance.

The absence of proof of abuse is not the same as proof of accountable design.

Toward an Autonomy-Secure State

The alternative to protective Leviathanism is not a weak State. It is an **autonomy-secure State**.

A weak State leaves persons to private tyranny.

A protective Leviathan rescues by governing.

An autonomy-secure State uses public capacity to enlarge the conditions of self-directed life while limiting the capacity's domination-producing effects.

Six principles follow.

Material exit before compulsory dependence

Protection must include housing, income support, accessible transport, healthcare, childcare, legal aid, counselling, and long-term assistance. An FIR without a place to live may deepen dependence. A conviction years later cannot substitute for an exit today.

Accountability before expansion

Police and administrative powers should not expand without independent complaint mechanisms, transparent standards, penalties for refusal and abuse, caste and gender competence, and accessible remedies. The police station must stop being a place where women are disciplined for requesting protection.

Surveillance constitutionalism

Protective surveillance should be lawful, necessary, proportionate, purpose-limited, time-bound, auditable, and subject to independent oversight. Data collection should be minimised. Secondary use should require distinct legal authority. Retention periods should be public. Affected persons should have complaint and correction rights.

Protective Leviathanism

The privacy principles recognised in *Justice K.S. Puttaswamy v Union of India* must enter the architecture of women's safety rather than appearing only after surveillance has become entrenched.¹⁵

Participation by those most governed

Dalit women, Adivasi women, Muslim women, queer and trans persons, sex workers, migrant women, domestic workers, street vendors, disabled women, rural women, students, and persons in conflict-affected regions must participate in the design, review, and audit of protective institutions.

Consultation after procurement is not participation. Participation means power over purpose, categories, safeguards, and evaluation.

Autonomy metrics

Institutional success should not be measured only through cases, cameras, calls, arrests, or disposals.

Evaluation should include whether women report greater freedom of movement, greater trust in institutions, improved access to housing and support, control over data, reduced economic dependence, and meaningful choice among remedies.

A budget is a theory of justice with numbers attached.

An evaluation framework is a theory of the person with metrics attached.

Reversibility

Protective powers should not become permanent merely because protection remains morally compelling. Programmes require review dates, sunset mechanisms where appropriate, public audit, and procedures for narrowing powers that fail to produce autonomy.

Care must not become an irreversible jurisdiction.

Protective Leviathanism Beyond India

Post-Nirbhaya India is the principal case, not the boundary of the theory.

Anti-trafficking law can protect exploited persons through police raids, border enforcement, detention, surveillance of migration, and regulation of sex work.

Protective Leviathanism

Domestic violence law can support survivors while expanding mandatory intervention, child welfare scrutiny, risk databases, and police discretion.

Online safety law can respond to misogynistic abuse through identity verification, content monitoring, platform reporting, and State removal powers.

Migration law can protect trafficked women by detaining or deporting them.

Counter-terrorism discourse can invoke women's rescue while regulating dress, association, mobility, and community life.

Child protection can create essential duties while building data-sharing systems and coercive family intervention.

The theory does not presume that these measures are equivalent. It identifies a recurring sequence.

A vulnerable subject appears.

The State promises protection.

Protection becomes capacity.

Capacity acquires durability.

Durable capacity travels.

Its contestation becomes difficult because it speaks in the name of care.

Existing feminist legal scholarship has long asked whether rights liberate or regulate, whether feminist reform becomes governance, and whether anti-violence politics strengthens punishment. Protective Leviathanism identifies an additional possibility.

Rights may enlarge formal protection and sovereign capacity at the same time.

The constitutional task is not to deny that relationship. It is to govern it.

Conclusion

The hardest problem in women's rights law is not that protection necessarily fails.

It is that protection can work in one register while producing domination in another.

Protective Leviathanism

The Criminal Law (Amendment) Act named harms that law had trivialised. Fast-track courts can reduce delay. ERSS can rescue persons in immediate danger. Safe City infrastructure can improve lighting, transport response, and evidence. Police duties can transform official refusal into legal accountability.

These gains matter.

So do the institutions built around them.

Hobbes teaches that fear authorises power. Young teaches that protection can subordinate the protected. Brown teaches that rights can emancipate and regulate. Williams teaches that abandoning rights can abandon those who need them. Governance feminism shows how feminist ideas enter institutions. Carceral feminism and human rights penalty expose the punitive routes those ideas may take. Feminist surveillance and data scholarship shows that visibility and classification are never equally distributed.

Protective Leviathanism brings these insights together around one neglected question:

What does the State acquire when it protects?

Post-Nirbhaya India shows that the answer includes more than criminal law. It includes procedural time, data, visibility, platforms, coordination, institutional knowledge, and new ways of making vulnerability administratively legible.

The State of nature is not a feminist destination. Women should not be abandoned to husbands, families, caste councils, employers, mobs, police refusal, or public harassment.

But the surveillance State is not liberation either.

A woman who can move only because she is watched has not fully entered freedom. She has entered supervised safety.

The solution is not hostility to public power. It is constitutional suspicion of power carrying a protective mandate. The State must be strong enough to break private domination, yet bounded enough not to become domination in public uniform.

Protection is necessary.

Agency remains the test.

Protective Leviathanism

The greatest danger to women's freedom is no longer only that the State will refuse to protect them. It is that protection itself may become the language through which freedom is indefinitely postponed.

Footnotes

References

Agnes, Flavia. 1992. "Protecting Women Against Violence? Review of a Decade of Legislation, 1980-89." *Economic and Political Weekly* 27: WS19-WS33.

Bacchi, Carol. 2009. *Analysing Policy: What's the Problem Represented to Be?* Frenchs Forest: Pearson.

Baxi, Pratiksha. 2014. *Public Secrets of Law: Rape Trials in India*. New Delhi: Oxford University Press.

Benjamin, Ruha. 2019. *Race After Technology: Abolitionist Tools for the New Jim Code*. Cambridge: Polity.

Bernstein, Elizabeth. 2012. "Carceral Politics as Gender Justice? The 'Traffic in Women' and Neoliberal Circuits of Crime, Sex, and Rights." *Theory and Society* 41 (3): 233-259.

Browne, Simone. 2015. *Dark Matters: On the Surveillance of Blackness*. Durham: Duke University Press.

Brown, Wendy. 2000. "Suffering Rights as Paradoxes." *Constellations* 7 (2): 208-229.

Buzan, Barry, Ole Wæver, and Jaap de Wilde. 1998. *Security: A New Framework for Analysis*. Boulder: Lynne Rienner.

Common Cause and Lokniti, Centre for the Study of Developing Societies. 2019. *Status of Policing in India Report 2019: Police Adequacy and Working Conditions*. New Delhi: Common Cause.

Crenshaw, Kimberlé. 1989. "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics." *University of Chicago Legal Forum* 1989: 139-167.

Protective Leviathanism

D'Ignazio, Catherine, and Lauren F. Klein. 2020. *Data Feminism*. Cambridge: MIT Press.

Dash, Preeti Pratishruti. 2020. "Rape Adjudication in India in the Aftermath of the Criminal Law Amendment Act, 2013: Findings from Trial Courts of Delhi." *Indian Law Review* 4 (2): 244-265.

De Shalit, Ann, and Katrin Roots. 2024. "The Anti-trafficking Security Assemblage: Examining Police and NGO Cooperation, Negotiation, and Knowledge Production in Ontario, Canada." *Feminist Legal Studies* 32: 309-329.

Dubrofsky, Rachel E., and Shoshana Amielle Magnet, eds. 2015. *Feminist Surveillance Studies*. Durham: Duke University Press.

Fairclough, Norman. 2010. *Critical Discourse Analysis: The Critical Study of Language*. 2nd ed. London: Routledge.

Fineman, Martha Albertson. 2010. "The Vulnerable Subject and the Responsive State." *Emory Law Journal* 60: 251-275.

Foucault, Michel. 1977. *Discipline and Punish: The Birth of the Prison*. Translated by Alan Sheridan. New York: Pantheon.

Goldscheid, Julie, and Debra J. Liebowitz. 2015. "Due Diligence and Gender Violence: Parsing Its Power and Its Perils." *Cornell International Law Journal* 48 (2): 301-345.

Goodmark, Leigh. 2018. *Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence*. Oakland: University of California Press.

Gruber, Aya. 2021. *The Feminist War on Crime: The Unexpected Role of Women's Liberation in Mass Incarceration*. Oakland: University of California Press.

Halley, Janet, Prabha Kotiswaran, Rachel Rebouché, and Hila Shamir. 2018. *Governance Feminism: An Introduction*. Minneapolis: University of Minnesota Press.

Hobbes, Thomas. 1996. *Leviathan*. Edited by Richard Tuck. Cambridge: Cambridge University Press.

Holtmaat, Rikki. 2013. "The CEDAW: A Holistic Approach to Women's Equality and Freedom." In *Women's Human Rights: CEDAW in International, Regional and National Law*, edited by Anne Hellum and Henriette Sinding Aasen, 95-123. Cambridge: Cambridge University Press.

Protective Leviathanism

Kapur, Ratna. 2002. "The Tragedy of Victimization Rhetoric: Resurrecting the 'Native' Subject in International and Post-Colonial Feminist Legal Politics." *Harvard Human Rights Journal* 15: 1-37.

Kotiswaran, Prabha. 2018. "Governance Feminism in the Postcolony: Reforming India's Rape Laws." In *Governance Feminism: An Introduction*, edited by Janet Halley, Prabha Kotiswaran, Rachel Rebouché, and Hila Shamir, 75-148. Minneapolis: University of Minnesota Press.

Loney-Howes, Rachel, Marlene Longbottom, and Bianca Fileborn. 2024. "Gender-Based Violence and Carceral Feminism in Australia: Towards Decarceral Approaches." *Feminist Legal Studies* 32: 163-185.

Mackenzie, Catriona, and Natalie Stoljar, eds. 2000. *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self*. New York: Oxford University Press.

Mandal, Saptarshi. 2024. "Bringing Governance Home: Feminists, Domestic Violence, and the Paradoxes of Rights in India." *Feminist Legal Studies* 32: 77-97.

Mavronicola, Natasa. 2024. "The Case Against Human Rights Penalty." *Oxford Journal of Legal Studies* 44 (3): 535-562.

Mavronicola, Natasa, and Laurens Lavrysen. 2020. "Coercive Human Rights: Introducing the Sharp Edge of the European Convention on Human Rights." In *Coercive Human Rights: Positive Duties to Mobilise the Criminal Law under the European Convention on Human Rights*, edited by Laurens Lavrysen and Natasa Mavronicola, 1-26. Oxford: Hart.

Mehta, Kalika, and Avantika Tiwari. 2021. "Between Sexual Violence and Autonomy: Rethinking the Engagement of the Indian Women's Movement with Criminal Law." *German Law Journal* 22 (5): 860-877.

Nedelsky, Jennifer. 2011. *Law's Relations: A Relational Theory of Self, Autonomy, and Law*. New York: Oxford University Press.

Pateman, Carole. 1988. *The Sexual Contract*. Stanford: Stanford University Press.

Radhakrishnan, Radhika. 2023. *A Woman's Place Is in a Safe City: Designing Feminist Cities Through Nirbhaya Funds*. Cambridge: MIT Data + Feminism Lab.

Rege, Sharmila. 1998. "Dalit Women Talk Differently: A Critique of 'Difference' and Towards a Dalit Feminist Standpoint Position." *Economic and Political Weekly* 33 (44): WS39-WS46.

Protective Leviathanism

Tapia Tapia, Silvana. 2022. *Feminism, Violence Against Women, and Law Reform: Decolonial Lessons from Ecuador*. Abingdon: Routledge.

Tapia Tapia, Silvana. 2025. "Human Rights Penalty and Violence Against Women: The Coloniality of Disembodied Justice." *Law and Critique* 36: 41-65.

Williams, Patricia J. 1987. "Alchemical Notes: Reconstructing Ideals from Deconstructed Rights." *Harvard Civil Rights-Civil Liberties Law Review* 22 (2): 401-434.

Young, Iris Marion. 2003. "The Logic of Masculinist Protection: Reflections on the Current Security State." *Signs* 29 (1): 1-25.

1. Justice J.S. Verma Committee, *Report of the Committee on Amendments to Criminal Law* (Government of India, 23 January 2013), Preface. The Report described the Committee's constitution as a response to the public outcry against failures of governance affecting women's safety and dignity. ↵
2. Criminal Law (Amendment) Act 2013, No 13 of 2013, particularly provisions concerning ss 166A, 326A, 326B, 354A to 354D, 370, 375 and 376 to 376E of the Indian Penal Code 1860. ↵
3. Convention on the Elimination of All Forms of Discrimination against Women, adopted 18 December 1979, 1249 UNTS 13, arts 1, 2 and 5. ↵
4. *Vishaka v State of Rajasthan* (1997) 6 SCC 241. ↵
5. Committee on the Elimination of Discrimination against Women, General Recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19, CEDAW/C/GC/35, 26 July 2017, particularly paras 21 to 35. ↵
6. Rajya Sabha Debates, 21 March 2013, discussion on the Criminal Law (Amendment) Bill 2013. See also Rajya Sabha Secretariat, *Synopsis of Debate*, 21 March 2013. The record includes interventions by Sushilkumar Shinde, D. Raja, T.N. Seema, M. Venkaiah Naidu, and other members. ↵
7. Criminal Law (Amendment) Act 2013, No 13 of 2013, including ss 376A and 376E of the Indian Penal Code 1860 as amended. ↵
8. Justice J.S. Verma Committee, *Report of the Committee on Amendments to Criminal Law* (Government of India, 23 January 2013), chapters concerning rape, sentencing, marriage, police reform, and institutional responsibility. ↵
9. Justice J.S. Verma Committee, *Report of the Committee on Amendments to Criminal Law* (Government of India, 23 January 2013). See also PRS Legislative Research, *Justice Verma Committee Report Summary*, 2013. ↵
10. Ministry of Home Affairs, Government of India, *Safe City Project*, accessed 11 July 2026. ↵

Protective Leviathanism

11. Press Information Bureau, Government of India, *Rs. 2919.55 Crores under the Nirbhaya Fund for Eight Safe Cities*, 8 August 2018. ↩
12. Ministry of Home Affairs, Government of India, *Emergency Response Support System*, accessed 11 July 2026. The official description identifies ten channels through which the system can receive distress signals. ↩
13. Press Information Bureau, Government of India, *Scheme of Fast Track Special Courts*, 8 August 2025. ↩
14. Common Cause and Lokniti, Centre for the Study of Developing Societies, *Status of Policing in India Report 2019: Police Adequacy and Working Conditions* (2019), 119-121. ↩
15. *Justice K.S. Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1. ↩