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GENDER EQUALITY THROUGH THE CONSTITUTIONAL LENS: EVALUATING THE EFFICACY OF LEGAL MECHANISMS IN ENSURING SUBSTANTIVE JUSTICE

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ABSTRACT

This paper undertakes a critical and nuanced exploration of the Indian Constitution and the accompanying legal framework as they pertain to the pursuit of gender equality. It begins by situating gender justice within the foundational vision of the Constitution, drawing upon the values enshrined in the Preamble, the guarantees under Part III (Fundamental Rights), and the aspirational goals of Part IV (Directive Principles of State Policy). Together, these provisions articulate a constitutional commitment to the principles of equality, dignity, and non-discrimination tenets that form the normative bedrock for advancing gender justice in India. A central theme of this study is the distinction between formal equality, which insists on identical treatment for all individuals regardless of context, and substantive equality, which seeks to remedy entrenched structural disadvantages faced by women and other marginalized gender identities. The paper interrogates how this tension plays out within legal and judicial discourse. In doing so, it engages closely with landmark judgments of the Indian judiciary, including *Vishaka v. State of Rajasthan*, *Shayara Bano v. Union of India*, and *Navtej Singh Johar v. Union of India* that have progressively expanded the scope of constitutional protections in the domain of gender rights. In addition to constitutional jurisprudence, the study evaluates key legislative interventions such as the Protection of Women from Domestic Violence Act, 2005, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. While these statutes signify important strides towards safeguarding women's rights in both public and private spheres, the paper interrogates their practical implementation, highlighting persistent challenges relating to enforcement, awareness, and social resistance. The analysis also draws attention to the broader social context in which gender inequality is embedded, acknowledging the intersecting roles of

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patriarchy, caste hierarchies, religious norms, and economic dependency. These structural forces often undermine the transformative potential of the legal framework. The paper argues that a genuinely inclusive model of gender justice must be grounded in the constitutional value of transformative equality and must adopt an intersectional lens that takes into account the multiplicity of identities and experiences. In conclusion, the paper offers a set of thoughtful and pragmatic recommendations aimed at strengthening the legal and institutional architecture for gender justice in India. These include the promotion of gender-sensitive legal education, greater judicial accountability, intersectional policy formulation, and grassroots-level sensitization initiatives. The overarching argument is that the pursuit of gender equality cannot be achieved solely through formal legal reforms but must be sustained by a broader societal commitment to constitutional morality and social transformation.

Keywords: Indian Constitution, Fundamental Rights, Directive Principles of State Policy (DPSP), Constitutional morality, Gender justice, Legal reforms, Judicial accountability.

INTRODUCTION

Gender equality is a cornerstone of a just and democratic society, serving as a fundamental principle that upholds the dignity, freedom, and equal rights of all individuals, regardless of their gender. In the context of India, this essential principle is enshrined in the Constitution, particularly in Articles 14, 15, and 16, which guarantee equality before the law, prohibit discrimination based on sex, and ensure equal opportunities in matters of public employment. These constitutional provisions form the bedrock of India's commitment to fostering an inclusive society where men, women, and individuals of all gender identities can thrive without facing systemic barriers. The concept of gender equality in India has deep historical roots, influenced by cultural, religious, and socio-political transformations over time. In ancient Indian society, particularly during the Vedic period, women enjoyed relatively high status, participating in education, philosophical discourses, and even religious rituals. However, subsequent periods saw a gradual decline in women's status due to the rise of patriarchal norms, rigid caste structures, and the imposition of restrictive social customs such as child marriage, purdah, and sati. During the colonial era, social reform movements led by visionaries like Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, and Jyotirao Phule played a pivotal role in challenging regressive practices and advocating for women's rights. Their efforts resulted in significant legal reforms, including the abolition of sati, the introduction of widow remarriage, and improvements in women's education. The Indian freedom struggle further

galvanized women's participation in political activism, with leaders like Sarojini Naidu and Kasturba Gandhi emerging as prominent figures. Post-independence, the framers of the Indian Constitution were deeply committed to establishing gender equality as a fundamental value of the new republic. This commitment was reflected in the inclusion of specific constitutional provisions aimed at dismantling institutionalized gender discrimination. Despite these robust normative commitments, gender-based disparities continue to persist across various spheres social, economic, political, and legal. In the social sphere, entrenched patriarchal norms, cultural stereotypes, and traditional practices often hinder women's autonomy and agency. Economically, the gender wage gap, unequal access to employment opportunities, and underrepresentation of women in leadership roles highlight significant challenges. Politically, while there has been progress in women's participation in governance, their representation in legislative bodies remains disproportionately low. Legally, although progressive laws have been enacted to address issues such as domestic violence, sexual harassment, and gender-based violence, implementation gaps and societal biases often undermine their effectiveness.

LITERATURE REVIEW

The pursuit of gender equality within the Indian legal framework has been widely studied, with scholars emphasizing the distinction between formal and substantive equality. While the Constitution guarantees equality through Articles 14, 15, and 16, scholars like Sandra Fredman² (2011) and Upendra Baxi³ (2002) argue that true gender justice requires addressing historical and structural disadvantages through a substantive, context-sensitive lens. Judicial interpretations have significantly contributed to this discourse. The Supreme Court's decisions in *Vishaka v. State of Rajasthan*⁴ (1997), *Shayara Bano v. Union of India*⁵ (2017), and *Navtej Singh Johar v. Union of India*⁶ (2018) reflect a progressive shift towards recognizing intersectional harms and upholding constitutional morality. Scholars such as Flavia Agnes⁷ and Ratna Kapur⁸ have welcomed this evolution but also caution against over-reliance on judicial activism in the absence of robust state enforcement mechanisms. Legislative measures like the Domestic Violence Act (2005) and the POSH Act (2013) signify efforts to operationalize gender rights. However, research from NCW and UN Women shows that weak implementation, lack of awareness, and socio-cultural resistance

² Sandra Fredman, *Discrimination Law* (2nd edn, OUP 2011)

³ Upendra Baxi, *The Future of Human Rights* (3rd edn, OUP 2008)

⁴ *Vishaka v State of Rajasthan* AIR 1997 SC 3011

⁵ *Shayara Bano v. Union of India* AIR 2017 SUPREME COURT 4609

⁶ *Navtej Singh Johar v Union of India* AIR 2018 SUPREME COURT 4321

⁷ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (OUP 2001)

⁸ Ratna Kapur, *Erotic Justice: Law and the New Politics of Postcolonialism* ISBN 9781138177345 (2005)

limit their impact. Feminist scholars emphasize that these gaps are particularly stark for marginalized groups such as Dalit, Adivasi, LGBTQ+, and disabled women (Rege⁹, Kannabiran¹⁰). The literature further stresses the need for a transformative constitutionalism approach (Klare¹¹), where law functions not only as a tool of governance but as a mechanism for dismantling entrenched hierarchies. Intersectionality, as articulated by Kimberlé Crenshaw¹², is seen as essential to understanding how caste, class, religion, and gender overlap in shaping women lived realities. In sum, the scholarship indicates that while India's constitutional and legal architecture contains the promise of gender justice, its realization depends on continuous structural reform, intersectional awareness, and sustained institutional commitment beyond legal formalism.

RESEARCH METHODOLOGY

This study employs a doctrinal legal research methodology, grounded in constitutional interpretation and legal theory. It focuses on the critical examination of the Indian constitutional framework, statutory enactments, and judicial decisions that collectively shape the discourse on gender equality. The research is qualitative and normative in character, aiming to evaluate not only the existing legal mechanisms but also their efficacy in delivering substantive gender justice.

The research draws on both primary and secondary legal materials.

Primary sources include: The Constitution of India, especially provisions such as Articles 14, 15, 16, 21, and 39; Key statutes including the Protection of Women from Domestic Violence Act, 2005 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; Judicial decisions such as *Vishaka v State of Rajasthan*, *Shayara Bano v Union of India*, and *Navtej Singh Johar v Union of India*.

Secondary sources encompass scholarly books, peer-reviewed journal articles, Law Commission of India reports, commentaries, and publications by bodies such as the National Commission for Women (NCW) and UN Women. These sources inform the critical evaluation of the operational and normative dimensions of gender justice in India.

ANALYTICAL APPROACH

The study adopts a multi-layered analytical framework. A textual analysis is used to interpret relevant constitutional provisions and legislation. A contextual reading is applied to understand

⁹ Sharmila Rege, *Writing Caste/Writing Gender: Narrating Dalit Women's Testimonies* (Zubaan 2006)

¹⁰ Kalpana Kannabiran, *Tools of Justice: Non-Discrimination and the Indian Constitution* (Routledge 2012)

¹¹ Karl Klare, 'Legal Culture and Transformative Constitutionalism' (1998) 14(1) *South African Journal on Human Rights* 146

¹² Crenshaw, Kimberle "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Anti discrimination Doctrine, Feminist Theory and Antiracist Politics," *University of Chicago Legal Forum*: Vol. 1989: Is. 1, Article 8

judicial trends in their socio-political milieu. The research also employs a critical lens rooted in feminist legal theory and the concept of constitutional morality to assess whether legal mechanisms effectively dismantle entrenched gender hierarchies.

THEORETICAL FRAMEWORK

The paper draws upon two key theoretical paradigms:

Substantive Equality: Moving beyond formal equality, this framework emphasizes the necessity of differential treatment to achieve genuine parity in outcomes. It supports affirmative measures for structurally disadvantaged groups and evaluates how laws respond to real-life gender-based discrimination.

Intersectionality: Originating from Kimberlé Crenshaw's work, intersectionality is used to highlight the compounded marginalization faced by women due to overlapping identities of caste, class, religion, and sexuality. This framework guides the critique of law's inadequacies in addressing multifaceted gender inequalities.

CONSTITUTIONAL FOUNDATIONS OF GENDER EQUALITY

The Indian Constitution enshrines a transformative vision of equality, grounded in the values of justice, liberty, and human dignity. When drafting the Constitution, the framers were acutely aware of the historical subordination of women and other gendered identities. Against the backdrop of colonial inequalities and indigenous patriarchy, they envisaged not only the formal promise of equal treatment but also a constitutional mandate to rectify entrenched structural disadvantages. This dual commitment to formal and substantive equality informs the constitutional architecture of gender justice in India.

UNDERSTANDING THE CONSTITUTIONAL IDEA OF EQUALITY

The principle of equality under the Indian Constitution is not limited to uniform treatment. Rather, it embodies a more substantive vision that aims to redress existing disparities and enable all individuals regardless of gender to access opportunities and live with dignity. The Supreme Court has clarified that Article 14's guarantee of equality before the law and equal protection of the laws is violated by any form of state arbitrariness. In *E. P. Royappa v State of Tamil Nadu*¹³, Justice

¹³ *E P Royappa v State of Tamil Nadu* (1974) 4 SCC 3.

Bhagwati famously noted that “equality is a dynamic concept with many aspects and dimensions and it cannot be 'cribbed, cabined and confined' within traditional doctrinal limits.”

This interpretation laid the foundation for a jurisprudence that is attentive to socio-economic realities and the intersectional disadvantages that impede gender equality in practice.

KEY CONSTITUTIONAL PROVISIONS

- Article 14: The starting point of equality jurisprudence, Article 14 ensures that the state shall not deny any person equality before the law or equal protection under the law. While appearing neutral on its face, this provision has been interpreted progressively to invalidate laws or policies that result in indirect or systemic discrimination against women and gender minorities.
- Article 15(1): This provision explicitly prohibits discrimination on the grounds of sex, among others. It serves as a direct constitutional tool to challenge gender-based exclusions. In *Anuj Garg v Hotel Association of India*¹⁴, the Supreme Court held that “legislative interference grounded in sex stereotypes is constitutionally suspect” and that the state cannot make paternalistic assumptions about women’s autonomy.
- Article 15(3): Recognizing that formal equality is insufficient in the face of deeply embedded inequalities, Article 15(3)¹⁵ permits the state to make special provisions for women and children. Far from being an exception to the rule of equality, this clause embodies a deeper commitment to substantive justice by authorizing affirmative measures aimed at empowerment.
- Article 16: This article guarantees equality of opportunity in public employment and prohibits discrimination on the grounds of sex. It has been instrumental in opening up institutional spaces to women and recognizing their right to equal representation in the public sphere.
- Directive Principles of State Policy: Although not justiciable, the Directive Principles provide valuable constitutional guidance. Article 39(a)¹⁶ directs the state to ensure that men and women have equal rights to an adequate means of livelihood, while Article 39(d)¹⁷ calls for equal pay for equal work. These principles have influenced key legislative and judicial developments, especially in the domain of labor rights and wage parity.

¹⁴ *Anuj Garg v Hotel Association of India* (2008) 3 SCC 1.

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

¹⁶ Constitution of India 1950, art 39(a).

¹⁷ Constitution of India 1950, art 39(d).

EVOLVING JURISPRUDENCE ON GENDER EQUALITY

Indian courts have played a crucial role in interpreting these constitutional guarantees in a manner that furthers gender justice. In *Air India v Nargesh Meerza*¹⁸, the Court struck down service conditions that forced female flight attendants to retire upon marriage or childbirth, holding such policies to be arbitrary and violative of Article 14.

The decision in *Vishaka v State of Rajasthan* marked a pivotal moment in Indian gender jurisprudence. Faced with a legislative vacuum on sexual harassment in the workplace, the Supreme Court invoked Articles 14, 15, and 21, alongside international obligations under CEDAW, to frame binding guidelines for employers. This case exemplifies how the judiciary has interpreted equality not only as a shield against discrimination but also as a mandate for proactive institutional reform. More recently, in *Navtej Singh Johar v Union of India*, the Court held that Section 377 of the IPC, insofar as it criminalized consensual same-sex relationships, violated the constitutional guarantees of equality, dignity, and privacy. The judgment reaffirmed that equality under Articles 14 and 15 must include protection from discrimination on the basis of sexual orientation and gender identity.

JUDICIAL INTERPRETATION AND THE ROLE OF COURTS

The Indian judiciary has been instrumental in transforming the abstract constitutional promise of gender equality into tangible workplace rights. Through a progressive body of jurisprudence, courts have interpreted constitutional provisions to address the lived realities of gender discrimination, sexual harassment, and structural exclusion in employment contexts. This judicial engagement has not only filled legislative gaps but has also shaped institutional accountability and cultural norms surrounding gender justice at the workplace.

The development of gender justice jurisprudence in India is thematically examined across three key areas:

- A. sexual harassment at the workplace,
- B. gender-based discrimination in employment,
- C. and equal opportunity and evolving workplace rights.

¹⁸ *Air India v Nargesh Meerza* (1981) 4 SCC 335.

A. SEXUAL HARASSMENT AT THE WORKPLACE

The legal framework on workplace sexual harassment in India has been significantly shaped by judicial innovation. In the absence of specific legislation until 2013, the Supreme Court assumed an active role in framing binding guidelines to address the issue.

*Medha Kotwal Lele v Union of India*¹⁹ : In this follow-up case, the Court expressed concern over the inadequate implementation of the Vishaka Guidelines and issued binding directions to ensure compliance by both public and private institutions. The judgment reaffirmed the affirmative duty of employers and state authorities to prevent, prohibit, and redress sexual harassment at the workplace.

*Priya Ramani v M.J. Akbar*²⁰ : In a significant ruling from the Delhi Trial Court during the #MeToo movement, the Court acquitted journalist Priya Ramani in a defamation suit filed by former Union Minister M.J. Akbar. The Court recognized that a woman's right to speak about her experiences of workplace harassment—even after a considerable passage of time—is protected by the constitutional guarantee of dignity and expression. The ruling underscored that the right to reputation cannot be weaponized to silence survivors of harassment.

B. GENDER-BASED DISCRIMINATION IN EMPLOYMENT

Judicial scrutiny has also extended to employment policies and legislative provisions that perpetuate gender-based discrimination. In this domain, the courts have moved beyond formal equality to interrogate social stereotypes and systemic barriers.

*Dilip Kumar Ghosh v Union of India*²¹ : Although less frequently cited, this case addressed gender-biased employment practices in public sector organizations. The Court reiterated that state employment must be free from gendered exclusions and align with the constitutional mandate of fairness and non-discrimination.

C. EQUAL OPPORTUNITY AND WORKPLACE RIGHTS

As workplaces evolve, courts have extended the scope of constitutional protections to ensure that the principle of equal opportunity remains meaningful in changing contexts.

*Bank of India v Aarya K Babu*²² : In this case, the Kerala High Court held that denying maternity benefits to a woman employee on contractual terms was discriminatory. The judgment reaffirmed

¹⁹ *Medha Kotwal Lele v Union of India* AIR ONLINE 2012 SC 632

²⁰ *Mobashar Jawed Akbar v Priya Ramani* ACMM01 2021

²¹ *Dilip Kumar Ghosh v Union of India* (2005) 11 SCC 36.

²² *Bank of India v Aarya K Babu* 2019 (8) SCC 587

that maternity rights are fundamental to substantive workplace equality and that employment status cannot be used as a pretext to deny basic entitlements.

Saurabh Kumar Mallick v Comptroller & Auditor General of India²³ : In a forward-looking interpretation, the Delhi High Court held that the term “workplace” includes virtual and remote environments. Recognizing the diversification of work arrangements, the Court ensured that legal protections against harassment are not confined to physical office spaces, thus broadening the constitutional and statutory reach of workplace rights.

LEGISLATIVE MEASURES FOR GENDER EQUALITY

The journey of gender equality in India has been deeply intertwined with its socio-political evolution. From the early years post-independence to the contemporary era, legislative reforms have been pivotal in addressing gender disparities. Each law enacted reflects the nation’s response to the changing roles of women and the persistent challenges they face. In the aftermath of independence, the Indian Constitution laid the foundational principles of gender equality, embedding the ideals of justice, liberty, and equality. However, to translate these principles into tangible rights, specific legislations were necessary. The Maternity Benefit Act²⁴ of 1961 was among the first significant steps towards recognizing women’s dual roles at work and home. It provided paid maternity leave and job security to working mothers, addressing issues faced by women in both organized and unorganized sectors. The 2017 amendment expanded its scope, increasing maternity leave to 26 weeks and introducing provisions for work-from-home arrangements and creche facilities. As the women’s rights movement gained momentum globally and domestically, India responded with more progressive laws. The Equal Remuneration Act²⁵ of 1976 emerged from the need to bridge the gender pay gap, mandating equal pay for equal work and prohibiting discriminatory practices in hiring and promotions. Although it faced implementation hurdles, its principles were later reinforced under the Code on Wages²⁶, 2019, which streamlined wage-related laws for better enforcement. Moving into the 21st century, the increasing participation of women in the workforce highlighted the pressing issue of workplace safety. The tragic case of Bhanwari Devi in Rajasthan, a grassroots worker who faced sexual violence while fighting child marriage, catalyzed the landmark Vishaka Guidelines issued by the Supreme Court in 1997. These guidelines laid the groundwork for the Sexual Harassment of Women at Workplace (Prevention, Prohibition

²³ Saurabh Kumar Mallick vs The Comptroller and Auditor General of India and Ors, MANU/DE/0956/2008.

²⁴ Maternity Benefit Act 1961, No 53 of 1961 (as amended by Maternity Benefit (Amendment) Act 2017)

²⁵ Equal Remuneration Act 1976, No 25 of 1976 (now subsumed under Code on Wages 2019, No 29 of 2019)

²⁶ Code on Wages 2019, No 29 of 2019

and Redressal) Act²⁷, 2013, formalizing the mechanisms to address sexual harassment, such as the establishment of Internal Complaints Committees (ICCs) in organizations. Simultaneously, addressing the private sphere, the Protection of Women from Domestic Violence Act²⁸, 2005 marked a paradigm shift. It broadened the definition of domestic abuse to include not only physical but also emotional, sexual, verbal, and economic abuse. The Act empowered magistrates to issue protection orders and provided victims with access to shelter homes and legal aid, recognizing domestic violence as not just a private issue but a public concern. Another significant legislation, the Prohibition of Child Marriage Act²⁹, 2006, sought to curtail the age-old practice of child marriage, especially prevalent in rural areas. By setting the legal age of marriage at 18 for women and 21 for men, and providing mechanisms to annul child marriages, it aimed to protect young girls from early pregnancies, dropouts from education, and health risks. Despite these legal advancements, the gap between legislation and lived realities remains wide. Socio-cultural norms, lack of awareness, and institutional apathy often hinder effective implementation. For instance, while the Sexual Harassment Act mandates ICCs, many organizations either lack them or have ineffective ones, as revealed in various high-profile cases during the #MeToo movement in India.

FROM FORMAL TO SUBSTANTIVE EQUALITY

Formal equality, rooted in classical liberal thought, underscores the principle of treating every individual alike, regardless of their personal or social differences. This approach asserts that fairness is realized through the uniform application of laws and equal treatment before the law. However, this conception has been criticized for its inability to account for systemic and structural inequalities. Laws based on formal equality may inadvertently sustain discrimination by ignoring the disparities in individuals' starting positions and the historical disadvantages faced by marginalized groups. As Fredman notes, formal equality "requires a comparator and the same treatment, thereby failing to address the effects of past disadvantage or social exclusion."³⁰

In contrast, substantive equality seeks to eliminate entrenched inequalities by focusing on outcomes rather than merely procedures. It acknowledges that equal treatment may sometimes require unequal measures to address structural disadvantages. Affirmative action, targeted social benefits, and policies of inclusion fall within this framework. According to Fredman, substantive

²⁷ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, No 14 of 2013

²⁸ Protection of Women from Domestic Violence Act 2005, No 43 of 2005

²⁹ Prohibition of Child Marriage Act 2006, No 6 of 2007

³⁰ Sandra Fredman, *Discrimination Law* (2nd edn, OUP 2011) 17.

equality aims to: (i) redress disadvantage; (ii) address stigma, stereotyping, prejudice, and violence; (iii) enhance participation, and (iv) accommodate difference and achieve structural change.³¹

Catharine MacKinnon also critiques formal equality, arguing that its supposed neutrality often entrenches patriarchal power structures. She observes that when the law treats men and women as the same, it often ignores women's lived realities, thereby maintaining the status quo.³² Her critique centers on how seemingly neutral laws can have gendered impacts, reinforcing the subordination of women.

International legal frameworks increasingly reflect substantive equality principles:

European Union: EU law incorporates substantive equality through directives such as Directive 2006/54/EC on equal treatment of men and women in matters of employment. The European Court of Justice (ECJ) in *Kalanke v Freie Hansestadt Bremen*³³ initially rejected automatic preference for women in promotions. However, later decisions like *Marschall v Land Nordrhein-Westfalen*³⁴ and *Badeck v Hessischer Ministerpräsident*³⁵ refined this view by upholding “positive action” measures that promote substantive equality where underrepresentation and objective criteria justify such actions.

India: The Indian Constitution embeds substantive equality in Articles 15(4), 15(5), and 16(4), enabling the State to enact special provisions for socially and educationally backward classes, Scheduled Castes, and Scheduled Tribes. In *Indra Sawhney v Union of India*³⁶, the Supreme Court upheld the constitutionality of reservations for Other Backward Classes, while also placing limits to ensure the balance between equality and merit. More recently, in *Navtej Singh Johar v Union of India*, the Court decriminalized same-sex relations under Section 377 IPC, acknowledging that equal treatment under law must consider the lived realities and dignity of LGBTQ+ individuals—a distinctly substantive equality perspective.

CHALLENGES IN REALISING GENDER JUSTICE

Despite the existence of a robust legal framework aimed at promoting gender equality, several structural and sociocultural challenges continue to hinder the attainment of substantive gender

³¹ Sandra Fredman, ‘Substantive Equality Revisited’ (2016) 14(3) *International Journal of Constitutional Law* 712.

³² Catharine A MacKinnon, ‘Difference and Dominance: On Sex Discrimination’ in *Feminism Unmodified* (Harvard University Press 1987) 32.

³³ Case C-450/93 Eckhard Kalanke v Freie Hansestadt Bremen [1995] ECR I-3051.

³⁴ Case C-409/95 Hellmut Marschall v Land Nordrhein-Westfalen [1997] ECR I-6363.

³⁵ Case C-158/97 Georg Badeck v Hessischer Ministerpräsident [2000] ECR I-1875.

³⁶ *Indra Sawhney v Union of India* 1992 (3) SCC(SUPP) 217

justice. These challenges are multifaceted, deeply entrenched, and often interlinked, making the pursuit of gender justice a complex endeavor.

Patriarchal Social Norms: One of the most formidable obstacles to gender justice is the persistence of patriarchal social norms. These norms are deeply embedded in societal structures, influencing attitudes, behaviors, and institutional practices. They perpetuate gender stereotypes, reinforce traditional gender roles, and contribute to the marginalization of women and gender minorities. The internalization of such biases often limits the effectiveness of legal reforms, as societal attitudes do not always align with progressive legislation. For instance, laws promoting women's rights may face resistance or passive non-compliance within communities where patriarchal values dominate.

Lack of Representation: Women's underrepresentation in key decision-making bodies, including the judiciary, legislature, and corporate leadership, significantly impedes the realization of gender justice. This lack of representation not only affects the diversity of perspectives in policy formulation and implementation but also undermines the credibility and responsiveness of institutions to gender-specific issues. The underrepresentation extends beyond numerical inadequacy, reflecting in limited influence over critical decisions that shape societal norms and legal interpretations.

Implementation Gaps: The existence of progressive gender-related laws does not guarantee their effective enforcement. Implementation gaps arise from various factors, including inadequate resources, lack of political will, insufficient training of law enforcement personnel, and bureaucratic inertia. These gaps weaken the impact of protective laws, leaving many victims of gender-based discrimination and violence without effective remedies. Moreover, corruption and lack of accountability mechanisms further exacerbate these challenges, making it difficult for affected individuals to seek justice.

Intersectional Discrimination: Gender-based discrimination often intersects with other forms of social stratification, such as caste, class, religion, ethnicity, and disability. This intersectionality compounds the disadvantages faced by individuals belonging to multiple marginalized groups. For example, a Dalit woman may experience discrimination not only based on her gender but also due to her caste and socio-economic status. Addressing intersectional discrimination requires a nuanced understanding of how different identities interact to produce unique experiences of oppression, which is often lacking in both legal frameworks and policy interventions.

Judicial Backlogs and Accessibility: The judicial system in many regions is plagued by extensive backlogs and delays, which disproportionately affect vulnerable groups seeking legal redress. In rural and remote areas, the inaccessibility of legal remedies is further compounded by the lack of legal literacy, inadequate legal aid services, and socio-economic barriers. Women from these areas often face additional challenges, such as social stigma, threats of retaliation, and logistical difficulties in accessing courts. These barriers not only delay justice but also deter many from pursuing legal action altogether.

THE WAY FORWARD: TOWARDS A TRANSFORMATIVE CONSTITUTIONALISM

To bridge the gap between normative commitments enshrined in constitutional frameworks and the lived realities of diverse communities, a transformative constitutionalism approach is imperative. This approach seeks not merely to interpret the constitution passively but to utilize it as an active tool for social change, ensuring that principles of justice, equality, and dignity are realized in practice. These comprehensive recommendations delineate the trajectory towards realizing this transformative aspiration:

GENDER SENSITIZATION

Institutional Training Programs: Implement comprehensive, continuous training programmed focused on gender sensitization for judges, police officers, and bureaucrats. These programmed should be integrated into the curriculum of judicial academies and administrative training institutes.

Content of Training: Include modules on gender biases, unconscious prejudice, case studies on gender-based discrimination, and the impact of patriarchal norms on legal and administrative decisions.

EVALUATION MECHANISMS

Establish periodic assessments to measure the effectiveness of these training programmed, with feedback loops to refine and update content.

INTERSECTIONAL POLICIES

Understanding Compounded Discrimination: Recognize that individuals may face multiple, overlapping forms of discrimination based on gender, caste, class, disability, sexual orientation, religion, and other identities.

TAILORED INTERVENTIONS

Design policy interventions that specifically address the unique challenges faced by these groups. For instance, schemes for Dalit women should consider both gender and caste-based vulnerabilities.

DATA-DRIVEN APPROACHES

Collect disaggregated data to inform policy decisions, ensuring that intersectionality is not just a rhetorical commitment but a practical reality in policymaking.

INCLUSIVE LAWMAKING

Representation in Legislative Processes: Ensure the active participation of women, LGBTQ+ individuals, and other marginalized communities in the drafting, discussion, and implementation of laws.

QUOTAS AND AFFIRMATIVE MEASURE

Introduce legislative quotas and mechanisms to enhance representation in legislative bodies, committees, and advisory panels.

Consultative Processes: Create platforms for civil society organizations, grassroots activists, and community leaders to provide input on legislative matters, ensuring laws reflect diverse lived experiences.

JUDICIAL REFORM

Enhancing Diversity: Promote greater diversity within the judiciary, not just in terms of gender and caste but also socio-economic backgrounds, to reflect the demographics of the society it serves.

FEMINIST LEGAL REASONING

Encourage the adoption of feminist jurisprudence, which critically examines how legal norms affect different genders and challenges traditional patriarchal interpretations of the law.

TRANSPARENT APPOINTMENT

Reform judicial appointment processes to ensure transparency, accountability, and inclusivity, reducing biases that hinder diversity.

GRASSROOTS EMPOWERMENT

Legal Literacy Campaigns: Launch widespread legal literacy programmes, especially in rural and marginalized communities, to educate people about their constitutional rights and legal remedies.

ACCESS TO JUSTICE

Strengthen mechanisms like legal aid services, paralegal networks, and community justice centers to make justice accessible, affordable, and responsive to local needs.

Community Participation: Empower local governance bodies and community-based organizations to play an active role in monitoring the implementation of legal rights and holding institutions accountable.

By implementing these recommendations, transformative constitutionalism can move beyond theoretical discourse and become a dynamic force for realizing social justice, equality, and human dignity in everyday life.

CONCLUSION

Gender equality is more than a constitutional ideal in India; it is a deeply necessary condition for the realization of justice, dignity, and democratic promise. The legal framework has laid important groundwork from constitutional guarantees to progressive legislation and evolving judicial interpretations that reflect a sincere commitment to dismantling discrimination and empowering marginalized genders. Yet, the persistence of patriarchal mindsets, systemic barriers, and intersectional disadvantages reveals that laws alone cannot transform society. What is needed, therefore, is a shift from viewing equality as merely a formal principle to embracing a substantive, lived reality one that recognizes difference, addresses historical injustices, and actively works to level the playing field. This demands more than statutes and court rulings; it requires continuous societal engagement, political will, and institutional reforms grounded in empathy and inclusivity. Elevating voices from the margins, reforming entrenched power structures, and making justice accessible are crucial steps in this ongoing journey. The idea of transformative constitutionalism offers a hopeful framework, urging us to see the Constitution not as a static document but as a living instrument of social change. Through sustained effort, critical self-reflection, and collective responsibility, India can move closer to the ideal of substantive gender justice where every individual, regardless of gender, can participate fully and freely in the social, economic, and political life of the nation. In essence, the struggle for gender equality is as much about changing hearts and minds as it is about changing laws. It is a shared project of rebuilding societal norms and institutions so that dignity and opportunity are truly within everyone's reach.

REFERENCES

1. Sandra Fredman, *Discrimination Law* (2nd ed, OUP 2011)

2. Upendra Baxi, *The Future of Human Rights* (3rd edn, OUP 2008)
3. *Vishaka v State of Rajasthan* AIR 1997 SC 3011
4. *Shayara Bano v. Union of India* AIR 2017 SUPREME COURT 4609
5. *Navtej Singh Johar v Union of India* AIR 2018 SUPREME COURT 4321
6. Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (OUP 2001)
7. Ratna Kapur, *Erotic Justice: Law and the New Politics of Postcolonialism* ISBN 9781138177345 (2005)
8. Sharmila Rege, *Writing Caste/Writing Gender: Narrating Dalit Women's Testimonies* (Zubaan 2006)
9. Kalpana Kannabiran, *Tools of Justice: Non-Discrimination and the Indian Constitution* (Routledge 2012)
10. Karl Klare, 'Legal Culture and Transformative Constitutionalism' (1998) 14(1) *South African Journal on Human Rights* 146
11. Crenshaw, Kimberlé "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Anti discrimination Doctrine, Feminist Theory and Antiracist Politics," "University of Chicago Legal Forum: Vol. 1989: Iss. 1, Article 8
12. *E P Royappa v State of Tamil Nadu* (1974) 4 SCC 3.
13. *Anuj Garg v Hotel Association of India* (2008) 3 SCC 1.
14. Constitution of India 1950, art 15(3).
15. Constitution of India 1950, art 39(a).
16. Constitution of India 1950, art 39(d).
17. *Air India v Nargesh Meerza* (1981) 4 SCC 335.
18. *Medha Kotwal Lele v Union of India* AIR ONLINE 2012 SC 632
19. *Mobashar Jawed Akbar v Priya Ramani* ACMM01 2021
20. *Dilip Kumar Ghosh v Union of India* (2005) 11 SCC 36.
21. *Bank of India v Aarya K Babu* 2019 (8) SCC 587
22. *Saurabh Kumar Mallick vs The Comptroller and Auditor General of India and Ors*, MANU/DE/0956/2008.
23. *Maternity Benefit Act 1961*, No 53 of 1961 (as amended by *Maternity Benefit (Amendment) Act 2017*)
24. *Equal Remuneration Act 1976*, No 25 of 1976 (now subsumed under *Code on Wages 2019*, No 29 of 2019)
25. *Code on Wages 2019*, No 29 of 2019

26. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, No 14 of 2013
27. Protection of Women from Domestic Violence Act 2005, No 43 of 2005
28. Prohibition of Child Marriage Act 2006, No 6 of 2007
29. Sandra Fredman, *Discrimination Law* (2nd edn, OUP 2011) 17.
30. Sandra Fredman, 'Substantive Equality Revisited' (2016) 14(3) *International Journal of Constitutional Law* 712.
31. Catharine A. MacKinnon, 'Difference and Dominance: On Sex Discrimination' in *Feminism Unmodified* (Harvard University Press, 1987) 32.
32. Case C-450/93 Eckhard Kalanke v. Freie Hansestadt Bremen [1995] ECR I-3051.
33. Case C-409/95 Hellmut Marschall v. Land Nordrhein-Westfalen [1997] ECR I-6363.
34. Case C-158/97 Georg Badeck v. Hessischer Ministerpräsident [2000] ECR I-1875.
35. Indra Sawhney v. Union of India 1992 (3) SCC(SUPP) 217