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Harshita

LLM Researcher,

Centre of Post Graduate Legal Studies,

School of Legal Studies, Babasaheb Bhimrao Ambedkar University, Lucknow

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Transformative Constitutionalism and Gender Justice: Advancing Women's Human Rights in India

Harshita

LLM Researcher,

Centre of Post Graduate Legal Studies,

School of Legal Studies, Babasaheb Bhimrao Ambedkar University, Lucknow

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ABSTRACT

This article explores the ways in which transformative constitutionalism has promoted women's human rights in India through constitutional measures, judicial interpretations, legislative changes, and international frameworks. By examining pivotal Supreme Court rulings and forward-thinking laws within the context of global human rights standards, this research illustrates the shift from formal equality to substantive equality. Although notable advancements have occurred in areas like workplace rights, personal freedom, and property rights, ongoing challenges continue to hinder the realization of constitutional commitments in practical terms. The article contends that transformative constitutionalism, supported by international frameworks, offers a strong basis for gender justice but necessitates continuous institutional backing to reach its full potential.

KEYWORDS

Transformative constitutionalism, gender justice, women's human rights, constitutional law, international frameworks, India

INTRODUCTION

"When women are empowered, society with stability is assured. Empowerment of women is essential as their thoughts and their value systems lead to the development of a good family, good society and ultimately a good nation."

- Justice K.G. Balakrishnan

Human beings, simply by existing, hold certain fundamental and inalienable rights known as 'human rights'. These rights are

intrinsic to every person from birth, regardless of their biological, physical, and social variations. Human rights are universal entitlements for all individuals, irrespective of race, gender, nationality, ethnicity, language, religion, or any other status.¹ Every person is entitled to these basic human rights without any form of discrimination. Such rights are crucial for the physical, moral, social, and spiritual well-being of individuals and foster conditions that promote both material and moral advancement within a community. The concept of human rights is deeply intertwined with human dignity. Therefore, all rights necessary to uphold human dignity can be classified as human rights.² In contemporary society, gender-based discrimination remains a prevalent issue in many regions across the globe, presenting a collective challenge. As aptly noted by UN Secretary General, Mr. Antonio Guterres:

*"achieving gender equality and empowering women and girls is the unfinished business of our time, and the greatest human rights challenge in the world."*³

The term 'gender' is inherently complex and cannot be confined to a rigid definition. It refers to the socially constructed roles assigned to women and men based on their sex, while 'sex' denotes biological and physical traits.⁴ The notion of gender encompasses five key components: relational, hierarchical, historical, contextual, and institutional.⁵ Although most individuals are born as either male or female, they learn the appropriate norms and behaviors expected of them, including how to interact with others of the same or different sex within families, communities, and workplaces. As societal perspectives have shifted, people are increasingly acknowledging and breaking free from traditional constraints. This broadens the scope for achieving the goals of justice and equality as outlined in the Constitution, advocating for laws that are equitable and just for everyone without exceptions.

Gender equality can be described as a systematic reallocation of

¹ United Nations, 'Global Issues – Human Rights' (United Nations) <https://www.un.org/en/global-issues/human-rights> accessed 30 May, 2025.

² Zubair Ahmad Khan, 'Human Rights vis-à-vis Women Rights' (2007) 43 *Civil and Military Law Journal* 42.

³ Chantal da Silva, 'After the #MeToo Movement, Could This International Women's Day Be the Most Pivotal Yet?' (Newsweek, 8 March 2018) <https://www.newsweek.com/after-metoo-international-womens-day-most-pivotal-ever-834309> accessed 30 May 2025.

⁴ Council of Europe, 'Sex and Gender' (Council of Europe) <https://www.coe.int/en/web/gender-matters/sex-and-gender> accessed 2 June 2025

⁵ Ibid.

power, opportunities, and access for individuals of all genders by dismantling harmful institutions such as patriarchy, homophobia, and transphobia.⁶

Transformation is essential for society. A rigid and unchanging constitution cannot fulfill the needs of the nation.⁷ However, it is nearly impossible for any nation to completely alter and recreate the Constitution in response to the evolving circumstances within the country. The solution to this dilemma is Transformative Constitutionalism. This concept indicates a recognition of the need for adaptation in line with the shifting requirements and aspirations of society. It embodies the incorporation of values such as liberty, equality, fraternity, and dignity into the social framework. It guarantees that while the Constitution will continue to evolve alongside societal changes, its fundamental principles will remain intact.

CONSTITUTIONALISM

The term 'constitutionalism' refers to the establishment of guidelines that allow citizens to lawfully exercise their rights while restricting the unchecked authority of the state and federal government. In essence, constitutionalism encompasses a collection of concepts, principles, regulations, and the authority granted to an entity to act; it aligns with the laws of society, traditions, cultures, and practices. The primary aim was to avert the misuse of power by governmental institutions and to guarantee that the authority exercised is in line with the established principles and laws.

Constitutionalism can be described as: "*Doctrine that governs the legitimacy of government action, and it implies something far more important than the idea of legality that requires official conduct to be in accordance with pre-fixed legal rules.*"⁸

Additionally, Henkin describes 'constitutionalism' as including vital elements such as popular sovereignty, adherence to the rule of law, limited government, the separation of powers (checks and balances), civilian oversight of the military, law-governed policing and judicial oversight, an independent judiciary, and respect for individual rights along with the right to self-determination, which

⁶ Aditya Suryavanshi and Vasudha Gupta, 'Gender Justice and Indian Society, an Analysis' *The Daily Guardian* (13 September 2021) <https://thedailyguardian.com/gender-justice-and-indian-societyan-analysis/> accessed 18 May 2025.

⁷ David A Strauss, *The Living Constitution* (Oxford University Press 2010).

⁸ Hilaire Barnett, *Constitutionalism and Administrative Law* (3rd edn, Cavendish Publishing 2000).

are all fundamental characteristics of constitutionalism.⁹

TRANSFORMATIVE CONSTITUTIONALISM

The NALSA ruling¹⁰ has tackled the idea of transformative power by stating, "The function of the court is to grasp the fundamental aim and essence of the Constitution for the benefit of society. Our Constitution, similar to the laws governing society, is a dynamic entity. It is grounded in a factual and social reality that is perpetually evolving. Occasionally, a modification in the law occurs before societal change and is even meant to encourage it. At other times, a legal alteration is a consequence of the social reality."

The concept of transformative constitutionalism has its roots in the South African experience. For nations in South Africa, it was essential to adopt the idea of transformative constitutionalism to rectify the injustices of the apartheid era. As expressed by Chief Justice of South Africa, Justice Pius Langa:

*"This is a magnificent goal for a constitution: to heal the wounds of the past and guide us to better future. For me, this is the core idea of transformative constitutionalism: that must change."*¹¹

Transformative constitutionalism is understood as development that takes on an active role in promoting liberty, equality, freedom, and other principles embedded in the nation's Constitution. It is emphasized that transformative constitutionalism should not only be seen as a just approach to addressing historical injustices but also as a means to foster a fair future by protecting the rights of individuals.

GLOBAL ASSURANCES OF RIGHT TO EQUALITY AND PRINCIPLE OF NON-DISCRIMINATION AGAINST WOMEN

The assurance of fundamental human rights asserts the banning of discrimination based on gender, along with the ensuing positive obligation to guarantee equality under the law and equal legal protection for all individuals, including men and women. The fundamental duty of non-discrimination has been addressed in several international treaties, agreements, and documents. The implementation of non-discriminatory practices on a global scale promotes the respect for human rights and can be considered transformative when examining the disparities encountered by

⁹ Michael Rosenfeld (ed), *Constitutionalism, Identity, Difference and Legitimacy: Theoretical Perspectives* (Duke University Press 1994).

¹⁰ *National Legal Services Authority v. Union of India* AIR 2014 SC 1863.

¹¹ *Ibid.*

different segments of society. Some of the most important International Frameworks are as follows-

- ***Universal Declaration of Human Rights, 1948***

Article 1 of the UDHR proclaims that "*All human beings are born free and equal in dignity and rights*," thereby laying the foundation for universal respect for human rights and fundamental freedoms without distinction of any kind.

- ***International Covenant on Civil and Political Rights, 1966 (ICCPR)***

The development of civil and political rights for individuals is prominently reflected in the International Covenant on Civil and Political Rights (ICCPR), which was adopted in 1966. While international recognition of political rights had existed prior to this, evolving social conditions and global progress led to a renewed focus on refining and reinforcing these rights. As a result, the ICCPR was created to uphold a more inclusive and equitable framework. A key emphasis of the Covenant is gender equality, requiring State parties to ensure that both men and women fully enjoy all civil and political rights as enshrined in the treaty.

- ***Convention on The Elimination of all Forms of Discrimination Against Women, 1979 (CEDAW)***

Although various "legal frameworks, statutes, and policies" exist to protect women's rights, a landmark international treaty in this area is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted in 1979. Often referred to as the "**international bill of rights for women**"¹², this Convention outlines comprehensive measures to eliminate gender-based discrimination.

Signatory states are under a legal obligation to eliminate all forms of gender-based discrimination by addressing deep-rooted societal stereotypes and cultural norms that perpetuate inequality. The Convention stresses the importance of achieving "substantive equality", which involves ensuring that women have "equal opportunities, equal outcomes, and equal access" across all aspects of life.

CEDAW also upholds women's rights to actively participate in

¹² Aparna Jayakumar, 'All about Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), 1979' (iPleaders, 25 March 2020) <https://blog.iplayers.in/convention-elimination-formsdiscrimination-women-cedaw-1979/> accessed 25 May 2025.

public and political life, including the right to vote, stand for election, and access education, healthcare, and employment opportunities. To ensure that women fully enjoy their fundamental freedoms and human rights, state parties commit to taking all necessary steps—such as enacting laws and adopting temporary special measures—to advance gender equality.

- ***Beijing Declaration and Platform for Action, 1995***

The "Beijing Declaration and Platform for Action, 1995" stands as a foundational international framework dedicated to advancing gender equality and the empowerment of women. It reinforces the principle that the human rights of women and girls are universal and must be upheld everywhere. The document outlines twelve key areas of concern, such as violence against women, access to education and healthcare, and women's participation in decision-making processes.¹³

- ***2030 Agenda for Sustainable Development***

The "2030 Agenda for Sustainable Development", adopted by all UN Member States in 2015, is a transformative global commitment that emphasizes the principle to "leave no one behind." A key focus of this agenda is gender equality and the empowerment of all women and girls, which is explicitly addressed under Goal 5.¹⁴ This goal calls for the elimination of all forms of violence, discrimination, and harmful practices that affect women and girls worldwide. To achieve genuine gender equality under the 2030 Agenda, it is essential to tackle intersecting inequalities that impact women, thus fostering a comprehensive approach to sustainable development.

TRANSFORMATIVE CONSTITUTIONALISM TOWARDS ADVANCEMENT OF WOMEN'S HUMAN RIGHTS IN ACHIEVING GENDER JUSTICE IN INDIA

The notion of transformative constitutionalism serves as an essential framework for grasping the progression of gender justice in India. In the Indian scenario, the Constitution of India has acted as both a mirror and a driver for societal change concerning gender dynamics.

India's constitutional path toward gender equality has

¹³ Beijing Declaration and Platform for Action, UN Fourth World Conference on Women, Beijing, 4–15 September 1995, paras 14–15.

¹⁴ UNGA Res 70/1, 'Transforming our world: the 2030 Agenda for Sustainable Development' (21 October 2015) UN Doc A/RES/70/1, Goal 5.

encountered notable complexities. When the Constitution was formulated in the wake of independence, it reflected both progressive goals and the societal realities of that era. The drafters of the Constitution, including Dr. B.R. Ambedkar and female members of the Constituent Assembly like Hansa Mehta, Rajkumari Amrit Kaur, and Sarojini Naidu, embedded principles of gender equality while also recognizing the entrenched patriarchal systems that shaped Indian society. The resulting document laid a groundwork for gender justice, while also acknowledging the necessity for continuous legal and social transformation.

CONSTITUTIONAL FRAMEWORK FOR GENDER EQUALITY

The Indian Constitution presents a thorough framework for gender equality through various clauses that ensure equal rights, forbid discrimination, and empower the state to implement special measures for the upliftment of women.

- ***Fundamental Rights Related to Gender Equality***

The fundamental rights enshrined in Part III of the Indian Constitution form the cornerstone of the country's commitment to gender justice. Article 14 provides that "all persons shall be equal before the law and are entitled to equal protection of the laws,"¹⁵ establishing a strong constitutional barrier against arbitrary state action and unjust distinctions. This provision has frequently been used to challenge discriminatory laws and societal practices that disadvantage women.

Article 15(1) strengthens this framework by prohibiting discrimination on the basis of religion, race, caste, sex, or place of birth, thus rendering gender-based bias unconstitutional.¹⁶ Complementing this, Article 15(3) allows the State to make special provisions for women and children, recognizing their historically marginalized status and the need for affirmative action.¹⁷ This clause has facilitated the creation of women-specific laws and welfare schemes, which remain valid despite the general non-discrimination rule.

Furthering the constitutional guarantee of equality, Article 16 ensures that no individual is denied equal opportunity in public employment on grounds similar to those mentioned in Article 15.¹⁸ This has been particularly impactful in enhancing women's economic empowerment and their representation in

¹⁵ The Constitution of India 1950, art. 14.

¹⁶ Ibid, art. 15(1).

¹⁷ The Constitution of India 1950, art. 15(3).

¹⁸ Ibid, art. 16.

public institutions.

Additionally, Article 21, which safeguards the right to life and personal liberty, has been expansively interpreted by Indian courts to include the right to live with dignity, privacy, and protection from violence.¹⁹ This wide interpretation has served as a legal basis for addressing gender-based violence and reinforcing women's bodily autonomy and personal freedoms.

- **Directive Principles of State Policy**

Although the Directive Principles of State Policy are not legally enforceable, they serve as vital policy guidelines for the State in advancing gender equality. Article 39(a) urges the State to ensure that "all citizens, men and women equally, have the right to an adequate means of livelihood."²⁰ This provision emphasizes the principle of economic inclusivity, regardless of gender.

In a similar way, Article 39(d) calls for the "equal pay for equal work for both men and women,"²¹ directly targeting wage disparities and promoting economic justice. Meanwhile, Article 39(e) mandates the State to take steps so that "the health and strength of workers, men and women, are not abused,"²² ensuring that labour policies protect all genders from exploitation.

Furthermore, Article 42 compels the State to make laws that secure "just and humane conditions of work" and provide "maternity relief," thereby acknowledging and supporting the distinct needs of women in the workforce²³, particularly regarding reproductive health and workplace equity.

Article 44, advocating for a Uniform Civil Code²⁴, has repercussions for gender justice by seeking to replace personal laws, which often include gender-biased provisions, with a uniform code applicable to all citizens.

- **Fundamental Duties**

The Fundamental Duties introduced by the 42nd Amendment to the Constitution encompass the obligation of every individual

¹⁹ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608; *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

²⁰ The Constitution of India 1950, art. 39(a).

²¹ *Ibid*, art. 39 (d).

²² *Ibid*, art. 39(e).

²³ The Constitution of India 1950, art. 42.

²⁴ *Ibid*, art. 44.

"to renounce practices that demean the dignity of women" as stated in Article 51A(e).²⁵ This clause recognizes the societal aspect of gender discrimination and the duty of citizens to fight against it.

CONSTITUTIONAL REFORMS FOR WOMEN'S POLITICAL INVOLVEMENT

The 73rd and 74th Constitutional Amendments enacted in 1992 represented a considerable leap forward for women's political representation by reserving one-third of positions for women in local governance bodies (Panchayats and Municipalities)²⁶. These reforms have allowed countless women to participate in politics at the grassroots level, defying traditional gender norms and playing a role in policy-making.²⁷

More recently, the Constitution (106th Amendment) Act, 2023, allocated one-third of all seats for women in the Lok Sabha and State Legislative Assemblies, marking a pivotal move towards strengthening women's involvement in legislative activities at both national and state levels.

This constitutional structure demonstrates a comprehensive strategy for achieving gender equality, tackling various forms of discrimination and offering means for redress. Nonetheless, the realization of these constitutional provisions into tangible outcomes has necessitated proactive judicial interpretation and legislative enactment, which will be discussed in the following sections.

JUDICIAL INTERVENTIONS

The judiciary, especially the Supreme Court of India, has taken on a pivotal role in interpreting constitutional clauses to promote gender justice. Through a succession of significant rulings, the Court has broadened the parameters of women's rights, tackled new manifestations of gender discrimination, and called for legislative changes.

- **Addressing Gender Justice in Personal Laws**

Mohd. Ahmed Khan v. Shah Bano Begum²⁸

²⁵ Ibid, art. 51A.

²⁶ Ibid, Articles 243D and 243T, inserted by the Constitution (73rd Amendment) Act, 1992, and the Constitution (74th Amendment) Act, 1992, respectively.

²⁷ Ibid, Article 332A, inserted by the Constitution (106th Amendment) Act, 2023.

²⁸ *Mohd. Ahmed Khan v. Shah Bano Begum* (1985) 2 SCC 556.

The pivotal case confirmed that Section 125 of the CrPC is applicable to Muslim women after the iddat period, highlighting its secular and protective characteristics. The Supreme Court placed greater importance on statutory law compared to personal law in order to protect rights. However, this progressive judgment faced significant backlash and was effectively nullified by the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, highlighting the persistent tension between judicial efforts to reform personal laws and legislative interventions that seek to preserve religious practices.

Mary Roy v. State of Kerala²⁹

This case contested the relevance of the Travancore Christian Succession Act, 1916, which denied equal inheritance rights to women of the Syrian Christian community. The Supreme Court ruled that the Act was no longer in effect following the establishment of the state of Kerala, leading to the application of the Indian Succession Act, 1925, which ensured equal inheritance rights. This ruling significantly advanced inheritance rights for a particular group of women, illustrating how constitutional challenges can tackle discrimination specific to communities.

Githa Hariharan v. Reserve Bank of India³⁰

The Court interpreted "Section 6 of the Hindu Minority and Guardianship Act" to mean that a mother may be recognized as the natural guardian of her child even during the father's lifetime, particularly if the father is not genuinely involved in the child's upbringing. This interpretation marked a notable departure from the traditionally patriarchal framework embedded in guardianship laws.

Danial Latifi v. Union of India³¹

In the wake of the contentious introduction of the Muslim Women (Protection of Rights on Divorce) Act, 1986, this case questioned the constitutionality of the Act. The Supreme Court interpreted the Act to require that a Muslim husband must make adequate provisions for his divorced wife's future, extending beyond the iddat period. By this interpretation, the Court upheld the constitutionality of the Act while ensuring substantial justice for Muslim women, showcasing judicial

²⁹ *Mary Roy v. State of Kerala* (1986) 2 SCC 209.

³⁰ *Githa Hariharan v. Reserve Bank of India* (1999) 2 SCC 228.

³¹ *Danial Latifi v. Union of India* (2001) 7 SCC 740.

ingenuity in reconciling community laws with constitutional values.

***Shayara Bano v. Union of India*³²**

In this significant judgment, the Supreme Court declared the practice of triple talaq (instant divorce) unconstitutional by a 3:2 majority. The majority opinion held that this form of divorce was not protected under Article 25, which guarantees "freedom of religion," and that it violated fundamental rights under Articles 14, 15, and 21, relating to equality, non-discrimination, and personal liberty. The decision was a milestone in using constitutional interpretation to reform personal laws, placing women's rights above age-old religious customs. Following this verdict, the Muslim Women (Protection of Rights on Marriage) Act, 2019 was passed, highlighting how judicial decisions can act as a catalyst for legislative reforms.

- **Addressing Gender-Based Violence**

***State of Maharashtra v. Madhukar Narayan Mardikar*³³**

It ruled that a woman's past sexual experiences were irrelevant when assessing whether she had been sexually assaulted in a specific case.

***Vishaka v. State of Rajasthan*³⁴**

Following the brutal gang rape of Bhanwari Devi, a grassroots activist from Rajasthan, the Supreme Court delivered a landmark judgment on workplace sexual harassment. In the absence of a specific domestic law at the time, the Court drew upon international legal instruments, particularly the "Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)," to frame preventive measures. This led to the creation of the "Vishaka Guidelines," which served as the de facto legal framework for addressing sexual harassment at work until the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The judgment underscored the judiciary's role in filling legal voids and advancing gender justice through the integration of international human rights norms.

***Chairman, Railway Board v. Chandrima Das*³⁵**

³² *Shayara Bano v. Union of India* (2017) 9 SCC 1.

³³ *State of Maharashtra v. Madhukar Narayan Mardikar* (1991) 1 SCC 57.

³⁴ *Vishaka v. State of Rajasthan* (1997) 6 SCC 241.

³⁵ *Chairman, Railway Board v. Chandrima Das* (2000) 2 SCC 465.

The Court granted compensation to an international citizen who was raped by railway staff, affirming that the right to be free from sexual violence is a fundamental human right, irrespective of nationality.

Lillu @ Rajesh v. State of Haryana³⁶

In this instance, the Supreme Court determined that the "two-finger test" performed on survivors of rape infringed upon their rights to privacy, physical and mental integrity, and dignity. The Court noted that such examinations contradicted the right to dignity as outlined in Article 21 and were scientifically flawed. This ruling played a crucial role in reforming medico-legal protocols in sexual assault cases, underscoring the importance of the survivor's dignity and privacy.

Mukesh and Anr. v. State NCT of Delhi³⁷

The Court's changing perspective on sexual violence. By upholding the death penalty for the accused, the Court stressed the importance of acknowledging the effects of sexual violence on women's dignity and autonomy. This ruling mirrored broader transformations in judicial dialogue concerning the gravity of sexual crimes.

Independent Thought v. Union of India³⁸

The Supreme Court struck down Exception 2 to Section 375 of the Indian Penal Code, which had previously allowed a husband to have sexual relations with his wife without it being considered rape, provided she was over the age of 15. The Court held that this exception was "arbitrary and unconstitutional," as it infringed upon the rights to equality, non-discrimination, and personal liberty guaranteed under Articles 14, 15, and 21 of the Constitution. By harmonizing the provision with the Protection of Children from Sexual Offences Act, 2012 (POCSO), the judgment criminalized non-consensual sex within marriage involving girls aged 15 to 18. While this was a major step in recognizing the sexual rights of minors within marriage, the decision did not address marital rape involving adult women, leaving that broader issue unresolved.

³⁶ *Lillu @ Rajesh v. State of Haryana* (2013) 14 SCC 643.

³⁷ *Mukesh and Anr. v. State NCT of Delhi* (2017) 6 SCC 1.

³⁸ *Independent Thought v. Union of India* (2017) 10 SCC 800.

- **Addressing Right to Equality in Employment**

C.B. Muthamma v. Union of India³⁹

In this landmark case, the Supreme Court annulled biased service regulations that mandated female foreign service officers to seek governmental approval prior to marriage and that prohibited them from remaining in service post-marriage. Justice Krishna Iyer noted that such stipulations directly violated Articles 14 and 16 of the Constitution. The Court highlighted that gender-based discrimination in public employment was unconstitutional, establishing a significant precedent for women's rights in the workplace.

Air India v. Nargesh Meerza⁴⁰

This case contested the prejudiced service terms for Air India's flight attendants, which included clauses for dismissal upon marriage, pregnancy, or upon reaching the age of 35. Although the Court validated the dismissal after a third pregnancy, it invalidated the terms concerning termination after the first pregnancy and the unequal retirement age compared to male flight attendants. This ruling was a crucial advancement toward acknowledging reproductive rights as integral to workplace equality.

Mackinnon Mackenzie and Co. v. Audrey D'Costa⁴¹

The Supreme Court examined the matter of equal pay for equal work, ruling that female stenographers doing the same tasks as their male counterparts were entitled to equivalent compensation. The Court analyzed the Equal Remuneration Act in conjunction with Article 39(d) of the Constitution, illustrating how directive principles can guide the interpretation of statutes.

Anuj Garg v. Hotel Association of India⁴²

The Supreme Court invalidated Section 30 of the Punjab Excise Act, 1914, which barred the employment of women in establishments where alcohol was consumed publicly. The Court determined that this provision stemmed from stereotypes and contradicted constitutional principles. Justice S.B. Sinha remarked that "instead of entirely forbidding women's employment in bars, the state should concentrate on devising

³⁹ *C.B. Muthamma v. Union of India* (1979) 4 SCC 260.

⁴⁰ *Air India v. Nargesh Meerza* (1981) 4 SCC 335.

⁴¹ *Mackinnon Mackenzie and Co. v. Audrey D'Costa* (1987) 2 SCC 469.

⁴² *Anuj Garg v. Hotel Association of India* (2008) 3 SCC 1.

methods to eliminate the unequal repercussions of gender differences." This ruling underscored the idea that protective discrimination should not perpetuate stereotypes or limit women's autonomy.

***Secretary, Ministry of Defence v. Babita Puniya*⁴³**

In a groundbreaking ruling for women in the military, the Supreme Court ordered the government to provide permanent commissions to female officers across all ten branches where women are recruited for short service commissions. The Court dismissed the government's claims regarding physiological constraints, societal expectations, and familial responsibilities as clichéd and constitutionally indefensible. This ruling broke down long-standing obstacles to women's equal participation in military roles, highlighting that the denial of equal opportunities for women officers based on gender stereotypes infringed upon their fundamental rights.

• **Addressing Reproductive Rights and Bodily Autonomy**

***Suchita Srivastava v. Chandigarh Administration*⁴⁴**

This case featured a woman with intellectual disabilities who became pregnant due to rape while living in a state-run facility. The Supreme Court affirmed her right to proceed with the pregnancy despite the objections of her guardians and the state, acknowledging reproductive autonomy as a facet of personal liberty under Article 21. The Court highlighted that a woman's entitlement to make reproductive decisions is a part of "personal liberty" under Article 21, which encompasses the right to decline sexual activity, utilize contraception, and choose whether to continue a pregnancy.

***Laxmi Mandal v. Deen Dayal Harinagar Hospital*⁴⁵**

In this case, the Delhi High Court held that denying maternal healthcare to women from low-income backgrounds amounted to a violation of their fundamental rights. The Court emphasized that maternal health is an essential aspect of the "right to life and health" guaranteed under Article 21 of the Constitution. This judgment highlighted the state's obligation to ensure equitable access to quality maternal healthcare, particularly for women belonging to vulnerable and

⁴³ *Secretary, Ministry of Defence v. Babita Puniya* (2020) 7 SCC 469.

⁴⁴ *Suchita Srivastava v. Chandigarh Administration* (2009) 9 SCC 1.

⁴⁵ *Laxmi Mandal v. Deen Dayal Harinagar Hospital* (2010) SCC OnLine Del 2234.

marginalized communities.

X v. Union of India⁴⁶

In a landmark decision enhancing reproductive rights, the Supreme Court affirmed that unmarried women are entitled to access safe and legal abortion services up to 24 weeks of pregnancy, on par with married women. The Court adopted an inclusive reading of the term "woman" under the Medical Termination of Pregnancy Act, emphasizing that "reproductive autonomy is an integral component of the right to dignity and personal liberty under Article 21 of the Constitution." This judgment represented a significant step forward in recognizing women's bodily autonomy and reproductive choices, regardless of their marital status.

• **Addressing Right to Non-Discrimination**

Joseph Shine v. Union of India⁴⁷

The Supreme Court invalidated Section 497 of the Indian Penal Code, which made adultery a criminal offense. The Court determined that this provision was grounded in gender biases and regarded women as the property of their spouses. Chief Justice Dipak Misra remarked that the provision was evidently arbitrary and infringed upon Articles 14, 15, and 21 of the Constitution. This ruling was pivotal in rejecting the idea of women's subservience within marriage and upholding women's independence and dignity.

The Indian Young Lawyers Association v. State of Kerala⁴⁸

Often referred to as the Sabarimala case, dealt with gender-based limitations on access to places of worship. The majority of the Court concluded that barring women of menstruating age from entering the Sabarimala temple contravened the constitutional rights to equality and freedom of religion. This ruling, despite being contentious and still under examination, illustrates the judiciary's readiness to subject religious customs to constitutional evaluation when they impede women's equal access to public spaces.

This comprehensive collection of case law demonstrates the essential function of the judiciary in progressively interpreting constitutional provisions to promote gender justice. Through

⁴⁶ *X v. Union of India* 2023 SCC OnLine SC 1081.

⁴⁷ *Joseph Shine v. Union of India* AIR 2018 SC 4898

⁴⁸ *The Indian Young Lawyers Association v. State of Kerala* (2018) 11 SCC 1.

these rulings, the courts have broadened the range of constitutional rights, confronted gender stereotypes, and propelled legislative and policy changes. The judicial perspective has shifted from formal equality to substantive equality, acknowledging the necessity to tackle structural disadvantages and guarantee significant equality results for women.

LEGISLATIVE CHANGES AND THEIR EFFECTS

Court rulings that interpret constitutional clauses have sparked considerable legislative changes across multiple areas impacting women's rights. This segment explores key legislative advancements, evaluating how they embody the effects of constitutional interpretation and contribute to transformative constitutionalism in practice.

• Changes in Personal Laws

Over time, legislative reforms in personal laws have been directed toward achieving greater gender equality. Amendments have tackled ongoing inequalities. The Hindu Succession (Amendment) Act, 2005 eliminated gender bias in the inheritance of ancestral property, granting daughters the same rights as sons.⁴⁹ This amendment was a response to court rulings that pointed out the disparities in the original Act and represented a crucial advancement in property rights for women.

Muslim personal law has experienced more limited legislative changes, reflecting the political sensitivities surrounding religious independence. The Muslim Women (Protection of Rights on Divorce) Act, 1986, introduced in response to the Shah Bano verdict, initially seemed to restrict Muslim women's rights to maintenance but was interpreted by the Supreme Court to afford significant protection.⁵⁰ More recently, The Muslim Women (Protection of Rights on Marriage) Act, 2019 made the practice of triple talaq a criminal offense following the Supreme Court's ruling in Shayara Bano.⁵¹ These reforms exemplify both the possibilities and constraints of legislative measures aimed at achieving gender equality within personal laws.

⁴⁹ The Hindu Succession (Amendment) Act 2005, s. 6.

⁵⁰ The Muslim Women (Protection of Rights on Divorce) Act 1986, s. 3(1).

⁵¹ The Muslim Women (Protection of Rights on Marriage) Act 2019, s. 4.

• **Tackling Violence Against Women**

Legislative actions addressing violence against women have grown considerably, often prompted by court rulings and public advocacy. The Criminal Law (Amendment) Act of 1983, which was passed in the wake of the Mathura case uproar, established crucial procedural safeguards for victims of rape and introduced new classifications of custodial rape with altered burdens of proof.⁵²

The Protection of Women from Domestic Violence Act of 2005 represented a significant change by acknowledging domestic violence as a separate crime and offering civil remedies such as protection orders, residence orders, and financial support.⁵³ This law adopted a broad definition of domestic violence that encompasses physical, sexual, verbal, emotional, and economic abuse, reflecting the changing perceptions of gender-based violence.⁵⁴

In the aftermath of the Delhi gang rape incident in 2012, The Criminal Law (Amendment) Act of 2013 brought about extensive reforms to laws concerning sexual assault. The updates widened the scope of what constitutes rape beyond just penetrative acts, increased punishments, introduced new offenses such as voyeurism and stalking⁵⁵, and established procedural safeguards for those filing complaints. This legislation mirrored both judicial influence and suggestions from the Justice Verma Committee, highlighting the interactive relationship between judicial rulings and legislative changes.

Most recently, The Criminal Law (Amendment) Act of 2018 raised minimum sentences for specific sexual offenses and introduced capital punishment for the rape of girls below twelve years old.⁵⁶ Although contentious from a human rights viewpoint, these amendments demonstrate societal and political reactions to persistent issues surrounding sexual violence.

• **Workplace Equality Initiatives**

Legislative measures aimed at fostering workplace equality have tackled issues related to discrimination, harassment, and obstacles to participation. The Equal Remuneration Act of 1976

⁵² The Indian Penal Code 1860, s. 376.

⁵³ The Protection of Women from Domestic Violence Act 2005, s. 18, 19, 20, respectively.

⁵⁴ Ibid, s. 2.

⁵⁵ The Indian Penal Code 1860, s. 354C and 354 D, respectively.

⁵⁶ Ibid, s. 376AB.

put into effect the constitutional directive found in Article 39(d)⁵⁷ by banning gender-based discrimination in hiring, promotions, and compensation.⁵⁸ This law came before similar protections were enacted in many Western nations.

As mentioned earlier, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 formalized and extended the Vishaka guidelines set forth by the Supreme Court. This Act mandates that employers create Internal Complaints Committees⁵⁹, formulate preventive measures, and ensure procedural safeguards for those who lodge complaints. This legislation is a direct application of judicially defined constitutional principles.

The Maternity Benefit (Amendment) Act of 2017 expanded maternity leave from 12 to 26 weeks⁶⁰, introduced leave for adoptive mothers, and mandated that organizations with 50 or more employees provide childcare facilities. These measures reflect the changing perceptions of work-family balance and the necessity of facilitating women's participation in the workforce.

• **Rights-Based Welfare Legislation**

A variety of rights-focused welfare laws have had considerable implications for gender, even if they are not directly aimed at women's rights. The National Rural Employment Guarantee Act of 2005⁶¹ contains stipulations for equal pay for both men and women and requires that at least one-third of the beneficiaries be female. Research shows that this initiative has led to an increase in women's participation in the workforce and their economic autonomy in rural regions.

In a similar vein, The National Food Security Act of 2013 identifies the eldest woman in each family as the head of the household for the purpose of ration cards,⁶² acknowledging the essential role women play in family nutrition and food security. This clause marks a significant departure from traditional beliefs regarding male dominance as household heads.

The Prohibition of Child Marriage (Amendment) Act, 2023, in response to court remarks regarding discrepancies in marriage

⁵⁷ The Constitution of India 1950.

⁵⁸ The Equal Remuneration Act 1976, s. 5.

⁵⁹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, s. 4.

⁶⁰ The Maternity Benefit (Amendment) Act 2017, s. 5.

⁶¹ Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) 2005.

⁶² The National Food Security Act 2013, s. 13.

age laws, Parliament revised the Prohibition of Child Marriage Act, raising the minimum marriage age for women from 18 to 21 years, thus aligning it with that of men. This change sought to tackle health issues linked to early childbirth and foster gender equality in personal legislation.

The Medical Termination of Pregnancy (Amendment) Act, 2021, After judicial actions underscored the necessity for more progressive abortion regulations, this amendment extended the gestation period for termination in specific categories of women and eliminated the gestation limit for terminations due to significant fetal abnormalities.⁶³ Additionally, the amendment strengthened confidentiality measures and broadened the range of practitioners who can authorize terminations. The recent judgment in *X v. Union of India (2023)* further widened the understanding of this law, incorporating unmarried women into its scope.

ONGOING CHALLENGES

Some of the various ongoing challenges in achieving gender justice regarding women's human rights in India are as follows-

- Gaps in Implementation
- Navigating Group Rights and Gender Equality
- Tackling Structural Inequalities
- Digital Gender Disparity and related Emerging Challenges
- Intersectional Aspects of Gender Equity

Therefore, although notable strides have been taken in broadening the rights framework, reforming institutions, and challenging patriarchal values, the initiative of transformative constitutionalism is still a work in progress. Bridging the gaps present and responding to new challenges necessitates ongoing constitutional engagement through judicial interpretation, legislative measures, and social activism.

CONCLUSION

It can be seen that the progression of transformative constitutionalism in promoting gender justice in India showcases a vibrant interaction among constitutional provisions, judicial interpretations, legislative changes, and shifts in societal norms. The constitutional structure for gender equality, which includes fundamental rights, directive principles, and essential duties, has established a strong basis for tackling various aspects of gender discrimination. This structure has been increasingly interpreted

⁶³ The Medical Termination of Pregnancy (Amendment) Act 2021, s. 3(2).

by the judiciary to broaden its reach and relevance in response to emerging challenges. From invalidating discriminatory laws to acknowledging new facets of women's rights, the courts have been instrumental in converting constitutional assurances into tangible realities for women.

The recommendations put forth for enhancing gender justice—which include legal reforms, strengthening institutions, policy initiatives, societal changes, and research efforts—illustrate the holistic strategy required to achieve the constitutional vision of substantive gender equality. These initiatives, rooted in constitutional principles, would tackle both immediate obstacles to women's rights and the deeper structural issues that sustain gender inequality.

Fulfilling the constitutional promise of equality, dignity, and justice for all women necessitates ongoing dedication from all stakeholders—the judiciary, legislature, executive, civil society, and citizens—guided by the transformative vision enshrined in the Constitution. As Justice D.Y. Chandrachud noted in *Joseph Shine v. Union of India*, "*the Constitution, as a transformative document, has played a crucial role in bringing about social change and must continue to do so.*"⁶⁴ This transformative capacity of the Constitution continues to shine as a guiding light for promoting gender justice in India.

⁶⁴ *Joseph Shine v. Union of India* AIR 2018 SC 4898.