
GENDER JUSTICE THROUGH JUDICIAL ACTIVISM

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1. INTRODUCTION:

1.1 Description of the Topic/Abstract:

Gender justice can be defined as the just and equal treatment of human beings regardless of their gender with the provision of equality of rights, opportunities as well as dignity in all areas of life. In India, gender justice has become a practice necessary component of constitutional democracy since social systems have historically categorized women and gender minorities such as the transgender community etc. as a disadvantaged group. Although there have been equal chances assured by the constitution, gender discrimination and violence are still taking root in the social, economic and judicial sectors.

Articles 14¹, 15² and 21³ put all genders on an equal level in the constitution. Article 14 confirms that everyone must be treated equally before the law which is Art.15, no one should be discriminated because of his or her sex hence it is Article 15 and Article 21 affirms everyone the right to life and personal liberty. These foundational articles assist the judiciary on the importance of viewing the fact that there is no law, statute or guideline that contradicts or is in variance with these rights. Judiciary particularly the Supreme Court of India has had great role in interpreting the states of the constitution by its wide interpretation to promote gender justice.

Judicial activism is described as the activist role that the court performs in defense of rights and injustices that cannot be guarded by the legislative and executive actions. Constitutional interpretation, public interest litigation (PIL) and progressive judgments that promote social justice have frequently been used as forms of judicial activism in India. Under gender justice, courts have often intervened to interpret the deficiencies in the legislatures and deal with

¹ India Const. art. 14.

² India Const. art. 15.

³ India Const. art. 21

societal injustices as well as providing solutions to gender victims.⁴

Judicial activism has particularly been used in the promotion of gender justice in areas like workplace harassment, personal, domestic violence, reproductive, and LGBTQ+ rights. Courts have through the landmark judgments that have been made challenged patriarchal norms defining women and gender minorities more as constitutional protections. To illustrate, the law of gender equality in India has been contributed by judicial intervention in the cases of sexual harassment at workplace and the discriminating personal laws. Therefore, judicial activism has become an influential tool to socialize the gender justice by means of ensuring that the constitutional principles of equality, dignity and liberty are achieved successfully⁵.

1.2 Statement of the Problem

Although there has been a constitutional assurance and legal provisions, gender inequity in the Indian society has still been ingrained. Women and gender minorities tend to be discriminated when it comes to employment, education, property rights, and personal relationships and even access to justice. Gender equality has not yet been achieved due to the traditional patriarchal attitudes, societal norms and institutional barriers. Legislation changes have tried to fix such problems but the execution of laws has been either too little or haphazard.⁶ Most of the women protection laws have historically only surfaced through judicial intervention. This brings such vital question of how far judicial activism is required to guarantee gender justice in India.

The other difficulty is a conflict between judicial activism and the notion of separation of powers. According to critics, overreach can be a consequence of judicial intervention, since it would weaken the position of the legislature. In contrast, proponents argue that judicial activism is needed in a society characterized by lethargic action in legislation to help curb social injustices⁷.

Consequently, the main issue examined in the research is to what degree judicial activism has

⁴ Bina Agarwal, *Gender and Command Over Property: A Critical Gap in Economic Analysis and Policy in South Asia*, 22 *World Dev.* 1455 (1994).

⁵ Anuj Bhuwania, *Public Interest Litigation and the Politics of Judicial Activism in India*, 38 *Modern Asian Stud.* 55 (2004).

⁶ Vrinda Narain, *Gender Justice and Constitutional Rights in India*, 21 *Can. J. Women & L.* 39 (2009)

⁷ Pratiksha Baxi, *Sexual Violence and the Law in India: The Mathura Rape Case and Beyond*, 9 *Feminist Legal Stud.* 35 (2001).

led to better gender justice in India and whether judicial intervention can be effective in combating habitual discrimination by the system based on gender.

1.3 Review of Literature

The significant contribution of the judiciary in promoting gender justice in India has been utilized widely according to scholarly research. Barnali Devi (2025) emphasizes that the judicial system has frequently served to empower women, by having a broader interpretation of the provisions of the constitution over time, and by optioning a loophole in the legislatures. The author mentions that preserved court decisions on the workplace harassment, employment equality, and individual freedom testify to the dedication of the judicial system to the rights of women.⁸

Likewise, Kaushiki and Garg (2024) and Thiyagarajan (2025)⁹ highlight that judicial activism has been crucial in changing the position of women in the Indian society by acknowledging their basic rights and questioning discrimination, which is practiced in the society. According to their study, the judicial decisions have contributed to the re-conceptualization of gender equality and the denying of women their constitutional rights.

In yet another work, Rao (2024)¹⁰ claims that judicial reforms have borne a major mark in gender justice by ascending biases that were evident in legal and social systems. The study observes that courts have been observed to act as custodians of the marginal members of the society by providing equal opportunities of access to justice and promoting gender equality by interpreting the law.

Another aspect that scholars bring to light to ensure gender justice is the use of Public Interest Litigation (PIL). The use of PIL has allowed the courts to adjudicate upon matters of concern to women even at the time when the victims themselves cannot approach the courts. To illustrate, the landmark case involving the sexual harassment in the working environment occurred through the PIL where judicial activism has established a new legal precedent when

⁸ Barnali Devi, Empowering Women Through Judicial Action: An Analysis of Court-Led Legal Reforms in India, 6 AGPE ROYAL GONDWANA RSCH. J. 27 (2025)

⁹ R. Thiyagarajan, Judicial Activism and Gender Justice in India, 7 INT'L J. LEGAL SCI. & INNOVATION 1 (2025)

¹⁰ Srikrishna Deva Rao, Judicial Reforms and Gender Justice: A Critical Examination, INDIAN J. L. (2024)

¹¹ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011 (India).

no law exists.¹¹

In sum, judicial activism according to the literature has been extremely vital in enhancing gender justice in India. Nevertheless, scholars also mention that there should be concerted activity on the way of the judiciary, legislature, and civil society to be able to make certain sustainable improvement towards gender equality.¹¹

2. ANALYSIS:

2.1 Gender justice and judicial activism:

Judicial activism has been an important factor contributing to the broadening of the fundamental rights in India. Constitutional interpretation has been used by courts to support social justice and marginal groups. One of the most noticeable spheres of judicial activism has been gender justice. The constitutional interpretation is one of the most important mechanisms of judicial activism. The fast developments of the law in society have seen the courts interpreting the provisions in the constitution.¹² This enables the judges to relevant the legal principles to modern-day problems such as gender discrimination, work harassment and reproduction of matters.

Public Interest Litigation is another significant mechanism. PIL enables an individual or an organization to approach courts on behalf of the impoverished groups who might be ill equipped to attempt to seek justice on their own. In the case of sexual harassment, domestic violence and discriminatory personal laws, through PIL, courts have dealt with such concerns.¹³

India has also developed feminist jurisprudence due to judicial activism. Feminist jurisprudence is a perspective that underlines the conviction that there should be an interpretation of the laws in a manner that acknowledges the social and structural drawbacks that women are subjected to. This is a trend that has been embraced by the courts during their hearing of cases that deal with gender discrimination. Judicial activism, however, is not

¹¹ Harleen Kaur, *Gendering of Indian Judiciary as a Roadmap Towards an Equitable Legal System and Progressive Gender-Sensitive Jurisprudence*, FRONTIERS SOC. (2025)

¹² Upendra Baxi, *Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India*, 4 THIRD WORLD LEGAL STUD. 107 (1985).

¹³ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 45–72 (Oxford Univ. Press 2001).

controversial, free of charge. The opponents say that the courts would occasionally overstep the constitutional mandate of judicial review, hence take on the policy formulation that they would otherwise leave to the legislature. However, in most cases, judicial intervention has been the need to deal with social injustices which had been overlooked by other governmental structures.¹⁴

2.2 Cases laws of landmark cases that contribute to gender justice:

1. Vishakha vs. state of Rajasthan (1997)¹⁵.

Bhanwari Devi is a socially responsible worker who was gang raped to stop child marriage; this is what made the case. To this, several NGOs and organizations filed a Public Interest Litigation in the Supreme Court. The Supreme Court detected the fact that sexual harassment in working place hampered the fundamental rights which were contained in Articles 14, 19 and 21 of the Constitution. Since there was no legislation that addressed such a case, the Court formulated the Vishaka Guidelines that served as the guidelines to the issue on how to prevent and address sexual harassment in the workplace. To still stand the test of time, these guidelines were all previously before congress by legislative laws that are passed until the passage of Sexual Harassment of Women at Workplace Act in 2013. This case is mostly considered a precedent of judicial activism because the Court effectively developed rules in the law where laws were not located.

2. Shah Bano v. Mohammed Ahmed Khan (1985) ¹⁶

This case solved the issue of maintenance that was accorded to the divorced Muslim women. As it was discovered, a Muslim woman could still be maintained under the section 125 of the Criminal Procedure Code even after divorce. The personal laws were required to comply with the constitutional ideas of equality and fairness as it was pointed out in the judgment. Even though the act of legislation made the decision weak afterwards, it brought about a nationwide debate on the matter of gender equality and

¹⁴ Ratna Kapur, The Tragedy of Victimization Rhetoric: Resurrecting the “Native” Subject in International/PostColonial Feminist Legal Politics, 15 HARV. HUM. RTS. J. 1 (2002).

¹⁵ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011 (India).

¹⁶ *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556 (India).

individual laws.

3. *Shayara Bano v. Union of India* (2017)¹⁷

The practice of Instant triple talaq (talaq-e-biddat) was declared unconstitutional in this case. The Court considered the practice to be unethical and arbitrary, and in a conflict with Article 14 principles. The decision was much celebrated among the Muslim women and was seen as a win by the judiciary to mediate in any dispute involving the discriminatory classifications and practices within the different religious groups.

4. *Joseph Shine v. Union of India* (2018)¹⁸

In this case, the decision was made to invalidate section 497, which was criminalizing adultery. The provision considered women as an asset of the husband that the courts considered as violating the basic rights and a discriminatory social construct. The decision restored the position of women as another property to that of an individual, a separate fundamental rights and value in the society.

5. *Navtej Singh Johar v. Union of India* (2018)¹⁹

Although primarily an LGBTQ+ rights case, the case improved the definition of the concept of gender justice significantly because of the decriminalization of any consensual same-sex act and created an allowance toward more shifting and accommodating interpretations that substitutes the constantly changing nature of the society. According to this judgement by the Supreme Court, sexual orientation is the basic and foremost feature of individuality, which is guarded by the Constitution. This emphasized the principles of dignity, autonomy on gender to sexual minorities, and gender equally.

6. *Chinmayee Jena v. State of Odisha* (2020)²⁰

Though it did not achieve much, it ensures that the needs of the new aged society

¹⁷ *Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India).

¹⁸ *Joseph Shine v. Union of India*, (2019) 3 SCC 39 (India).

¹⁹ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

²⁰ *Chinmayee Jena v. State of Odisha*, 2020 SCC OnLine Ori 657 (India).

where the rights of the transgender people to choose the sex and co-exist with the partners of their choice were recognized. The court noted that the real nature of human dignity requires personal expression and the right of choice, the self-determination of the gender but not the societal pressure or any other factor. This decision propelled gender justice beyond the traditional gendered male-female.

2.3 Promotion of gender justice through acts and legislations:

In India, gender specific laws have been prepared and laid in judicial activism quite often.

Certain major laws have been embraced to protect the female rights and ensure gender equality.

1. Protection of Women, 2005 Domestic violence Act: ²¹The Act aims to provide a protective measure to the females under the family environment against physical, emotional, sexual, and economic abuse. It has recognized the rights of women in the marriages and cohabitation in relationships.
2. Sexual harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act, 2013²²: this act was introduced due to the recommendations of Vishaka that were given by the Supreme Court. It presents avenues of prevention and redressing sexual harassment at workplaces.
3. Dowry Prohibition Act, 1961: ²³It is a criminal offense of dowry associated gift and acceptance accompanied with a motive to eliminate the practice of dowry based harassment and violence.
4. Criminal Law, (Amendment) Act, 2013²⁴: This Act, however, introduced more difficult punishments on sexual crime and it liberalized the meaning of rape and sexual harassment in the wake of the 2012 case on the issue of the Delhi gang rape.
5. The Maternity Benefit Act, 1961 (As Amended 2017):²⁵ This Act ensures that

²¹ Protection of Women from Domestic Violence Act, No. 43 of 2005, INDIA CODE (2005).

²² Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, INDIA CODE (2013); *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011 (India).

²³ Dowry Prohibition Act, No. 28 of 1961, INDIA CODE (1961).

²⁴ Criminal Law (Amendment) Act, No. 13 of 2013, INDIA CODE (2013).

²⁵ Maternity Benefit Act, No. 53 of 1961, INDIA CODE (1961) (as amended by the Maternity Benefit (Amendment) Act, 2017).

women employees are given equal opportunities such as payment of maternity leave and other benefits as one of the ways through which gender equality can be promoted.

These acts indicate that judicial activism and mass pressure have influenced the procedure of drafting laws that promote gender justice.

CONCLUSION:

Gender justice is one of the biggest constitutional devotions of the Indian legal system. The Constitution of India has formulated a good normative base of equality under the provisions of Articles 14, 15, 16 and 21 which underlines equality before the law, elimination of discrimination based on sex, and an inalienability of life and personal liberty. Even with these constitutional guarantees, gender inequality remains an issue since the social structure of patriarchy. Gender differences in economics, culture, and institutional prejudices all form deep roots to gender discrimination. In this regard, judicial activism has become a very important tool towards promoting gender justice in India. The judiciary has investigated this aspect with a progressive and transformative approach in interpretation of constitutional rights so that gender equality could not be just a formality but a fact. Courts have interpreted the constitution broadly and with Public Interest Litigation dealt in a manner of systemic gender discrimination and where legislative and executive action could not be found sufficient or in timely fashion.

Courts of law rulings have brought about the most critical in the way gender equality in the Indian law has been put in perspective. The case involving workplace sexual harassment, personal laws, reproductive autonomy, and LGBTQ+ rights indicate that the judiciary has attempted to defy the patriarchal beliefs and uphold individual decency. In several cases, the courts have occupied those gaps in the legislation with some legal principles and guidelines which eventually affected the creation of the laws. Indicatively, judicial regulations that governed workplace harassment resulted in the ultimate adoption of inclusive legislation that governed the matter.

Academic evidence also acknowledges the fact that judicial activism has played a vital role in protecting and empowering women to the extent that it has intervened to remedy the status quo inequalities and through progressive interpretation of the constitution. Courts have tended to follow the role of safeguarding the marginalized groups in making sure that the basic rights are

not denied due to the sex discrimination or social biases.

There is, however, a limitation to the development of gender justice based on judicial activism. Although the courts can introduce the progressive legal principles, their realization in practice can be subjected to strong opposition at the societal and institutional level. The absence of structural inequalities like ignorance, financial dependency, social stigma and exposure to legal facilities remains a limiting factor to many women to pursue justice. Moreover, the existence of gender stereotypes in social institutions undermines the effectiveness of judicial reforms in some cases.

Another significant issue relates to the fact that females are not represented in courts in general sufficiently. The American judiciary remains relatively lowly represented about females which influences the diversity of the judicial views of the decisions. The current state of judicial affairs, according to the observations of the judicial authorities, recently has admitted that the achievement of gender balance in the judiciary is still a pending porta as to the increased inclusivity of the judicial system. Additionally, the argument about the extent of judicial activism is also still topical. Critics suggest that over interruption in the judiciary system can destroy the separation of powers because the judiciary is given the powers to perform functions that are traditionally the preserve of the legislature. Nevertheless, judicial activism has proven to be a relevant instrument in defending constitutional morality and safeguarding basic rights in a society where social reforms are seen to be commonly opposed in a society.²⁶

Therefore, gender justice needs to be approached in a holistic and collaborative way. As much as judicial activism has been transformative in promoting gender equality, this action alone cannot be sustained to promote sustainable development. The realizations of gender justice need the collaboration of the legislature, the executive, the judiciary, civil societies, and educational institutions. The Courts in India have taken charge towards gender justice by questioning the discriminating nature of practice and the enforcement of constitutional relationships of equality and dignity. Nevertheless, the process of substantive gender equality implementation is not completed yet. To make sure whether the constitutional guarantee of gender justice is turned into the daily lives of the citizens, there should be continuous institutional changes, social consciousness, and legal innovation.

²⁶ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford Univ. Press 2001).

RECOMMENDATIONS:

Reforms are the only way that gender justice can be attained and this should be comprehensive both in the law and in the perception of society. The set of recommendations below is intended to reinforce the activities of the judicial institutions other than promote a broader system change.

1. Gender Sensitization Empowerment in the Judiciary.

The members of the justice system such as judges, prosecutors, police officials, etc. also need to be received on regular gender-sensitivity training. The decision making process of the judiciary system should be founded on the language of gender discrimination, intersectionality, and the social economic problems that are faced by women and gender minorities. Such training would help in eliminating unconscious bias and promoted a more equitable court ruling. There should also be gender sensitization programs in the judicial academies, and continuing legal education programs, in order to ensure that the judges are abreast with the evolving gender issues.

2. Expanding Women Representation in Judiciary.

To facilitate gender sensitive justice, it should be emphasized that the number of women who are represented in all sections of the judicial set up should be increased. Women are increasingly occupying more judgeship in the lower courts yet they are under-represented in the upper courts. With more women representatives, the decision-making process would be more inclusive and women would add to the fact that there is a variety of perspectives that are accepted within the judicial interpretations. These means can be adopted in the form of adoption of transparent means of appointment of the lawyers, the implementation of a mentorship program of women lawyers and the involvement of an institutional program of ladies of the legal practice.

3. Empowerment of Women and Improved Right to Justice.

Most women particularly in rural, marginalized or less fortunate do not have much hopes of receiving the justice system. These barriers include some of the financial barriers, lack of awareness about the law, and the social stigma and distance to courts.

To address such problems, the government need to expand the provision of legal aid, establish legal support centers that are made more female friendly and strengthen institutions such as National Legal Services Authority (NALSA). There must also be community based legal awareness campaigns that must be conducted where there should be education of women regarding their rights, as well as legal remedies they can avail.

4. Establishing Gender-Based Violence Specialized Courts.

The fast track courts are supposed to be strengthened by adding courts that have to work with sexual violence, domestic violence and harassment. Court cases are also accustomed to waiting since they delay delivery of legal action to victims and make it easy to deny them justice. Special courts attached to training judicial death penalties and prosecutors and other support staffs may help deal with cases of gender based violence in a much faster and well-informed manner.

5. The reinforcements of the already existing laws should be strengthened.

India has undertaken several legislations to protect the rights of women but this is not feasible since the way it had been done. The harassment in the workplace and domestic violence protection officers required by the law should also work well by the internal complaints committee on the harassment in the workplace. To ensure that these laws succeed in their intended causes, supervision, accountability policies with strict punishment should be put in place in case they are not followed.

6. Promoting Law Education that is gender sensitive.

Law institutions play a role in the preparation of future lawyers, judges and policy makers. The curriculum laid in law schools should include gender justice, feminist jurisprudence and human rights. Clinical legal education programs that focus on women rights can also expose the learners to practical exposure of gender related legal issues in addition to creating awareness in the society.

7. Furthering Policy Co-ordination and Legislative Reform.

Despite the role played by judicial activism in the cause of gender justice, change in

legislation plays a pivotal role in structural change in the long run. The legislators need to keep on reforming and transforming laws to encompass emerging gender issues such as cyberbullying, online privacy, abortion and gender prejudice in the workplace. Intimate connection between the judiciary and legislature can be adopted to ensure that the values of judiciary is integrated in integrated legislative frameworks.

8. Promoting Social Cognizance and Cultural Revolution.

Whichever way, gender discrimination cannot be abolished only by law changes unless changes take place in the society. The society should also have campaigns to create awareness, community awareness programmes, education programs to address the attitude of patriarchy and support equality between sexes. Legal endeavors should engage the media establishments, the civil society and the learning institutions to develop a culture that adheres to the equality of sex among gender and human dignity.

9. Empowering Research and Data Collection of Gender Justice.

The policy making requires clear information on the cases of crimes related to gender, court cases and the application of gender related laws. The government agencies and laboratories should come together and offer comprehensive researches on the issue of gender justice. Such research can identify gaps in the legal system and guide the creation of more efficient policies and the establishment of judicial practice.

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