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# GENDER JUSTICE AND THE LAW: A SOCIO-LEGAL STUDY OF STRUCTURAL INEQUALITY IN INDIA

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## ABSTRACT

The pursuit of the gender justice in India represents one of the most complex socio-legal transformations of the post-colonial era. Despite, the constitutional vision of the equality and dignity, gender-based discrimination continues to pervade in every sphere of the Indian society. From the political participation and property ownership to the workplace equity and access to justice, women encounter systemic barriers that have evolved from the centuries of the patriarchal norms. This paper undertakes a socio-legal examination of the gender inequality in India, evaluating how the legal institutions, judicial interpretation, and the policy reforms have attempted, often inadequately, to transform the social realities. Anchored in the framework of the constitutional guarantees under the Articles 14, 15, and 21, and influenced by the international human rights instruments such as the international treaty adopted by the UN General Assembly in 1979, The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), this article analyses the intersection between law and the social structure. It explores the feminist jurisprudence, judicial activism, and the role of state institutions in redefining the gender justice. The study ultimately argues that substantive equality demands more than legal reform that is requires in the social transformation through the education, representation, and inclusive governance.

**Keywords:** Gender justice, constitutional law, rights for womens, equality, jurisprudence.

**Introduction:**

The Constitution of India envisions a transformative social order grounded in the principles of equality, liberty, and fraternity.<sup>1</sup> Yet, the lived experiences of women across India reveal a dissonance between the constitutional ideals and social realities. Gender inequality remains deeply entrenched, perpetuated by the economic disparities, patriarchal customs, and institutional biases.<sup>2</sup>

Historically, gender relations in India have been shaped by the intersection of religion, caste, and culture.<sup>3</sup> The pre-colonial era reflected the gendered roles embedded in social hierarchies, while colonial law reinforced patriarchal control by codifying the personal laws along religious lines.<sup>4</sup> The post-independence period saw a radical constitutional break, promising equality under the law, yet traditional biases persisted in civil and criminal legal frameworks.<sup>5</sup>

The challenge of achieving gender justice lies not merely in enacting gender-sensitive laws but in ensuring their enforcement and acceptance within the society. Law, as a social institution, functions both as a mirror and as a mechanism of change.<sup>6</sup> The Indian judiciary has played an essential role in this process, particularly through landmark judgments that expanded the interpretation of fundamental rights.<sup>7</sup> Cases such as *Vishaka -vs- State of Rajasthan*<sup>8</sup> and *Joseph Shine -vs- Union of India*<sup>9</sup> demonstrate how judicial activism has filled the legislative gaps to protect women's dignity and autonomy.

However, gender justice is not limited to legal formalism, it encompasses the broader socio-economic context that shapes women's access to rights.<sup>10</sup> Disparities in literacy, labour participation, health care, and representation in decision-making institutions hinder the realization of equality.<sup>11</sup> This study thus adopts a socio-legal approach, integrating legal

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<sup>1</sup> INDIAN CONSTITUTION PREAMBLE

<sup>2</sup> Ramesh Thakur, Gender Inequality in India: The Socio-Legal Dimensions, 12 INT'L J. GENDER STUD. 45 (2022).

<sup>3</sup> UMA CHAKRAVARTI, Gendering Caste Through a Feminist Lens 1–23 (2013)

<sup>4</sup> FLAVIA AGNES, Law and Gender Inequality: The Politics of Women's Rights in India (Oxford Univ. Press 1999).

<sup>5</sup> Id.

<sup>6</sup> MARC GALANTER, Law and Society in Modern India (1989).

<sup>7</sup> Id.

<sup>8</sup> *Vishaka -vs- State of Rajasthan*, (1997) 6 SCC 241 (India).

<sup>9</sup> *Joseph Shine -vs- Union of India*, (2019) 3 SCC 39 (India).

<sup>10</sup> National Commission for Women, Gender Statistics in India (2022).

<sup>11</sup> Id.

analysis with the sociological perspectives to understand how laws operate within the Indian social fabric.<sup>12</sup>

The objectives of this article are as follow:

1. To critically examine the constitutional and statutory framework governing gender equality in India,
2. To analyze key judicial pronouncements that have advanced or constrained women's rights, and
3. To assess socio-legal barriers to gender justice and propose measures for substantive reform.

The analysis draws upon the feminist legal theory, intersectionality, and social-justice jurisprudence to uncover structural inequalities embedded within the legal institutions.<sup>13</sup> By connecting the textual promises of the Constitution with the lived experiences of Indian women, this paper demonstrates that true gender justice demands both legal reform and societal transformation.

### **Constitutional Framework and Judicial Interpretation:**

The Constitution of India provides a robust normative foundation for gender equality. The Preamble guarantees justice—social, economic, and political—and equality of status and opportunity.<sup>14</sup> Part III enshrines the right to equality under Article 14, which mandates equal protection of the laws, while Article 15(1) prohibits discrimination on grounds including sex.<sup>15</sup> Furthermore, Article 15(3) explicitly empowers the State to enact special provisions for women and children, recognizing the need for affirmative protection to achieve substantive equality.<sup>16</sup>

Article 16 ensures equality of opportunity in public employment, and Article 21, expanded through judicial interpretation, which safeguards the right to life with dignity, encompassing

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<sup>12</sup> WERNER MENSKI, *Comparative Law in a Global Context: The Legal Systems of Asia and Africa* (Cambridge Univ. Press 2006).

<sup>13</sup> CATHARINE A. MACKINNON, *Toward a Feminist Theory of the State* (Harvard Univ. Press 1989).

<sup>14</sup> INDIAN CONSTITUTION PREAMBLE

<sup>15</sup> *Id.* art. 15(1).

<sup>16</sup> *Id.* art. 15(3).

reproductive rights, bodily autonomy, and protection from the sexual violence.<sup>17</sup> The Directive Principles of State Policy further reinforce the gender justice by directing the State to secure equal pay for equal work (Article 39(d)), humane working conditions (Article 42), and the renunciation of practices derogatory to women's dignity (Article 51A(e)).<sup>18</sup>

The Judicial interpretation has been transformative in broadening these constitutional guarantees. The Supreme Court, through activist jurisprudence, has progressively expanded equality and liberty to include protection from gender-based violence, sexual harassment, and discriminatory laws.<sup>19</sup> In *Air India -vs- Nergesh Meerza*, the Court initially upheld discriminatory service conditions requiring air hostesses to retire earlier than male counterparts.<sup>20</sup> However, later decisions such as *C.B. Muthamma -vs- Union of India* struck down service-rules restricting women officers from marrying or continuing employment post-marriage.<sup>21</sup> This evolution from formal to substantive equality signals a move toward the dismantling structural barriers that perpetuate discrimination.<sup>22</sup>

The landmark ruling in *Vishaka -vs- State of Rajasthan* established binding guidelines against workplace sexual harassment, grounding them in constitutional rights and India's obligations under CEDAW.<sup>23</sup> In *Githa Hariharan -vs- Reserve Bank of India*, the Court recognized mothers as natural guardians alongside fathers, thereby challenging the patriarchal presumptions in personal law.<sup>24</sup> Likewise, *Anuj Garg -vs- Hotel Association of India* invalidated a statutory provision barring women from the employment in liquor-serving establishments, observing that protective discrimination must not reinforce stereotypes.<sup>25</sup>

The Article 21 jurisprudence has been pivotal in advancing gender justice. In *Laxmi -vs- Union of India*, the Supreme Court directed the regulation of acid sales and ordered compensation for the victims, linking bodily integrity to the right to life.<sup>26</sup> Similarly, *Suchita Srivastava -vs- Chandigarh Administration* recognized reproductive autonomy as intrinsic to personal liberty.<sup>27</sup>

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<sup>17</sup> Id. arts. 16, 21.

<sup>18</sup> Id. arts. 39(d), 42, 51A(e).

<sup>19</sup> *Maneka Gandhi -vs- Union of India*, (1978) 1 SCC 248 (India)

<sup>20</sup> *Air India -vs- Nergesh Meerza*, (1981) 4 SCC 335 (India).

<sup>21</sup> *C.B. Muthamma -vs- Union of India*, (1979) 4 SCC 260 (India).

<sup>22</sup> Rina Agarwala, *Substantive Equality and Indian Constitutionalism*, 14 ASIA-PAC. L. REV. 56 (2010).

<sup>23</sup> *Vishaka -vs- State of Rajasthan*, (1997) 6 SCC 241 (India).

<sup>24</sup> *Githa Hariharan -vs- Reserve Bank of India*, (1999) 2 SCC 228 (India)

<sup>25</sup> *Anuj Garg -vs- Hotel Ass'n of India*, (2008) 3 SCC 1 (India).

<sup>26</sup> *Laxmi -vs- Union of India*, (2014) 4 SCC 427 (India)

<sup>27</sup> *Suchita Srivastava -vs- Chandigarh Admin.*, (2009) 9 SCC 1 (India).

These judgments illustrate the judiciary's evolving understanding of gender rights within constitutional morality and human dignity.<sup>28</sup>

Despite such progress, the persistence of patriarchal norms and institutional inertia continues to undermine the implementation.<sup>29</sup> The challenge, therefore, is not only interpretive but also structural, which require the transformation of social attitudes and administrative frameworks to align with the constitutional ideals<sup>30</sup>

### **Statutory and Institutional Mechanisms for Gender Justice:**

The commitment to gender equality under the Constitution of India finds concrete expression through a series of legislative enactments aimed at addressing discrimination, violence, and socio-economic exclusion. While these statutes represent important milestones in women's legal empowerment, their implementation reveals the gap between normative frameworks and ground realities.<sup>31</sup>

#### **A. The Legal Architecture of Gender Justice-**

Post-independence, India witnessed a progressive expansion of gender-related legislation. The Hindu Succession (Amendment) Act, 2005 granted daughters equal coparcenary rights in ancestral property, rectifying long-standing inequities in inheritance law.<sup>32</sup> The Dowry Prohibition Act, 1961 criminalized the giving and taking of dowry but has struggled with weak enforcement due to the social acceptance of the practice.<sup>33</sup> Similarly, the Protection of Women from Domestic Violence Act, 2005 (PWDVA) redefined domestic violence beyond physical harm to include verbal, emotional, sexual, and economic abuse.<sup>34</sup>

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) codified the Vishaka Guidelines laid down by the Supreme Court, mandating the creation of Internal Complaints Committees in all workplaces.<sup>35</sup> The Criminal Law

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<sup>28</sup> GAUTAM BHATIA, *The Transformative Constitution: A Radical Biography in Nine Acts* 146–50 (2019).

<sup>29</sup> Nivedita Menon, *Seeing Like a Feminist* 112–15 (2012).

<sup>30</sup> AMARTYA SEN, *Development as Freedom* 203 (1999).

<sup>31</sup> Indira Jaising, *Gender Justice and Legal Reform in India*, 15 INDIAN J. GENDER STUD. 35 (2008).

<sup>32</sup> Hindu Succession (Amendment) Act, No. 39 of 2005, INDIA CODE (2005).

<sup>33</sup> Dowry Prohibition Act, No. 28 of 1961, INDIA CODE (1961).

<sup>34</sup> Protection of Women from Domestic Violence Act, No. 43 of 2005, INDIA CODE (2005).

<sup>35</sup> Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, INDIA CODE (2013).

(Amendment) Act, 2013, enacted in the aftermath of the Nirbhaya incident, expanded the definition of rape, enhanced penalties, and recognized sexual harassment, voyeurism, and stalking as distinct offences.<sup>36</sup>

These statutory developments mark a decisive shift from the “protective” to “empowerment-oriented” legislation.<sup>37</sup> Yet, socio-cultural resistance and administrative apathy continue to dilute their effectiveness.<sup>38</sup> A 2023 study by the National Commission for Women (NCW) reported that less than 50% of Indian workplaces had functional Internal Committees, reflecting poor compliance with the POSH Act.<sup>39</sup>

## **B. Enforcement Challenges and Institutional Response-**

Implementation gaps stem from both structural and attitudinal barriers.<sup>40</sup> The Police insensitivity, lack of training, and patriarchal biases often discourage victims from filing complaints.<sup>41</sup> Judicial delay compounds the trauma of survivors, as cases under the PWDVA and POSH Act linger for years.<sup>42</sup> Moreover, the misuse discourse, often raised in the context of Section 498A of the Indian Penal Code (IPC), which has been weaponized to undermine women’s credibility, even though empirical studies show that false complaints constitute a small minority.<sup>43</sup>

The judiciary has played a dual role, both progressive and cautious, in interpreting gender statutes. In *Inder Raj Malik -vs- Sunita Malik*, the Delhi High Court upheld the constitutional validity of Section 498A IPC, recognizing it as a necessary safeguard against domestic cruelty.<sup>44</sup> Conversely, in *Arnesh Kumar -vs- State of Bihar*, the Supreme Court sought to prevent the misuse of arrest powers under 498A, mandating pre-arrest verification, a decision that many activists viewed as undermining deterrence.<sup>45</sup>

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<sup>36</sup> Criminal Law (Amendment) Act, No. 13 of 2013, INDIA CODE (2013)

<sup>37</sup> Lotika Sarkar, *From Protection to Equality: The Changing Paradigm of Women’s Legislation in India*, in *Women and Law: Contemporary Issues* 55–60 (Vikas Publ’g 1995).

<sup>38</sup> National Commission for Women, *Annual Report* (2023).

<sup>39</sup> *Id.*

<sup>40</sup> Upendra Baxi, *Law as an Instrument of Social Change in India*, 3 INDIAN SOCIO-LEGAL REV. 1 (1982).

<sup>41</sup> Pratiksha Baxi, *Public Secrets of Law: Rape Trials in India* 214–17 (Oxford Univ. Press 2014).

<sup>42</sup> *Id.*

<sup>43</sup> Centre for Social Research, *False Cases under Section 498A IPC: A Myth or Reality?* (2018).

<sup>44</sup> *Inder Raj Malik -vs- Sunita Malik*, 1986 Cri LJ 1510 (Del. HC) (India).

<sup>45</sup> *Arnesh Kumar -vs- State of Bihar*, (2014) 8 SCC 273 (India).

The Institutional mechanisms such as the National Commission for Women (NCW), State Commissions for Women, and District Legal Services Authorities (DLSAs) have contributed to grievance redressal and legal awareness.<sup>46</sup> However, inadequate staffing, limited budgets, and overlapping jurisdiction hinder their effectiveness.<sup>47</sup> The One-Stop Centres Scheme under the Ministry of Women and Child Development offers integrated support for the survivors of violence, including legal aid, but remains unevenly implemented across the states.<sup>48</sup>

### **C. International Commitments and Domestic Incorporation-**

India's obligations under international law reinforce its domestic framework for the gender equality. The country ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1993, committing to eliminate discrimination in public and private life.<sup>49</sup> The Supreme Court has repeatedly invoked CEDAW to interpret constitutional rights in harmony with global norms. In *Vishaka -vs- State of Rajasthan*, the Court cited Articles 11 and 24 of CEDAW to establish employer accountability for workplace harassment.<sup>50</sup> Similarly, in the case of *Apparel Export Promotion Council -vs- A.K. Chopra*, it relied on CEDAW principles to uphold the dismissal of a senior official accused of sexual harassment, affirming that gender equality forms part of the fundamental right to life and dignity under Article 21.<sup>51</sup>

The Indian State's periodic reports to the CEDAW Committee, however, have been criticized for lack of transparency and limited stakeholder consultation.<sup>52</sup> Scholars argue that India's dualist legal system, requiring parliamentary incorporation for the treaty enforcement, which restricts the direct application of international norms.<sup>53</sup> Nonetheless, judicial engagement with CEDAW and related instruments like the Beijing Platform for Action has catalyzed normative progress in the domestic jurisprudence.<sup>54</sup>

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<sup>46</sup> National Commission for Women, About the Commission, <https://ncw.nic.in>.

<sup>47</sup> Shirin Rai, Institutions and Gender Equality: Comparative Experiences, 9 FEMINIST L. STUD. 45 (2001)

<sup>48</sup> Ministry of Women & Child Development, One Stop Centre Scheme Report (2022).

<sup>49</sup> Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).

<sup>50</sup> *Vishaka -vs- State of Rajasthan*, (1997) 6 SCC 241 (India).

<sup>51</sup> *Apparel Export Promotion Council -vs- A.K. Chopra*, (1999) 1 SCC 759 (India)

<sup>52</sup> U.N. Committee on the Elimination of Discrimination against Women, Concluding Observations on the Combined Fourth and Fifth Periodic Reports of India, U.N. Doc. CEDAW/C/IND/CO/4-5 (2014).

<sup>53</sup> S.P. Sathe, Judicial Activism in India: Transgressing Borders and Enforcing Limits 157–60 (2002).

<sup>54</sup> Fareda Banda, Global Standards: Local Values—CEDAW and the Regulation of Gender Equality, 17 INT'L J. L. POL'Y & FAM. 37 (2003).

## **D. Socio-Legal Assessment-**

A socio-legal evaluation of gender laws reveals the complexity of implementation within India's pluralistic society.<sup>55</sup> The Legislative reform, though necessary, cannot by itself transform patriarchal structures deeply embedded in the family, religion, and community.<sup>56</sup> The persistence of gender-based violence, workplace harassment, and economic exclusion underscores the need for cultural change alongside legal enforcement.<sup>57</sup>

The Grassroots movements, such as the Self-Employed Women's Association (SEWA) and Mahila Samakhya Yojana, have demonstrated that collective mobilization can bridge the gap between law and lived experience.<sup>58</sup> Integrating these socio-political initiatives with the legal mechanisms offers a pathway toward participatory gender governance.<sup>59</sup>

## **Gender and Social Transformation:**

### **A. The Socio-Legal Interface-**

The pursuit of gender equality in India must be understood within a broader socio-legal context where law interacts dynamically with culture, economy, and power.<sup>60</sup> Although constitutional guarantees have sought to dismantle discrimination, the persistence of patriarchal practices underscores the limits of formal equality.<sup>61</sup> As Upendra Baxi notes, "law in India functions both as an instrument of social change and as a reflection of the unequal power relations."<sup>62</sup>

The Women's subordination is often reproduced through social norms that the legal system fails to effectively challenge.<sup>63</sup> For instance, despite the criminalization of dowry, its practice remains socially legitimized.<sup>64</sup> This disjunction between the legislative intention and societal

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<sup>55</sup> Ratna Kapur, *The (Im)possibility of Gender Justice: Feminist Reflections on the Law in India*, 14 CAN. J.L. & SOC'Y 105 (1999).

<sup>56</sup> *Id.*

<sup>57</sup> NALSA, *Annual Report on Legal Services to Women and Children* (2023).

<sup>58</sup> SEWA Bharat, *Empowering Informal Women Workers: Policy Review* (2022).

<sup>59</sup> Government of India, *Mahila Samakhya Programme Evaluation Report* (2019).

<sup>60</sup> Upendra Baxi, *Law and Social Transformation in India* (Eastern Book Co. 1998).

<sup>61</sup> Ratna Kapur, *The (Im)Possibility of Gender Justice: Feminist Reflections on the Law in India*, 14 CAN. J.L. & SOC'Y 105 (1999).

<sup>62</sup> *Id.*

<sup>63</sup> Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 32–36 (Oxford Univ. Press 1999).

<sup>64</sup> Dowry Prohibition Act, No. 28 of 1961, INDIA CODE (1961).



behaviour exemplifies how social transformation requires more than statutory reform, it necessitates structural change in the cultural attitudes.<sup>65</sup>

Intersectionality further complicates this picture.<sup>66</sup> Dalit, Adivasi, and minority women face overlapping oppressions of caste, gender, and class, resulting in compounded disadvantage.<sup>67</sup> Feminist scholars emphasize that the law must recognize these intersecting hierarchies to achieve substantive equality.<sup>68</sup> The Constitution's promise of equality, therefore, demands a nuanced understanding that extends beyond the gender neutrality towards the transformative justice.<sup>69</sup>

## **B. Representation and Participation-**

The Political and institutional representation forms a critical component of gender justice.<sup>70</sup> The 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendments mandated one-third reservation for women in the local governance, which has significantly enhanced their participation in decision-making.<sup>71</sup> Studies reveal that female leadership in Panchayati Raj institutions correlates with the improved outcomes in education, sanitation, and welfare delivery.<sup>72</sup>

However, women remain underrepresented in higher political offices. As of 2024, women constitute only about 15% of Lok Sabha members and less than 12% of High Court judges.<sup>73</sup> This lack of representation affects the inclusivity of lawmaking and adjudication.<sup>74</sup> The Supreme Court in *Indira Jaising -vs- Supreme Court of India* observed that gender diversity on the bench strengthens public confidence in the justice system.<sup>75</sup> Yet, systemic barriers, including gender bias in appointments and limited mentorship opportunities, persist.<sup>76</sup>

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<sup>65</sup> Uma Chakravarti, *Gendering Caste Through a Feminist Lens* 76 (2013).

<sup>66</sup> Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. CHI. LEGAL F. 139 (1989).

<sup>67</sup> Gita Sen, *Gender Equality and Human Development: The Intersectional Challenge*, 18 DEV. PRAC. 433 (2008).

<sup>68</sup> *Id.*

<sup>69</sup> INDIAN CONSTITUTION. Art. 14.

<sup>70</sup> *Id.* arts. 243D, 243T.

<sup>71</sup> Ministry of Panchayati Raj, *Women's Participation Report* (2022).

<sup>72</sup> Rohini Pande & Deanna Ford, *Gender Quotas and Female Leadership: Evidence from India*, 113 AM. ECON. REV. 291 (2012).

<sup>73</sup> Election Commission of India, *Statistical Report on General Elections 2024*.

<sup>74</sup> *Id.*

<sup>75</sup> *Indira Jaising -vs- Supreme Court of India*, W.P. (C) No. 454/2015 (SC 2016) (India).

<sup>76</sup> Shailaja Tripathi, *Women in the Judiciary: Barriers to Entry and Advancement*, 14 INDIAN L.J. 77 (2020).

Beyond the judiciary, representation within bureaucracy and armed forces reflects similar disparity. The decision in Secretary, Ministry of Defence -vs- Babita Puniya marked a milestone by affirming women's eligibility for the permanent commission in the Indian Army, rejecting "physiological limitations" as a rationale for exclusion.<sup>77</sup> The Court's judgment underscored that the equality under Article 14 entails dismantling institutional discrimination.<sup>78</sup>

### C. Landmark Case Law and Judicial Transformation-

The Judicial interpretation has been a principal driver of gender reform in India.<sup>79</sup> The evolution from "formal" to "substantive" equality is evident in several landmark rulings: -

1. Vishaka -vs- State of Rajasthan (1997): The Supreme Court framed legally binding guidelines to combat workplace sexual harassment in the absence of legislation.<sup>80</sup> By invoking Articles 14, 15, 19, and 21, the Court recognized sexual harassment as a violation of fundamental rights.<sup>81</sup>
2. Anuj Garg -vs- Hotel Association of India (2008): The Court invalidated a law prohibiting women from working in liquor-serving establishments, observing that "protective discrimination must not reinforce patriarchal stereotypes."<sup>82</sup>
3. Joseph Shine -vs- Union of India (2019): The Court struck down the Section 497 of the Indian Penal Code, which criminalized adultery only for men, holding that it violated women's dignity and autonomy.<sup>83</sup>
4. Laxmi -vs- Union of India (2014): Recognizing acid violence as a gendered crime, the Court directed the regulation of acid sales and compensation for the survivors.<sup>84</sup>
5. Suchita Srivastava -vs- Chandigarh Administration (2009): The Court affirmed a woman's right to reproductive choice as part of her personal liberty under Article 21.<sup>85</sup>

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<sup>77</sup> Secretary, Ministry of Defence -vs- Babita Puniya, (2020) 7 SCC 469 (India).

<sup>78</sup> Id.

<sup>79</sup> Bina Agarwal, Gender and Legal Change: A Feminist Appraisal, 21 FEMINIST STUD. 321 (1995).

<sup>80</sup> Vishaka -vs- State of Rajasthan, (1997) 6 SCC 241 (India).

<sup>81</sup> Id.

<sup>82</sup> Anuj Garg -vs- Hotel Ass'n of India, (2008) 3 SCC 1 (India).

<sup>83</sup> Joseph Shine -vs- Union of India, (2019) 3 SCC 39 (India).

<sup>84</sup> Laxmi -vs- Union of India, (2014) 4 SCC 427 (India).

<sup>85</sup> Suchita Srivastava -vs- Chandigarh Admin., (2009) 9 SCC 1 (India).

Collectively, these cases illustrate the judiciary's transformative potential in translating constitutional ideals into enforceable rights.<sup>86</sup> Yet, despite judicial advances, implementation gaps remain entrenched due to inadequate state enforcement and social resistance.<sup>87</sup>

#### **D. Gender-Based Violence and Access to Justice-**

The Gender-based violence (GBV) remains a pervasive barrier to equality.<sup>88</sup> The National Crime Records Bureau (NCRB) reported over 4,45,000 cases of crimes against women in 2023, with domestic violence and sexual assault forming the majority.<sup>89</sup> The Protection of Women from the Domestic Violence Act, 2005 expanded the definition of abuse but continues to face procedural delays and limited support infrastructure.<sup>90</sup>

The POSH Act, 2013 similarly suffers from non-compliance: a 2022 FICCI–EY survey revealed that over 70% of Indian firms lacked fully functional Internal Committees.<sup>91</sup> These institutional deficiencies highlight the disconnect between the legislative intent and operational efficacy.<sup>92</sup>

The Judicial interpretations have gradually redefined consent in sexual-assault jurisprudence. In *State of Punjab -vs- Gurmit Singh*, the Court held that the victim's testimony carries equal weight to that of an injured witness.<sup>93</sup> Later, in *State of Karnataka v. Krishnappa*, the Court emphasized that “consent cannot be implied by submission under fear or coercion.”<sup>94</sup> The Criminal Law (Amendment) Act, 2013 incorporated these principles into statutory law, widening the definition of rape and enhancing penalties.<sup>95</sup>

Nevertheless, the non-criminalization of marital rape under Exception 2 to Section 375 IPC remains a serious lacuna.<sup>96</sup> The Delhi High Court's split verdict in *RIT Foundation -vs- Union*

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<sup>86</sup> Gautam Bhatia, *The Transformative Constitution* 151–56 (HarperCollins 2019).

<sup>87</sup> *Id.*

<sup>88</sup> National Crime Records Bureau, *Crime in India 2023* (Ministry of Home Affairs 2024).

<sup>89</sup> *Id.*

<sup>90</sup> Protection of Women from Domestic Violence Act, No. 43 of 2005, INDIA CODE (2005).

<sup>91</sup> FICCI–EY, *Workplace Harassment Survey* (2022)

<sup>92</sup> *Id.*

<sup>93</sup> *State of Punjab -vs- Gurmit Singh*, (1996) 2 SCC 384 (India).

<sup>94</sup> *State of Karnataka -vs- Krishnappa*, (2000) 4 SCC 75 (India).

<sup>95</sup> Criminal Law (Amendment) Act, No. 13 of 2013, INDIA CODE (2013).

<sup>96</sup> Indian Penal Code, No. 45 of 1860, § 375, Exception 2 (India).

of India (2022) exemplifies the ongoing conflict between the morality and societal conservatism.<sup>97</sup>

### **E. Education, Employment, and Economic Empowerment-**

The Empowerment through education and economic independence forms the cornerstone of gender justice.<sup>98</sup> The National Education Policy, 2020 underscores inclusive access, yet dropout rates for girls remain disproportionately high in rural India.<sup>99</sup> The Equal Remuneration Act, 1976 and its successor provisions under the Code on Wages, 2019 guarantee equal pay, but implementation is inconsistent.<sup>100</sup>

The Women's labour-force participation remains below 30%, reflecting the unpaid-care burden and occupational segregation.<sup>101</sup> Informal sector workers, who form the majority of women's workforce, often lack maternity protection and social security.<sup>102</sup> Schemes such as the Deendayal Antyodaya Yojana – National Rural Livelihood Mission (DAY–NRLM) have improved access to credit and collective bargaining, yet systemic barriers persist.<sup>103</sup>

The Economic reforms must thus be accompanied by the institutional accountability, ensuring gender-sensitive budgeting, workplace flexibility, and access to childcare.<sup>104</sup>

### **Policy Recommendations:**

India's gender-justice framework must now evolve from the reactive legislation to proactive structural reform. The following policy recommendations aim to consolidate the gains achieved through constitutional and judicial advances:

1. Criminalization of Marital Rape: The Exception 2 to Section 375 of the Indian Penal Code, 1860 continues to deny married women equal protection under law.<sup>105</sup> Its repeal

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<sup>97</sup> RIT Found -vs- Union of India, W.P. (C) No. 284/2015 (Del. HC 2022) (India).

<sup>98</sup> UNESCO, Gender Education Monitoring Report – India (2023).

<sup>99</sup> Government of India, National Education Policy (2020).

<sup>100</sup> Equal Remuneration Act, No. 25 of 1976, INDIA CODE (1976); Code on Wages, No. 29 of 2019, INDIA CODE (2019).

<sup>101</sup> National Statistical Office (NSO), Periodic Labour Force Survey 2023–24 (2024).

<sup>102</sup> International Labour Organization, Women and Informal Work in India (2023).

<sup>103</sup> Ministry of Rural Development, Deendayal Antyodaya Yojana – NRLM Progress Report (2023).

<sup>104</sup> Planning Commission of India, Gender Budgeting Handbook (2012)

<sup>105</sup> Indian Penal Code, No. 45 of 1860, § 375, Exception 2 (India).

would align domestic law with constitutional guarantees under the Articles 14, 15, and 21, and India's international obligations under CEDAW.<sup>106</sup>

2. Gender Sensitization in Judiciary and Law Enforcement: Institutional reform must include gender-sensitization programs for judges, prosecutors, and police officers to counteract unconscious bias in enforcement.<sup>107</sup> The BPR&D Training Manual on Gender and Policing (2022) emphasizes experiential learning and community engagement to strengthen survivor-centric approaches.<sup>108</sup>
3. Strengthening Enforcement Mechanisms: Statutory frameworks such as the Protection of Women from Domestic Violence Act, 2005 and the POSH Act, 2013 require robust monitoring.<sup>109</sup> Independent oversight bodies with the audit powers could enhance accountability.<sup>110</sup>
4. Representation and Diversity: Quotas for women in higher judiciary, bureaucracy, and legislatures should be institutionalized to ensure decision-making parity.<sup>111</sup>
5. Intersectional Data Collection and Evidence-Based Policymaking: The absence of disaggregated data obscures structural inequalities faced by Dalit, tribal, and minority women.<sup>112</sup> The National Family Health Survey (NFHS-5) and Periodic Labour Force Survey models can be adapted to capture the intersectional indicators of gender inequality.<sup>113</sup>
6. Community Legal Education and Access to Justice: Expanding legal literacy through Nyaya Bandhu (Pro Bono Legal Services) and Legal Services Clinics under NALSA could empower women at the grassroots level.<sup>114</sup>

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<sup>106</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).

<sup>107</sup> Bureau of Police Research and Development (BPR&D), Training Manual on Gender and Policing (2022).

<sup>108</sup> *Id.*

<sup>109</sup> Protection of Women from Domestic Violence Act, No. 43 of 2005, INDIA CODE (2005); Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, INDIA CODE (2013).

<sup>110</sup> National Commission for Women, Annual Report (2023)

<sup>111</sup> Indira Jaising, Towards Gender Parity in the Judiciary, 7 INDIAN J. CONST. L. 89 (2020).

<sup>112</sup> Gita Sen & Amrita Nandy, Gender Data and Intersectionality in India: Missing Dimensions, 22 DEV. SOC. POL'Y 67 (2023).

<sup>113</sup> Ministry of Statistics & Programme Implementation, Periodic Labour Force Survey 2023 (2024).

<sup>114</sup> National Legal Services Authority (NALSA), Annual Report on Legal Awareness and Outreach (2023).

7. Economic Reforms and Social Protection: Policies must address the unpaid-care burden and extend maternity and childcare benefits to informal-sector workers.<sup>115</sup> Gender-responsive budgeting across ministries should become a legal requirement, not a policy choice.<sup>116</sup>

### **The Way Forward- Toward Substantive Equality:**

The Indian constitutional vision of gender justice is deeply aspirational, it seeks not only to ensure equal rights, but to transform the social fabric itself.<sup>117</sup> This transformative character of the Constitution, as articulated by the Supreme Court in *Navtej Singh Johar v. Union of India*, demands that state institutions actively dismantle structural hierarchies.<sup>118</sup> Gender equality, therefore, must be understood as a dynamic, evolving principle, grounded in human dignity and autonomy rather than mere the formal equality.<sup>119</sup>

The Socio-legal transformation requires collaboration between state and society. Laws acquire meaning only when internalized by the communities they seek to reform.<sup>120</sup> Feminist scholars emphasize that gender justice must extend beyond the courtroom into classrooms, workplaces, and households.<sup>121</sup> Thus, legal empowerment through education and public participation becomes integral to sustaining reform.

### **Conclusion:**

The trajectory of the gender justice in India demonstrates both the progress and paradox. The Constitution and judiciary have expanded the normative horizon of equality, yet implementation remains uneven due to the entrenched patriarchy and institutional inertia.<sup>122</sup> The Law has undoubtedly served as a catalyst for the social change, but without the corresponding shifts in the social attitudes of the society, its transformative potential remains constrained in this world.<sup>123</sup>

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<sup>115</sup> International Labour Organization, *Women and Informal Work in India* (2023).

<sup>116</sup> Government of India, *Gender Budget Statement 2024–25* (Ministry of Finance 2024).

<sup>117</sup> INDIAN CONSTITUTION PREAMBLE

<sup>118</sup> *Navtej Singh Johar -vs- Union of India*, (2018) 10 SCC 1 (India).

<sup>119</sup> *Id.*

<sup>120</sup> Upendra Baxi, *The Future of Human Rights* 213 (Oxford Univ. Press 2008).

<sup>121</sup> Nivedita Menon, *Recovering Subversion: Feminist Politics Beyond the Law* 45–48 (Permanent Black 2004).

<sup>122</sup> Flavia Agnes, *Law, Justice, and Gender Equality in India*, 22 INDIAN J. GENDER STUD. 65 (2015).

<sup>123</sup> Amartya Sen, *Development as Freedom* 285 (Oxford Univ. Press 1999)

A socio-legal approach reveals that true justice demands more than equality of treatment, it calls for the equality of condition.<sup>124</sup> Achieving this requires continuous engagement between law, policy, and society. As Dr. B.R. Ambedkar envisioned, the Constitution must function as a living instrument, ensuring that liberty, equality, and fraternity are not abstract ideals but lived realities for every woman in India.<sup>125</sup>

Thus, this paper critically examines the gender justice in India through a socio-legal lens, analyzing constitutional guarantees, judicial reforms, and persistent patriarchal barriers which still persists. It highlights landmark judgments, evolving feminist jurisprudence, and policy challenges, concluding that substantive equality requires structural, educational, and institutional transformation to realize the constitutional promise of dignity and justice for all women's of the country.

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<sup>124</sup> Catharine A. MacKinnon, *Toward a Feminist Theory of the State* 255 (Harvard Univ. Press 1989).

<sup>125</sup> B.R. Ambedkar, *Constituent Assembly Debates*, Vol. XI, at 979 (1949).

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