

# Exploring the Contours of Gender Justice in India Vis-À-Vis Role of Judiciary: An Exploratory Study\*

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## Abstract

Gender justice seeks to ensure fair and equitable treatment of individuals across all genders, enabling them to access rights, opportunities, and responsibilities in every facet of life. Since Independence, Indian courts have played a critical role in fostering gender equality by interpreting constitutional provisions that promote the advancement of women in society. Key judicial decisions have addressed various dimensions of gender justice, including sexual autonomy, property rights, workplace protections, maternity benefits, and marital rights, thereby shaping the contours of constitutional rights for Indian women. This paper explores the significance of these judicial decisions and examines how the judiciary has defined and expanded constitutional guarantees for women. The study relies on a doctrinal approach, analysing relevant judgments, constitutional provisions, and secondary sources such as scholarly articles and reports using a qualitative research methodology. Through an in-depth exploration of these legal instruments and their interpretations, the study highlights the progressive role of the judiciary in advancing women's rights. However, it also argues that despite these judicial strides, substantial reforms in personal laws by introducing a uniform civil code could be a pivotal step toward achieving comprehensive gender justice in India. The findings emphasise the need for legal reforms to complement judicial efforts in ensuring gender equality.

**Keywords:** Gender Justice; Indian Judiciary; Gender Equality; Supreme Court; Constitution of India

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## A. INTRODUCTION

There is no tool for development more effective than women's empowerment." This statement by former United Nations Secretary-General Kofi Annan underscored the indispensable role of gender justice in ensuring holistic societal progress. Gender justice, and the principle it espouses to guarantee equal rights and opportunities for women and men, is the cornerstone of a just society. Historical, social, and cultural complexities, as well as longstanding inequalities, surround the introduction of this principle, making it particularly significant for India. The systemic subjugation of women, rooted in patriarchal traditions, has made sure that the deficiencies to access education, employment, and the political structure continue to prevail. A discussion on the emerging contours of gender justice and the role of the judiciary in its attainment becomes necessary in the context of India's modernisation. ([Sood, 2008](#))

The concept of gender justice is viewed in India in the context of the Constitution, which emphasises the principles of equality and non-discrimination. Under articles 14, 15, and 16 of the Indian Constitution, equality before the law is granted, and discrimination based on gender is prohibited. Also, Article 39(a) mandates that the state provide men and women equal opportunities to secure an adequate livelihood. However, Article 42 focuses on the condition for providing work, which shall be just and humane, especially for women. Strong provisions notwithstanding, the fight for gender justice can only be achieved when society relinquishes the normative rules it imposes on women and the entitled position it has given them. ([Sriraam, 2020](#))

Judicial authorities, custodians of constitutional rights, have furthered gender justice in India. Landmark decisions of the past decades have altered the landscape to obviate discriminatory practices and protect the rights of women altogether. Starting from the classic *Vishaka v. State of Rajasthan* in 1997, which first gave guidelines on the prevention of sexual harassment at the workplace, to the latest *Joseph Shine v. Union of India* judgment in 2018, which declared a law of adultery unconstitutional, courts have always been trustworthy agents of change. The judicial pronouncements extended constitutional protections to women and challenged some widespread patriarchal norms prevailing in society.

Significant challenges still beset the journey toward gender justice, but these ongoing socio-economic factors—particularly poverty, illiteracy, and a general lack of legal access—really widen the gap. Women in rural areas are usually victims of a lack of awareness and traditional patriarchal attitudes when the judiciary takes progressive interventions that are still not substantial enough

to affect real change. Legal reforms must be accompanied by social changes, requiring judicial, executive, and societal consensus. ([Deb Zyoti Das & Rohilla, 2020](#))

This analysis interrogates gender justice and the Indian judiciary, examining landmark judgments and changing jurisprudence around women's rights and the judiciary's response to emerging challenges. This paper examines judicial interventions within the context of the ultimate potential for women's inclusion in its exercise, limiting judicial intervention and making a case for a more inclusive approach to gender justice. This paper explores and brings into view both progress and continuities in the realisation of gender justice in India through critically analysing the role of the judiciary. Undeniably, the judiciary has been one of the significant strongholds for gender justice. Still, the way forward will depend significantly on efforts at each level, sustained and committed for a long time. ([Pandita, 2022](#))

The article primarily discusses the concept of gender justice, the various contours and dimensions that have evolved, as well as the dynamic role of the Indian judiciary in recognising the promotion of gender justice in the Indian legal and socio-economic-political context. It aims to analyse how gender justice has evolved and how the Indian Judiciary has recognised the numerous dimensions of gender justice to protect women's rights. It further explores the activist role of the Indian Judiciary in evolving new principles through dynamic decisions for furthering women's rights in the country and advancing the goal of gender justice.

## **B. METHODS**

This article uses a comprehensive exposition of the landmark judicial decisions which have influenced and shaped the concept of gender justice in India. The article primarily employs a doctrinal method of research based on primary and secondary data. The primary data includes relevant constitutional provisions, legislative enactments, international treaties, and case laws, and secondary data includes the academic literature on gender justice. Attention revolves around the specific interpretation of the constitutional provisions and legislations by the Indian Judiciary in landmark cases such as Vishaka ([1997](#)) and Shah Bano Begum ([1985](#)) etc. It also examines the courts' application of international human rights provisions in India to advance gender justice. Judicial decisions on significant issues such as equal pay for women, prevention of sexual harassment, marriage, divorce, adoption, promotion of inheritance rights for

women, personal laws, and reproductive rights of women have been explored to trace the judicial role in evolution and development of the concept of gender in India.

## C. RESULTS AND DISCUSSION

### 1. Meaning of Gender Justice

Gender justice aims at fair and equitable treatment of persons of different genders so that they can access rights, opportunities, and responsibilities across every aspect of life. It seeks to combat structural and cultural impediments and constraints maintaining gender inequalities. In this regard, it strives to enforce a society in which all genders like men, women, transgender, and all others- can live without differences. Equal opportunity is also called for in employment, education, healthcare, and political participation. It is shaped by social, political, and feminist movements questioning patriarchal power structures and gender roles to strive toward a more inclusive and just society. ([Singh, 2023](#))

The core of gender justice concerns opportunity, and there is the elimination of barriers that restrict participation by women and gender minorities. Freedom from discrimination and violence are also integral to this, examples being gender-based violence, sexual harassment, and workplace discrimination. Supportive structures for victims are established, an essential tool for a just cause. Intersectionality is another critical aspect wherein inequalities in gender may often cut across various other oppressions that may otherwise be attributed to race, class, or sexuality, among others. Such overlapping issues addressed contribute to fairness overall. ([Bhatnagar, 2024](#))

Earning gaps must be reduced, resources should be accessible equally, and unpaid domestic labour should be redressed, primarily on women's shoulders. Advocating policy actions like paid parental leave, equal wages, and access to childcare benefits create an equity economic structure. Political representation also matters since women and all other marginalised genders should hold more representative and influential positions and be engaged more in society's decision-making processes. True gender justice demands that the political systems be more inclusive, featuring a voice for every gender, not just those of the dominant genders. Even while gender equality has improved significantly, much ground remains to be covered. Social norms, for instance, have become an essential marker in the enforcement of gender stereotyping, which primarily restricts the opportunities available for women and the less dominant genders regarding education, employment, healthcare, and political participation. Issues

like violence associated with the gender dimension continue unabated, including pay gaps and the responsibilities related to unpaid care work; less representation in politics remains. More importantly, the integration of gender inequality with other social inequalities, such as race and class, complicates justice further. ([Karwa, 2024](#))

Achieving gender justice requires challenges on patriarchy, changes in society's structure, and inclusive reforms on the legal, social, and economic front. Only in this way can a just society be achieved for all genders ([Singh, 2022](#)). Gender justice in India would envision equality, justice, and non-discrimination for all genders, focusing mainly on institutional and social structures entrenched in patriarchal norms. Indian society has a record of placing women into subordinate positions within societal frameworks since time immemorial and limiting their participation in the public sphere while bolstering sexist stereotypes. However, the passage of time has seen specific tremendous reforms-legal, social, and political- that are better at protecting women's rights and those of other genders. The Constitution of India guarantees gender equality. This is further safeguarded by special enactments of the Dowry Prohibition Act of 1961, the Protection of Women from Domestic Violence Act of 2005, and the Sexual Harassment of Women at Workplace Act of 2013. These legislations provide important modes of protection against violence and discrimination based on gender. Implementation faces severe challenges, and it is ridiculous that marital rape does not have the presence of law, which represents society's unwillingness to open up regarding such sensitive issues. ([Gopala, 2023](#))

Economic justice has also emerged as a serious concern. Nowadays, women are less involved in financial activities than the men. Even in workplaces, women get less remunerations, and there are restraints to their career development, and they shoulder the responsibilities of informal, unpaid work in the house. Not even the passage of legal instruments like the Equal Remuneration Act of 1976 has helped bridge the gap. Women are a small proportion of leadership, a segment where women are badly needed. Political representation is not on par, either. Though the reservation policy empowered the grassroots level women, women have been more underrepresented in national and state politics. The Women's Reservation Bill, which envisions reserved seats for women in the Parliament and the state legislatures, is still in the debate. Social movements, including feminist movements like #MeToo, have played an important role in challenging the old hegemony of patriarchy, creating awareness, and demanding reforms. India still lags in combating gender-based violence, economic inequality, and political underrepresentation. True gender justice will take time if, with the same momentum, patriarchal structures are

progressively brought down, and laws are strictly enforced, bringing change in the societal mechanism to form an all-inclusive society. ([Patel, 2014](#))

## **2. The Need for Judicial Review and Activism in Addressing Gender Justice in India**

Gender justice finds big legislative and administrative gaps in India. Unfortunately, thousands of laws in this country to ensure gender neutrality, like the Protection of Women from Domestic Violence Act, 2005, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, go unenforced. This inadequacy reflects ineffective action by law enforcement and a deep need for judicial review and activism in filling the gaps toward achieving substantive gender justice. ([Krishnan et al., 2013](#))

There are legislative gaps that could be termed as the inadequacy of extant laws in handling issues with gender-based violence and discrimination. In a nutshell, the laws consider protecting women against domestic violence and sexual harassment but do not effectively deal with the issue of gender equality in the workplace or even the intersectionality of caste, class, gender, and so on. It is for this reason that marginalised groups are often left with little or no access to justice. Moreover, inefficiency in the administration from ignorance, insensitivity, and training shortcomings among law enforcement and judiciary members the situation because victims are discouraged from reporting crimes or seeking redress because of stigmatism or retribution. ([Krishnan et al., 2014](#))

Judicial review bridges such gaps by interpreting extant laws to cover protections that extend to women and other marginalised genders. Thus, the doctrines of constitutional morality and the right to life and liberty guaranteed under Article 21 of the Constitution can be pressed to expand the reach of gender justice. For example, significant judgments like *Vishaka v. State of Rajasthan* in 1997 and *Navej Singh Johar v. Union of India* in 2018 demonstrated how judicial activism could alter the landscape of gender rights and thereby gave interpretation to the fact that justice cannot be rigid but has to bend to the curve of society. Judicial activism may also pave the ground for legislative reforms by pointing out lacunas in the enactments passed and tugging at the legislature's attention to make them of a fuller and richer scope.

Courts can also pass an order to create gender-sensitive machinery in the administrative machinery to implement the statutes effectively. Therefore, the administrative vacuum will be eradicated. Apart from judicial activism, Public Interest Litigation (PIL) has become a strong machinery through which

grievances of gender injustice are redressed today. Activists and organisations can raise issues of public interest; therefore, the judiciary scrutinises those issues and brings the state to accountability for its acts. Such activism empowers women and creates an awareness in society about gender injustices. Thus, filling the legislative and administrative vacuum requires a multi-pronged approach in terms of gender justice. Judicial review and activism are indispensable in interpreting and expounding the existing laws and providing necessary reformations towards an egalitarian society involving both genders in India. Such a judiciary would continue to be the guardian of rights, with the evolution of the law to deal with society's challenges, which would eventually lead to a much more just and equitable context for all. ([Marc and Krishnan, 2004](#))

### **3. Role of Indian Judiciary in Evolving and Shaping Contours of Gender Justice**

Indian jurisprudence has been the greatest proponent of gender justice, challenging deep-seated gender biases and promoting rights for women through judicial reforms. For decades, courts have intervened where legislative reforms stalled, or societal practices contradicted constitutional values to redress gender inequity. Advances taken into the results have resulted in significant improvements within legal interpretation supporting gender equality through the active judicial approach to bridge the gaps between law and social reality. The judicial contribution to ensuring gender justice in India can be broadly categorised into the following:

#### **i) Interpretation of Constitutional Rights:**

The bedrock of gender equality in the Constitution of India lies in Articles 14, 15, and 16. It is said that the Indian judiciary has interpreted these articles to their practical limits and thereby enlarged the scope of gender equality. In this respect, it can be said that the expansion of the ideas of arbitrariness and reasonable classification has hugely contributed to eliminating gender-based barriers. Further, including gender-specific rights under Article 21 of the Constitution of India is considered an important milestone in ensuring gender justice. Article 21 of the Constitution guarantees the right to life and personal liberty to all. Although gender equality is not mentioned explicitly in Article 21, the Supreme Court of India has interpreted it widely in many historic rulings, including various rights that promote and develop gender equality.

The Hon'ble Bombay High Court in *Arati Durgaram Gavandi v. Managing Director, Tata Metaliks Limited* ([1997](#)), emphasised that, "The right to gender



equality is intrinsic to the right to life under Article 21 of the Constitution. The right to life comprehends the right to live with dignity. An affront to or the invasion of gender is destructive of the right of every woman to live with dignity. Article 15 of the Constitution, which contains a prohibition inter alia against discrimination by the State on the grounds of sex, is an emanation of that right. The provisions of the Constitution recognise gender equality as a fundamental right. Gender equality in all its dimensions is a basic human right recognised by and embodied in the provisions of the Constitution. The broad sweep of the human right to gender equality traverses every facet of the position of a woman in society. The right comprehends the preservation of the dignity of women. At a basic level, gender equality postulates the protection of women against all those practices that invade the dignity of being.” ([MANU/2008](#))

The Indian Constitution’s protection of the right to practise one’s religion may potentially conflict with the principles of gender equity. Sometimes, patriarchal standards that support gender inequality are justified in the name of religious freedom. However, as the court has made clear in many decisions, religious activity is only protected under Article 25 if it meets the criteria of an essential religious practice, which is a practice that is necessary for the religion to exist. Religious practices that violate gender equality are typically not seen as fundamental. Therefore, it is doubtful that gender justice will be seriously threatened by the right to religion guaranteed by Article 25. Moreover, in the case of *Aaqil Jamil and Others v. State of U.P. and Another* (2017), it was observed that “Fundamental rights (Articles 14, 15, 16, 21 and 22) have got overriding effect over Articles 25 and 26 and Personal Law; either it is Hindu or Muslim or any religion. No person can be persecuted, tortured, humiliated or dishonoured in the garb of Personal Law. Nothing can be done which may affect dignity and quality of life of man or woman under the garb of Personal Law”.

Further, the Court continued, “Concept of equality enshrined in Article 14, the concept of non-discrimination on the ground of sex etc. enshrined in Article 15(2) and the concept of the right to life and personal liberty which includes the right to live with dignity as enshrined in Article 21 read with the preamble of the Constitution, are the foundation and the basic features of the Constitution. Breach of any of these by any law or practice shall render such law or practice unconstitutional. Whether it is the collective rights of citizens or individual rights, both are protected by the philosophy and ethos of the Constitution. In the garb of Personal Law, citizens cannot be deprived of constitutional protection. The equality clause is not merely about equality before the law. However, it embodies the concept of real and substantive equality, which strikes at the inequalities arising due to vast social and economic differentiation”.



In the case of the Voluntary Health Association of Punjab (2016), the Apex Court highlighted the equal status of both men and women in a marital relationship. The Court observed that “woman has to be regarded as an equal partner in a man's life. A society that does not respect its women cannot be treated to be civilised. The civilisation of a country is known for how it respects its women. It is the requisite of the present day that people are made aware that treating women with respect and dignity is obligatory so that humanism in its conceptual essentiality remains alive”.

Several decisions highlighted the importance of the right to privacy to ensure women's dignity and worth. In the case of Neera Mathur v. LIC of India (1992), it was held that the questioning of a woman by any employer, or prospective employer, as regards her matters, was held to be not only embarrassing and humiliating but also against her modesty, dignity and self-respect (Chauhan, 2013). Another significant decision in this regard is State of Maharashtra v. Madhukar Narain (1991), wherein it was held that the ‘right to privacy’ is available even to a woman of easy virtue and no one can invade her privacy (Jayakumar, 2014). Further, in Surjit Singh Thind v. Kanwaljit Kaur (2003), the Punjab and Haryana High Court has held that allowing medical examination of a woman for her virginity amounts to a violation of her right to privacy and personal liberty enshrined under Article 21 of the Constitution. (Pillai, 2014)

## ii) Protective Discrimination:

Protective discrimination means the policy of granting special privileges to the downtrodden and the underprivileged sections of society in order to bring them at par with the mainstream society. The objective is to remove the inequality caused by such sections of society since ancient times. It is to be noted that due to their inherent vulnerability, women need to be given special favourable treatment to make them equal to men in society. The need for protective discrimination was highlighted in the case of Ranghubans Saudagor Singh v. State (1972). The Court opined that the Constitution of India forbids any discrimination on the grounds of sex alone. However, discrimination is permissible on the grounds of sex when there are a variety of other factors involved, and there is a reasonable nexus with the object of classification.

In the case of T. Sudhakar Reddyv. Government of Andhra Pradesh (1994), the petitioner challenged the validity of Section 31 (1) (a) of the Andhra Pradesh Co-operative Societies Act, 1964 and Rule 22 C, 22 A (3) (a) of the Andhra Pradesh

Co-operative Societies Rules 1964. These provisions provided for the nomination of two women members by the Registrar to the Managing Committee of the Co-operative Societies, with a right to vote and to take part in the committee meetings. The Andhra Pradesh High Court quashed the petition. It upheld these provisions in the interest of women's participation in cooperative societies and opined that it would benefit the country's economic development.

### iii) Reforms in Personal Laws

The protection of gender justice in India is intricately tied to reforms in personal laws, which often dictate the terms of marriage, divorce, inheritance, and custody based on religious customs. Historically, many of these laws have perpetuated gender inequality by embedding discriminatory patriarchal attitudes against women. Nowadays, the country's legislative body has taken various bold reforms in the post-independence period to eradicate all such practices that support gender discrimination. It is because the judiciary has always been responsive to these reforms and has invalidated legislation that sustains gender inequality. One case in point that showcases the judiciary's role in reforming personal law is *Narasu Appa Mali v. State of Bombay* (1952); this was the case in which it challenged the constitutionality of the Bombay Prevention of Hindu Bigamous Marriages Act, 1946, on the grounds of violating Articles 14 and 15 due to its application being restrictive to Hindus alone while excluding Muslims. This held that there was indeed the power of legislation on some issues by the state, and it did not hold exclusion unconstitutional to point towards the complicated issues surrounding personal laws and their effects on the rights of genders.

Bombay High Court, in *Pragati Varghese v. Cyril George Varghese* (2020), declared invalid the requirement made under section 10 of the Indian Divorce Act, 1926 that a Christian wife must show adultery along with cruelty or desertion to obtain a divorce. The court recognised this requirement as violative of a woman's fundamental right to live under Article 21 of the Constitution with dignity. This judgment was an important step forward in the deconstruction of patriarchal structures that exist within personal laws, which limit women's rights. Another landmark judgment in the case of *Ms. Gita Hariharan & Another v. Reserve Bank of India* (1999) was wherein the Supreme Court interpreted Section 6(a) of the Hindu Minority and Guardianship Act, 1956. This section had put the right to be a "natural guardian" of a minor with the father alone and gave such right to the mother only when the father was absent. The court interpreted

this provision to reinforce the principle of equality, allowing mothers to assume the role of natural guardians if fathers were unable, unwilling, or absent.

The judgment of the Supreme Court in *Mohd. Ahmed Khan v. Shah Bano Begum* (1985) reaffirmed gender justice because it dealt with the problem of post-divorce maintenance awarded to Muslim women. The court held that Muslim personal law, which provided merely for iddat period maintenance, an approximate three months, could not prevail over the secular Criminal Procedure Code, which granted more expansive rights to maintenance. This verdict also strongly reiterated the state's duty of ensuring women's rights under every religion. However, these brilliant judicial decisions have brought forth hardly any desirable consequence, and most things continue to be dealt with as before. Article 44 of the Indian Constitution demands the state to enact a Uniform Civil Code so that varied status for women and men could be dispelled under different religions. Furthermore, nothing ever materialised in parliament on this UCC; thus, gender discrimination persists. The Supreme Court, in *Sarala Mudgal v. Union of India* (1995), highlighted the urgent need for a UCC to protect women from legal inequalities flowing from personal laws, especially in matters related to polygamy.

*Mamta Dinesh Vakil v. Bansi S. Wadhwa* (2006) deals with provisions of the Hindu Succession Act, 1956, where paternal rather than maternal relatives granted parity to intestine succession. The high court held this provision discriminative and violative of Article 14 of the Constitution, making a case for women being entitled to equal inheritance rights as against men. It ruled that women must be treated equally as single participants in today's society, whose cases of joint participation are increasing, and must have equal rights over inheritance. In this case, the Supreme Court vindicated the property rights of Christian women, thereby ending the discriminatory practices since the Travancore Syrian Christian Succession Act of 1916. Affirming the principles of gender equality in property rights, the court significantly advanced the cause of gender justice. (Himangshu Ranjan Nath, 2015)

More recently, in *Vineeta Sharma v. Rakesh Sharma* (2020), the Supreme Court reiterated that daughters under the Hindu Succession (Amendment) Act, 2005, have a coparcenary right with equal rights to sons irrespective of the father's position at the time of the amendment. It declared instant triple talaq unconstitutional, reaffirming the fundamental rights of Muslim women and dismantling arbitrary practices that undermine their dignity. It is also another indication of how the judiciary is trying to come up with solutions for issues such as child marriage, as seen in *M. Mohamed Abbas v. The Chief Secretary* (2015),

held that the Supreme Court confirmed that the Prohibition of Child Marriage Act, 2006 applies to all persons including Muslim girls and accordingly protects such women from discriminatory practices. Therefore, the constant reform in personal laws in India evidences the critical interaction between legislative action and judicial activism to further the course of gender justice. While considerable progress has been registered, the demand for a Uniform Civil Code and more significant implementation of prevalent rules must be continued to realise wholesome gender equality in all spheres of living. The assertive role of the judiciary has also helped instigate contestations against pathologically patriarchal moorings. It has paved the way for a more equal society where women's rights are respected and upheld. ([Kori, 2024](#))

#### **iv) Promoting Gender Equality in Employment:**

The Indian Supreme Court has played a key role in forwarding gender equality at the workplace with numerous historical judgments on various aspects of workplace-related discrimination and women's rights. Describing these judgments: With one such case: *Randhir Singh v. Union of India & Ors.* ([1982](#)), the Indian Supreme Court upheld the principle of "equal pay for equal work," ruling that gender-based pay discrimination violated Articles 14 and 16 of the Indian Constitution, which guarantees equal remuneration for equivalent service. Further, the Supreme Court upheld the idea of "equal pay for equal work," stating that it is a constitutional objective in the *State of U.P. & Ors. v. J.P. Chaurasia & Ors.* ([1981](#)). The Court highlighted that constitutional remedies might be utilised to attain this concept, which applies to both genders equally.

Under its activist role, the Supreme Court of India decided in the historic case of *Vishaka and Others v. State of Rajasthan and Others* ([1997](#)), that sexual harassment against working women violates their equality in employment. The Court observed, "Each such incident violates the fundamental rights of 'Gender Equality' and the 'Right of Life and Liberty'. It violates the rights under Articles 14, 15 and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1)(g) 'to practice any profession or to carry out any occupation, trade or business'. Such violations, therefore, attract the remedy under Article 32 for the enforcement of these fundamental rights of women". It was further reiterated in *Apparel Export Promotion Council v. A.K. Chopra* ([1999](#)), the Court observed that "there is no gainsaying that each incident of sexual harassment, at the place of work, results in violation of the Fundamental Right to Gender Equality and

the Right to Life and Liberty the two most precious Fundamental Rights guaranteed by the Constitution of India”.

In *Municipal Corporation of Delhi v. Female Workers (Muster Roll) and Anr* (2000), an additional significant ruling was made to safeguard working women. The court discussed the application of the Maternity Benefit Act of 1961 to female contract casual employees. By extending the Maternity Benefit Act of 1961 provisions, the Court determined that women who work casually, on a muster roll basis, or for daily pay are also entitled to maternity leave, in addition to those who work regular jobs.

#### **v) Advancing Right to Marriage and Reproductive Rights:**

The Indian judiciary addressed marriage and reproductive rights issues and has rendered several landmark judgments in advancing gender justice. In *Lata Singh v. Union of India* (2006), the Apex Court stated that a girl had a fundamental right to choose her marriage partner. Similarly, this is followed in *Shakti Vahini v. Union of India* (2018), wherein it has been held that choosing a life partner manifests fundamental rights guaranteed under Articles 19 and 21 of the Constitution of India. Further, the same is reiterated and followed in *Shafin Jahan v. K.M. Asokan* (2018). In *Suchita Srivastava & Anr v. Chandigarh Administration* (2009), the Hon'ble Supreme Court held that the "right to make reproductive choices is a dimension of 'personal liberty' as provided under Article 21 of the Constitution of India.". Further, in *Devika Biswas vs Union of India* (2016), the Court observed that "the freedom to exercise these reproductive rights would include the right to choose sterilisation based on informed consent and free from any form of coercion".

In *P. Geetha v. Kerala Livestock Development Board Ltd* (2015), the Kerala High Court addressed the distinctions made by the State Government between three sorts of mothers: natural, biological, and surrogate. The Court held that the State cannot lawfully draw such differences. It stressed that all mothers should receive the same treatment, irrespective of how they became parents. This view was followed in several other cases, including *Dev Shree B Andhey v. Chhattisgarh State Power Holding Co. Ltd.* (2017), *Sushma Devi v. State of Himachal Pradesh* (2021), and *Chanda Keswani v. State of Rajasthan* (2023), etc. These judgements highlighted that motherhood through artificial human reproductive methods did not prevent women from obtaining rights and benefits.

In *Smt. Vimla Srivastava vs State of U.P. And Another* (2016), the Court discussed the question of whether the marital status of the daughter should be considered as a factor to define the term 'family' for compassionate appointment based on Dying-in-Harness Rules. The Court observed that such considerations constitute a breach of Articles 14 and 15. Further, in *Isha Tyagi vs. State of U.P.* (2014), the Court observed that "Marriage does not have and should not have a proximate nexus with identity. The identity of a woman as a woman continues to subsist even after and notwithstanding her marital relationship. The time has, therefore, come for the Court to affirmatively emphasise that it is not open to the State if it has to act in conformity with the fundamental principle of equality, which is embodied in Articles 14 and 15 of the Constitution, to discriminate against married daughters by depriving them of the benefit of a horizontal reservation, which is made available to a son irrespective of his marital status".

In *Savita Samvedi v. Union of India* (1996), the Supreme Court observed that the marital status of a daughter should not be grounds for discrimination. These decisions reaffirmed the fundamental idea that a woman's marital status should not result in her receiving less favourable treatment or in receiving benefits. Gender equality in India has advanced significantly due to the various decisions and observations made by the judiciary in that nation. These serve as a driving force behind enacting new laws (*Mohd. Ahmad Khan, 1985*) case led to the enactment of The Muslim Women (Protection of Rights on Divorce) Act, 1986; *Vishaka & Ors. (1997)* led to the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. The *Shayara Bano v. Union of India (2017)* led to the adoption of The Muslim Women (*Protection of Rights on Marriage Act, 2019*) and many legislative modifications (*Suchita Srivastava (2019)* led to the amendment in Medical Termination of Pregnancy Act, 1971; *P. B. Vijay Kumar (1985)* influenced in creating provisions in favour women workers; *Tukaram (1979)* led to amendments in IPC with rape.) However, in some instances, for several reasons, including the public interest, customs, and primacy of personal laws, the judiciary has taken a narrow approach towards the issues of gender justice. For example, several of the Chotanagpur Tenancy Act of 1908 clauses were contested as unfair to women in the *Madhu Kishwar v. State of Bihar (1996)* case. The court, in this case, held that "under the circumstances, it is not desirable to declare the customs of tribal inhabitants as offending Articles 14, 15 and 21 of the Constitution, and each case must be examined when full facts are placed before the court," keeping the door open for such a challenge even though it declined to declare tribal customs as mass violations of fundamental rights.

While dealing with the legality of provisions relating to restitution of conjugal rights, the Court in *Harvinder Kaur vs Harmander Singh Choudhry* (1984) observed that “introduction of constitutional law in the home is most inappropriate. It is like introducing a bull in a China shop. It will prove to be a ruthless destroyer of the marriage institution, and all it stands for. In the privacy of the home and the married life, neither Article 21 nor Article 14 have anyplace”. One of the judgments that reveal the judiciary's limitation to interfere in personal laws is the decision in *Ahmadabad Women Action Group & Ors. v. Union of India* (1997). In this case, different organisations had challenged through various Petitions many gender discriminatory aspects of personal laws - both codified and uncodified across religions. The Court, relying on the earlier decisions (*Maharshi Avdhesh v. Union of India*, 1994; *Reynold Rajamani v. Union of India* (1982); *Pannalal Pitti v. State of A.P.* (1996); etc.) held that the matters pertained to legislative action and the Court could not interfere. It is to be noted that no reasons were given as to why personal laws could not be susceptible to Part III of the Constitution. (Pillai, 2012)

In *Lily Thomas v. Union of India* (2000), the Supreme Court addressed the validity of a second marriage contracted by a Hindu husband after converting to Islam. The Court clarified that it had not issued directives for codifying a Uniform Civil Code (UCC), indicating that previous remarks by judges from different benches were context-specific and should not be construed as a formal mandate. This clarification suggests a retreat from the earlier judicial activism concerning the UCC, reflecting the complexities of navigating personal laws in a nation marked by diverse religions and cultures. As a result, ensuring gender justice by promoting women's equal status and protection against discrimination remains a formidable challenge for the legislature and judiciary in India.

In the case of *Nanak Chand Sejwani v. State of Rajasthan* (2018), the Court emphasised that in an era focused on gender justice, women who seek to assert their rights under the law are justified. If a woman raises her voice for justice, it should not be construed as an act of personal vengeance. Such reasoning perpetuates a patriarchal mindset, suggesting that women should be seen but not heard and that they must endure the injustices inflicted upon them by their husbands and their families. This antiquated perspective has no place in contemporary society. Courts must recognise and dismiss such arguments, reaffirming the right of women to seek justice without being subjected to societal stigma or retribution.

Further, while dealing with the legality of provisions relating to restitution of conjugal rights, the Court in *Harvinder Kaur v. Harmander Singh Choudhry*



(1984) observed that “introduction of constitutional law in the home is most inappropriate. It is like introducing a bull in a China shop. It will prove to be a ruthless destroyer of the marriage institution, and all it stands for. In the privacy of the home and the married life, neither Article 21 nor Article 14 have anyplace”.

Judicial activism has been essential for the gender justice system, primarily through crucial decisions relating to sexual harassment, equal pay, and reproductive rights. However, the judiciary may remain fettered by the complex web of personal laws and religious customs. Their actions would inadvertently work against delivering gender justice across all walks of life. Perhaps a sense of cohesion could be required whereby changing social values would make people slowly change legal principles to suit new values better. The judiciary not only needs to carry on its dynamic role in gender justice but also address the limitations posed by personal laws. A move towards codifying a Uniform Civil Code might find harmony in conflicting religious and gender equality provisions.

#### **D. CONCLUSIONS**

It may be noted here that the Indian judiciary, after playing an active role in recognising constitutional provisions and expanding protections for women and marginalised genders, has provided significant momentum to gender justice in India. Some key decisions included defining sexual harassment, determining reproductive rights, and providing equal pay to genders, thus constituting a bedrock for a better justice system. Nevertheless, all these developments notwithstanding, the situation remains way above what societal virtues and religion or religious ethos would call for: even full gender equality. Limitations of the judiciary toward personal laws and the slow pace of legislative reforms further underscore the need for a more cohesive and comprehensive approach. The recommendations that can be considered will be a codification of a Uniform Civil Code so that gender justice can cut across the barriers of religion and culture, strengthening the enforcing capacities of laws that exist in the books, creating awareness as well as increasing access to legal redress for women in the rural and weak sections of the society to close socio-economic gaps and collaboration between judges, civil society, and governments working on the causes of gender inequality to drive the achievement of factual, substantive, and substantive gender justice in India.

## REFERENCES:

### Book Chapter

Pillai, Aneesh V. (2014). Ensuring Gender Justice through Equality of Status and Protective Discrimination: The Legislative and Judicial Role in India. In Dr Uttam Kumar Panda, *Gender Issues and Challenges in Twenty-First Century*, Satyam Law International.

### Journal article

Krishnan, Jayanth K, et al. (2013). Grappling at the Grassroots: Access to Justice in India's Lower Tier. *Harvard Human Rights Journal*, vol. 27. 13-39 Accessed 24 Oct. 2024.

Nath, Himangshu Ranjan (2015). PIL Strategy in Advancing the Rights of Have-Nots in India: Issues and Challenges. *Journal of Juridical and Social Science* Vol 5. no. 2.

Sood, Avani Mehta (2008). "Gender Justice through Public Interest Litigation: Case Studies from India." *Vanderbilt Journal of Transnational Law*, vol. 41, no. 3, 833–906. Accessed 24 Oct. 2024.

### Journal article with DOI

Bhagyamma Gopala (2023). "A Constitutional Imperative for Gender Equality and Dignity: A Discourse on Menstrual Leave in India." *Social Science Research Network*, vol. 2, no. 3. [papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4649172](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4649172), <https://doi.org/10.2139/ssrn.4649172>.

Bhatnagar, Suryaprabha (2024). Patriarchy and the Indian Society. *SSRN Electronic Journal* [papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4806415](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4806415), <https://doi.org/10.2139/ssrn.4806415>.

Das, Deb Zyoti, & Rohilla Bhanu Singh (2020). "Gender Neutral Legislative Drafting in India." *Ssrn.com*. [papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3662147](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3662147). Accessed 25 Oct. 2024.

Kori, Naveen kumar (2024). Strategies for Enhancing Women's Political Participation: Insights from Uttarakhand, India. 1 Jan. 2024, <https://doi.org/10.2139/ssrn.4851944>. Accessed 24 Oct. 2024.

- Marc, Galanter, & Krishnan, Jayanth (2000). Personal Law and Human Rights in India and Israel. *Israel Law Review*, vol. 34, no. 1. 101–133, <https://doi.org/10.1017/s0021223700011894>. Accessed 10 Jan. 2021.
- Pandey, Vartika, and Shekhar, Dr Shashank (2024). Gender Neutrality of Indian Laws - a Myth or Reality? *FIMT Law Journal*, vol. 5. no. 1. <https://doi.org/10.53555/kuvey.v30i5.3419>.
- Patel, Vibhuti Amar (2014). Gender Equality and Human Rights. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3182315>.
- Singh, Divya (2021). “Feminist Justice by Way of Women’s Rights to Property: An Indian Approach after Independence.” *SSRN Electronic Journal*, 2021, <https://doi.org/10.2139/ssrn.3819134>. Accessed 19 May 2021.
- Singh, Priyanka (2024). Evolution of Indian Jurisprudence: From a Caste and Gender Perspective. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.4684789>
- Sriraam, Dr. Sangeetha (2020). Uniform Civil Code: An Instrument for Gender Justice. *SSRN Electronic Journal*, <https://doi.org/10.2139/ssrn.3590351>. Accessed 30 Aug. 2020.

## **Book Review**

- Karwa, Surbhi (2023). Review of *Founding Mothers of the Indian Republic: Gender Politics of the Framing of the Constitution*, by Achyut Chetan. [papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4414063](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4414063). Accessed 24 Oct. 2024.

## **Website Document**

- Justice, Hon'ble, & B Chauhan (2013). Making Legal Aid a Justice for Women from Investigation to Decision a Reality through Sensitized Judiciary. <https://upslsa.up.nic.in/speech2.pdf>
- Jayakumar, Y. F. (2014). Liberty and Reproductive Healthcare Justice: Indian Perspective. Retrieved from <http://www.jus.uio.no/english/research/news-and-events/events/conferences/2014/wcclcmdc/wccl/papers/ws7/w7-Jayakumar.pdf>.

### **Conference Papers**

Pillai, Aneesh V. (2012). Dichotomy between Constitutional Morality and Public Morality: Judicial Stand in India. Paper presented in the Two-Day National Seminar on Judiciary, Ethics and Justice Delivery in India Organised by National Law University, Odisha.

### **Judicial Decisions**

Aaqil Jamil and Others v. State of U.P. and Another, 2017 SCC On Line All 1325

Ahmadabad Women Action Group & Ors. v. Union of India, AIR 2000 SC 1650

Apparel Export Promotion Council v. A.K. Chopra, 1999 (1) SCC 759

Arati Durgaram Gavandi v. Managing Director, Tata Metaliks Limited (1997) 6 SCC 24

Chanda Keswani v. State of Rajasthan, 2023 SCC OnLine Raj 3274.

Dev Shree B Andhey v. Chhattisgarh State Power Holding Co. Ltd. 2017 SCC

Devika Biswas vs Union of India, (2016) 10 SCC 726

Harvinder Kaur v. Harmander Singh Choudhry, AIR1984 Delhi 66

Isha Tyagi vs. State of U.P. 2014 (9) ADJ 331

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

Lata Singh v. Union of India, 2006 (5) SCC 475

Lily Thomas v. Union of India, AIR 2000 SC 1650

M. Mohamed Abbas v. The Chief Secretary, AIR 2015 Mad 237

Madhu Kishwar v. State of Bihar, (1996) 5 SCC 125

Maharshi Avdshesh v. Union of India, 1994 SCC, Supl. (1) 713

Mamta Dinesh Vakil v. Bansi S. Wadhwa, (2006) 4 SCC 385.

Mohd. Ahmad Khan v. Shah Bano Begum, AIR 1985 SC 945.

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

Ms. Gita Hariharan & Another v. Reserve Bank of India, (1999) 2 SCC 228

Municipal Corporation of Delhi v. Female Workers (Muster Roll) and Anr. AIR 2000 SC 1274

Nanak Chand Sejwani v. State of Rajasthan, AIR 2018 SC 1933  
Narasu Appa Mali v. State of Bombay, AIR 1952 Bombay 84  
Navtej Singh Johar v. Union of India (2018) 10 SCC 1  
Neera Mathur v. LIC of India, AIR 1992 SC 392  
P. B. Vijay Kumar vs. Government of Andhra Pradesh, AIR 1995 SC 1648.  
P. Geetha v. Kerala Livestock Development Board Ltd. 2015 SCC Ker 71.  
Pannalal Pitti v. State of A.P. (1996) 2 SCC 498  
Pragati Varghese v. Cyril George Varghese, (2020) 2 KLT 507  
Randhir Singh v. Union of India & Ors., [1982] 1 SCC 618  
Ranghubans Saudagor Singh v. State, AIR 1972 P & H 117.  
Reynold Rajamani v. Union of India (1982) 2 SCC 474  
Sarala Mudgal v. Union of India, AIR 1995 SC 1531  
Savita Samvedi v. Union of India, (1996) 2 SCC 380  
Shafin Jahan v. K.M. Asokan, AIR 2018 SC 1933  
Shakti Vahini v. Union of India, AIR 2018 SC 1601  
Shayara Bano v. Union of India, (2017) 9 SCC 1.  
Smt. Vimla Srivastava vs State of U.P. And Another, 2016(1) ADJ 21 (DB)  
State of Maharashtra v. Madhukar Narain, AIR 1991 SC 207  
State of U.P. & Ors. v. J.P. Chaurasia & Ors., [1989] 1 SCC 121.  
Suchita Srivastava v. Chandigarh Administration, AIR 2010 SC 235.  
Surjit Singh Thind v. Kanwaljit Kaur, AIR 2003 P&H 353.  
Sushma Devi v. State of Himachal Pradesh, 2021 SCC OnLine HP 416  
T. Sudhakar Reddyv. Government of Andhra Pradesh, AIR 1994 SC 544.  
Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1.  
Vishaka & Ors. v State of Rajasthan & Ors., (1997) 6 SCC 241.  
Vishaka v. State of Rajasthan, AIR 1997 SC 3011.  
Voluntary Health Association of Punjab, AIR 2016 SC 5122.