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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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THE SUPREME COURT'S PROACTIVE ROLE IN FEMINIST JURISPRUDENCE: INTEGRATING CEDAW INTO DOMESTIC LAW

AUTHORED BY - ANJALI BANGA
LL.B., LL.M.

Abstract:

“Women’s Rights are Human Rights” emerged as a powerful slogan at the Vienna Conference on Human Rights, marking a milestone when India ratified the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Historically in India, abuses against women have often been excused under the guise of cultural or religious practices. The prevalent use of cultural relativism by the legislature has at times undermined the universal application of human rights. In the absence of comprehensive domestic legislation on gender equality and women’s rights, the Supreme Court of India has played a transformative role in developing feminist jurisprudence by drawing upon international conventions. Central to this paper is the seminal *Vishaka v. State of Rajasthan* (1997), where the Court innovatively formulated guidelines, addressing sexual harassment through an interpretation informed by CEDAW principles to protect women's dignity and secure gender justice. The Supreme Court assumed an evolving and proactive role, courageously stepping beyond the confines of traditional legal interpretations. The decision not only set a precedent for subsequent judicial activism but also underlined the potential of international norms to supplement domestic law in safeguarding fundamental rights. Through doctrinal analysis and qualitative assessment of judicial reasoning, this paper argues that by invoking CEDAW, the Supreme Court has effectively bridged legislative gap, reaffirmed constitutional morality under Articles 14, 15, and 21, and aligned India’s domestic legal framework with its international obligations under Article 51(c) of the Constitution; and has forged a path that reaffirms the constitutional pledge to gender justice, ensuring that the rights of women are safeguarded with legal rigor.

Key Words: Judicial Activism, CEDAW, Legislative Gap, Feminist Jurisprudence.

Introduction:

The pursuit of gender-based justice in India has been a continuous struggle against systematic inequalities deep-rooted in social, economic, religious, and legal structures. Feminist jurisprudence is a branch of legal theory which examines the relationship between woman and law; it plays a pivotal role in reimagining the law as a tool for achieving substantive equality. The focus of feminist jurisprudence is to interrogate the patriarchal assumptions embedded within legal systems and challenge the notion of law as neutral. It exposes how traditional legal frameworks often marginalize women's experiences, reinforcing male-centric norms under the guise of objectivity.¹ In the context of Indian constitutionalism, feminist jurisprudence seeks to reinterpret and hopefully expand constitutional values, particularly those enshrined in Articles 14, 15, and 21, in order to affirm the dignity, autonomy, and equal status for women. Article 141 empowers the Supreme Court of India with interpretative authority; through which SC has emerged as a transformative institution in establishing feminist jurisprudence, especially in the absence of strong legislative frameworks.

The Constitution of India envisioned a right based legal system which was grounded in equality and justice for all. Despite this, the promise, the practical reality of gender equality remained elusive for decades. Discriminatory customs, regressive personal laws, and a patriarchal mindset existing in both public and private spheres continued to affect women's access to justice. Judicial activism, particularly in the post-Emergency era of the 1980s and 1990s, became a mechanism through which courts could address social injustices and fill legislative gaps. Judicial activism in India refers to the proactive stance of the judiciary in interpreting and enforcing constitutional rights in ways that urge the state to fulfil its obligations.² It is particularly evident in Public Interest Litigation (PIL) dealing, where the courts have broadened the scope of fundamental rights to include rights to livelihood, education, clean environment, and bodily autonomy.

The legislative framework for women's rights in India before the 2000s was largely inadequate and reactive. Most statutes concerning women's rights were either outdated or narrowly framed. For instance, the Indian Penal Code (IPC), 1860, defined rape in extremely limited terms until the Criminal Law (Amendment) Act, 2013. Similarly, there was no comprehensive

¹ Smart C, *Feminism and the Power of Law*, Routledge (1989).

² Sathe S. P., *Judicial Activism in India: Transgressing Borders and Enforcing Limits*, Oxford University Press (2002).

legislation addressing sexual harassment at the workplace until the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which came more than fifteen years after the Vishaka judgment. Laws such as the Dowry Prohibition Act, 1961, and Protection of Women from Domestic Violence Act, 2005 were enacted either after long public campaigns or due to international pressure. The general legislative inertia in safeguarding women's autonomy and bodily integrity required judicial intervention.

In such a legal environment, the Supreme Court's use of CEDAW as a standardizing tool has been both innovative and constitutionally grounded. The integration of international norms into domestic legal reasoning finds textual support in Article 51(c) of the Constitution, which directs the state to "foster respect for international law and treaty obligations." Furthermore, through evolving jurisprudence, the Court has held that international treaties, even when not incorporated through domestic legislation, may be used as interpretative tools, particularly when there is no inconsistency with existing constitutional provisions.³

The methodology adopted in this research is primarily doctrinal, focusing on the close reading of constitutional provisions, judicial decisions, and international instruments such as CEDAW. This is supplemented by qualitative analysis of judicial reasoning in landmark cases like *Vishaka*, *Apparel Export*, and *Babita Puniya*, among others.

Discrimination Against Women in Indian Society

The status of women in Indian society has historically been shaped by deep-rooted patriarchal norms that continue to influence social, legal, and institutional frameworks. Ancient Hindu texts such as the *Manusmriti* downgrade women to submissive roles, prescribing strict control over their autonomy and access to education and property. These texts institutionalized a gendered order where women were expected to obey their fathers, husbands, and sons throughout their lives, a norm often put down in the traditional maxim "Pita rakshati kaumarye" (the father protects in childhood), reinforcing lifelong dependency.⁴

Even in post-independence India, where the Constitution guarantees equality under Articles 14 and 15, the actual realities of women often diverge from constitutional ideals. Legal and

³ Peoples Union for Civil Liberties v. Union of India, (1997) 3 SCC 433.

⁴ Discrimination and Oppression of Women in Context to Indian Society, Hindrise (Apr. 24, 2025, 10:04AM), <https://hindrise.org/resources/discrimination-and-oppression-of-women/>.

political reforms have often struggled against cultural resistance. Practices such as dowry, child marriage, and honor-based violence continue to be prevalent despite being criminalized. According to data presented by the Hindrise Foundation, women in India continue to suffer discrimination in nearly every area of life, from education and employment to inheritance and decision-making within the family.⁵

Economic inequality adds another layer of oppression. Women still remain grossly underrepresented in formal employment and leadership roles, and even when employed, they earn significantly less than their male counterparts. The gender pay gap in India is estimated to be around 19%, with women often lacking control over their own earnings due to patriarchal expectations which prioritize male authority in the household.⁶ According to the World Inequality Report 2022, Indian men earn approximately 82% of the total labour income, while women earn only 18%, showcasing a substantial disparity in earnings. Factors contributing to this gap include occupational segregation, limited access to education and training for women, and societal norms that undervalue women's work.⁷

Furthermore, intersectional discrimination aggravates the marginalization of women from lower castes and tribal communities. Dalit and Adivasi women frequently experience dual discrimination on the basis of caste and gender, often resulting in denial of basic rights such as access to education, healthcare, and safety.⁸

Gender-based violence is another grim and persistent reality in India, with the country reporting alarmingly high incidents of sexual assault, domestic abuse, and other forms of violence against women. As reported by The Guardian, crimes such as rape are not only frequent but also systemic in nature, with law enforcement agencies sometimes associated in trivializing complaints, discouraging victims from filing FIRs, or purposely delaying investigations and prosecution. This systemic failure erodes public trust and contributes to underreporting, with

⁵ *Id.*

⁶ Snigdha Sen, From Civil Rights to Security: Examining the Struggles of Women in India Through Historical and Contemporary Lenses.

⁷ Dr. Shradha Roy, A Quintessential Conversation: Gender Pay Parity for India's Diverse Landscape, India leaders for social sector (Apr. 24, 2025, 10:10AM), <https://indialeadersforsocialsector.com/gender-pay-parity-india-diverse-landscape/>.

⁸ Gender Equality in India: A Historical Perspective and Modern Realities, Sleepy Classes (Apr. 24, 2025, 10:10AM), <https://sleepyclasses.com/gender-equality-in-india-a-historical-perspective-and-modern-realities>.

many survivors fearing stigma, retribution, or inaction.⁹

Contemporary gender disparities in India are revealed by a combination of national surveys, crime data, and international indices. According to NFHS-5 (2019–21), only 71% of women participate in basic household decisions, 51% have access to money they can use, 42% enjoy freedom of movement, and 29 percent report experiencing physical or sexual spousal violence.¹⁰ Meanwhile, the National Crime Records Bureau documents a troubling rise in crimes against women—from 371,503 reported offences in 2020 to 445,256 in 2022.¹¹ On the global stage, India's Gender Inequality Index ranking improved marginally, from 122 out of 191 countries in 2021 to 108 out of 193 in 2022, with a GII value of 0.437, yet remains indicative of substantial gender-based loss in human development.¹² Public opinion says that roughly 76% of Indian adults view violence against women as a “very big problem” in their society. About a quarter of Indians (23%) say there is “a lot of discrimination” against women in India.¹³

Thus, the historical and social context of women's oppression in India highlights the dire need for a feminist reformation of the law. Without structural and cultural reform, constitutional guarantees remain aspirational rather than transformative.

Understanding CEDAW

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) stands as the principal international treaty on women's rights. It was adopted by the UN General Assembly by resolution 34/180 on 18 December 1979, following more than 10 years of preparatory work by the Commission on the Status of Women. The Convention was opened for signature at UN Headquarters on 1 March 1980 and entered into force on 3 September 1981, just thirty days after the twentieth instrument of ratification was deposited, hence, making it

⁹ Hannah Ellis-Petersen, India Is Outraged at Yet Another Young Woman's Death – and We've Been Here Too Often, *The Guardian* (Aug. 23, 2024), (Apr. 24, 2025, 1045AM), <https://www.theguardian.com/global-development/article/2024/aug/23/india-is-outraged-at-a-young-doctors-and-we-have-been-here-too-often>.

¹⁰ Shireen J Jejeebhoy, Gender inclusivity in India's National Family Health Survey, 401, 1424-1425(2023).

¹¹ Sonali Verma, India records 51 cases of crime against women every hour; over 4.4 lakh cases in 2022: NCRB report, *TOI*, Apr. 3, 2024.

¹² Views on women's place in society, *Pew Research Center* (Apr. 24, 2025, 11:00AM), <https://www.pewresearch.org/religion/2022/03/02/views-on-womens-place-in-society/>.

¹³ India jumps 14 ranks on Gender Inequality Index 2022, ranking 108 out of 193 countries, *THE TIMES OF INDIA* (Apr. 24, 2025 11:02 AM), <https://timesofindia.indiatimes.com/india/india-jumps-14-ranks-on-gender-inequality-index-2022-ranking-108-out-of-193-countries/articleshow/108492304.cms>.

the fastest-ever human rights treaty to take effect.¹⁴

CEDAW's core principles go beyond mere formal equality. First, it contains the prohibition of all discrimination against women, defining "discrimination" as any distinction or restriction based on sex that impairs women's enjoyment of human rights and fundamental freedoms (art. 1). Second, it requires substantive equality, mandating not only the removal of discriminatory laws but also positive measures (including special or affirmative actions) to accelerate de facto equality (art. 4). Third, it imposes state accountability, obliging States Parties to adopt legislative, administrative, and other measures, such as sanctions and public institutions—to eliminate discrimination (art. 2). Finally, CEDAW establishes positive obligations, requiring States Parties to take "all appropriate measures" in political, economic, social, cultural, civil, and other fields to ensure women's full development and advancement.¹⁵

Here are some substantive provisions of CEDAW:

- Article 2 obliges States Parties "to pursue by all appropriate means and without delay a policy of eliminating discrimination against women," including incorporation of equality into constitutions and enactment of necessary legislation (art. 2(a)), plus measures to guarantee practical realization of that principle (art. 2(b))
- Article 5 calls for transforming "social and cultural patterns" by eliminating prejudices and stereotypes about gender roles and ensuring family education recognizes shared responsibility of men and women for childcare.
- Article 11 provides for the obligation on State parties to take appropriate measures to eliminate discrimination against women in the field of employment. It addresses employment rights, mandating equal opportunity in hiring, promotion, vocational training, and "equal remuneration...for work of equal value," as well as social security, paid leave, and protection of health and safety.
- Article 24 provides for the obligation on State parties to adopt all necessary measures at a national level for the realization of the rights in this Convention.
- Article 11 of the General Recommendations on the Convention on the Elimination of All Forms of Discrimination Against Women focuses on the need for equality in

¹⁴ Dubravka Šimonović, Convention on the Elimination of All Forms of Discrimination against Women (Apr. 24, 2025, 11:03 AM), <https://legal.un.org/avl/ha/cedaw/cedaw.html>.

¹⁵ Discrimination against Women: The Convention and the Committee (Apr. 24, 2025, 11:05AM), <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet22en.pdf>.

employment and defines sexual harassment. It also provides for an obligation on the States to make reports and include information on measures against sexual harassment.¹⁶

India ratified CEDAW on 9 July 1993 also attached two declaratory statements and one reservation. In its declarations, India affirmed that Articles 5(a) and 16(1) would be applied “in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent,” and that compulsory marriage registration (art. 16(2)), while supported in principle, was impractical given India’s diversity of customs and literacy levels. India’s sole reservation, to Article 29(1) (the dispute-settlement clause), stated it would not consider itself bound by option to the International Court of Justice without its consent. Domestically, although CEDAW is not self-executing, Article 51(c) of the Indian Constitution directs the State to “foster respect for international law and treaty obligations” in its working and Article 253 provides for the enabling power of the parliament to enact laws for implementing the International conventions and norms. The Supreme Court has repeatedly invoked this provision to interpret fundamental rights in harmony with international norms.

The Vishaka Judgement

The genesis of *Vishaka v. State of Rajasthan*¹⁷ (1997) lies in the harrowing case of Bhanwari Devi, a “Saathin” employed under Rajasthan’s Women Development Programme. In 1992, Bhanwari Devi intervened to stop the child marriage of a nine-month-old girl, as a duty prescribed by the Programme, which led to her being brutally gang-raped by 5 men in front of her husband as a form of retribution. Despite the existence of compelling evidence, and with help from the mishandling of evidence by the police and investigation agencies, the trial court acquitted the perpetrators on grounds of “insufficient proof,” demonstrating the inadequacy of existing criminal provisions, Section 354 (outraging modesty) of the IPC, which were ill-suited to address workplace or gender-based harassment.¹⁸ The incident revealed the hazards that a working women is exposed to and the ill effects of sexual harassment. The extreme failure of statutory remedies in Bhanwari Devi’s case ignited women’s organisations, such as Sakshi and Vishakha, to file a petition under Article 32 of the constitution in the Supreme Court of India, spotlighting the systematic absence of legal protection against sexual harassment in all work

¹⁶ *Id.*

¹⁷ AIR 1997 SC 3011.

¹⁸ Astha Srivastava, *Vishaka v. State of Rajasthan: Pioneering the Legal Framework for Sexual Harassment in India*, Lawful Legal (Apr. 24, 2025, 11:06), <https://lawfullegal.in/vishaka-v-state-of-rajasthan-pioneering-the-legal-framework-for-sexual-harassment-in-india/?amp=1>.

settings.

When the SC was confronted with this legislative gap, the absence of any legislation for workplace harassment, it embraced judicial innovation by invoking international human rights norms. SC drew on precedents such as *Nilabhati Behra v. State of Orissa* (AIR 1993 SC 1960), which had held that fundamental rights may be construed in light of international instruments. The court highlighted the use of Article 51(c) and Article 253 declared that conventions like CEDAW could inform its interpretation of Articles 14 (equality), 15 (non-discrimination), and 21 (right to life and dignity) of the Constitution. Specifically, the Court observed that India's international obligations under CEDAW (ratified in 1993) mandated state action to eliminate discrimination and protect women's dignity in the workplace, thus justifying a reading-in approach until Parliament enacted specific legislation.¹⁹

In August of 1997, a three-judge bench led by Chief Justice J.S. Verma delivered a landmark judgement. The Court held that “*gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised global acceptance.*” Thus, “*in the absence of domestic law, the contents of International Conventions and norms are essential to formulate effective measures to check the evils of sexual harassment of working women at all workplaces.*” The court highlighted Article 51(c) and Article 253 read with Entry 14 of the Seventh Schedule (provides for the power to enter into treaties and foreign agreements and implement treaties and conventions). Keeping in mind the use of International standards, the court realised the role of the judiciary as envisaged in the Beijing Statement of Principles of the Independence of Judiciary, adopted in 1995, which set the minimum standard guidelines for ensuring the independence and effectiveness of judiciary.²⁰

The court thus undertook the exercise of establishing guidelines and norms to govern the behaviour of employers and all others at the workplace. This was the first time that the SC relied on an international convention to establish guidelines. These guidelines addressed the workplace hazards faced by women. The court emphasised that the employer must ensure the safety of their employees and others affected by their business. The court stated that such incidents violate the fundamental rights of gender equality and the right to life and liberty, as guaranteed under

¹⁹ Vishaka Guidelines against Sexual Harassment at Workplace, Poshequili (Apr. 24, 2025, 11:08AM), <https://www.poshequili.com/vishaka-guidelines-against-sexual-harassment-at-workplace/>.

²⁰ *Id.*

Articles 14, 15, and 21 of the Constitution. Consequently, the court issued a writ of mandamus and provided specific directions for prevention. Such as:

1. It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent sexual harassment and to provide for the resolution and settlement mechanism.

2. The court defined what constitutes sexual harassment. For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

a) physical contact and advances;

b) a demand or request for sexual favours;

c) sexually coloured remarks;

d) showing pornography;

e) any other unwelcome physical verbal or non-verbal conduct of a sexual nature.

3. Preventive Steps: All employers should take appropriate steps to prevent sexual harassment which shall include:

(a) Express prohibition of sexual harassment (as defined above) at the workplace should be notified, published and circulated in appropriate ways.

(b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include prohibition of sexual harassment and provide for appropriate penalties against the offender.

(c) In regards to the private sector, employers should take steps to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, of 1946.

(d) Appropriate work conditions should be provided with respect to work, leisure, health, and hygiene to further ensure that there is no hostile environment towards women at workplaces.

4. Criminal Proceedings: The employer shall take appropriate action if any such behaviour by the perpetrator falls under the Indian Penal Code. The employer should file or assist the aggrieved in filing the complaint with the appropriate authority. Moreover, the employer shall ensure that the aggrieved or the witnesses are not victimised or discriminated against.

5. Disciplinary Action: Where any such behaviour amounts to misconduct under the code of conduct or service rules, appropriate disciplinary action should be initiated by the employer by those rules.

6. Complaint Mechanism: Whether or not any such behaviour constitutes an offence under the law or the service rules, an appropriate complaint mechanism should be created in the

employer's organisation for effective redressal of such complaints. Such a complaint redressal mechanism should ensure the timely resolution of complaints.

7. Complaints Committee: The complaint mechanism, referred to in point (6) above, should be adequate to provide a Complaints Committee, a special counsellor or other support services, including the maintenance of confidentiality of such complaints.

The Complaints Committee should be headed by a woman and not less than half of its members should be women. Also, to prevent the possibility of any bias or influence from senior levels, such a Complaints Committee should involve a third party, either an NGO or other bodies who are familiar with the issue of sexual harassment.

The Complaints Committee must prepare an annual report including the number of complaints received and the action taken by them. Such a report shall be submitted to the government department concerned with the complaints. The employers and person in charge shall also report on the compliance to the Government department.

8. Workers' Initiative: Employees should be allowed to raise issues of sexual harassment at workers' meetings and in other appropriate forums and it should be affirmatively discussed in Employer-Employee Meetings.

9. Awareness: Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines.

10. Where the perpetrator of sexual harassment is a third party or an outsider, the employer and person in charge shall take all steps necessary and reasonable to assist the aggrieved in terms of support and preventive action.

11. The Central/State governments are requested to consider adopting measures including legislation to ensure that the guidelines laid down by the court are also observed by the employers in the Private Sector.²¹

The legacy of *Vishaka* is profound. Its guidelines remained India's only comprehensive protection against workplace sexual harassment for sixteen years, directly shaping the framework of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. *Vishaka* thus represents a paradigmatic example of judicial activism in feminist jurisprudence, demonstrating how the Supreme Court can deploy international norms to fill legislative gaps, reinforce constitutional morality, and protect women's rights when Parliament lags.

²¹ Everything you need to know about Vishaka Guidelines, Ungender (Apr. 24, 2025, 11:20AM), <https://www.ungender.in/here-is-everything-you-need-to-know-about-vishaka-guidelines/>.

Supreme Court's Transformative Role in Advancing Feminist Jurisprudence

Transformative constitutionalism is understood as a long-term project of “*constitutional enactment, interpretation, and enforcement committed ... to transforming a country's political and social institutions and power relationships in a democratic, participatory and egalitarian direction.*”²² In this model, the Constitution is not a static charter but a living instrument that actively reshapes society.

From influential cases addressing issues of discrimination, violence against women and reproductive rights, to those advocating the cause of workplace equality and personal autonomy, the Supreme Court has been a strong guardian of justice for women across the nation. The judicial activism by SC has played an important role in shaping the future of Indian women, so that they enjoy a full spectrum of rights, unfettered by societal norms.²³

The Supreme Court's transformative role can be traced by the following landmark judgements:

- *Apparel Export Promotion Council v. A.K. Chopra* (1999)²⁴- The central issue involved a sexual harassment complaint in workplace setting. A female employee alleged that she was made a victim to persistent unwelcomed sexual advances by her supervisor. In this case the High Court offered a much narrow interpretation of “Sexual harassment.” Then the Supreme Court of India highlighted that the court must view the cases of sexual harassment with a broad perspective, and must avoid focus on narrow technicalities. This was the first post-*Vishaka* case, reaffirming that employers are vicariously liable for workplace sexual harassment and must institute preventive measures and internal redressal mechanisms.
- *Air India v. Nergesh Mirza* (1981)²⁵- The SC struck down Air India's rule forcing its cabin crew to leave service upon marriage. Under the airline's regulations at that time, an air hostess was required to retire at age 35, upon getting married, or on her first pregnancy—whichever happened first—and additionally had to resign if she completed four years of service or married, again whichever came earlier. The Supreme Court held

²² Transformative Constitutionalism, National Law School Of India University Bengaluru (Apr. 24, 2025, 11:25AM), <https://www.nls.ac.in/course/transformative-constitutionalism-22-23/>.

²³ Anadi Tewari, International Women's Day 2024: 24 Supreme Court judgments that shaped the contours of women's rights in India, Bar And Bench (Apr. 24, 2025, 11:30AM), <https://www.barandbench.com/columns/litigation-columns/international-womens-day-24-supreme-court-judgments-womens-rights-india>.

²⁴ AIR 1999 SC 625.

²⁵ AIR 1981 SC 1829.

that compelling women to quit solely because they married was both arbitrary and unreasonable. It reaffirmed that marital status cannot justify terminating employment and emphasized that true gender equality forbids such stereotypical assumptions about a woman's "place" after marriage.

- *State of Maharashtra and Anr. v. Madhukar Narayan Mardikar* (1991)²⁶ – In this case a police inspector was accused of forcing his way into the housing of a woman named Banubi, described by some as of "easy virtue," and attempting sexual intercourse against her will. Banubi filed a complaint and, during the departmental inquiry, candidly admitted to an extramarital relationship. The inquiry found the inspector guilty of "perverse conduct" and recommended his dismissal. The Bombay High Court, however, set aside that removal order, doubting the reliability of a witness of "doubtful reputation" and faulting certain procedural lapses. On appeal, the Supreme Court restored the dismissal, holding that Banubi's moral character could not diminish the value of her testimony. Finding sufficient corroboration, The Court observed, "*Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law. Therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown overboard,*" and that her evidence must be judged on its own merits, not on moral prejudice.
- *Githa Hariharan and Anr. v. Reserve Bank of India and Anr.* (1999)²⁷ – In this case, the Supreme Court examined the constitutionality of the provisions under the Hindu Minority and Guardianship Act, 1956, which identified the father as the sole natural guardian of a minor, thereby sidelining the mother. The petitioner challenged this gender-biased distinction as discriminatory. The Court agreed, stating that denying the mother equal guardianship rights solely on the basis of sex violated the Constitution's guarantee of equality. It held that both parents must be treated equally in matters of guardianship and that the law could not prioritize the father merely due to gender.
- *Mohd Ahmed Khan v. Shah Bano Begum & Ors.* (1985)²⁸ - In this case a 62-year-old woman from Madhya Pradesh, after being divorced by her husband in 1978, sought maintenance under Section 125 of the Code of Criminal Procedure (CrPC). The

²⁶ AIR 1991 SC 207.

²⁷ (1999) 2 SCC 228.

²⁸ AIR 1985 SC 945.

Supreme Court ruled in her favor, affirming the entitlement of Muslim women to claim maintenance and upholding the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The Court clarified that a Muslim husband's obligation to provide maintenance does not cease with the end of the *iddat* period. Instead, if the divorced wife is left without means of support, the husband remains responsible for her maintenance beyond *iddat*, as outlined in Section 3(1)(a) of the Act.

- *Shayara Bano v. Union of India* (2017)²⁹ - The Supreme Court dealt with the constitutionality of the practice of triple talaq (instant divorce) among Muslims. Shayara Bano, a woman divorced through talaq-e-biddat (instant triple talaq), challenged the practice as arbitrary and discriminatory. A five-judge Constitution Bench by a 3:2 majority declared triple talaq unconstitutional, holding that it violated fundamental rights under Articles 14 (equality), 15 (non-discrimination), and 21 (right to life and dignity) of the Constitution. The Court observed that a practice allowing unilateral, instantaneous divorce was manifestly arbitrary and oppressive towards women, and thus invalid in law.
- *Joseph Shine v. Union of India* (2018)³⁰ - The Supreme Court unanimously invalidated Section 497 of the Indian Penal Code, which criminalized adultery. The Court emphasized that any law infringing upon the dignity and equality of women stands in direct violation of constitutional principles. It firmly rejected the outdated notion of a husband's dominion over his wife, declaring that legal sovereignty of one gender over another is fundamentally flawed. The Court found that Section 497 compromised a woman's dignity and autonomy, thus breaching her fundamental rights under Article 21. It further observed that the adultery law was rooted in patriarchal values, stripping women of their agency and elevating them to unrealistic standards set by societal norms.
- *Secretary, Ministry of Defence v. Babita Puniya and Ors.* (2020)³¹ – The Supreme Court ruled that women officers in the Army must be granted Permanent Commission across all ten streams where the Central Government had already allowed Short Service Commission for women. The Court found that completely excluding women from command positions violated Article 14 of the Constitution and was discriminatory. It struck down the policy restricting women to only “staff appointments,” declaring such

²⁹ (2017) 9 SCC 1.

³⁰ (2018) 2 SCC 189.

³¹ (2020) 7 SCC 469.

a limitation legally untenable and emphasizing the need for true equality within the armed forces.

- *X v. The Principal Secretary Health and Family Welfare Department, Delhi NCT Govt. and Anr. (2002)*³² - The Supreme Court ruled that unmarried women cannot be denied the right to terminate a pregnancy between 20 and 24 weeks under the Medical Termination of Pregnancy (MTP) Act. The Court clarified that Rule 3B(c) of the MTP Rules must be interpreted broadly and not in a manner that excludes unmarried women, as such a narrow reading would violate Article 14 of the Constitution. It affirmed that even women who conceive through consensual relationships outside marriage have the right to seek an abortion up to 24 weeks of pregnancy.

Challenges in Judicial Path to Gender Justice

- **Limited Female Representation on the Bench:** Women continue to be underrepresented in India's judiciary, with female judges comprising only about 30% of the High Courts and a mere 6% in the Supreme Court as of 2023.
- **Inconsistent Application of CEDAW:** Although the Supreme Court cited CEDAW in landmark judgments like *Vishaka*, its application has been inconsistent across various High Courts, with some judges failing to apply the international principles in their rulings, thereby limiting the broader impact of feminist jurisprudence.
- **Delayed Legislative Response:** Despite the Supreme Court's proactive stance in issuing the Vishaka Guidelines, there was a 16-year delay in the enactment of the POSH Act, 2013, illustrating the slow pace of legislative action despite judicial prompting.
- **Resistance from Conservative Social Institutions:** Conservative social and cultural institutions continue to resist progressive legal changes, often questioning or undermining judicial decisions that promote gender justice, as seen in the backlash against progressive judgments such as *Shayara Bano v. Union of India*³³ (2017) on triple talaq.

Possible Road Ahead

- **Judicial Education and Gender Sensitization:** To address the gender biases and patriarchal attitudes still prevalent in the judiciary, mandatory training in feminist legal

³² 2022 SCC OnLine SC 905.

³³ (2017) 9 SCC 1.

theory and human rights should be implemented for judges at all levels. This training should focus on understanding gender-based violence, the importance of equality, and the international frameworks like CEDAW that support women's rights. Judicial education would not only improve decision-making but also foster a more empathetic and gender-sensitive approach in legal interpretations, enhancing the overall impact of the judiciary on gender justice.

- **Enhanced Use of International Law:** Indian courts should place greater reliance on international conventions such as CEDAW, ensuring consistent application of General Recommendations provided by the CEDAW Committee. While the Supreme Court has made substantial use of international law, its adoption remains sporadic at lower court levels. A more systematic application of these frameworks will provide a stronger foundation for women's rights, and the judiciary should interpret domestic law in ways that align with international commitments, ensuring that gender justice principles are universally upheld.
- **Legislative Backing:** The timely implementation of judicial directives should be prioritized. While judicial innovation, as seen in the Vishaka case, fills immediate gaps, legislative delays like those experienced with the POSH Act, 2013 underscore the need for swift legal reform. Legislators should ensure that judicial recommendations are not only followed but also embedded into domestic law with clarity and specificity. This will bridge the gap between judicial activism and legislative enactment, providing enduring legal protection to women.
- **Institutional Mechanisms:** Institutional mechanisms must be strengthened to enforce gender justice effectively. For instance, internal complaints committees (ICCs) within workplaces should be given more authority and resources to ensure compliance with POSH regulations. The POSH Act, while a significant step, needs further strengthening in terms of practical enforcement and accountability. Institutions should also conduct regular training to educate employees and employers about their rights and duties, ensuring a safer and more equitable work environment for women.
- **Women's Representation:** Affirmative action should be introduced to ensure greater representation of women in judicial appointments and bar associations. Currently, women occupy a disproportionate share of lower court positions and the bar, with representation in the Supreme Court remaining dismal. To ensure gender equality in legal decision-making, a deliberate effort must be made to create more opportunities for women, especially in senior positions. This will not only reflect the demographic

diversity of India but also contribute to more gender-sensitive and equitable legal rulings.

- **Public Legal Awareness Campaigns:** A nationwide legal awareness campaign is essential to inform women of their rights under CEDAW, the POSH Act, and various other Indian laws that protect them from discrimination and violence. Public campaigns should aim to educate women about their legal recourse options, while also empowering men to understand the importance of equality and non-discrimination. The campaign should utilize mass media, social media, and educational platforms to disseminate information and ensure that women in rural, urban, and marginalized communities are equally informed and empowered to claim their rights.

Together, these recommendations can help build a more robust legal and social framework for gender justice in India, ensuring that feminist jurisprudence is not just a theoretical concept but a transformative reality. By focusing on judicial education, institutional reform, legislative action, and public awareness, India can move closer to realizing a gender-just society.

