

Gender and the Constitution: A Critical Analysis of the Transformative Jurisprudence in India

*¹ Dr. Rajeshri Varhadi and ²MESV Krupakar

¹ Professor & Head, Department of Law, University of Mumbai, Maharashtra, India.

² Research Scholar, Department of Law, University of Mumbai, Maharashtra, India.

Article Info.

E-ISSN: 2583-6528

Impact Factor (SJIF): 6.876

Peer Reviewed Journal

Available online:

www.alladvancejournal.com

Received: 05/ May/2025

Accepted: 01/June/2025

Abstract

This research paper critically analyses the relationship between gender and the Indian Constitution, focusing on how transformative jurisprudence has promoted gender justice. It begins by outlining the importance of gender justice in a constitutional democracy and India's foundational legal commitment to challenging patriarchal norms. It then examines five major areas of constitutional jurisprudence. These include: the doctrine of substantive equality and the judiciary's role in addressing gender discrimination; judicial responses to gender-based violence and harassment; recognition of reproductive and sexual autonomy through the lens of bodily integrity and privacy; the expansion of rights for LGBT+ individuals and recognition of diverse gender identities; and the tensions between gender justice and religious or cultural practices, particularly where constitutional morality is invoked. Through a review of landmark judgments and doctrinal developments, the paper argues that Indian courts have, at times, embraced a transformative and inclusive vision of constitutional rights. Nonetheless, it highlights the limitations and inconsistencies that hinder the full realization of gender justice. The study concludes with a call for a more coherent and sustained judicial commitment to constitutional transformation in gender-related matters.

*Corresponding Author

Dr. Rajeshri Varhadi

Professor & Head, Department of Law,
University of Mumbai, Maharashtra,
India.

Keywords: Gender justice, gender discrimination, sexual autonomy, reproductive rights, Indian constitution, and transformative jurisprudence.

1. Introduction

1.1 Understanding Gender Justice and Its Evolving Meaning

Gender justice is a foundational principle in the quest for a just and equitable society. It entails the eradication of gender-based discrimination and the establishment of social, economic, and political structures that enable all individuals, irrespective of gender, to live with dignity and freedom. Traditionally, the discourse on gender justice was confined to addressing the disparities between men and women, rooted in a binary understanding of gender. However, with the evolution of feminist thought, queer theory, and international human rights norms, the concept of gender justice has expanded to encompass a broader spectrum of gender identities. This expanded vision includes the rights and dignities of transgender, non-binary, intersex, and other gender-diverse individuals, recognising that gender is a complex social construct rather than a biological determinism.

1.2 Gender at the Time of Indian Independence

At the time of India's independence, the condition of women was marked by widespread legal and social discrimination. Women were denied equal rights in matters of education, inheritance, employment, and participation in public life. Patriarchal customs and personal laws reinforced gender hierarchies, and the notion of gender beyond the binary was virtually absent from public discourse. The early feminist movement in India, while important, focused largely on women's rights, often sidelining the experiences of those outside the cisgender framework.

1.3 Constitutional Commitment to Gender Justice

The Indian Constitution, adopted in 1950, was a transformative document that aimed to undo entrenched social hierarchies, including those based on gender. Through key provisions such as Articles 14 (equality before law), 15 (non-discrimination on grounds of sex), and 21 (protection of life and personal liberty), the Constitution articulated a vision of

substantive equality. Article 39 of the Directive Principles further mandates that the State ensure equal pay for equal work and equitable conditions of employment for men and women. Over the decades, the judiciary has interpreted these provisions to not merely protect formal equality, but to actively pursue substantive gender justice.

This constitutional promise of transformation has been central to India's evolving jurisprudence on gender. While early cases often reflected conservative readings, landmark decisions in recent years-ranging from *Vishaka* to *Navtej Johar*-have redefined the legal landscape by embracing a more inclusive and intersectional understanding of gender.

1.4 Methodology

This study adopts a doctrinal research methodology, relying primarily on the analysis of constitutional provisions, statutes, judicial decisions, and academic literature. The research critically examines how Indian courts have interpreted and expanded the meaning of gender justice in five key thematic areas: gender equality and discrimination, protection from violence and harassment, reproductive and sexual autonomy, LGBT and gender identity rights, and religion or cultural practices. The study draws upon landmark judgments to trace the evolution of jurisprudence and assess the transformative potential of the Indian judiciary. The focus remains firmly grounded in the Indian constitutional and judicial context, aiming to assess both the achievements and limitations in realizing the constitutional vision of gender justice.

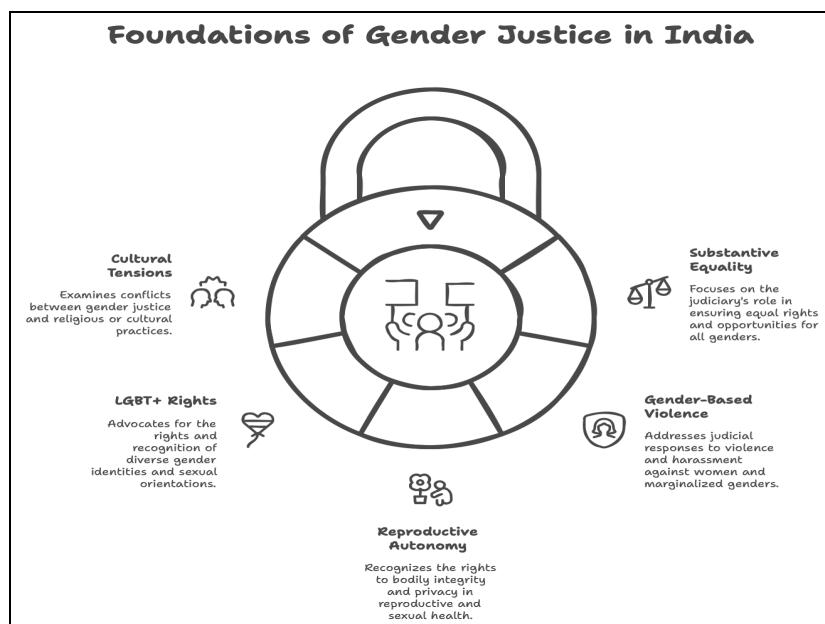
1.5 Significance of the Study

The significance of this study lies in its comprehensive and

critical engagement with the evolution of gender justice within the framework of Indian constitutional jurisprudence. While there is an expanding body of literature on gender rights, much of it remains segmented, either focusing narrowly on women's rights or on specific issues such as sexual harassment or LGBT+ inclusion. This research seeks to bridge those silos by providing an integrated analysis of how the Indian judiciary has interpreted and advanced the constitutional promise of gender justice across a wide range of intersecting themes.

The study is especially relevant in the current socio-legal climate, where the boundaries of gender identity and expression are being constantly redefined, and where legal institutions are increasingly called upon to adjudicate complex questions that involve individual autonomy, societal norms, and constitutional morality. The study traces jurisprudential developments across themes such as discrimination, violence, reproductive autonomy, queer rights, and the interplay with religious and cultural practices, and offers a holistic understanding of both the transformative potential and the inherent limitations of constitutional adjudication in advancing gender justice.

Furthermore, the study contributes to scholarly discourse by emphasizing the shift from a binary and formal conception of equality to a more substantive, inclusive, and intersectional approach. It also adds value to policy and legal reform discussions by identifying jurisprudential gaps and inconsistencies that need to be addressed to ensure a more coherent and equitable legal framework.



2. Gender Equality and Discrimination

Gender equality, as a normative constitutional and ethical principle, is deeply rooted in the ideals of justice, dignity, and individual freedom. These values not only underpin democratic governance but also form the moral bedrock of modern human rights discourse. The historical evolution of gender equality as a legal and philosophical ideal can be traced back to the emergence of classical liberal thought, particularly in the works of thinkers such as John Stuart Mill and Mary Wollstonecraft.

In his seminal essay *The Subjection of Women*, John Stuart Mill argued that gender-based distinctions in rights and

opportunities were incompatible with rationality and liberty ^[1]. Similarly, Mary Wollstonecraft, in *A Vindication of the Rights of Woman*, advocated for women's education and political inclusion on the basis of reason, equality, and moral independence ^[2]. These early liberal theorists emphasized formal equality, i.e., the legal recognition of individuals as equal before the law, regardless of sex. However, feminist legal theory, developed extensively in the twentieth century, critiqued this liberal framework as inadequate for addressing the lived realities of women and other marginalized gender identities. Formal equality, which insists on treating likes alike, fails to account for systemic

inequalities, historical subordination, and material disadvantage. For example, providing equal voting rights or access to education without dismantling patriarchal social norms, economic exclusion, or gender-based violence does little to achieve true equality.

In response, scholars and courts began to embrace the concept of substantive equality. This conception acknowledges that individuals do not stand on an equal footing due to structural, institutional, and cultural barriers that disproportionately affect women and non-binary individuals. Substantive equality requires an affirmative duty on the State and society to rectify these disparities—not merely by eliminating discriminatory laws, but by actively transforming the conditions that sustain inequality [3]. In this view, achieving gender justice is not simply about removing overt legal distinctions between men and women, but about dismantling systemic hierarchies—including patriarchal norms, heteronormativity, and gendered economic structures—that perpetuate social subordination. It calls for a contextual and power-conscious approach to law and policy, one that considers intersections of gender with caste, class, religion, sexuality, and disability. Thus, the shift from formal to substantive equality marks a profound transformative constitutional turn, compelling courts, legislatures, and civil society to look beyond the surface of legal neutrality and engage with the deeper injustices embedded within social structures.

Constitutional jurisprudence in India has gradually evolved from a formalist view of equality towards a more substantive and intersectional framework. Articles 14, 15, and 16 of the Indian Constitution collectively guarantee equality before the law, prohibit discrimination on grounds including sex, and secure equal opportunity in public employment. Article 15(3) further authorizes special provisions for women and children, reflecting an affirmative commitment to remedy historical disadvantages. The judiciary's task, therefore, has been to reconcile these principles with the socio-legal realities of patriarchal oppression [4].

Despite constitutional guarantees, Indian society remains deeply gender-stratified. Discriminatory practices persist in employment, education, property rights, and public representation. Structural barriers—such as unequal access to resources, gendered division of labour, and entrenched stereotypes—continue to limit the participation and advancement of women and gender minorities. Furthermore, institutions often reflect and reinforce these inequalities through laws, policies, and workplace norms that are ostensibly neutral but have disparate gendered impacts. Against this backdrop, judicial intervention has played a critical role in identifying and challenging gender discrimination.

In *Air India v. Nargesh Meerza* [5], the constitutional validity of service regulations governing air hostesses was challenged. The regulations provided that an air hostess would retire upon marriage (after four years of service), reaching the age of 35, or upon first pregnancy—whichever occurred earlier. These conditions did not apply to male flight pursers. The Supreme Court struck down the provision requiring retirement upon pregnancy as "arbitrary" and "abhorrent to the notions of decency and dignity." However, the Court upheld the regulation allowing termination upon marriage within four years of service and maintained the lower retirement age for air hostesses as a matter of "operational requirements" and "public image." While the judgment marked an important recognition of reproductive autonomy, it fell short of

articulating a clear doctrine of substantive equality. The Court employed a limited formalist lens, distinguishing between reasonable classification and invidious discrimination without interrogating the structural assumptions behind the regulations. The ruling was a mixed outcome: it advanced gender justice in one respect but reinforced stereotypical assumptions in another. It exposed the judiciary's early reluctance to challenge the institutional logic of "protectionism" and aesthetic expectations placed on women. The case of *Anuj Garg v. Hotel Association of India* [6] concerned the constitutional validity of Section 30 of the Punjab Excise Act, which prohibited the employment of women in establishments where liquor was served, unless they were employed in supervisory roles. The State justified the prohibition on grounds of protecting women from potential harm in such environments. The Supreme Court struck down the provision as violative of Articles 14, 15, and 21. Importantly, the Court applied a heightened level of scrutiny and emphasized that protective legislation must not be based on gendered stereotypes or reinforce patriarchal norms. The Court held that "in the name of protection, women cannot be subjected to restrictive conditions that perpetuate inequality." The judgment invoked the concept of substantive equality, noting that "autonomy and dignity" must inform the interpretation of constitutional rights. The Court rejected the paternalistic rationale and highlighted the need to empower women rather than limit their agency. *Anuj Garg* is widely regarded as a transformative moment in Indian gender jurisprudence. It moved beyond formal equality to acknowledge the intersection of law, power, and gender stereotypes. The judgment also signalled a shift in judicial sensitivity towards gender-based classifications that claim to be benevolent but have exclusionary consequences.

In the case of *Charu Khurana v. Union of India* [7], Charu Khurana, a qualified make-up artist, was denied membership in the Cine Costume Make-Up Artists and Hair Dressers Association (CCMAA) solely on the ground that the profession of make-up artistry was reserved for men. The association's rules created a formal barrier to women's participation in a skilled, high-profile profession in the film industry. The Supreme Court ruled in favour of Khurana, holding that the association's rules violated Articles 14 and 15. The Court condemned the rigid gender-based demarcation of professional roles and declared that no profession could be denied on the basis of sex. It stressed that the constitutional vision demands the dismantling of such outdated and discriminatory practices. The Court also acknowledged the symbolic and material impact of professional exclusion, recognizing that such discrimination undermines not only economic opportunity but also human dignity and self-worth. This judgment reaffirmed the principle that substantive equality requires dismantling structural and institutional barriers to women's participation in traditionally male-dominated fields. It further extended the logic of anti-discrimination to the informal and private spheres, where professional guilds and associations often perpetuate gender-based exclusions.

3. Protection of Women from Violence and Harassment

Violence and harassment against women remain pervasive and deeply entrenched issues in Indian society. Manifesting in various forms—domestic violence, sexual assault, workplace harassment, acid attacks, and custodial violence—these acts reflect a continuum of structural and systemic gender-based oppression. Despite constitutional promises of equality and

dignity, societal attitudes, institutional failures, and cultural norms have historically rendered women vulnerable to violence, often without adequate redress. The judiciary, however, has emerged as a crucial site for the articulation and enforcement of rights, shaping the state's response to gender-based violence through transformative interpretation of constitutional and legal provisions.

Data from the National Crime Records Bureau (NCRB) indicates an alarming and consistent rise in crimes against women. In 2022, over 445,000 cases were registered under crimes against women, including over 30,000 rape cases under Section 376 of the IPC [8]. Yet these numbers underrepresent the scale of violence due to pervasive underreporting, stigma, and institutional apathy. Social barriers, inadequate police responsiveness, and lack of survivor support systems reinforce a cycle of silence and impunity.

In the seminal case of *Vishaka v. State of Rajasthan*, the Supreme Court laid down the first definitive framework to address sexual harassment at the workplace. Brought in the aftermath of the brutal gang rape of Bhanwari Devi, a social worker attempting to stop child marriage, the Court recognized the vacuum in domestic law and drew from international obligations under CEDAW. The Vishaka Guidelines provided enforceable norms for all workplaces, thereby grounding gender-sensitive protections in constitutional guarantees of Articles 14, 15, and 21. The Court held that sexual harassment violates the fundamental rights of working women under Articles 19(1) (g) and 21. The decision remains a prime example of judicial creativity, bridging the gap between normative constitutional commitments and practical protections [9].

The case of *Lalita Kumari v. Government of Uttar Pradesh* addressed systemic police inaction in cases involving women victims. The petitioner, a minor, was abducted and forcibly married. Her father approached the police, which refused to register an FIR. The Supreme Court held that the police are under a mandatory obligation to register an FIR under Section 154 CrPC upon receiving information about a cognizable offence. The judgment strengthened procedural safeguards for survivors of gender-based violence, reducing the discretionary power of law enforcement and reinforcing the state's duty of prompt and effective redress [10].

The issue of acid attacks has received significant judicial attention due to the irreversible harm inflicted on survivors. In *Laxmi v. Union of India*, the Supreme Court directed the regulation of acid sale, mandated compensation schemes, and emphasized the need for medical care and rehabilitation. Recognizing the violation of Article 21, the Court framed preventive and restorative measures grounded in dignity, bodily autonomy, and the right to life. The judgment has been critical in shifting public discourse from punitive justice to survivor-centric reparative frameworks. It also underscores the importance of judicial activism in filling legislative and executive voids [11].

4. Reproductive and Sexual Autonomy: Theoretical Foundations and Judicial Trajectory

Reproductive and sexual autonomy lies at the core of personal liberty, bodily integrity, and gender equality. It refers to an individual's right to make informed decisions about their reproductive health and sexuality without external interference. Rooted in liberal feminist thought, particularly the works of theorists such as Martha Nussbaum, this autonomy underscores the fundamental principle that women

must have control over their own bodies to achieve full personhood and participate equally in society [12].

Liberal feminism emphasizes individual rights and freedoms, positing that the state and society should not impose coercive or paternalistic limits on women's choices. According to Nussbaum's "capabilities approach," the ability to make reproductive decisions is essential to the development of human capabilities such as bodily health, integrity, and practical reason. Denying women this autonomy perpetuates structural inequality and inhibits their full participation in political and social life. Feminist legal theorists argue that patriarchal social structures have historically viewed women's reproductive roles through the lens of control and regulation. The female body has often been constructed as a vessel for familial, societal, and state interests, rather than as a site of autonomous agency. Cultural norms and legal regimes have frequently restricted access to reproductive healthcare, imposed barriers to contraception and abortion, and moralized female sexuality. These constraints not only limit women's health outcomes but also reinforce gender subordination by denying them the capacity to define the course of their own lives.

In this context, reproductive and sexual autonomy emerges as a critical site for constitutional interpretation and feminist jurisprudence. Judicial recognition of these rights, particularly through doctrines of privacy, dignity, and liberty, serves as an essential tool in dismantling patriarchal legal traditions and ensuring substantive gender justice. Indian constitutional jurisprudence has gradually evolved to recognize the reproductive rights of women within the broader framework of Article 21 of the Constitution-right to life and personal liberty.

The landmark case of *Suchita Srivastava v. Chandigarh Administration* involved a mentally challenged woman who had become pregnant as a result of sexual assault while residing in a government-run welfare institution. The Chandigarh Administration sought judicial permission to terminate her pregnancy under the Medical Termination of Pregnancy (MTP) Act, 1971, without her express consent. The Supreme Court, in a progressive interpretation, underscored that reproductive choices are a dimension of personal liberty under Article 21. It emphasized that a woman's right to privacy, dignity, and bodily integrity includes the freedom to decide whether to bear a child. The Court distinguished between mental illness and mental retardation, concluding that the woman possessed the capacity to make an informed decision and that forced termination would violate her fundamental rights. The judgment was significant in reinforcing the autonomy of women over their bodies, affirming that even vulnerable women have the legal agency to decide the course of their pregnancies [13].

This more recent decision in *X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi* extended the legal recognition of reproductive autonomy to unmarried women. The petitioner, a 25-year-old unmarried woman, sought to terminate her pregnancy at 22 weeks after her partner refused to marry her. Initially, she was denied relief by the Delhi High Court on the ground that the MTP Act, as amended in 2021, did not include unmarried women within its purview for termination between 20–24 weeks. The Supreme Court overturned this decision and held that the 2021 amendment to the MTP Act must be interpreted in an inclusive and purposive manner. It ruled that marital status cannot be a ground to restrict a woman's access to abortion. This judgment marked a transformative shift in

Indian jurisprudence by expanding reproductive rights to all women, irrespective of their marital or social status. It reinforced a vision of reproductive justice rooted in equality, autonomy, and non-discrimination [14].

5. LGBT+ Rights and Gender Identity in Indian Constitutional Jurisprudence

The discourse on LGBT (Lesbian, Gay, Bisexual, and Transgender) rights and gender identity is fundamentally anchored in the principles of human dignity, personal autonomy, equality, and the right to non-discrimination. These values form the normative framework through which legal systems are increasingly called upon to recognize and protect diverse sexual orientations and gender identities. Philosophically, post-structuralist and queer theorists have provided profound critiques of the ways in which traditional gender and sexuality norms are constructed and enforced. Michel Foucault, in his groundbreaking work *The History of Sexuality*, argues that sexuality is not a natural or pre-political phenomenon but is shaped through discursive practices and power relations within society. Foucault's concept of biopower reveals how institutions regulate bodies and identities, creating norms that privilege heterosexuality and cisgender identities while pathologizing difference [15].

Judith Butler extends this critique in *Gender Trouble* (1990), where she introduces the influential theory of gender performativity. According to Butler, gender is not an innate or fixed trait but is constituted through repeated performances shaped by societal expectations. This view disrupts the binary conception of male and female and exposes the coercive force of heteronormativity, which marginalizes individuals who do not conform to traditional gender roles [16].

Queer theory, emerging from these foundational insights, challenges the normalization of heterosexuality as the societal standard. It seeks to create legal, cultural, and intellectual spaces for the recognition of fluid, intersectional identities that do not align with fixed categories of gender or sexuality. This tradition emphasizes the need for a jurisprudence that accommodates diversity and resists the exclusionary tendencies of binary logic. These theoretical foundations are critical to understanding the evolution of judicial reasoning in favor of LGBT+ rights and the legal recognition of non-binary gender identities in many jurisdictions, including India. They advocate for a shift from formal equality to substantive justice, grounded in respect for autonomy and dignity.

Within the liberal tradition, autonomy and individual liberty are fundamental to personhood. Thus, the legal recognition of diverse sexual orientations and gender identities is not merely a matter of non-discrimination but also one of affirming human dignity and freedom under constitutional democracies. In the Indian context, Articles 14, 15, 19, and 21 of the Constitution have been invoked to assert the constitutional legitimacy of LGBT+ identities and to challenge the structural marginalization and criminalization that such individuals have historically endured. In the landmark decision of *NALSA v. Union of India*, the Supreme Court recognized the constitutional rights of transgender persons and directed the state to treat them as the "third gender." The petitioners argued that the denial of legal recognition and equal rights to transgender individuals violated their fundamental rights under Articles 14, 15, 16, 19, and 21. The Court, drawing from international human rights norms and constitutional morality, held that gender identity is an integral part of personal autonomy and dignity. It ruled that the right to self-identify one's gender is protected under Article 21.

Importantly, the Court emphasized that fundamental rights are available to "all persons" and not limited by binary notions of gender. This judgment established the groundwork for gender-inclusive jurisprudence in India and mandated affirmative action for transgender persons [17].

This historic verdict in *Navtej Singh Johar v. Union of India* decriminalized consensual same-sex relations between adults by reading down Section 377 of the Indian Penal Code. The petitioners, comprising activists and individuals from the LGBT+ community, argued that criminalization violated their rights under Articles 14, 15, 19, and 21. The Supreme Court unanimously held that Section 377, to the extent it criminalized consensual sexual conduct between adults, was unconstitutional. The Court affirmed that sexual orientation is an inherent aspect of identity and falls within the protective ambit of dignity and privacy. Justice Chandrachud's concurring opinion emphasized constitutional morality over social morality and argued for an inclusive constitutional culture that recognizes the lived realities of marginalized groups [18].

Though primarily concerned with the right to privacy, the nine-judge bench decision in *K.S. Puttaswamy v. Union of India* laid the jurisprudential foundation for subsequent LGBT+ rights cases. The Court unanimously held that the right to privacy is a fundamental right under Article 21, encompassing decisional autonomy, bodily integrity, and sexual orientation. The judgment explicitly acknowledged the harmful legacy of Suresh Kumar Koushal (which had earlier upheld Section 377) and declared that sexual orientation is an essential component of identity. The reasoning in *Puttaswamy* provided the doctrinal basis for the recognition of LGBT+ rights in *Navtej Johar*, signaling a broader transformation in the Indian judiciary's understanding of constitutional liberties [19].

6. Religion, Culture, and the Perpetuation of Gender Oppression

Religious and cultural norms have long exerted a profound influence on gender roles, often prescribing expectations about behavior, family structure, and women's place in society. In India, religious doctrines—whether Hindu, Muslim, Christian, or others—have historically framed women's identities through patriarchal interpretations that emphasize obedience, chastity, and domesticity. While religion can foster community cohesion and ethical reflection, it can also serve as a powerful tool for entrenching gender-based hierarchies when left unchallenged by critical legal and social inquiry.

Feminist scholars such as Martha Nussbaum and Catharine MacKinnon have critically engaged with the intersection of gender, religion, and culture. Nussbaum's "capabilities approach" posits that justice should be evaluated not only through formal rights but also by assessing whether individuals have the actual ability to achieve fundamental human functions—such as health, education, bodily integrity, and freedom from violence. In many traditional cultural and religious settings, women are deprived of these capabilities due to systemic subordination, lack of mobility, limited reproductive autonomy, and early or forced marriages.

Catharine MacKinnon, in contrast, adopts a radical feminist lens, arguing that law frequently upholds patriarchal authority by treating religious or cultural norms as untouchable and neutral, even when they reinforce discrimination (MacKinnon, 1989). She maintains that the legal system often disguises male dominance as cultural legitimacy, especially when it fails to question gender-biased religious practices.

This is evident in judicial reluctance to intervene in cases involving personal laws that regulate marriage, divorce, inheritance, and religious entry, despite their conflict with constitutional principles of equality and non-discrimination [20]. Legal and constitutional scrutiny of cultural and religious practices becomes particularly significant in a diverse and pluralistic society like India. While Article 25 of the Indian Constitution guarantees freedom of religion, it is qualified by provisions for public order, morality, and health, and is subject to the other fundamental rights-most notably, Article 14 (equality) and Article 15 (non-discrimination). The tension between constitutional morality and popular morality (as elaborated in *Navtej Johar*) underscores the judiciary's task in navigating claims of religious freedom (Article 25) vis-à-vis the fundamental rights to equality (Article 14), non-discrimination (Article 15), and dignity (Article 21).

In the seminal case of *Shah Bano v. Union of India*, Shah Bano, a 62-year-old Muslim woman, was divorced by her husband through talaq and denied maintenance beyond the iddat period. She filed a petition under Section 125 of the Criminal Procedure Code seeking maintenance. The Supreme Court ruled in her favor, holding that a divorced Muslim woman is entitled to maintenance under secular criminal law, regardless of personal law. The Court emphasized that personal laws cannot override constitutional guarantees of equality and dignity. However, the judgment sparked political backlash, leading to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which effectively reversed the ruling and limited women's rights under the guise of protecting religious identity. This episode highlighted the challenges of ensuring gender justice when confronted with conservative interpretations of religious freedom.

In the case of *Shayara Bano v. Union of India*, Shayara Bano challenged the practice of talaq-e-biddat (instant triple talaq), arguing that it was arbitrary, unilateral, and violated her fundamental rights under Articles 14, 15, 21, and 25. A five-judge bench of the Supreme Court held the practice unconstitutional by a 3:2 majority. The majority opinion ruled that triple talaq violated the right to equality and dignity and was not an essential religious practice protected under Article 25. The case marked a turning point in asserting constitutional supremacy over patriarchal religious customs. It also reflected the judiciary's evolving approach toward interpreting personal law in light of fundamental rights and reinforced that religion cannot be a shield for oppressive practices [21].

In the Sabarimala temple case (*Indian Young Lawyers Association v. State of Kerala*) [22], the petitioners challenged the prohibition on entry of women aged 10–50 into the temple as a violation of Articles 14, 15, 25, and 51A (e). The Supreme Court, by a 4:1 majority, held that the exclusion of women on the basis of menstruation was discriminatory and unconstitutional. The Court rejected the notion that the ban constituted an "essential religious practice" and held that it violated women's right to equality and freedom of religion. Justice Chandrachud noted that customs based on notions of impurity and pollution cannot be allowed to undermine constitutional values. The decision reaffirmed the primacy of constitutional morality over religious orthodoxy and emphasized that gender justice is central to a progressive and inclusive society.

7. Judicial Reticence and Missed Opportunities in Advancing Gender Justice

Despite progressive strides in Indian constitutional

jurisprudence, there have been notable instances where the Supreme Court and High Courts have failed to fulfil the transformative promise of gender justice. These cases underscore how the persistence of patriarchal assumptions, formalistic reasoning, and deference to legislative inaction have led to judgments that fall short of constitutional ideals of equality, dignity, and non-discrimination.

In *Supriyo @ Supriya Chakraborty vs Union of India*, the much-anticipated case concerning the recognition of same-sex marriage, the Supreme Court declined to declare a constitutional right to marriage for queer couples, despite its earlier jurisprudence on privacy (K.S. Puttaswamy), autonomy (Navtej Johar), and equality (NALSA). The Court adopted a deferential stance, stating that the question of marriage equality lies within the legislative domain and that it cannot judicially create or expand the Special Marriage Act to include same-sex couples. This outcome marked a significant retreat from the Court's otherwise robust engagement with LGBT+ rights. The judgment failed to recognize marriage as integral to dignity, companionship, and socio-legal recognition.

RIT Foundation v. Union of India is a case regarding the criminalisation of marital rape under Section 375 of the Indian Penal Code. The split verdict by the Delhi High Court—where one judge held that non-consensual sex within marriage constitutes rape, while the other upheld the marital rape exception—reflected a deep divide within the judiciary. Despite compelling arguments on bodily autonomy and equal protection under the law, the matter remained unresolved due to the lack of a majority decision. The unwillingness of the judiciary to decisively strike down the exception perpetuates the notion that marriage grants implicit sexual consent, thereby violating a woman's autonomy and reinforcing patriarchal control over her body.

In the case of *D. Velusamy v. D. Patchaiammal*, the Supreme Court narrowly interpreted the term "relationship in the nature of marriage" under the Protection of Women from Domestic Violence Act, 2005. The Court held that only relationships that satisfy certain conditions—such as long-term cohabitation, social acceptance, and intention to marry—would qualify. This formalistic and moralistic approach denied protection to vulnerable women in non-traditional or socially unrecognized relationships [23].

In 2019, a former junior Court assistant accused then Chief Justice of India, Ranjan Gogoi, of sexual harassment and victimization. Rather than following a transparent, independent, and credible inquiry process, a hastily constituted in-house committee—composed of sitting Supreme Court judges—conducted a closed-door inquiry and later dismissed the complaint without providing a report to the complainant or the public. Compounding the institutional opacity, CJI Gogoi sat on the bench that convened a suo motu hearing to address "larger conspiracy" allegations against the judiciary. This posed a stark conflict of interest and eroded public confidence in judicial impartiality and internal mechanisms for accountability.

These cases illustrate a pattern where the judiciary either defers to legislative will, applies regressive moral frameworks, or uses narrow statutory interpretation to avoid challenging deeply rooted gender hierarchies. The reluctance to adopt a robust substantive equality approach allows for the perpetuation of patriarchal norms under the guise of legal neutrality. In each of the above instances, the constitutional values of dignity, autonomy, and equality were subordinated to societal norms, moral anxieties, or procedural constraints.

Conclusion

Indian constitutional jurisprudence has played a transformative role in advancing gender justice, with landmark rulings affirming the principles of equality, autonomy, and dignity. These judgments reflect the constitutional promise of a more just and inclusive society, challenging long-standing gender norms and discriminatory practices. However, the judicial record is not uniformly progressive. As this study has shown, there have been pivotal moments when the judiciary faltered—either by upholding patriarchal assumptions or by deferring to conservative interpretations of culture and tradition. Such inconsistencies underscore the need for a jurisprudence that is not only rights-affirming but also unwavering in its constitutional commitment. Genuine gender justice requires more than isolated victories; it demands a sustained and courageous effort to interrogate and reform the deep-rooted structures of inequality that persist in law, institutions, and societal attitudes.

References

1. Mill JS. *The subjection of women*, 1869.
2. Wollstonecraft M. *A vindication of the rights of woman: With strictures on political and moral subjects*, 1792.
3. Chamallas M. *Introduction to feminist legal theory* (2nd ed.). Aspen Publishers, 2003.
4. Kannabiran K. *Tools of justice: Non-discrimination and the Indian Constitution*. Routledge India, 2012.
5. Air India v. Nargesh Meerza, 1981, 4 SCC 335.
6. Anuj Garg v. Hotel Association of India, (2008) 3 SCC 1.
7. Charu Khurana v. Union of India, 2015, 1 SCC 192.
8. Frontline Staff. Over 4.45 lakh crimes against women in, 2022: One every 51 minutes. Frontline. <https://frontline.thehindu.com/news/crime-in-india-2022-ncrb-report-over-445000-crimes-against-women-in-2022-one-every-51-minutes-murders-juvenile-crimes-uapa-offences-against-state-uttar-pradesh-delhi-kolkata-kerala/article67607146.ece>
9. Vishaka v. State of Rajasthan, 1997, 6 SCC 241.
10. Lalita Kumari v. Government of Uttar Pradesh, 2014, 2 SCC 1.
11. Laxmi v. Union of India, 2014, 4 SCC 427.
12. Nussbaum MC. *Women and human development: The capabilities approach*. Cambridge University Press, 2000.
13. Suchita Srivastava v. Chandigarh Administration, 2009, 9 SCC 1
14. X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi (2022 SCC Online SC 1321)
15. Foucault M. *The history of sexuality: An introduction*, (R. Hurley, Trans.). Pantheon Books, 1978, I.
16. Butler J. *Gender trouble: Feminism and the subversion of identity*. Routledge, 1990.
17. NALSA v. Union of India, 2014, 5 SCC 438
18. Navtej Singh Johar v. Union of India, 2018, 10 SCC 1
19. K.S. Puttaswamy v. Union of India, 2017, 10 SCC 1
20. MacKinnon CA. *Toward a feminist theory of the state*. Harvard University Press, 1989.
21. Shayara Bano v. Union of India, 2017, 9 SCC 1.
22. Indian Young Lawyers Association v. State of Kerala, 2018, 10 SCC 1.
23. D. Velusamy v. D. Patchaiammal, 2010, 10 SCC 469