
THE INDIAN JUDICIARY AND THE QUEST FOR GENDER JUSTICE

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ABSTRACT:

The goal of gender justice, a crucial facet of social justice, guarantees men, women, and people of different gender identities, the same rights, opportunities, and dignity. The promise of equality enshrined in Articles 14, 15, and 21 of the Indian Constitution has served as a solid basis for the advancement of gender justice. But its realization has frequently been hampered by biases, cultural norms, and societal hierarchy. By interpreting the Constitution in a progressive manner and extending the reach of gender rights, the Indian court has significantly contributed to patch this gap.

The courts have reinterpreted equality from a formal concept to one of substantive justice through monumental rulings like **Vishaka v. State of Rajasthan**, which led to the passage of POSH Act 2013, **Shayara Bano v. Union of India**, which pushed the Government to enact the Muslim Women (Protection of Rights on Marriage Act, 2019 which made Triple Talaq punishable and **NALSA v. Union of India**, compelled the Government to pass The Transgender Persons (Protection of Rights) Act, 2019, guaranteeing protection against exclusion, violence, and discrimination. The Researcher explores the development of judicial approaches to gender justice in India, emphasizing the ways in which human rights viewpoints, constitutional morality, and judicial activism have all worked together to empower women and gender minorities. It comes to the conclusion that the judiciary continues to play a crucial role in bringing gender justice from a legal ideal to a social reality.

Keywords: Gender, Justice, Constitution, Judicial approach, Equality.

“Equality cannot be achieved by sameness but by dismantling structures of discrimination”

- Justice D.Y. Chandrachud

This statement makes it clear that treating everyone the same does not lead to real equality because it ignores the disadvantages and systemic barriers that prevent some groups from getting equal rights and opportunities. The idea of sameness means treating everyone the same without taking into account the realities of society. On the other hand, the idea of equality stresses that everyone should have the same rights and respect. In social contexts characterised by unequal starting positions, uniform treatment merely sustains inequality.

The principle highlights the distinction between formal and substantive equality: the former pertains to the law treating everyone the same in theory, whereas the latter involves taking active measures to combat discrimination, bias, and historical disadvantages. To realize true equality, society must endeavor to eliminate patriarchal norms, dismantle barriers related to caste, gender, disability, and class, and implement affirmative protections where necessary.

In nutshell, equality mandates the removal of systemic discrimination and social barriers, rather than merely instituting identical treatment, as doing so does not address the underlying inequalities.

Women enjoy a unique position in every society and country of the world. Despite their contribution in all spheres of life, they suffer in silence and form a class which is in silence and form a class which is in a disadvantaged position because of several barriers and impediments.¹ In India as per UN (world population prospect 2024) the sex ratio is 106.443 males per 100 females.² Several factors like social, cultural, technological advancement etc are responsible for the unequal gender ratio. If this inequality is merely in number it can be resolved to certain extent with the help of law but this inequality is not confined to number, but in many spheres women are treated differentially as subordinates, hence there is an urgent need to address this issue. The goal of gender justice, a crucial facet of social justice, guarantees men, women, and people of different gender identities, the same rights, opportunities, and dignity.

¹ Concept of Gender Justice in India: A Constitutional Perspective, available <https://ijert.org/papers/IJCRT2312695> (visited on 20th January 2026)

² India sex ratio 2025, available @ <https://statisticstimes.com/demographics/country/india-sex-ratio> (visited on 24th January 2026)

Ensuring gender justice is vital in any fair, inclusive and progressive society.

The researcher aims to analyze the role of Judiciary in promoting women's rights and equality, analyzing landmark judgments, transformative jurisprudence, challenges like patriarchal norms and implementation gaps, and making suggestions for a truly inclusive justice system that ensures equal rights, dignity, and representation for all genders in India.

In the Indian legal context, courts often invoke this principle in gender justice cases, affirming that offering maternity benefits to women is not discriminatory against men. Legal provisions, including seat reservations and targeted protections, serve to redress structural inequalities, in accordance with Articles 14 and 15(3) of the Indian Constitution, which permit specific provisions for women. Judicial decisions, such as those in *Vishaka v. State of Rajasthan* (workplace harassment), *NALSA v. Union of India* (transgender rights), and *Joseph Shine v. Union of India* (rejection of gender stereotypes), reinforce the notion that equal treatment devoid of efforts to eliminate discrimination fails to rectify existing inequalities.

Judiciary in India has played a transformative and activist role in advancing gender justice by interpreting the Constitution as a living document.

Constitutional mandates to achieve Gender Equality:

Fundamental Rights (Part III)

Indian Constitution guarantees Fundamental Rights which are justiciable.

Article 14 ensures Right to Equality. It guarantees equality before the law and equal protection of the law. Equality is not treating all alike always. If equals are treated unequally or unequals are treated equally it amounts to violation of equality. Wherever there is arbitrariness equality is violated. Judiciary has evolved a test for reasonable classification to put a check on arbitrariness.

Article 15(1) Prohibition of Discrimination based on sex, caste, religion, race or place of birth.

. Article 15(3) enables the state to make Special Provisions for Women. This provision affirms the idea that certain privileges are to be given to women in order to break the stereotyped patriarchal society and to attain equality.

Article 21 guarantees Right to Life and Dignity, innumerable rights are brought under the purview of this article. Dignity, privacy, reproductive rights, autonomy and integrity are also part of it. Dignity enshrined under article 21 cannot be achieved without addressing the gendered and societal barriers.

Directive Principles (Part IV)

Article 38 directs the State to take steps to promote social, economic and political justice.

Article 39(a) mandates the state to make policies towards achieving equal livelihood without any gender discrimination,, Art.39(d) directs the state to provide equal pay for equal work regardless of gender , 39 (e) states that health and strength of the workers, men women and children must not be abused, they must not be forced to take up work unsuited to their age because of economic necessity .

All these provisions aim for real equality, not just formal sameness.

Equal treatment and non-discrimination are essential factors that contribute to gender justice.

Judicial Approach:

Justice V.R. Krishna Iyer who is known for judicial activism addressed the issue of gender discrimination in late seventies. In the case of

***C. B. Muthamma V. Union of India and Others*³**

Supreme Court through Justice V. J. Krishna Iyer addressed a writ petition filed by Muthamma, a senior member of the Indian Foreign Service, her contention was that she was not considered for promotion and argued that the service rules incorporated discrimination against women. The rule that mandates a woman in service to take permission to marry and also put married women at a disadvantage is purely violative of equality. She was overlooked for promotion due to systemic discrimination against women incorporated in the service rules that put married women at a disadvantage, court recognized the presence of gender bias within these regulations and observed that the government had started to tackle these concerns, as one of the prejudicial rules had been eliminated and another was set to be removed. Although Muthamma received

³ CDJ 1979 SC 028

her promotion during the proceedings, she expressed worries regarding her seniority in comparison to junior officers who had been promoted in the meantime. The court instructed the government to reassess her seniority in view of her recent promotion. While the petition was ultimately dismissed, the court underscored the importance of the government reforming the service regulations to eradicate all instances of sex discrimination.

Later on in the eighties also the Supreme Court struck down the Air India rules as discriminatory and unconstitutional in *Air India V. Nargesh Meerza*⁴ case.

Under the leadership of Fazal Ali, J., the Supreme Court examined the constitutionality of certain regulations related to Air Hostesses working for Air India and the Indian Airlines Corporation. The case involved several petitions that raised comparable legal issues, primarily concerning the retirement age and service conditions for Air Hostesses. The issue related to a writ petition challenging Regulation 46(1)(c) of the A.I. Employee Service Regulations, which mandates retirement of Air Hostesses at the age of 35 or upon marriage within four years of service, or upon their first pregnancy whichever is earlier. The petitioners contended that these regulations were gender discriminatory and infringed Articles 14 and 15 of the Indian Constitution. Their argument was that Air Hostesses faced unjust treatment in comparison to their male counterparts in the cabin crew. The court affirmed that Air Hostesses and male cabin crew members are considered as different categories due to variations in recruitment standards, qualifications, and service conditions, indicating that any differential treatment doesn't automatically contravene Article 14. The court determined that the regulation mandating retirement upon the first pregnancy was arbitrary and unreasonable, thus violating Article 14. It found it unacceptable to terminate an employee's service solely based on pregnancy. The regulation enforcing retirement at age 35 was maintained, but the clause granting the Managing Director unfettered discretion to prolong service was declared invalid due to its lack of guidelines, which constituted excessive delegation of authority. The rule regarding termination due to the first pregnancy was ruled unconstitutional and annulled. The court mandated that the retirement age for Air Hostesses should be raised to 45 years, contingent upon medical fitness. The ruling underscored the necessity for regulations to comply with constitutional principles of equality and justice. The petitions were partially upheld, invalidating certain provisions of the regulations while acknowledging the distinct categories of service for Air Hostesses and male cabin crew members. Ultimately, the ruling aimed to strengthen the

⁴ AIR 1981 SC 1829

principles of equality and non-discrimination in the workplace, especially concerning gender-specific regulations affecting employment conditions.

In *Vishaka and others V. State of Rajathan*⁵ a monumental judgement which laid guidelines for protection of women at work place. The Supreme Court, under the leadership of Chief Justice J.S. Verma, addressed a writ petition which was filed by social activists and NGOs focused on safeguarding the fundamental rights of working women in India, especially in light of the rising occurrences of sexual harassment. The petition, filed, was triggered by a horrific gang rape incident involving a social worker in Rajasthan, underscoring the pressing need for protective measures for women in their workplaces. The Court highlighted that such events infringe upon women's rights as per Articles 14 (equality), 19 (freedom to practice any profession), and 21 (right to life and liberty) of the Indian Constitution. It acknowledged the insufficient legislative framework in place to shield women from sexual harassment and determined that guidelines were essential for ensuring a secure working environment. The Court has given guidelines for employers and institutions aimed at preventing sexual harassment. Employers are required to take preventive measures against sexual harassment and to create protocols for addressing complaints. This encompasses unwelcome actions such as unwanted physical contact, soliciting sexual favors, and making sexually inappropriate remarks. Employers are expected to include prohibitions on sexual harassment in workplace policies and guarantee a safe atmosphere. They must take legal action where harassment amounts to a criminal offense. Suitable disciplinary actions should be enforced against perpetrators. A systematic procedure for victims to report harassment should be created. Complaints should be managed confidentially by a committee headed by a woman and comprising mostly female members. Employees should be encouraged to raise issues of sexual harassment during meetings. Rights and guidelines must be effectively communicated to female staff members. Employers are also obligated to support victims if harassment occurs due to the actions of external individuals. Governments are urged to contemplate legislation that would enforce these guidelines in the private sector. These guidelines do not alter existing rights under the Protection of Human Rights Act. The Court has declared these guidelines as legally binding until thorough legislation is formulated, with the intent of promoting gender equality and safeguarding working women from sexual harassment. Gender equality includes protection from sexual harassment and right to work with dignity.” The Judgement given in

⁵ AIR 1997 SC 3011

this case laid foundation for the enactment of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

***Shayara Bano & Others V. Union of India & Others*⁶**

The case is a landmark judgement which paved the way for the enactment of The Muslim Women (Protection of Rights on Marriage) Act, 2019, which makes Triple Talaq a Criminal Offence.

Section 2- Muslim Personal Law (Shariat) Application Act, 1937, declares that in matters of marriage, divorce, gifts, inheritance the muslim law will prevail in case of any clash with the law in force. Triple Talaq is recognised by the Muslim Personal Law and it was argued that it is arbitrary and violative of equality under Art.14. According to Art. 13 (1) any preconstitutional law is violative of fundamental rights guaranteed by the Indian Constitution; it is void to the extent of inconsistency. The Supreme Court through the five-judge bench of the Supreme Court held 3:2, that Triple Talaq was unconstitutional. Chief Justice J.S. Khehar and Justice Nazeer declared that Triple Talaq was a fundamental right, while the other three judges disagreed. Justices Nariman, Lalit, and Kurian declared that Triple Talaq was unconstitutional

. The Supreme Court bench has recommended the Legislature to draft a new law regarding Triple Talaq within six months. If a new law is not enacted within the time, the Supreme Court's injunction on Triple Talaq will remain in effect. This case addressed a gender issue which was in practice in matters of divorce under Muslim Law and the passage of the The Muslim Women (Protection of Rights on Marriage) Act, 2019, held this practice as arbitrary.

***Indian Young Lawyers Association & Others V. State of Kerala & Others*⁷**

This case is popularly called as Sabarimala Case. The case has come before the Supreme Court by way of a public interest litigation related to the prohibition of women aged between 10 to 50 from entering the Sabarimala Temple, a restriction based on certain traditional customs. The Kerala High Court had held that these restrictions did not amount to discrimination under Articles 14, 15, and 25 of the Constitution. The Supreme Court identified the necessity to

⁶ AIR 2017 SC 4609

⁷ (2019) 11 SCC 1

resolve constitutional mandates concerning gender discrimination, religious practices, and the rights of women to access places of public worship. The complexity of the case warranted deliberation by a larger bench.

The Court examined the constitutionality of Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules 1965, which prohibits women aged 10 to 50 from entering the Sabarimala temple. It holds that devotees of Lord Ayyappa do not form a separate religious denomination but are Hindus, with no unique tenets apart from those common to Hinduism. Article 25(1) of the Constitution, guarantees to all the right to freely profess, practice, and propagate the religion of their choice regardless of gender. The Court determined that the practice of prohibiting entry into the temple of certain aged women at Sabarimala violates the fundamental right of Hindu women to worship, thereby rendering Rule 3(b) unconstitutional .. The term 'morality' in Article 25 is interpreted within the ambit of constitutional morality rather than narrow individual or sectarian understandings. Further, the Court ruled that the ongoing exclusion of women is not an essential practice of Hinduism and does not align with the rights governed by the Constitution.

SC ruled that “Patriarchy in religion cannot trump over the right to equality.

*National Legal Services Authority V. Union of India*⁸

is another bench mark case decided by the Supreme Court of India. SC declared transgender people as the 'third gender.' The court affirmed that the fundamental rights guaranteed under the Constitution of India are equally applicable to them. It also recognized their right to self-identify their gender as male, female, or third gender.

The judgment is seen as a significant step towards gender equality in India. The Supreme Court observed that the transgender people are treated as socially and economically disadvantaged. As a result, they will receive reservations for admissions to educational institutions and jobs.

The Indian judiciary always tried to maintain the spirit of the Constitution especially in matters relating to Gender Justice; it has interpreted the law in such a way to maintain the balance of Gender Justice. Through progressive pronouncements, the courts have widened the scope of Articles 14, 15, and 21. In such a move towards protecting the dignity of the individual and

⁸ AIR 2014 SC 1863

getting their rights enforced according to the laws in force, if any lacuna is identified the Courts recommended and was responsible for enacting required legislation. . Important decisions on sexual harassment at work, reproductive rights, marital equality, LGBTQ+ rights, religious exclusion, and maintenance have collectively changed gender law in India.

Judicial actions bring social change, especially when legislative inaction or societal resistance blocks gender-inclusive reforms. By prioritizing constitutional mandates above societal norms, the judiciary has affirmed that deep-rooted patriarchal traditions cannot undermine fundamental rights. Recognizing gender as a spectrum, breaking down stereotypes, and focusing on bodily autonomy shows a significant move towards a rights-based approach to gender justice.

Moreover, the journey toward gender justice has not come to an end. Although judicial pronouncements are progressive, they face obstacles in effective implementation due to financial constraints, lack of awareness, and institutional limits. Gender justice can be achieved by united effort among the judiciary, legislature, executive, and society to turn constitutional ideals into everyday realities.