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Critical Analysis of Gender Justice Under Indian Constitution

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ABSTRACT

This research critically examines the framework and implementation of gender justice under the Indian Constitution, focusing on the experiences of women and transgender individuals. The study explores how constitutional provisions including Articles 14, 15, 16, and 21 establish a legal foundation for equality and non-discrimination. It also analyzes the Directive Principles of State Policy and Fundamental Duties that collectively guide the State's role in promoting gender equity. The research highlights key judicial pronouncements that have expanded the interpretation of gender justice, such as in *NALSA v. Union of India*, which recognized transgender rights, and in cases like *Anuj Garg and Babita Puniya*, which addressed workplace discrimination. Despite these legal advances, the study finds a persistent gap between constitutional ideals and societal realities, as evidenced by continued gender-based violence, economic disparities, and social exclusion. The paper emphasizes the need for structural reforms, intersectional legal interpretation, gender-sensitive education, and institutional accountability. By combining legal, social, and policy perspectives, it argues for a complete and fair approach to achieve gender justice, one that includes all gender identities and remove deep-rooted barriers.

Keywords: Gender justice, Indian Constitution, Transgender rights, Articles 14–16, Gender-based discrimination, Judicial interpretation, Directive Principles, Intersectionality

1. Introduction

Gender justice is grounded in the principle of equality and in the recognition of fundamental human rights available to every individual, regardless of their gender identity. It means ensuring that all persons whether male, female, or belonging to the third gender are treated equally in law, society, and practice. Gender justice seeks to eliminate the social, economic, and legal disadvantages experienced by individuals due to their gender. These disadvantages often arise from long-standing societal customs, religious norms, traditional practices, and cultural patterns that promote male dominance and result in systemic marginalization of women and non-binary individuals. These patterns of inequality tend to repeat across generations and become deeply rooted in everyday life. The Constitution of India has made a conscious and deliberate effort to break this cycle of inequality. It does so by laying down a legal and ethical framework that promotes equal treatment, equal opportunity, and non-discrimination. It recognizes the need to protect and empower not just women but also individuals from marginalized gender identities such as the third gender. Various provisions embedded within the Constitution aim to dismantle the structural barriers that have historically disadvantaged these groups. For instance, the inclusion of Articles 14, 15, and 16 under the chapter on Fundamental Rights affirms the commitment of the Indian state to guarantee equality before the law, prohibit discrimination on the basis of sex, and ensure equal access to public employment opportunities.¹

India has witnessed significant shifts in the legal and social status of women and gender minorities over the years. Yet, despite these constitutional promises and policy initiatives, gender discrimination continues to persist in both overt and subtle forms. Women are still disproportionately affected by issues like unequal pay, lack of representation in leadership roles, gender-based violence, and limited access to education and healthcare. The third gender also faces severe stigmatization, exclusion from public life, and systemic neglect. The fact that gender-based injustices continue to exist despite clear constitutional safeguards raises important questions about the gap between law and practice.

The framers of the Indian Constitution were aware of the entrenched gender inequalities in Indian society. They therefore included specific provisions to address these issues and to promote a legal culture of equality and justice. Yet, the lived reality of many continues to reflect the deeply embedded patriarchy and gender bias within societal structures. It is important to reaffirm that every individual, irrespective of their gender, is entitled to live a life of dignity, freedom, and equality. This principle is not merely aspirational; it is a legal right guaranteed by the Constitution. Understanding gender justice, therefore, begins with acknowledging these systemic barriers and actively working to dismantle them through both legal reform and cultural change.

¹ Trishala Chettri, "A Critical Analysis of Gender Justice under the Indian Constitution", 5 International Journal of Law Management and Humanities 1610 (2022).

2. Concept of Gender Justice

The concept of gender justice focuses on achieving full equality among all genders in terms of rights, responsibilities, and opportunities. It does not merely refer to equal treatment under the law but also demands a deeper social shift that ensures dignity, autonomy, and fairness in all spheres of life. Gender justice aims to dismantle the entrenched systems of discrimination and power imbalances that exist between different genders. Justice, in this context, requires both structural changes and social reform to ensure equal access to economic resources, education, political participation, healthcare, employment, and legal protection. Without such a multi-dimensional approach, gender justice cannot be fully realized.

This concept recognizes that discrimination based on gender identity or biological sex continues to exist in many visible and invisible forms. The Indian Constitution explicitly acknowledges the need to eliminate such inequality. It enshrines principles of equality under Articles 14, 15, and 16, affirming that no person shall be denied equality before the law or equal protection of the laws. Article 15(3) allows for special provisions in favor of women and children, showing the Constitution's intention to balance historical disadvantages. Yet, in practice, several women still experience bias in social, economic, and political settings. Many are denied equal access to property, education, employment, and personal freedoms.²

With time, the recognition of a third gender has added a critical dimension to this discussion. Transgender persons have long been excluded from most spheres of public life due to deep-rooted stigma and lack of institutional support. True gender justice cannot be achieved if this section of society remains ignored. The Supreme Court, in *National Legal Services Authority v. Union of India*³, recognized the rights of transgender individuals and affirmed their legal status. This was a crucial development in redefining gender justice as inclusive of all identities. Therefore, gender justice today must not be limited to the binary categories of male and female. A meaningful framework must ensure equal recognition, protection, and empowerment for transgender persons as well. Without addressing the needs of all genders, any pursuit of justice remains incomplete.

3. Gender Justice and the Indian Constitution

The Indian Constitution lays a strong foundation for achieving gender justice by addressing the historic and systemic disadvantages faced by women and marginalized genders. The framers of the Constitution were deeply conscious of the inequalities women experienced in both private and public life. As a result, the Constitution contains specific provisions aimed at rectifying gender-based discrimination and fostering substantive equality. It not only guarantees formal legal equality but also empowers the state to take affirmative steps to ensure fairness and justice across gender lines. These guarantees are not symbolic; they form a binding commitment to upholding dignity and freedom for all genders in the Indian democratic system.⁴

Article 15 of the Indian Constitution is central to the idea of gender justice. It prohibits the State from discriminating against any citizen on grounds of religion, race, caste, sex, or place of birth. More importantly, Article 15(3) enables the State to make special provisions for women and children. This clause acknowledges the need for differential treatment to ensure substantive equality rather than just formal uniformity. Article 16 strengthens this guarantee by ensuring equal opportunity in matters related to public employment, regardless of sex. It aims to dismantle structural barriers that have historically restricted women's access to government positions and leadership roles.

Article 19 guarantees to all citizens including women the freedoms of speech and expression, assembly, association, movement, residence, and the right to practice any profession or trade. These rights are vital for women to participate in public life without fear or coercion. Article 39 of the Directive Principles of State Policy further obliges the State to ensure that men and women have an equal right to livelihood. It also mandates equal pay for equal work and the protection of health and strength of workers, especially those engaged in labor-intensive occupations. These provisions, though non-justiciable, provide a guiding principle for policy-making and legislative reform.

Taken together, these constitutional guarantees form a comprehensive legal architecture for promoting gender justice in India. They not only seek to eliminate discrimination but also enable the creation of a more equitable social order. Yet, the effectiveness of these provisions depends on their actual implementation and the willingness of institutions to challenge patriarchal norms. The Constitution offers a vision of justice, but it requires continuous effort, vigilance, and reform to turn that vision into lived reality for all genders.

3.1. Other Rights

In addition to the fundamental equality clauses, various other constitutional rights play a key role in promoting gender justice in India. These rights safeguard the dignity, agency, and personal freedoms of women and marginalized genders. Article 19(1)(a) guarantees the right to freedom of speech and expression to all citizens. For women, this means the right to speak freely in public spaces, protest injustice, and raise their voices against violations. It empowers women to challenge oppressive practices, express dissent, and participate actively in democratic processes. Courts have interpreted this article broadly, reinforcing its importance as a shield for women against social silencing and exclusion from the public sphere.

² Explain the Constitutional Perspectives of Gender Justice with the Help of Relevant Constitutional Provisions and Case Laws, *available at*: <https://vajiramandravi.com/questions/explain-the-constitutional-perspectives-of-gender-justice-with-the-help-of-relevant-constitutional-provisions-and-case-laws/>

³ (2014) 5 SCC 438

⁴ Gender Equality and the Indian Constitution, *available at*: <https://blog.ipleaders.in/gender-equality-and-the-indian-constitution/>

Article 23 of the Constitution prohibits human trafficking, begar (forced labor), and other forms of exploitation. This provision is especially relevant to gender justice because women and children are frequently the primary victims of trafficking, particularly for sexual exploitation and forced labor. The Supreme Court has recognized the gendered nature of these crimes and emphasized that Article 23 protects the dignity of the individual regardless of economic or social status. In *People's Union for Democratic Rights v. Union of India*⁵, the Court held that any form of forced labor, whether physical compulsion or economic coercion, violates Article 23. The judgment extended constitutional protection to laborers, many of whom are women from vulnerable groups.⁶

Further, courts have recognized the role of NGOs and public interest litigation in enforcing Article 23 as a gender justice tool. In *Gaurav Jain v. Union of India*⁷, the Supreme Court addressed the exploitation of women in brothels and ordered state measures for the rescue, rehabilitation, and reintegration of sex workers and their children. This judgment directly connected the issue of trafficking with gender-based constitutional protection. Article 23 has thus emerged as a legal instrument for combating structural violence and exploitation against women and children.

Together, Articles 19 and 23 reinforce the broader commitment to gender justice under the Constitution. They provide both freedom and protection two essential pillars for building an inclusive society where women can live with dignity, security, and equality. Their interpretation by the judiciary underscores the Constitution's role not only in providing rights but also in enabling social transformation for gender justice.

4. Directive Principles of State Policy on Ensuring Gender Justice

Part IV of the Indian Constitution contains the Directive Principles of State Policy (DPSPs), which guide the State in formulating laws and public policies aimed at promoting justice and equity. Although these principles are non-justiciable and cannot be directly enforced by courts, they play a crucial role in steering legislative and administrative decisions. Many of these principles are central to advancing gender justice by outlining the government's obligations to eliminate structural inequalities and support the welfare of women. Articles 39(a), 39(d), and 42 specifically focus on eliminating gender-based disparities in employment and social security. Article 39(a) urges the State to secure an adequate means of livelihood for all citizens, both men and women. Article 39(d) insists on equal pay for equal work, while Article 42 directs the State to ensure just and humane conditions of work and maternity relief.⁸

These principles have formed the constitutional basis for several key laws and policies targeting women's welfare. Laws such as the Equal Remuneration Act, 1976 and the Maternity Benefit Act, 1961 owe their origins to the ideals set out in these provisions. Government programs such as *Beti Bachao Beti Padhao*, initiatives for skill development, women's self-help groups, and schemes offering maternity and health benefits also align with the spirit of the DPSPs. These measures are designed to promote the education, empowerment, and financial independence of women, especially those from rural and economically weaker sections. Although not legally binding, the DPSPs significantly shape the direction of policy-making and create a moral obligation for governments to pursue gender fairness.

Article 51A(e) under Part IVA of the Constitution addresses the Fundamental Duties of citizens, further strengthening the framework for gender justice. It imposes a civic duty on all Indian citizens to renounce practices derogatory to the dignity of women and to promote harmony and the spirit of common brotherhood. This provision shifts part of the responsibility for achieving gender equality from the State to the people themselves. Gender justice, therefore, becomes not just a matter of policy enforcement but also of cultural transformation and individual accountability. Public awareness campaigns, educational curricula, and workplace ethics initiatives often invoke Article 51A(e) to cultivate a respectful and equitable social environment.

Although DPSPs and Fundamental Duties are not enforceable by courts, they are not without legal influence. The Supreme Court has interpreted them as essential components of constitutional governance. In *Randhir Singh v. Union of India*⁹, the Court held that the principle of equal pay for equal work, though not expressly enforceable, could be read into Articles 14 and 16 and thus become judicially enforceable. The Court has also encouraged governments to translate these non-justiciable principles into concrete legislative action. The 73rd and 74th Constitutional Amendments, enacted in 1993, introduced reservations for women in local governance bodies *Panchayati Raj* institutions and urban municipalities. These amendments marked a structural step forward in increasing women's political participation and ensuring grassroots-level representation.

Through the combined force of Directive Principles, Fundamental Duties, and judicial interpretation, the Indian Constitution promotes a dynamic and responsive approach to gender justice. It acknowledges that eliminating inequality requires both state-led policies and active societal engagement. Even though these provisions may not create direct legal rights, they shape the direction of public policy and reinforce the constitutional commitment to a just and equal society.¹⁰

⁵ (1982) 3 SCC 235

⁶ C B Naveen Chandra, "Concept of Gender Justice in India: A Constitutional Perspective", 11 International Journal of Creative Research Thoughts g215 (2023)

⁷ (1997) 8 SCC 114

⁸ Md Jiyauddin, Shazila Shajahan, "A Critical Analysis on Gender Justice and Dimensions of Constitutional Exposition to Ensure Social Justice in India", available at: <https://www.ijlrr.com/post/a-critical-analysis-on-gender-justice-and-dimensions-of-constitutional-exposition-to-ensure-social-j>

⁹ (1982) 1 SCC 618

¹⁰ A Critical Analysis of Rights of Women under the Constitution of India and Other Statutes in India, available at: <https://www.iilsindia.com/blogs/a-critical-analysis-of-rights-of-women-under-the-constitution-of-india-and-other-statutes-in-india/>

5. The Emerging Issue of Transgender in the Context of Gender

The traditional discourse on gender justice in India has primarily focused on the binary understanding of gender male and female. This binary framework often overlooks the existence and rights of individuals who do not conform to conventional gender norms. In recent years, there has been growing recognition of the transgender community as an integral part of the gender spectrum. This shift in understanding marks a significant development in the pursuit of inclusive gender justice. Transgender persons have historically been subjected to social exclusion, legal invisibility, and systemic discrimination. Their issues require not only legal acknowledgment but also affirmative protection. For gender justice to be truly comprehensive, it must encompass the experiences, rights, and dignity of transgender individuals alongside those of men and women.

5.1. Justice under the Indian Constitution

With the evolution of social values and legal thought, the Indian Constitution's understanding of gender has expanded beyond the binary. The transgender community, often described as the "third gender", has gradually gained legal recognition, though many challenges remain in practice. Historically, transgender persons have been marginalized, denied access to education, healthcare, employment, and basic civil rights. They have suffered from social stigma, harassment, and institutional neglect. These realities are fundamentally incompatible with the constitutional promises of equality, dignity, and freedom. Gender justice, in its true form, requires equal treatment and respect for all genders, including transgender persons, under both law and society.

A landmark moment came on 15 April 2014, when the Supreme Court delivered its historic ruling in *National Legal Services Authority v. Union of India*.¹¹ In this case, the Court affirmed that transgender individuals are entitled to legal recognition as a third gender and deserve equal rights under the Constitution. The judgment declared that Articles 14, 15, and 16 must be interpreted to include transgender persons. Article 14 ensures equality before the law and equal protection of laws to "any person", which the Court clarified includes transgender individuals. Articles 15 and 16, which prohibit discrimination on the grounds of sex, were held to also cover gender identity. The Court emphasized that discrimination based on a person's self-identified gender violates their dignity and constitutional rights.¹²

The judgment also acknowledged that gender identity whether expressed through dress, behavior, or self-perception must be respected and constitutionally protected. Article 21, which guarantees the right to life and personal liberty, was interpreted to include the right to live with dignity. The Court ruled that recognition of one's gender identity is essential to living a life of dignity and autonomy. This expanded interpretation of Article 21 makes it clear that gender justice cannot exist without legal and social recognition of transgender persons.

Despite the progressive nature of the NALSA ruling, much work remains to be done. Legal recognition has not fully translated into effective implementation. Transgender individuals continue to face barriers in accessing education, jobs, public health services, and housing. Without strong enforcement of constitutional principles and statutory protections, the promise of gender justice for the transgender community remains incomplete. Therefore, ongoing legal, institutional, and societal reforms are essential to ensure that transgender persons enjoy the same rights and freedoms as all other citizens in India.

5.2. Constitutional Interpretation of Gender Justice

The Indian Constitution affirms that all citizens, regardless of gender, are entitled to equal protection of the law and enjoy fundamental rights under Part III. These include the Right to Equality (Articles 14–18), the Right to Freedom (Articles 19–22), the Right to Cultural and Educational Rights (Articles 29–30), and the Right to Constitutional Remedies (Article 32). Although these rights apply universally, the real challenge lies in how courts interpret and enforce them in cases concerning gender-based discrimination and justice for women. Constitutional interpretation by the judiciary has played a decisive role in transforming gender equality from a theoretical ideal into a lived reality, especially where statutory protections were lacking or social norms remained regressive.¹³

In *Air India v. Nargesh Meerza*¹⁴, a group of air hostesses challenged discriminatory service conditions that applied only to women employees of Air India. The service rules prohibited them from marrying within four years of joining, mandated retirement upon first pregnancy, and permitted extensions of tenure only at the discretion of the Managing Director. The Supreme Court upheld the marriage restriction as a condition of employment but struck down the pregnancy and retirement clauses as unconstitutional, citing violation of Article 14. The Court held that arbitrary termination based on pregnancy was unreasonable and discriminatory, marking a significant step in recognizing women's reproductive autonomy as a component of workplace equality.

In *Anuj Garg v. Hotel Association of India*¹⁵, the Court struck down a law that banned women from working in establishments that served alcohol. The Delhi government had justified this restriction as a protective measure for women. The Supreme Court ruled that such a blanket ban was based on outdated

¹¹ (2014) 5 SCC 438

¹² Avinash Kumar Tiwari, "Gender Justice Through Constitutional Ideology: A Critical Study", 1 *Annual International Journal of Vaikunta Baliga College of Law* 197 (2024)

¹³ Role of Legislature and Judiciary in Securing Gender Justice, available at: https://www.nja.gov.in/Concluded_Programmes/2021-22/SE-03_2021_PPTs/5.Role%20of%20Legislature%20and%20Judiciary%20in%20Securing%20Gender%20Justice.pdf ..

¹⁴ (1981) 4 SCC 335

¹⁵ (2008) 3 SCC 1

and paternalistic stereotypes and violated Articles 14 and 15. The judgment emphasized that gender-based restrictions cannot be justified merely by invoking safety or morality, especially when they limit women's agency and employment opportunities. It cautioned that protective discrimination should not entrench traditional roles but must aim to expand freedom and participation.

In *Secretary, Ministry of Defence v. Babita Puniya & Ors*¹⁶, the Supreme Court addressed the systemic exclusion of women from permanent commissions in the Indian Army. The government had allowed women to serve only in short service commissions, denying them long-term career growth available to male counterparts. The Court declared this policy discriminatory and violative of Articles 14 and 15, ordering that women officers must be granted permanent commissions in all ten eligible streams of the army, including command roles. This decision reinforced the principle that state institutions must be accountable for structural inequalities and cannot use biological differences as a justification for exclusion.

These judicial pronouncements reveal a distinct evolution in how gender justice is interpreted under the Constitution. Courts have shifted from a formal understanding of equality treating everyone the same to a more substantive interpretation that accounts for social realities and power imbalances. The judgments reflect the judiciary's willingness to intervene when legislative or executive action falls short of ensuring fairness. Yet, there remain concerns about inconsistency. In some cases, courts still resort to protective approaches that reinforce traditional roles rather than enabling real empowerment. Moreover, intersectionality how gender intersects with caste, class, sexuality, and region is often overlooked. For constitutional gender justice to be fully realized, courts must continue refining their interpretive methods to capture the full spectrum of identities and experiences.¹⁷

6. Conclusion

The examination of gender justice under the Indian Constitution reveals a progressive legal framework that aspires to dismantle deeply entrenched systems of inequality affecting women and the transgender community. Through a series of fundamental rights, directive principles, and judicial interpretations, the Constitution affirms the dignity, equality, and freedom of all genders. Articles such as 14, 15, 16, and 21 form the backbone of legal protections against discrimination and have been vital in shaping the discourse on gender justice. The evolution of legal recognition for transgender persons, especially through the landmark *NALSA* judgment, further expands the inclusivity of constitutional protections. Simultaneously, the directive principles and fundamental duties underscore the role of both the State and society in building a more gender-just environment. However, the persistent gap between constitutional ideals and ground realities marked by gender-based violence, lack of representation, and systemic discrimination calls attention to the challenges that remain unresolved.

In conclusion, while India's Constitution offers an ambitious vision for gender equality and justice, the effectiveness of this vision hinges on its implementation and societal acceptance. Legal recognition must be matched by robust enforcement mechanisms, social sensitization, and inclusive policy frameworks. The judiciary has played a crucial role in advancing gender justice, but continued progress requires a commitment from all branches of government as well as from civil society. Structural reforms, greater awareness, and the inclusion of marginalized voices are essential to transforming legal rights into lived realities. Only when gender justice is understood and practiced as a shared responsibility legal, institutional, and cultural can India fulfill its constitutional promise of equality for all genders.

¹⁶ (2020) 7 SCC 469

¹⁷ Gender Justice and Its Various Forms under Indian Constitution, *available at*: <https://legalresearchandanalysis.com/gender-justice-and-its-various-forms/>