

**Constitutional Guarantees and Judicial Activism:
A Critical Analysis of the Evolution of Women's
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Abstract

The Indian Constitution, adopted in 1950, enshrines a vision of gender equality through its fundamental rights provisions and directive principles, laying a robust normative foundation for women's rights. Yet the translation of these constitutional promises into lived realities has been neither linear nor uncontested. This paper examines the evolution of women's rights in India through a multi-dimensional lens, analysing the interplay between constitutional mandates, legislative interventions, and judicial activism. Drawing on landmark Supreme Court decisions, transformative legislative enactments, and the progressive use of Public Interest Litigation (PIL), the study interrogates whether the Indian legal system has adequately discharged its constitutional obligation to secure gender justice.

The paper traces the historical trajectory of women's rights from the colonial era through post-independence legislative developments, evaluating how Articles 14, 15, 16, and 21 of the Constitution have been interpreted and expanded by the judiciary to combat patriarchal norms entrenched in personal laws, workplace practices, and public life. A central focus is the role of the Supreme Court in deploying the doctrine of substantive equality — as opposed to mere formal equality — to strike down discriminatory laws and create new rights regimes, exemplified by decisions such as *Vishaka v. State of Rajasthan*, *Shayara Bano v. Union of India*, and *Joseph Shine v. Union of India*. The paper further evaluates the contribution of Directive Principles of State Policy, particularly Articles 39, 42, and 46, in shaping progressive legislation on maternity benefits, equal remuneration, and prohibition of child marriage.

The paper concludes that while Indian courts have pioneered transformative jurisprudence on gender justice, structural gaps persist, and a sustained convergence of legislative reform, executive accountability, and social mobilisation is indispensable to the fulfilment of the constitutional promise of equality for women in India.

Keywords: *Gender Justice, Constitutional Equality, Public Interest Litigation, Judicial Activism, Women's Rights*

I. INTRODUCTION

The protection and promotion of women's rights represents one of the most significant constitutional imperatives in the legal architecture of the Indian Republic. At the heart of this enterprise lies the Constitution of India, which, in its foundational text, established a comprehensive normative framework aimed at dismantling centuries of patriarchal domination and institutionalised gender discrimination. The Constituent Assembly, cognisant of the deep-rooted social inequities afflicting Indian women across caste, class, and religious lines, deliberately embedded guarantees of equality and non-discrimination within the fundamental rights chapter. The framers were acutely aware that a formal proclamation of equality was insufficient without corresponding mechanisms to operationalise the guarantee, and they accordingly equipped the constitutional text with both judicially enforceable fundamental rights and programmatic directives addressed to the legislature and executive.

Yet the constitutional text, however carefully drafted, could not by itself transmute social reality. The decades following independence revealed a persistent gap between constitutional promise and lived experience — a gap that the legislature sought to address through progressive enactments and the judiciary endeavoured to close through creative constitutional interpretation. This dynamic interplay between constitutional text, statutory law, and judicial interpretation has produced an evolving jurisprudence on women's rights that, while genuinely transformative in many respects, remains contested and incomplete. Laws enacted to advance women's interests have at times been rendered ineffective by inadequate enforcement mechanisms, and judicial directions — though path-breaking in their conception — have encountered the stubborn resistance of entrenched social norms and institutional inertia.

This paper undertakes a critical analysis of this evolution, tracing the arc from the constitutional foundations laid in 1950 through the landmark judicial decisions of recent decades. The paper examines how the courts — most prominently the Supreme Court of India — have deployed the tools of purposive constitutional interpretation, implied rights doctrine, and public interest adjudication to advance the cause of gender justice. It also evaluates the role of Directive Principles of State Policy in shaping the legislative framework for women's empowerment, and assesses the transformative potential of Public Interest Litigation as a vehicle for vindicating women's rights when the legislature has remained recalcitrant or the executive inactive.

The analytical framework adopted in this paper draws upon both doctrinal analysis and socio-legal critique, interrogating not merely the formal doctrinal landscape but also the contextual conditions that shape the translation of legal pronouncements into social outcomes. The paper proceeds in six substantive parts. Following this introduction, Part II examines the constitutional foundations of women's rights, encompassing both the fundamental rights provisions and the directive principles. Part III traces the historical evolution of women's rights in India. Part IV analyses the judicial interpretation of the equality provisions. Part V examines the role of the judiciary in advancing women's rights through landmark decisions. Part VI evaluates the use of Public Interest Litigation as a tool for gender justice. Part VII considers contemporary challenges and the path forward, before the paper concludes with a synthesis of its key findings.

II. CONSTITUTIONAL FOUNDATIONS: A FRAMEWORK FOR GENDER JUSTICE

A. Fundamental Rights and Gender Equality

The Constitution of India occupies a distinctive position among the constitutions of the world in the specificity and comprehensiveness of its provisions for gender equality. Article 14, which guarantees the right to equality before law and equal protection of laws, applies to all persons irrespective of gender.¹ While the article does not make explicit reference to sex as a prohibited ground of discrimination, the Supreme Court has consistently interpreted it to prohibit arbitrary sex-based classifications that lack a reasonable nexus with a legitimate state objective. The equality guarantee under Article 14 has thus been deployed as a broad constitutional tool to challenge not merely formal legal discrimination but also the arbitrary exercise of state power that disproportionately affects women.

Article 15 of the Constitution goes further, explicitly prohibiting discrimination on grounds of, inter alia, sex.² Significantly, Article 15(3) carves out an exception to the general prohibition, permitting the State to

¹INDIA CONST. art. 14.

²INDIA CONST. art. 15, cl. 1.

make special provisions for women and children.³ This provision has been described by the Supreme Court as an enabling provision that creates constitutional space for protective discrimination in favour of women — a recognition that formal equality may be insufficient to overcome the structural disadvantages that women face in Indian society. The Court has consistently upheld legislation framed under Article 15(3), including reservations in educational institutions and protective labour laws, provided such measures are genuinely remedial in character rather than reflective of paternalistic stereotypes.

Article 16 extends the principle of equality of opportunity to matters of public employment, prohibiting discrimination on grounds of sex in respect of employment or appointment to any office under the State.⁴ The Supreme Court has interpreted this provision broadly, holding that it encompasses not only initial appointment but also conditions of service, promotion, and termination. The early decisions of the Court in *C.B. Muthamma v. Union of India*⁵ and *Air India v. Nergesh Meerza*⁶ struck down service rules that required women employees to resign upon marriage or on attaining a specified age, recognising such conditions as fundamentally incompatible with the constitutional guarantee of equality and expressive of a paternalistic and discriminatory attitude towards women in the public service.

Article 21, which guarantees the right to life and personal liberty, has emerged as the most expansive vehicle for the development of women's rights jurisprudence in India. Through a succession of creative interpretive moves, the Supreme Court has expanded Article 21 beyond its textual confines to encompass a cluster of substantive rights essential for a life of dignity. As the Court observed in the landmark right to privacy judgment, the right to life includes the right to live with dignity, the right to personal autonomy, and the right to make intimate personal

³INDIA CONST. art. 15, cl. 3.

⁴INDIA CONST. art. 16.

⁵C.B. Muthamma v. Union of India, AIR 1979 SC 1868 (India).

⁶Air India v. Nergesh Meerza, AIR 1981 SC 1829 (India).

choices free from state interference.⁷ This expansive reading of Article 21 has been deployed to vindicate women's rights in contexts ranging from sexual violence to forced sterilisation, from reproductive autonomy to the right to a safe and secure working environment.

B. Directive Principles of State Policy and Women's Empowerment

The Directive Principles of State Policy, contained in Part IV of the Constitution, provide a programmatic framework for state action aimed at achieving substantive equality for women. While not judicially enforceable in the same manner as fundamental rights, the Directive Principles impose on the State an obligation of progressive realisation that has been reinforced through legislative and executive action. The Supreme Court has repeatedly affirmed that Directive Principles constitute the conscience of the Constitution and must guide the interpretation of fundamental rights in a manner that advances the constitutional vision of a just society.

Article 39(a) mandates the State to direct its policy towards securing to all citizens, men and women equally, the right to an adequate means of livelihood.⁸ Article 39(d) requires the State to ensure equal pay for equal work for both men and women — a directive that found legislative expression in the Equal Remuneration Act, 1976.⁹ Article 42 directs the State to make provision for securing just and humane conditions of work and maternity relief,¹⁰ a mandate reflected in the Maternity Benefit Act, 1961¹¹ and its subsequent amendments, most notably the Maternity Benefit (Amendment) Act, 2017, which extended the period of paid maternity leave to twenty-six weeks. Article 46 enjoins the State to promote with special care the educational and economic interests of weaker sections of the people, which has been interpreted to include women as a historically disadvantaged group.¹²

⁷Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1, ¶ 310 (India).

⁸INDIA CONST. art. 39, cl. (a).

⁹Equal Remuneration Act, No. 25 of 1976, Acts of Parliament, 1976 (India).

¹⁰INDIA CONST. art. 42.

¹¹Maternity Benefit Act, No. 53 of 1961, Acts of Parliament, 1961 (India).

¹²INDIA CONST. art. 46.

The relationship between Directive Principles and Fundamental Rights underwent a significant transformation following the decision of the Supreme Court in *Minerva Mills Ltd. v. Union of India*,¹³ where the Court established that fundamental rights and directive principles are complementary and must be harmoniously construed. This interpretive approach has allowed the Court to use directive principles as aids in the purposive interpretation of fundamental rights, thereby enriching the substantive content of gender equality guarantees and providing a constitutional basis for reading women's rights expansively.

III. HISTORICAL EVOLUTION OF WOMEN'S RIGHTS IN INDIA

A. The Colonial Legacy and Its Implications

The position of women under Indian law during the colonial period was characterised by a complex admixture of customary practices, personal laws administered by courts established under colonial authority, and a limited body of protective legislation introduced by the British administration. The colonial enterprise, while nominally committed to the amelioration of certain social practices affecting women — as evidenced by the abolition of sati through the Sati Regulation Act, 1829, and the Hindu Widows' Remarriage Act, 1856 — simultaneously preserved and codified patriarchal structures through its approach to personal law. The colonial policy of non-interference in religious personal law effectively entrenched discrimination in the domains of marriage, divorce, inheritance, and guardianship, and these discriminatory structures were inherited by the post-independence Indian state.

The nationalist movement, while articulating a vision of an independent India founded on principles of equality and democracy, was itself ambivalent about the status of women. While prominent nationalist leaders including Mahatma Gandhi and Jawaharlal Nehru advocated for women's political rights and formal equality, the movement was less forthcoming on questions of personal law reform and the dismantling of social structures that subordinated women within the family. This ambivalence was reflected in the debates of the Constituent Assembly, where proposals for a uniform civil code were deferred to a directive

¹³*Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789 (India).

principle in the face of opposition from religious minorities who viewed personal law reform as an assault on religious identity.

The contribution of women members of the Constituent Assembly — including Hansa Mehta, Ammu Swaminathan, Begum Aizaz Rasul, Dakshayani Velayudhan, and Sucheta Kriplani — in ensuring that the foundational document of the Republic included robust gender equality provisions deserves particular recognition. It was largely on the insistence of these members that the prohibition on sex-based discrimination was included in Article 15(1) as an explicit prohibition rather than leaving the matter to be inferred from the general equality guarantee of Article 14. Their contribution ensured that the constitutional text provided a more secure foundation for gender equality than would otherwise have been the case.

B. Post-Independence Legislative Developments

The Constitution of independent India committed the State to a programme of legal reform that would fundamentally alter the position of women in law. The early years of independence witnessed a series of significant legislative interventions in Hindu personal law that constituted a partial, though incomplete, effort to restructure personal law in conformity with constitutional values. The Hindu Marriage Act, 1955¹⁴ introduced the concept of judicial divorce into Hindu law, enabling women to dissolve unsatisfactory marriages on grounds including cruelty, desertion, and irretrievable breakdown. The Hindu Succession Act, 1956 conferred upon Hindu women an enhanced right to inherit property, though it preserved significant limitations on women's rights in relation to coparcenary property in joint families.

The passage of the Hindu Succession (Amendment) Act, 2005 represented a landmark in the evolution of women's inheritance rights.¹⁵ Prior to the amendment, daughters were not recognised as coparceners in a Hindu joint family, effectively excluding them from a substantial share of ancestral property. The 2005 amendment conferred upon daughters the status of coparceners by birth, placing them on an equal footing with sons in relation to ancestral property and entitling them to the same rights and

¹⁴Hindu Marriage Act, No. 25 of 1955, Acts of Parliament, 1955 (India).

¹⁵Hindu Succession (Amendment) Act, No. 39 of 2005, Acts of Parliament, 2005 (India). See also Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1 (India) (affirming retroactive application of the amendment).

liabilities as sons in a coparcenary. The Supreme Court in *Vineeta Sharma v. Rakesh Sharma* affirmed that the amendment confers rights upon daughters irrespective of whether their father was alive when the amendment came into force, resolving a long-standing ambiguity in the interpretive jurisprudence on the provision.

The Protection of Women from Domestic Violence Act, 2005¹⁶ marked another significant legislative milestone, providing for the first time a comprehensive civil law remedy for women subjected to domestic violence in its various forms — physical, sexual, verbal, emotional, and economic. The Act recognised the right of women to reside in the shared household regardless of their proprietary interest therein, and established a mechanism of protection orders, residence orders, and monetary relief to be administered through the office of Protection Officers. The enactment of this legislation was preceded by sustained advocacy by women's rights organisations and was the product of a prolonged consultative process that engaged civil society, legal practitioners, and government officials.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013¹⁷ was a legislative codification of the guidelines laid down by the Supreme Court in *Vishaka v. State of Rajasthan*, representing a rare instance of the legislature following through on judicial directions on a time-critical issue. The Criminal Law (Amendment) Act, 2013,¹⁸ enacted in the aftermath of the horrific gang rape in New Delhi in December 2012, introduced significant amendments to the Indian Penal Code and the Code of Criminal Procedure, expanding the definition of rape, introducing new offences relating to acid attack and stalking, and prescribing enhanced penalties for aggravated forms of sexual assault. The Law Commission of India had previously recommended several of these reforms in its Report No. 172 on the Review of Rape Laws.¹⁹

¹⁶Protection of Women from Domestic Violence Act, No. 43 of 2005, Acts of Parliament, 2005 (India).

¹⁷Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, Acts of Parliament, 2013 (India).

¹⁸Criminal Law (Amendment) Act, No. 13 of 2013, Acts of Parliament, 2013 (India).

¹⁹Law Commission of India, Report No. 172: Review of Rape Laws (2000).

The legislative architecture for women's rights was further strengthened by the enactment of the Dowry Prohibition Act, 1961,²⁰ the Protection of Children from Sexual Offences Act, 2012,²¹ the Prohibition of Child Marriage Act, 2006,²² and the National Commission for Women Act, 1990.²³ Together, these enactments constitute a substantial, if imperfect, statutory framework aimed at protecting women from specific forms of abuse and discrimination and providing institutional machinery for the enforcement of their rights.

IV. EQUALITY BEFORE LAW AND GENDER JUSTICE: JUDICIAL INTERPRETATIONS

A. Article 14 and the Doctrine of Reasonable Classification

The Supreme Court's jurisprudence on Article 14 has evolved significantly from the early formulation of the equality clause as a prohibition against class legislation to a more nuanced doctrine that scrutinises the rationality of classifications based on their nexus with the objective sought to be achieved. In the context of gender discrimination, the Court has been called upon to determine whether sex-based classifications in legislation and state action satisfy the requirements of the equality doctrine, and has done so by applying both the traditional intelligible differentia test and, increasingly, a more substantive scrutiny that interrogates the underlying assumptions about gender roles and capacities that inform the challenged measure.

In *Anuj Garg v. Hotel Association of India*,²⁴ the Supreme Court struck down a provision of the Punjab Excise Act, 1914, that prohibited the employment of women below a certain age in premises where liquor was served. The Court held that the provision, though ostensibly protective of women, in fact operated as a discriminatory exclusion from employment that reinforced stereotypical assumptions about women's vulnerability

²⁰Dowry Prohibition Act, No. 28 of 1961, Acts of Parliament, 1961 (India).

²¹Protection of Children from Sexual Offences Act, No. 32 of 2012, Acts of Parliament, 2012 (India).

²²Prohibition of Child Marriage Act, No. 6 of 2007, Acts of Parliament, 2006 (India).

²³National Commission for Women Act, No. 20 of 1990, Acts of Parliament, 1990 (India) (establishing the National Commission for Women as a statutory body to review constitutional and legal safeguards for women).

²⁴*Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1 (India).

and was therefore constitutionally impermissible. The Court articulated the principle that protective legislation enacted under the guise of safeguarding women's interests must not have the effect of placing women in a more disadvantageous position or restricting their right to equal opportunity in employment. The decision is significant because it marked a doctrinal shift towards substantive equality analysis, requiring the Court to look beyond the surface form of legislation to interrogate its actual impact on women's capacity to participate equally in social and economic life.

The doctrine of substantive equality developed in *Anuj Garg* recognises that facially neutral or even ostensibly protective legal rules may operate to perpetuate or deepen women's disadvantage when assessed against the standard of their actual effect on women's autonomy and opportunities. This more sophisticated doctrinal framework has been applied in subsequent decisions to evaluate a range of legal provisions that affect women, including provisions of service rules, social welfare legislation, and personal law. The Court has, however, not always been consistent in applying this more rigorous standard of scrutiny, and certain decisions have reverted to a more deferential posture that privileges the legislature's characterisation of a measure as protective over a careful empirical assessment of its effects.

B. Article 15 and Protective Discrimination

The tension between formal equality and protective discrimination in the context of Article 15 has generated a rich body of jurisprudence. The Court has consistently upheld reservations and special provisions for women as valid exercises of the enabling power under Article 15(3), provided that such provisions are genuinely aimed at ameliorating the disadvantaged position of women rather than perpetuating sex-role stereotypes. The enabling clause thus serves as a constitutional safety valve that permits the State to deviate from the formal equality requirement of Article 15(1) in order to achieve the more ambitious objective of substantive equality.

In *State of Andhra Pradesh v. P.B. Vijayakumar*,²⁵ the Supreme Court upheld a rule providing for reservation of thirty percent of posts in government service for women, holding that such reservation fell

²⁵State of Andhra Pradesh v. P.B. Vijayakumar, (1995) 4 SCC 520 (India).

squarely within the ambit of Article 15(3) and was consistent with the constitutional mandate to achieve substantive equality for women. The Court emphasised that the persistent under-representation of women in public employment was itself a form of structural discrimination that the State was constitutionally obligated to address through affirmative measures. The decision recognised that women constitute a class that has historically been subject to disadvantage in matters of public employment, and that preferential measures aimed at correcting this disadvantage are not merely permissible but may in certain circumstances be constitutionally required.

C. Article 21 and the Expanding Horizon of Women's Rights

Perhaps the most consequential development in Indian constitutional law has been the progressive expansion of Article 21 to encompass rights that bear directly on the status of women in society. The Supreme Court has derived from Article 21 a right to life with dignity that includes, inter alia, the right to be free from sexual violence, the right to reproductive autonomy, the right to privacy in intimate decisions, and the right to a safe and secure working environment. This interpretive expansion has transformed Article 21 from a procedural guarantee against arbitrary deprivation of life and liberty into a substantive repository of rights essential for the full flourishing of women as equal persons.

In *Chairman, Railway Board v. Chandrima Das*,²⁶ the Court held that a Bangladeshi woman who had been gang-raped by railway employees was entitled to compensation from the railway authorities under Article 21, recognising her fundamental right to be free from sexual violence as an emanation of the right to life and dignity. The Court further held, significantly, that the guarantee of Article 21 is not limited to citizens but extends to all persons on Indian soil, thereby preventing the State from denying constitutional protection to non-citizen women victims of gender-based violence. In *Bodhisattwa Gautam v. Subhra Chakraborty*,²⁷ the Court held that rape constitutes a violation of the right to life under Article 21, and directed that interim compensation be awarded to rape victims pending criminal trial, thereby blurring the conventional

²⁶Chairman, Railway Board v. Chandrima Das, AIR 2000 SC 988 (India).

²⁷Bodhisattwa Gautam v. Subhra Chakraborty, AIR 1996 SC 922 (India).

boundary between civil and criminal remediation of gender-based violence.

The landmark decision in *Justice K.S. Puttaswamy v. Union of India*²⁸ recognised privacy as a fundamental right under Article 21, with significant implications for women's rights. The Court's recognition of bodily integrity and reproductive autonomy as components of the right to privacy provides a constitutional basis for challenging restrictive laws and practices relating to women's reproductive choices, including laws that restrict access to contraception, criminalise abortion, or permit non-consensual medical procedures. The decision's affirmation that the right to choose an intimate partner is a dimension of constitutional liberty reinforced the constitutional underpinnings of decisions striking down personal law provisions that interfere with women's marital choices.

The Supreme Court in *State of Maharashtra v. Madhukar Narayan Mardikar*²⁹ articulated an important principle in the context of sexual assault, holding that even a woman of doubtful character is entitled to the equal protection of law and cannot be denied the right to life with dignity under Article 21. This decision repudiated the odious notion — embedded in certain evidentiary and procedural rules — that a woman's sexual history is relevant to the credibility of her allegation of rape, and constituted an important step in the development of a more rights-respecting approach to the adjudication of sexual violence cases.

V. THE ROLE OF THE JUDICIARY IN ADVANCING WOMEN'S RIGHTS

A. Landmark Supreme Court Decisions

The Supreme Court of India has played a uniquely prominent role in the evolution of women's rights in India, often operating at the vanguard of social change where the legislature has been slow to act. This judicial activism in the domain of gender justice has been described as a distinctive feature of Indian constitutionalism, reflecting the Court's self-understanding as a guardian of constitutional values against majoritarian indifference or hostility. The Court has on numerous occasions explicitly

²⁸Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India).

²⁹State of Maharashtra v. Madhukar Narayan Mardikar, AIR 1991 SC 207 (India) (holding that even a woman of easy virtue is entitled to the protection of law and cannot be denied the right to life with dignity under Article 21).

acknowledged that it is exercising a creative constitutional function when it derives new rights from the constitutional text to fill legislative gaps that adversely affect women.

The decision in *Vishaka v. State of Rajasthan*³⁰ stands as perhaps the most celebrated example of judicial law-making in the service of women's rights. The case arose from a petition filed following the gang rape of Bhanwari Devi, a social worker employed by the Government of Rajasthan, who had attempted to prevent a child marriage in her village. The Supreme Court, finding a complete absence of legislation specifically addressing sexual harassment in the workplace, issued a set of binding guidelines — the Vishaka Guidelines — that required employers to establish complaints committees, formulate policies against sexual harassment, and provide remedies for aggrieved employees. The Court derived the authority for this exercise of legislative function from Article 21 read with Articles 14 and 15, and from India's international obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The Vishaka decision remains a landmark not only for its substantive contribution to women's workplace rights but also for its innovative use of international human rights instruments as aids to constitutional interpretation.

The decision in *Shayara Bano v. Union of India*³¹ addressed the constitutionality of the practice of instantaneous triple talaq (talaq-e-biddat) in Muslim personal law. A five-judge constitutional bench of the Supreme Court, by a majority of three to two, held that the practice was unconstitutional as violative of the right to equality under Article 14. The majority's reasoning was that talaq-e-biddat was manifestly arbitrary and lacked any rational basis, since it allowed the dissolution of a marriage through the unilateral and irrevocable pronouncement of a formula by the husband without affording the wife any opportunity to be heard or to seek reconciliation. The decision was subsequently reinforced by the enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019,³² which criminalised the practice of triple talaq, converting a

³⁰*Vishaka v. State of Rajasthan*, AIR 1997 SC 3011 (India).

³¹*Shayara Bano v. Union of India*, (2017) 9 SCC 1 (India).

³²Muslim Women (Protection of Rights on Marriage) Act, No. 20 of 2019, Acts of Parliament, 2019 (India).

judicial invalidation of the practice into a statutory prohibition backed by penal consequences.

In *Joseph Shine v. Union of India*,³³ a five-judge constitutional bench unanimously struck down Section 497 of the Indian Penal Code, 1860, which penalised adultery only as an offence by the male partner with the consent or connivance of the husband, treating the wife as the passive property of her husband. The Court held that the provision was unconstitutional on multiple grounds: it treated women as the property of men, denied women agency and autonomy over their intimate decisions, and perpetuated the pernicious stereotype of women as incapable of making independent moral choices. Writing separately, each judge contributed a distinctive analysis of the equality and dignity dimensions of the provision's unconstitutionality, enriching the doctrinal foundations for future gender rights adjudication.

B. Transformative Constitutional Adjudication and Its Limits

While the landmark decisions discussed above represent genuine advances in the constitutional recognition of women's rights, it is necessary to also acknowledge the limitations of judicial activism as a vehicle for gender justice. The Court's interventions are necessarily reactive — they address particular controversies brought before the court by litigants who have the resources and inclination to pursue constitutional litigation. Structural patterns of gender discrimination that are diffuse, pervasive, or embedded in everyday social practices are often beyond the effective reach of judicial remediation, however creative the Court's constitutional interpretation.

Moreover, the implementation of judicial directions has often been incomplete or ineffective, particularly in cases involving gender-based rights. The Vishaka Guidelines, despite their mandatory character, were widely flouted by employers in both the public and private sectors for the sixteen years until the Sexual Harassment of Women at Workplace Act, 2013 was enacted. The persistence of substantive non-compliance with judicial orders in gender justice cases reflects the limits of adjudication as a tool of social transformation in contexts where the relevant stakeholders lack the institutional capacity, political will, or social incentive to

³³Joseph Shine v. Union of India, (2018) 2 SCC 189 (India).

implement the court's directions.³⁴ Scholarly commentators have accordingly cautioned against an uncritical celebration of judicial activism in gender justice cases, emphasising the importance of sustained institutional follow-through to translate judicial pronouncements into material improvements in the lives of women.

VI. PUBLIC INTEREST LITIGATION AND GENDER JUSTICE

A. The PIL Mechanism and Its Significance for Women

Public Interest Litigation has emerged as one of the most important procedural innovations in Indian constitutional law, profoundly expanding the access of marginalised groups — including women — to constitutional justice. The evolution of PIL from the late 1970s onwards was driven by the recognition that the adversarial model of litigation, with its requirement of a directly aggrieved individual petitioner, was inadequate to vindicate the rights of those who lacked the resources, awareness, or social standing to invoke the judicial process. The PIL mechanism, by relaxing the standing requirements for constitutional petitions and enabling the Court to take up systemic rights violations on the basis of letters and newspaper reports, created a more accessible and responsive constitutional forum.

The conceptual foundations of PIL were articulated in seminal decisions such as *S.P. Gupta v. Union of India*,³⁵ where Justice Bhagwati articulated a vision of an open and accessible Supreme Court that would serve as the guardian of the rights of the poor and marginalised. In *Bandhua Mukti Morcha v. Union of India*,³⁶ the Court held that any public-spirited individual or organisation could invoke the Court's writ jurisdiction on behalf of persons whose fundamental rights had been violated, thereby relaxing the locus standi requirements that had hitherto restricted access to constitutional remedies. The democratisation of access to constitutional adjudication through PIL was particularly significant for women, who had historically faced both legal and social barriers to independent

³⁴See *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 311 (India) (directing States to comply with Vishaka Guidelines even sixteen years after the original decision, illustrating persistent implementation gaps in gender justice adjudication).

³⁵*S.P. Gupta v. Union of India*, AIR 1982 SC 149 (India).

³⁶*Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802 (India).

litigation and who disproportionately suffered from the enforcement gaps that PIL was designed to address. The *Hussainara Khatoon case*³⁷ further demonstrated the Court's willingness to use epistolary jurisdiction — receiving a letter as a writ petition — to vindicate the rights of women prisoners held in inhuman conditions, a striking illustration of the Court's expansive access philosophy.

B. Landmark PIL Cases in Gender Justice

The PIL mechanism has been employed with particular effect in the domain of women's rights, enabling courts to address systemic patterns of discrimination and rights violations that could not have been effectively addressed through conventional individual litigation. The *Vishaka* case itself was initiated as a PIL by a group of women's organisations and activists, demonstrating how collective advocacy through the PIL mechanism could translate specific incidents of gender violence into systemic legal reform. The case illustrates the model of PIL that has been most productive for gender justice: combining the credibility of organised women's advocacy with the moral authority of a specific egregious violation to create the conditions for an ambitious judicial response.

In *Medha Kotwal Lele v. Union of India*,³⁸ the Supreme Court took up a PIL filed by women's rights organisations and directed the States and Union Territories to ensure compliance with the Vishaka Guidelines, thereby using its supervisory jurisdiction to enforce its earlier directions against a backdrop of widespread institutional non-compliance. The Court's readiness to exercise a continuing supervisory jurisdiction over the implementation of its gender justice directions through the PIL mechanism represents an important, if imperfectly realised, approach to bridging the gap between judicial pronouncements and institutional practice.

In *People's Union for Democratic Rights v. Union of India*,³⁹ the Court used the PIL mechanism to address the violation of labour rights — including the minimum wage rights of female workers — in the context of public construction projects. The Court's willingness to entertain PILs

³⁷Hussainara Khatoon v. Home Secretary, State of Bihar, AIR 1979 SC 1360 (India).

³⁸Medha Kotwal Lele v. Union of India, (2013) 1 SCC 311 (India).

³⁹People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473 (India).

relating to economic and social rights of women has significantly expanded the justiciability of women's rights beyond the narrow civil and political rights paradigm, and has provided a constitutional foundation for judicial intervention in the labour rights of women workers in the informal and unorganised sectors. The decision also established the important principle that non-payment of the statutory minimum wage to workers, including women workers, constitutes a violation of their constitutional right to life under Article 21 when it reduces them to a condition of existence that is incompatible with human dignity.

The *Rupan Deol Bajaj v. K.P.S. Gill*⁴⁰ case is significant not as a PIL but as a demonstration of the judiciary's willingness to hold a senior police officer accountable for sexual harassment of a female IAS officer — a case that underscored the message that no individual, however powerful or highly placed, is above the law in matters of gender-based dignity violations. The Court's affirmation of the criminal liability of a serving Director-General of Police for an act of sexual harassment at a social gathering sent an important signal about the equality of the law's reach across hierarchies of power and privilege. Similarly, in *Bodhisattwa Gautam*⁴¹ the Court engaged with the intersection of caste, gender, and religion in practices that subjected women to sexual exploitation under the guise of religious tradition, employing the PIL mechanism as a vehicle for interrogating complex socio-cultural practices that violated women's constitutional rights.

C. Critiques of PIL as a Gender Justice Tool

While acknowledging the significant contributions of PIL to the advancement of women's rights in India, it is necessary to engage with the scholarly critiques that have been levelled against this mechanism. Critics have argued that PIL, by privileging the voice of educated, urban, middle-class advocates and organisations, may not adequately represent the interests and priorities of the most marginalised women — those living in poverty, belonging to lower castes, or residing in remote rural areas. The very accessibility that makes PIL a powerful tool in the hands of organised civil society may simultaneously render it a vehicle for the articulation of elite preferences dressed in the language of rights. The risk

⁴⁰*Rupan Deol Bajaj v. K.P.S. Gill*, (1995) 6 SCC 194 (India).

⁴¹*Bodhisattwa Gautam v. Subhra Chakraborty*, AIR 1996 SC 922 (India).

that PIL outcomes may reflect the preferences of its institutional actors — judges, lawyers, and middle-class petitioners — rather than the actually expressed needs of the intended beneficiaries is a genuine structural concern.

Furthermore, the propensity of courts to issue broad, systemic directions in PIL cases without adequate attention to implementation mechanisms and resource constraints has been identified as a structural limitation of PIL adjudication. The gap between the court's ambitious directions and the state's capacity or willingness to implement them has led to what some scholars have described as a jurisprudence of aspiration that offers more symbolic than material benefit to the intended beneficiaries.⁴² The experience of PIL-driven gender justice in India thus presents a mixed picture: transformative in its best moments, but susceptible to implementation failure and elite capture in ways that limit its capacity to produce the structural change in women's lives that the constitutional text demands.

VII. CONTEMPORARY CHALLENGES AND THE PATH FORWARD

A. Persistent Structural Inequalities

Notwithstanding the significant legal and judicial progress described in the preceding sections, women in India continue to face pervasive structural inequalities that the law has been unable to fully address. Gender-based violence remains endemic, with data from the National Crime Records Bureau reflecting high rates of reported crimes against women including domestic violence, sexual assault, acid attacks, and trafficking. The gender pay gap persists across sectors, with women earning significantly less than men for comparable work despite the constitutional and legislative mandates for equal remuneration. Female labour force participation remains stubbornly low by international standards, reflecting both structural barriers in the formal economy and the disproportionate burden of unpaid care work borne by women within the household.

The persistence of personal law pluralism — whereby women of different religious communities are governed by distinct, often discriminatory rules

⁴²UPENDRA BAXI, *THE FUTURE OF HUMAN RIGHTS* 128 (Oxford Univ. Press, 3d ed. 2008). See also Usha Ramanathan, *Ostensibly Irrelevant: Women and the Law*, 34 *ECON. & POL. WKLY.* 72 (1999).

relating to marriage, divorce, inheritance, and guardianship — represents a continuing structural challenge to the realisation of uniform gender justice. While the Supreme Court has taken significant steps to address specific practices such as triple talaq, the broader question of comprehensive personal law reform under Article 44 of the Constitution remains politically contentious and is far from resolution. The continuing divergence between the constitutional promise of gender equality and the discriminatory realities of personal law for women of various religious communities represents one of the most significant unfinished items of business in the Indian gender justice agenda. The work of scholars such as Flavia Agnes in documenting the impact of this divergence on women's access to justice in family law matters has been particularly important in keeping this issue in the public domain.⁴³

B. The Intersection of Caste, Class, and Gender

The project of gender justice in India cannot be adequately pursued without attending to the intersectional dimensions of women's disadvantage. Dalit women, Adivasi women, and women from minority religious communities face forms of discrimination that are simultaneously gendered and caste-based, religious, or class-based, and these intersecting forms of disadvantage are not fully captured by legal frameworks that address gender in isolation. The constitutional framework has been criticised for failing to provide adequate tools for addressing intersectional discrimination, relying instead on sequential or parallel protections for different grounds of disadvantage that may not cohere into effective protection for women who face multiple and simultaneous forms of discrimination.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013,⁴⁴ while a significant advance, has been criticised for its limited reach to women in the informal sector who constitute the overwhelming majority of the female workforce in India.

⁴³FLAVIA AGNES, *FAMILY LAW: MARRIAGE, DIVORCE, AND MATRIMONIAL LITIGATION* 45 (Oxford Univ. Press 2011).

⁴⁴Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, Acts of Parliament, 2013 (India), § 4 (mandating Internal Complaints Committees only in establishments with ten or more employees).

The Act's requirement of a formal Internal Complaints Committee is difficult to operationalise in contexts of casual, home-based, or agricultural employment where women lack the protection of a formal employer-employee relationship. The disconnect between the Act's formal structure and the realities of women's employment in the informal economy illustrates a recurring pattern in Indian gender legislation: statutes designed with formal sector workers in mind that leave the most vulnerable women without effective legal protection.

C. The Way Forward: Legislative Reform and Implementation

The path forward for women's rights in India lies at the intersection of legislative reform, executive accountability, and the sustained engagement of civil society. Several specific directions merit attention. First, the longstanding call for comprehensive personal law reform that would extend to all women, irrespective of religious affiliation, the same rights in relation to marriage, divorce, and inheritance deserves serious legislative consideration. Second, the implementation framework for existing legislation — including the Domestic Violence Act, the POSH Act, and the Criminal Law Amendment Act — requires significant strengthening through investment in institutional capacity, legal aid infrastructure, and awareness-raising among the women intended to be protected.

Third, the passage of the Constitution (One Hundred and Sixth Amendment) Act, 2023, providing for one-third reservation of seats for women in Parliament and state legislatures,⁴⁵ represents a significant step in ensuring adequate political representation for women in legislative bodies. The operationalisation of this amendment, which is contingent upon delimitation, requires expeditious attention to translate the constitutional mandate into enhanced political agency for women. Fourth, an intersectional approach to gender justice — one that disaggregates data on gender inequality by caste, class, religion, and geography, and tailors policy interventions to the specific vulnerabilities of different groups of women — is essential to ensuring that legal advances produce material improvements across the full spectrum of Indian women's experiences.

⁴⁵Constitution (One Hundred and Sixth Amendment) Act, 2023, Acts of Parliament, 2023 (India) (inserting arts. 330A, 332A providing for reservation of one-third seats for women in the House of the People and State Legislative Assemblies).

VIII. CONCLUSION

The journey of women's rights in India from the constitutional text of 1950 to the present day represents both a story of remarkable legal progress and a reminder of the considerable distance that remains to be covered before the constitutional promise of gender equality is translated fully into social reality. The Constitution provided a foundational framework of rights and directives that has proven sufficiently capacious to sustain an expansive and creative jurisprudence by a judiciary that has, in its finest moments, demonstrated a genuine commitment to the values of gender justice. The willingness of the Supreme Court to engage in substantive equality analysis, to deploy Article 21 as a vehicle for women's rights, and to use PIL as a mechanism for addressing structural injustice has produced a body of constitutional doctrine that compares favourably with the jurisprudence of constitutional courts in many other jurisdictions.

The Supreme Court's contributions to this jurisprudence — through decisions such as *Vishaka*, *Shayara Bano*, *Joseph Shine*, and *Puttaswamy* — have reshaped the legal landscape in ways that were not fully anticipated by the framers of the Constitution. The Court has proved willing to deploy doctrinal innovations such as the expansion of Article 21, the doctrine of substantive equality, and the recognition of international human rights norms as interpretive aids to advance women's rights in the face of legislative inaction or hostile social norms. This judicial activism, while not without its limitations and critics, has created a more rights-respecting legal environment for women than would have existed in its absence.

Public Interest Litigation has served as an indispensable procedural vehicle for the vindication of women's rights, enabling women's organisations and social activists to bring systemic rights violations to the attention of the courts and to mobilise judicial authority in the service of structural reform. The PIL mechanism, for all its limitations, has democratised access to constitutional justice in ways that have materially benefited women across a range of domains, from workplace rights to personal law reform to the enforcement of criminal law protections against gender-based violence.

Yet judicial activism, however expansive, cannot substitute for the legislative and executive commitment that is necessary to translate rights into realities. The persistence of gender-based violence, economic

marginalisation, and social discrimination in Indian society reflects the limits of legal reform as a driver of social transformation. Law can create enabling conditions, remove formal barriers, and establish normative standards, but the deeper work of challenging patriarchal norms and building a culture of gender equality requires sustained investment in education, economic opportunity, institutional capacity, and social mobilisation. The constitutional promise of gender equality in India remains an ongoing endeavour, one that demands the active engagement of all institutions of governance — legislative, executive, and judicial — as well as the citizens whose commitment to the values of equality and dignity animates the constitutional enterprise and gives it its enduring force.