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Gender Equality in India: Human Rights and Its Constitutional Powers in India

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ABSTRACT

Gender equality stands as one of the most fundamental imperatives of any just and democratic society. In India, the aspiration for gender equality is not merely a policy objective but a constitutional mandate, enshrined through a tapestry of provisions across the Constitution of India, 1950, that collectively guarantee equal rights, prohibit discrimination, and impose affirmative obligations on the State to secure conditions of substantive equality for all persons regardless of sex. This research critically examines the multidimensional relationship between gender equality, human rights, and constitutional powers in the Indian context. It traces the historical evolution of gender rights from ancient social structures through the colonial period and into the post-independence constitutional era, evaluating how law has both reflected and shaped social norms governing gender. The study assesses the adequacy of existing constitutional, legislative, and judicial frameworks in ensuring meaningful gender equality, and investigates the persistent structural barriers — including patriarchal social customs, economic dependence, inadequate institutional mechanisms, and discriminatory personal laws — that continue to frustrate the realization of constitutional promises. Through an analysis of landmark Supreme Court judgments, relevant international instruments, and empirical data on gender-based disparities, this research aspires to offer a nuanced and holistic understanding of gender equality challenges in contemporary India, while proposing concrete measures to strengthen the legal and institutional architecture for the protection and promotion of women's human rights.

Keywords: Gender Equality, Human Rights, Article 14, Article 15, Article 21, CEDAW, Fundamental Rights, Constitutional Provisions, Women's Rights, Discrimination, Judicial Activism, Personal Laws

INTRODUCTION

Gender equality is recognized internationally as a fundamental human right and a prerequisite for sustainable development and the full enjoyment of all other human rights. The Universal Declaration of Human Rights, adopted in 1948, unequivocally affirms that all human beings are born free and equal in dignity and rights, without distinction of any kind, including sex.¹

In India, the question of gender equality is deeply intertwined with the country's complex social fabric, its colonial legacy, its constitutional aspirations, and the persistent realities of patriarchal structures that have historically subordinated women across all spheres of public and private life. Despite the transformative vision of the Constitution of India and decades of legislative reform, gender inequality remains one of India's most pressing human rights challenges — manifesting in wage gaps, restricted access to education and healthcare, gender-based violence, discriminatory personal laws, and underrepresentation in public life and political institutions.

The Constitution of India occupies a central position in this discourse. Its framers, acutely conscious of the historical subjugation of women, embedded within it a robust framework of rights and State obligations directed towards the achievement of genuine gender equality. Article 14, guaranteeing equality before the law and equal protection of the laws to all persons,² Article 15, prohibiting discrimination on grounds of sex among others, Article 16, ensuring equality of opportunity in public employment, and Article 21, protecting the right to life and personal liberty with dignity, collectively constitute the constitutional bedrock of gender equality in India.

This research seeks to examine the historical evolution of gender rights in India, critically analyse the constitutional and legislative framework for gender equality, evaluate landmark judicial contributions to the advancement of women's rights, identify persistent structural barriers to equality, and propose reforms to strengthen India's commitment to gender justice.

A DETAILED EXAMINATION OF THE EVOLUTION OF GENDER RIGHTS IN INDIA

The position of women in Indian society has undergone profound transformations across successive historical epochs, each leaving distinctive imprints on the legal and social landscape

¹Universal Declaration of Human Rights (UDHR), 1948, Article 1.

²Constitution of India, 1950, Article 14.

that contemporary law must navigate. In the ancient period, the status of women was neither uniformly subordinate nor uniformly empowered. Vedic literature contains evidence of women participating in intellectual and spiritual discourse, yet the Manusmriti and similar prescriptive texts codified a patriarchal social order that relegated women to perpetual dependence upon father, husband, and son.

The medieval period witnessed further erosion of women's rights through the entrenchment of practices such as purdah, child marriage, sati, and the prohibition of widow remarriage. Colonial rule introduced contradictory currents — on one hand, rationalizing and entrenching existing patriarchal structures through codification of personal laws, and on the other, creating legislative space for reform through measures such as the Hindu Widows' Remarriage Act of 1856 and the Age of Consent Act of 1891, driven in part by the social reform movements of the nineteenth century.

The Indian independence movement itself was a crucible for evolving ideas about gender equality. Women's mass participation in the freedom struggle, under the leadership of figures such as Sarojini Naidu, Kasturba Gandhi, and Annie Besant, created political momentum for the recognition of women's rights in the constitutional framework. The Constituent Assembly debates reflect a genuine and substantive engagement with the question of women's status, resulting in constitutional provisions that were, for their time, among the most progressive in the world.

At the international level, the adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979, ratified by India in 1993, created binding international obligations to eliminate discrimination against women in all its forms and to ensure substantive equality in law and practice.³ CEDAW has served as an important reference point in Indian judicial discourse, with courts invoking its provisions to interpret constitutional guarantees expansively.

GENDER EQUALITY IN INDIA: ISSUES AND STRATEGIC SOLUTIONS

Workplace Discrimination and Sexual Harassment

³Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, Article 1.

Gender-based discrimination in employment remains pervasive despite constitutional guarantees of equality of opportunity under Article 16. Women continue to face barriers in recruitment, promotion, and remuneration, with the gender pay gap persisting across sectors. The landmark Supreme Court decision in *C.B. Muthamma v. Union of India & Ors.* struck down a service rule that required women officers to obtain government permission before marriage and to resign upon marriage, holding that such provisions were manifestly discriminatory and violative of Articles 14 and 16 of the Constitution.⁴

Sexual harassment at the workplace represents a particularly acute dimension of gender-based discrimination, constituting a violation of women's fundamental rights to equality and dignity. The Supreme Court's pathbreaking judgment in *Vishaka & Ors. v. State of Rajasthan & Ors.* laid down binding guidelines for the prevention and redressal of sexual harassment at the workplace, recognizing such harassment as a violation of Articles 14, 15, 19(1)(g), and 21 of the Constitution. These guidelines, subsequently codified in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, established Internal Complaints Committees as mandatory institutional mechanisms in all workplaces employing ten or more persons.⁵

Gender-Based Violence

Gender-based violence constitutes one of the most severe manifestations of gender inequality in India. National Crime Records Bureau data reveals deeply alarming trends — crimes against women, encompassing rape, domestic violence, acid attacks, dowry deaths, and trafficking, continue to be reported in large numbers, with widespread underreporting further obscuring the true scale of the problem.⁶ The social stigma attached to reporting gender-based violence, combined with institutional insensitivity and inadequate victim support infrastructure, creates a culture of impunity that perpetuates the cycle of violence.

The Protection of Women from Domestic Violence Act, 2005, marked a significant legislative advance by recognizing domestic violence — including physical, emotional, sexual, verbal, and economic abuse — as a legal wrong and providing civil remedies including protection orders,

⁴*C.B. Muthamma v. Union of India & Ors.*, AIR 1979 SC 1868.

⁵*Vishaka & Ors. v. State of Rajasthan & Ors.*, AIR 1997 SC 3011.

⁶National Crime Records Bureau, Crime in India Report 2022, Ministry of Home Affairs, Government of India.

residence orders, and monetary relief.⁷ However, the effective implementation of the Act has been hampered by insufficient awareness among victims, inadequate numbers of Protection Officers, and delays in judicial proceedings.

Discriminatory Personal Laws

India's pluralistic legal system, which maintains distinct personal laws for different religious communities governing matters of marriage, divorce, inheritance, and adoption, has historically been a site of profound gender inequality. The Supreme Court in *Mary Roy v. State of Kerala & Ors.* struck down provisions of the Travancore Christian Succession Act that discriminated against women in matters of inheritance, holding them inconsistent with the Constitution's equality guarantees.⁸

The debate around the Uniform Civil Code, envisaged under Article 44 of the Constitution as a Directive Principle of State Policy, remains deeply contested. Proponents argue that a uniform code would eliminate gender discriminatory provisions that persist across various personal law regimes. Critics caution that any such reform must be undertaken through democratic consensus and must prioritize women's rights rather than serving as an instrument of majoritarian cultural imposition.

Stereotyping and Protective Discrimination

Legislative and judicial attempts to protect women have at times inadvertently reinforced stereotypical assumptions about female vulnerability and incapacity. The Supreme Court in *Anuj Garg & Ors. v. Hotel Association of India & Ors.* struck down a provision of the Punjab Excise Act that prohibited the employment of women in establishments serving liquor, holding that such paternalistic legislation violated women's constitutional rights to equality and dignity. The Court emphasized that protective legislation must not be founded upon stereotypical assumptions about women's capabilities and must not restrict women's autonomy in the name of protection.⁹

Privacy, Bodily Autonomy, and Reproductive Rights

⁷Protection of Women from Domestic Violence Act, 2005, Section 3.

⁸*Mary Roy v. State of Kerala & Ors.*, AIR 1986 SC 1011.

⁹*Anuj Garg & Ors. v. Hotel Association of India & Ors.*, (2008) 3 SCC 1.

The Supreme Court's unanimous judgment in *Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.* recognizing privacy as a fundamental right under Article 21 has significant implications for gender equality. The judgment explicitly acknowledged that privacy encompasses decisional autonomy — including decisions relating to bodily integrity, reproductive choices, and personal relationships — and that women's right to make decisions about their own bodies is a core component of constitutional liberty.¹⁰

Rights of Transgender Persons

The Supreme Court's landmark decision in *National Legal Services Authority v. Union of India & Ors.* extended constitutional recognition to the rights of transgender persons, holding that gender identity is an intrinsic element of personal identity protected under Article 21, and that transgender persons are entitled to recognition as a third gender and to all fundamental rights guaranteed by the Constitution. The Court directed the Union and State Governments to take steps to treat transgender persons as socially and educationally backward classes entitled to reservations in educational institutions and public employment.¹¹

Religious Practices and Gender Equality

The intersection of religious freedom and gender equality has generated some of the most complex constitutional adjudication in recent years. In *Indian Young Lawyers Association & Ors. v. State of Kerala & Ors.* (the Sabarimala case), the Supreme Court by a majority struck down the practice of excluding women of menstruating age from entry into the Sabarimala temple, holding that such exclusion violated women's constitutional rights to equality, dignity, and religious freedom. The judgment reaffirmed that constitutional morality must prevail over social morality when the two come into conflict.¹²

Strategic Solutions

Addressing the complex and deeply entrenched challenges to gender equality in India requires a comprehensive, multi-dimensional strategy grounded in constitutional values, international human

¹⁰Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors., (2017) 10 SCC 1.

¹¹National Legal Services Authority v. Union of India & Ors., (2014) 5 SCC 438.

¹²Indian Young Lawyers Association & Ors. v. State of Kerala & Ors., (2019) 11 SCC 1 (Sabarimala Case).

rights standards, and empirical understanding of social realities. The following measures are proposed:

Comprehensive Implementation of Existing Legislation: The gap between legislative intent and ground-level implementation is perhaps the single most critical obstacle to gender equality. Rigorous monitoring of the implementation of the POSH Act, the Domestic Violence Act, the Dowry Prohibition Act, and related legislation, with mandatory periodic reporting and accountability mechanisms, is essential.

Reform of Discriminatory Personal Laws: Personal law reforms that eliminate gender-discriminatory provisions in matters of inheritance, divorce, maintenance, and guardianship across all religious communities must be pursued through democratic and consultative processes, with women's organizations and affected communities centrally involved.

Strengthening Institutional Mechanisms: Gender-sensitization training for the judiciary, police, prosecutors, and civil servants is critical to ensuring that the letter of gender equality law is translated into equitable institutional practice. Fast-track courts for cases of gender-based violence must be adequately resourced and staffed.

Investing in Women's Economic Empowerment: Substantive gender equality requires addressing the economic dependence that renders many women vulnerable to exploitation and violence. Targeted investment in women's access to education, skills development, financial services, and productive assets is an essential complement to legal reform.

Promoting Digital Literacy and Combating Online Gender-Based Violence: The increasing prevalence of cyberstalking, non-consensual sharing of intimate images, online harassment, and digital manipulation targeting women demands dedicated legislative attention and robust enforcement mechanisms, alongside comprehensive digital literacy programmes.

GENDER EQUALITY AS AN INTEGRAL PART OF THE INDIAN CONSTITUTION

The Indian Constitution represents one of the most ambitious exercises in constitutional gender justice in the post-war era. Its framers, operating in a society deeply scarred by centuries of gender discrimination, sought to inscribe within the supreme law of the land a comprehensive framework

for the equal citizenship of women. Understanding the full constitutional architecture for gender equality requires an appreciation of the interplay among several distinct but interconnected provisions.

Article 14 guarantees to every person equality before the law and the equal protection of the laws. The Supreme Court has interpreted this provision to permit reasonable classification, but has consistently struck down classifications that are arbitrary or that perpetuate gender-based stereotypes without rational justification. The right to equality is not merely formal but substantive — it demands not only that the law treat like cases alike, but that the law actively work to dismantle structural conditions of inequality.

Article 15(1) prohibits the State from discriminating against any citizen on grounds only of religion, race, caste, sex, or place of birth. Article 15(3) carves out an important exception, empowering the State to make special provisions for women and children — a provision that has served as the constitutional basis for a wide range of affirmative action measures in education, employment, and public representation. The Supreme Court has consistently held that Article 15(3) must be read as an enabling provision designed to accelerate the achievement of substantive equality, not as a licence for paternalistic measures that restrict women's freedoms.

Article 16 guarantees equality of opportunity in matters of public employment, and has been interpreted to prohibit not only direct discrimination on grounds of sex but also indirect discrimination through facially neutral conditions that disproportionately disadvantage women. Article 19(1)(g), guaranteeing the right to practise any profession or carry on any occupation, trade, or business, has been invoked to challenge restrictions on women's participation in economic life.

Article 21, the most expansively interpreted provision of the Constitution, has served as a particularly fertile source of gender rights. The Supreme Court has read within its guarantee of life and personal liberty the right to live with dignity, the right to health and reproductive autonomy, the right to be free from violence and sexual harassment, and the right to privacy including decisional autonomy in matters of personal and intimate concern. These interpretations have transformed Article 21 into a comprehensive charter of women's human rights.

Article 39, among the Directive Principles of State Policy, directs the State to ensure that men and women equally have the right to an adequate means of livelihood, that there is equal pay for equal

work for both men and women, and that the health and strength of women workers is not abused. Article 42 directs the State to make provision for securing just and humane conditions of work and for maternity relief. While Directive Principles are not directly enforceable, the Supreme Court has increasingly treated them as supplementing and amplifying fundamental rights, particularly in the context of socio-economic dimensions of gender equality.

Any legislative or executive measure that discriminates against women or fails to accord them equal dignity and opportunity must therefore be subjected to rigorous constitutional scrutiny. The test of constitutionality in matters of gender equality, as developed by the Supreme Court, demands not merely that a measure have a rational basis but that it be proportionate, that it not be founded upon stereotypical assumptions about gender, and that it contribute to rather than detract from the constitutional goal of substantive equality.

CONCLUSION

The constitutional framework for gender equality in India represents a profoundly ambitious vision, one that places the dignity, autonomy, and equal citizenship of women at the heart of the constitutional order. The Supreme Court of India has, over seven decades, served as a vital institutional actor in the realization of this vision, expanding the scope of constitutional rights, striking down discriminatory legislation and practices, and directing the State to fulfil its affirmative obligations towards women.

Yet the distance between constitutional promise and lived reality remains vast for the majority of Indian women. Gender-based violence, economic dependence, discriminatory personal laws, patriarchal social norms, and inadequate institutional mechanisms continue to frustrate the achievement of substantive equality. These challenges demand not complacency but renewed resolve — a recognition that constitutional transformation requires not only legal reform but also sustained investment in education, economic empowerment, institutional capacity, and social attitudes.

India's obligations under international human rights instruments, particularly CEDAW and the Beijing Platform for Action, reinforce and complement the domestic constitutional mandate. The periodic review processes under these instruments have generated valuable recommendations for

strengthening India's gender equality framework, and their implementation must be treated as a matter of constitutional seriousness rather than diplomatic formality.

The advancement of gender equality in India is, ultimately, a test of the nation's commitment to its own constitutional ideals. It calls upon legislatures to enact responsive and non-discriminatory laws, upon executives to implement those laws with diligence and sensitivity, upon judiciaries to interpret constitutional guarantees expansively and progressively, and upon civil society to hold all institutions accountable to the constitutional standard of equal justice for all. The task is formidable, but the constitutional foundation is sound — and the aspirations of the women of India, long deferred, cannot indefinitely be denied.

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