

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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GENDER JUSTICE UNDER THE INDIAN CONSTITUTION: ROLE OF THE SUPREME COURT IN EXPANDING WOMEN'S FUNDAMENTAL RIGHTS

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Abstract

I started working on this paper because I kept coming back to a question that bothered me throughout law school. The Constitution of India, when it was adopted in 1950, promised equality to all citizens regardless of gender. Article 14 said everyone is equal before the law. Article 15 said you cannot discriminate based on sex. These were radical provisions for their time, especially in a society as deeply patriarchal as India. But here is the thing: constitutional promises on paper do not automatically translate into lived reality. Between the text of the Constitution and the actual experience of women in this country lies a vast gap filled with discriminatory personal laws, workplace harassment, violence in the home, and cultural practices that treat women as less than fully human. The question I wanted to explore is this: what role has the Supreme Court played in bridging that gap?

This paper looks at how the Supreme Court of India has interpreted constitutional provisions over the decades to expand the scope of women's fundamental rights. I examine landmark cases across different domains workplace equality, personal laws, reproductive autonomy, criminal law reform, and religious practices. From the early cases like Muthamma and Air India v. Nergesh Meerza that challenged employment discrimination, to the transformative Vishaka guidelines on sexual harassment, to the more recent decisions in Joseph Shine, Shayara Bano, and the Sabarimala case. I also look at the 2025 judgment in Janshruti v. Union of India, which reaffirmed the constitutional validity of Section 498A and the principle of positive discrimination under Article 15(3).

What I found is that the Supreme Court has been, at its best, a powerful force for expanding women's rights. It has read the Constitution expansively, drawing on international law and

feminist principles to give meaning to abstract guarantees of equality. But the Court has also had its limitations. It has sometimes dodged hard questions, as seen in the marital rape exception litigation that remains unresolved. It has sometimes failed to apply Article 15 with the rigor it deserves. The story of gender justice under the Indian Constitution is not a simple narrative of progress, but a complex and ongoing struggle.

Keywords: Gender Justice, Supreme Court of India, Article 15, Positive Discrimination, Vishaka Guidelines, Sabarimala, Triple Talaq, Marital Rape Exception, Reproductive Autonomy, Workplace Equality

1. Introduction

I remember reading the Constituent Assembly Debates for the first time and being struck by how little the framers actually discussed gender. They talked about caste, about religion, about federalism, about the powers of the President. But women's rights? It came up, but not with the urgency you might expect. And yet, when the Constitution was finally adopted, it contained some of the most progressive equality provisions anywhere in the world. Article 15(1) explicitly prohibited discrimination on the ground of sex. Article 15(3) allowed the state to make special provisions for women and children. These were not afterthoughts; they were deliberate inclusions that reflected the influence of women like Hansa Mehta and Amrit Kaur in the Constituent Assembly.

But here is the thing about constitutional promises. They are just words on paper until someone breathes life into them. Until a woman walks into a courtroom and says, "This law discriminates against me, and the Constitution says that is not allowed." Until a judge sits down and writes an opinion that takes those abstract words and applies them to concrete facts. The Supreme Court of India has been doing that work for over seventy years now. Sometimes brilliantly, sometimes inadequately, but always at the center of the struggle for gender justice.

Think about what the Court has had to grapple with. In the early years, it was about employment discrimination. Women like C.B. Muthamma, the first woman to join the Indian Foreign Service, who was told she could not be promoted if she got married. Women like Nergesh Meerza, an air hostess forced to resign from Air India upon her first pregnancy. The Court struck down these discriminatory rules, holding that the Constitution guarantees equal opportunities regardless of gender.

Then came the cases about violence. *Vishaka v. State of Rajasthan* in 1997, where the Court laid down guidelines on sexual harassment at the workplace, drawing on international conventions like CEDAW to fill a legislative vacuum. The case arose from the gang-rape of a social worker, but its impact went far beyond that one incident. It created a framework that eventually led to the POSH Act of 2013.

Then there were the cases about personal laws. *Shah Bano* in 1985, where the Court held that Muslim women are entitled to maintenance under Section 125 CrPC, sparking a political firestorm that led to the Muslim Women Act of 1986. And then *Danial Latifi* in 2001, where the Court effectively restored what *Shah Bano* had won, holding that Muslim women are entitled to reasonable and fair provision beyond the iddat period. And finally *Shayara Bano* in 2017, where the Court struck down the practice of triple talaq as unconstitutional.

More recently, the Court has taken on issues of bodily autonomy and reproductive rights. In the *Sabarimala* case, a 4-1 majority held that excluding women of menstruating age from the temple violated their right to equality and dignity. "To treat women as children of a lesser god is to blink at the Constitution itself," Justice Chandrachud wrote. In *X v. Principal Secretary*, the Court expanded access to abortion for unmarried women, recognizing that reproductive autonomy is part of Article 21.

And just this year, in *Janshruti (People's Voice) v. Union of India*, the Court reaffirmed the constitutional validity of Section 498A, holding that gender-specific laws targeting dowry-related cruelty are justified under Article 15(3)'s principle of positive discrimination. The Court acknowledged instances of misuse but held that misuse does not invalidate a law; it must be addressed case by case.

This paper is my attempt to trace this journey. To understand how the Supreme Court has interpreted the Constitution to expand women's fundamental rights. To see where it has succeeded, where it has faltered, and where the work remains unfinished.

2. Objectives of the Study

When I started working on this paper, I had five main questions I wanted to answer.

First, I wanted to trace the evolution of the Supreme Court's jurisprudence on gender justice from 1950 to the present. How did early cases conceptualize equality? When did the shift from

formal equality to substantive equality occur? What triggered these shifts?

Second, I wanted to examine the Court's interpretation of the constitutional framework Articles 14, 15, and 21 in cases involving women's rights. How has the Court understood the relationship between these provisions? Has it applied Article 15(3) consistently as a tool for positive discrimination?

Third, I wanted to analyze landmark judgments across different domains: workplace equality, personal laws, criminal law reform, reproductive autonomy, and religious practices. What principles did these cases establish? How have they shaped the law and society?

Fourth, I wanted to look at the Court's approach to specific legal challenges that remain unresolved, particularly the marital rape exception. What are the constitutional arguments for and against striking it down? Why has the Court delayed a decision?

Fifth, I wanted to assess the limitations and critiques of the Court's gender justice jurisprudence. Where has the Court fallen short? When has it failed to apply Article 15 with the rigor it deserves? What does this tell us about the possibilities and limits of judicial action?

3. Methodology

This is mostly a doctrinal study, which means I spent time reading and analyzing case law, constitutional provisions, and scholarly commentaries rather than conducting surveys or interviews. I wanted to understand what the Supreme Court has said and how its reasoning has evolved.

The primary sources I relied on were the Constitution of India, particularly Articles 14, 15, and 21, and a wide range of Supreme Court judgments spanning seven decades. I read the cases themselves, not just summaries, to understand the reasoning.

For secondary sources, I drew on academic analyses, law journal articles, and commentaries on the cases. The NLS Forum's analysis of Justice Chandrachud's gender equality jurisprudence was particularly helpful for understanding recent developments. The LSE Human Rights blog's detailed constitutional analysis of the marital rape exception provided a rigorous framework for evaluating that issue. India Today's compilation of cases on Muslim women's rights helped me trace that specific line of jurisprudence. And the PARI article summarizing key judgments gave me a broader overview.

I also looked at the recent Janshruti judgment from 2025, which is available through Kerala

Law, and the coverage of the Sabarimala case and the Andhra High Court's transgender rights judgment.

I should be clear about the limitations of this approach. This is a study of judicial decisions, not of their implementation. I can tell you what the Court said, but I cannot tell you how many women have actually benefited from these judgments. That would require a different kind of research.

4. Literature Review

4.1 Feminist Legal Theory and the Indian Constitution

The relationship between law and gender has been extensively theorized in feminist legal scholarship. A foundational text in the Indian context is Kapur and Cossman's "Subversive Sites," which provides a feminist analysis of the legal regulation of women in India. The authors examine both the limitations and possibilities of law in women's struggles for social change. They argue that law should be revisioned as a site for discursive struggle, rather than simply as a tool for social change. This framework helps us understand why court victories do not always translate into social transformation.

The book examines the constitutional challenges and contesting discourses around equality and family, women's engagement with legal discourse, and the strategies available for feminist legal interventions. It remains essential reading for anyone trying to understand the complexities of gender justice litigation in India.

4.2 The Shift from Formal to Substantive Equality

Early Indian jurisprudence on gender equality tended to focus on formal equality treating women the same as men. This approach had its limits because it could not address the structural disadvantages that women face. Over time, the Supreme Court has moved toward a more substantive understanding of equality, recognizing that sometimes you need to treat women differently to achieve real fairness.

Article 15(3) has been central to this shift. As the Court reaffirmed in *Janshruti*, Article 15(3) is not an exception to Article 14 but a facet of it. Positive discrimination for women is constitutionally permissible because it addresses systemic vulnerabilities. This interpretation has enabled the enactment and upholding of laws like Section 498A, which target specific forms of violence that disproportionately affect women.

4.3 International Law and Constitutional Interpretation

Indian courts have frequently drawn on international law in interpreting constitutional provisions related to gender. The Vishaka case is the most prominent example, where the Court relied on CEDAW to lay down guidelines on sexual harassment. The Court held that international conventions to which India is a party can be used to interpret fundamental rights, especially where domestic law is absent.

This approach has been criticized by some as judicial activism, but it has also been praised for bringing Indian law in line with international standards. The UN Guidelines on the Role of Prosecutors have been used to evaluate India's prosecutorial framework, and CEDAW's General Recommendations have informed the Court's understanding of violence against women as a form of discrimination.

4.4 The Anti-Stereotyping Principle

A significant development in recent jurisprudence is the articulation of an anti-stereotyping principle. In cases like Anuj Garg and Navtej Singh Johar, the Court has held that laws based on gendered stereotypes violate Article 15. This principle has been applied to strike down provisions that assume women are incapable of making certain decisions or that reinforce patriarchal notions of women's roles.

As applied to the marital rape exception, the anti-stereotyping principle would require striking down a provision that rests on the archaic notion that women, once married, implicitly consent to all future sexual acts. Such a stereotype has no place in a constitutional order based on equality and autonomy.

4.5 Intersectionality and Multiple Disadvantages

Recent scholarship has emphasized the importance of intersectionality in understanding gender discrimination. Women are not a monolithic category; they experience discrimination differently based on caste, class, religion, and other factors. The Supreme Court has begun to recognize this, as seen in its jurisprudence on Muslim women's rights and its recognition of transgender women's rights under Article 15.

The Andhra High Court's 2025 judgment affirming that a transgender woman is entitled to the same legal protections as any woman under Section 498A is a significant step in this direction. The Court held that discriminating against a trans woman solely on the ground of reproductive capacity violates Articles 14, 15, and 21. This extends the definition of "sex" in Article 15 to include gender identity, consistent with the NALSA judgment of 2014.

4.6 What Is Missing in the Literature

Reading through all this, I noticed several gaps. First, there is a tendency to focus on landmark cases while neglecting the everyday implementation of these judgments. Second, the voices of women most affected by the justice system are largely absent from the academic literature. Third, there is a need for more empirical research on how courts actually decide gender cases. Fourth, the recent judgments on transgender rights and their relationship to women's rights jurisprudence deserve more attention.

This paper tries to address some of these gaps, at least a little, by providing a comprehensive overview of the Court's gender justice jurisprudence and highlighting areas where work remains to be done.

5. The Constitutional Framework

5.1 Article 14: The Equality Guarantee

Article 14 of the Constitution says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. This provision has been interpreted by the Supreme Court to prohibit arbitrary discrimination and to require that any classification made by law must have a rational basis and a nexus with the law's objective.

In the context of gender, this means that laws that treat men and women differently are not automatically unconstitutional. They must be tested against the reasonable classification standard. If there is a real difference between men and women that is relevant to the law's purpose, and if the classification is reasonably related to achieving that purpose, the law can survive constitutional challenge.

5.2 Article 15: Prohibition of Discrimination and Special Provisions

Article 15 provides more specific protection against gender discrimination. Article 15(1) prohibits discrimination on grounds including sex. But Article 15(3) creates an explicit exception: nothing in this article shall prevent the State from making any special provision for women and children.

The relationship between Article 14 and Article 15(3) has been the subject of considerable judicial interpretation. The Supreme Court has consistently held that Article 15(3) is not an exception to Article 14 but a realization of it. Positive discrimination for women is constitutionally permissible because it addresses the systemic disadvantages that prevent women from enjoying equality in fact.

This framework has enabled the enactment of laws like Section 498A, which target violence that disproportionately affects women. As the Court held in *Janshruti*, the gender-specific nature of such laws is not arbitrary but a deliberate legislative choice based on social reality.

5.3 Article 21: The Right to Life with Dignity

Article 21 guarantees that no person shall be deprived of his life or personal liberty except according to procedure established by law. The Supreme Court has given this provision an expansive interpretation over the years, holding that the right to life includes the right to live with dignity, the right to health, the right to privacy, and the right to be free from violence.

For women, this means that domestic violence, sexual harassment, and denial of reproductive autonomy are not just legal wrongs; they are violations of constitutional rights. The Court has repeatedly invoked Article 21 in gender cases, from *Vishaka* to the abortion access cases to the marital rape exception litigation.

5.4 The Doctrine of Positive Discrimination

The doctrine of positive discrimination, rooted in Article 15(3), has been central to the Court's gender justice jurisprudence. It recognizes that formal equality treating everyone the same is insufficient in a society marked by historical disadvantage. As the Court has said, equality does not require identical treatment; it requires that equals be treated equally and unequals be treated unequally.

This doctrine has been applied to uphold reservations for women in local bodies, maternity benefits, and protective legislation like Section 498A. It has also been invoked to justify gender-specific approaches to issues like domestic violence, where women are disproportionately affected.

6. Landmark Judgments on Workplace Equality

6.1 C.B. Muthamma v. Union of India (1979)

C.B. Muthamma was the first woman to be appointed as an Indian Foreign Service officer. She faced discrimination at every stage of her career, culminating in a challenge to Rule 8(2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961, which required women officers to obtain permission before marrying and disentitled them from promotion if they married.

The Supreme Court acknowledged the blatant gender-based discrimination and held that the rules violated Articles 14 and 16. The Court emphasized that the Constitution guarantees equal opportunities to both men and women in public employment and that gender cannot be a valid

criterion for differential treatment. This was one of the earliest cases where the Court struck down discriminatory provisions based on gender.

6.2 Air India v. Nergesh Meerza (1981)

Nergesh Meerza was an air hostess with Air India who was forced to retire upon her first pregnancy. The airline's regulations required air hostesses to retire at 35, or upon marriage, or upon first pregnancy, whichever occurred earlier.

The Supreme Court held that the policy of forcing air hostesses to resign upon marriage or pregnancy was arbitrary and unreasonable. The Court emphasized the importance of gender equality and rejected the notion that marriage or pregnancy could be grounds for termination of employment. This case established important principles about the relationship between employment and reproductive choices.

6.3 Mackinnon Mackenzie v. Audrey D'Costa (1987)

Audrey D'Costa was a lady stenographer who was paid less than her male counterparts for work of a similar nature. The employer had created an artificial designation to justify paying women less.

The Supreme Court ruled that employers cannot create artificial designations to pay women less than men for work of similar or identical nature. This case applied the principle of equal pay for equal work and established that job titles cannot be used to disguise gender discrimination.

6.4 Apparel Export Promotion Council v. A.K. Chopra (1999)

This case involved sexual harassment at the workplace. The Court referenced the definition of sexual harassment from Vishaka and held that it is inclusive of unwelcome sexually determined behaviors. The Court emphasized that sexual harassment can manifest as any form of sex discrimination when such conduct impacts a female employee's work or creates a hostile environment.

The case reinforced the Vishaka guidelines and established that sexual harassment claims must be taken seriously by employers.

7. Landmark Judgments on Personal Laws

7.1 Shah Bano v. Union of India (1985)

Shah Bano, a 62-year-old divorced Muslim woman, filed a case for maintenance under Section

125 of the Code of Criminal Procedure. The Supreme Court ruled in her favor, holding that Muslim husbands are liable to provide maintenance to their divorced wives beyond the iddat period.

The judgment sparked a political firestorm. Conservative Muslim groups argued that it interfered with Muslim personal law. The Rajiv Gandhi government responded by enacting the Muslim Women (Protection of Rights on Divorce) Act, 1986, which restricted the right of Muslim divorcees to maintenance to only the iddat period.

The Shah Bano case remains one of the most controversial and significant judgments in the history of Indian gender jurisprudence. It highlighted the tension between religious personal laws and constitutional guarantees of equality, a tension that remains unresolved to this day.

7.2 Danial Latifi v. Union of India (2001)

Danial Latifi, the advocate who represented Shah Bano, challenged the constitutional validity of the 1986 Act. The Supreme Court interpreted the Act in a manner that upheld the Shah Bano judgment, effectively nullifying the restrictions imposed by the 1986 law.

The Court held that Muslim women are entitled to reasonable and fair provision for their future, which extends beyond the iddat period. This judgment restored the rights that Shah Bano had won and established that personal laws must be interpreted in light of constitutional guarantees.

7.3 Shayara Bano v. Union of India (2017)

Shayara Bano challenged the practice of triple talaq (instant divorce) under Muslim personal law. The Supreme Court, in a 3:2 majority, declared the practice unconstitutional and invalid. The Court held that triple talaq violates the fundamental rights of Muslim women, particularly their right to equality and dignity. The judgment was a landmark in the struggle for gender justice within personal laws. It established that practices that are arbitrary and discriminatory cannot be defended solely on the ground that they are part of personal law.

7.4 Mary Roy v. State of Kerala (1986)

Mary Roy challenged the discriminatory provisions of the Travancore Christian Succession Act, 1916, which governed the inheritance rights of Syrian Christian women in Kerala. The Act granted women only a one-fourth share of the property that their brothers inherited.

The Supreme Court ruled that the discriminatory provision was unconstitutional and that Christian women in Kerala were entitled to equal shares of inheritance under the Indian

Succession Act. This judgment extended the principle of gender equality to inheritance laws and established that customary laws cannot override constitutional guarantees.

7.5 Githa Hariharan v. Reserve Bank of India (1999)

This case challenged the provisions of the Hindu Minority and Guardianship Act, 1956, which designated the father as the natural guardian of a minor child, excluding the mother from this role.

The Supreme Court held that such a provision was unconstitutional and violated the principles of equality. The Court ruled that the mother, like the father, should be considered a natural guardian, and that her rights should not be subordinated solely based on gender. The Court observed that both parents are duty-bound to take due care of their child, and both should be treated as guardians.

8. Landmark Judgments on Criminal Law and Violence Against Women

8.1 Vishaka v. State of Rajasthan (1997)

This is perhaps the most famous gender justice judgment in Indian legal history. The case arose from the gang-rape of a social worker in Rajasthan, which exposed the complete absence of legal protections against sexual harassment at the workplace.

The Supreme Court laid down detailed guidelines on sexual harassment, drawing on international conventions like CEDAW. The Court held that sexual harassment violates the fundamental rights of working women under Articles 14, 15, and 21. The Vishaka guidelines remained in force until they were codified in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

The case is significant not only for its outcome but also for its methodology. The Court used international law to fill a legislative vacuum, establishing a precedent for future rights-based litigation.

8.2 State of Punjab v. Gurmit Singh (1996)

This case addressed the evidentiary standards in rape trials. The Supreme Court held that the testimony of a rape victim is entitled to the same weight as that of an injured witness. The Court criticized the tendency of courts to view rape victims with suspicion and emphasized that a woman's testimony cannot be disbelieved simply because she is a woman of "doubtful reputation."

The Court observed that even a woman of easy virtue is entitled to privacy and no one can invade her person as and when he wishes. This judgment was crucial in shifting the focus in rape trials from the victim's character to the accused's conduct.

8.3 State of Jharkhand v. Shailendra Kumar Rai (2022)

This case prohibited the unscientific medical examination practice known as the "two-finger test" in rape cases. The Court held that this test is a relic of patriarchal notions and neither proves nor disproves allegations of rape. It directed that the test should not be conducted and that any reference to it in medical reports should be disregarded.

The judgment recognized that such examinations violate the dignity of rape survivors and perpetuate myths about women's sexuality. It was a significant step toward ensuring that medical evidence in rape cases is collected in a manner that respects the survivor's rights.

8.4 Budhadev Karmaskar v. State of West Bengal (2022)

This case addressed the rights of sex workers. The Supreme Court recognized the right of sex workers to live with dignity under Article 21. The Court held that their consent is paramount in every interaction with the state, including during raids and rehabilitation schemes. It prohibited police from harassing, arresting, or victimizing sex workers in cases of voluntary sex work.

The judgment was significant because it recognized sex workers as rights-bearing citizens entitled to constitutional protection. It rejected the moralistic approach that had historically characterized judicial attitudes toward sex work.

8.5 Janshruti (People's Voice) v. Union of India (2025)

This recent judgment addressed the constitutional validity of Section 498A IPC (now Section 84 BNS), which criminalizes cruelty by husbands and their relatives against married women. A civil society organization had petitioned the Court to declare the provision unconstitutional because it applies only to women and to direct the government to formulate gender-neutral guidelines for domestic violence complaints.

The Supreme Court dismissed the petition. It held that Section 498A is constitutionally valid, supported by Article 15(3)'s principle of positive discrimination. The Court acknowledged instances of misuse but held that misuse does not invalidate a law; it must be addressed on a case-by-case basis. The Court also noted that dowry remains a deeply entrenched social evil, with many cases going unreported, underscoring the continued necessity of the provision.

The judgment reaffirms the constitutional validity of gender-specific protective legislation and clarifies that positive discrimination is not an exception to equality but a realization of it.

9. Landmark Judgments on Reproductive Autonomy and Bodily Integrity

9.1 Suchita Srivastava v. Chandigarh Administration (2009)

This case involved a woman with mental illness who was forced to undergo an abortion. The Supreme Court recognized the fundamental right of women to make decisions about their reproductive health, including the choice to continue a pregnancy. The Court held that reproductive autonomy is an integral part of Article 21.

The judgment emphasized that the state cannot impose its will on women in matters of reproduction. It established that women have the right to bodily integrity and that this right extends to reproductive choices.

9.2 X v. Principal Secretary, Health and Family Welfare Department (2022)

This case addressed the interpretation of Rule 3B of the Medical Termination of Pregnancy Rules, which extended the 20-week time limit for abortions to 24 weeks in certain circumstances, including a change in marital status. The rule explicitly mentioned married women, leading to a challenge by unmarried women who argued that they were being discriminated against.

Justice Chandrachud, writing for the Court, held that excluding unmarried women from the extended time limit violated their right to decisional autonomy. He reinterpreted Rule 3B to be inclusive of unmarried women as well. However, as scholars have noted, the judgment was notable for the complete absence of Article 15 analysis. The Court discussed patriarchy and stereotypes but did not ground its reasoning in the constitutional prohibition of sex discrimination.

9.3 Sabarimala Temple Entry Case (2018)

In a 4:1 majority, the Supreme Court held that the practice of excluding women of menstruating age from the Sabarimala temple violated their right to equality and dignity. Chief Justice Dipak Misra observed: "The dualistic approach against women degrades the status of women. Woman is not lesser or inferior to man. Patriarchy of religion cannot be permitted to trump over faith". Justice Chandrachud added: "To treat women as children of a lesser god is to blink at the Constitution itself". The Court held that excluding menstruating women is not an essential part

of religion and that physiological factors cannot be the basis for denying constitutional entitlements.

The judgment was significant because it applied constitutional principles to religious practices, holding that even religious freedom under Article 25 must yield to fundamental rights of equality and dignity.

10. The Unfinished Agenda: The Marital Rape Exception

One of the most significant pending challenges to gender justice in India is the marital rape exception. Exception 2 to Section 375 of the Indian Penal Code provides that sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape. This provision, a relic of colonial jurisprudence, grants husbands legal immunity for non-consensual sexual acts within marriage.

The constitutional challenge to this provision is currently pending before the Supreme Court in *Hrikesh Sahoo v. State of Karnataka*. As a detailed constitutional analysis argues, the marital rape exception violates multiple constitutional provisions.

Under Article 14, the exception fails both the reasonable classification test and the arbitrariness test. While it creates an intelligible differentia based on marital status, there is no rational nexus between this differentia and the object of rape laws, which is to protect women's bodily integrity and sexual autonomy. The exemption does not serve this goal; it undermines it.

Under Article 15, the exception violates the anti-stereotyping principle. It rests on the archaic notion that women, once married, implicitly consent to all future sexual acts. This perpetuates the stereotype of women as submissive sexual partners who are bound by the norms of marriage. It reinforces the damaging stereotype that marriage strips women of their individuality.

Under Article 21, the exception violates the right to life with dignity and bodily integrity. As established in *Puttaswamy*, privacy includes the right to make decisions about one's body. The marital rape exception denies married women this right.

Under Article 23, which prohibits forced labor, the exception can be seen as enabling a form of forced labor within the home, undermining constitutional protections against servitude.

The Court's delay in deciding this case has been criticized by scholars and activists. As one analysis notes, the existence of the marital rape exception creates a paradoxical constitutional framework where married women possess fewer rights over their bodily autonomy than their

unmarried counterparts. This legal matrix creates a sanctioned hierarchy of oppression, effectively institutionalizing gender-based discrimination.

11. The Role of Justice Chandrachud in Expanding Gender Justice

Justice D.Y. Chandrachud, who retired as Chief Justice of India in 2024, played a significant role in shaping the Supreme Court's gender justice jurisprudence. A recent analysis examines his contribution, noting both the promise and the limitations of his approach.

In *Navtej Singh Johar*, Justice Chandrachud confirmed the rights of homosexuals within Article 15's non-discrimination pledge and cemented an approach to equality that includes indirect discrimination. He noted that it was no defense to claim that homosexuals were not particularly named by the anti-sodomy provision; in practice, it was weaponized against the queer community.

In *Joseph Shine*, he explicitly pointed out the patriarchal stereotypes underlying the adultery provision and struck it down for violating women's right to equality. He read the history of the provision to note that the supposed immunity enjoyed by married women from prosecution existed only because of the stereotypical notion of chastity and the belief that a woman became the property of her husband upon marriage.

In the *Sabarimala* judgment, he read Article 17's prohibition against untouchability to include practices of excluding menstruating women, noting the central role pollution plays in both forms of bigotry.

In *Lt. Col. Nitisha*, he prescribed a framework for the assessment of indirect discrimination, importing a variant of the test used by the Canadian Supreme Court.

However, scholars have noted that once Justice Chandrachud became Chief Justice, his focus on equality seemed to diminish. In *X v. Principal Secretary*, dealing with abortion access for unmarried women, there was a complete absence of Article 15 analysis. The Court discussed patriarchy and stereotypes but did not ground its reasoning in the constitutional prohibition of sex discrimination. And during his time as master of the roster, cases important to women's rights, such as those challenging the restitution of conjugal rights and the marital rape exception, were not given sufficient time for hearing.

This mixed record suggests that even the most progressive judges operate within institutional constraints and that the project of gender justice cannot rely on individual judges alone.

12. Transgender Rights and the Expansion of Gender Justice

The Supreme Court's 2014 judgment in *NALSA v. Union of India* was a landmark in the recognition of transgender rights. The Court held that transgender individuals have the right to self-identified gender and that discrimination on the ground of gender identity violates Article 15. The Court extended the definition of "sex" in Article 15 to include gender identity.

A recent judgment of the Andhra Pradesh High Court in 2025 applied these principles to a criminal case under Section 498A. The petitioners had argued that a transgender woman could not file a complaint under Section 498A because she was not a "woman" within the meaning of the law. Justice Venkata Jyothirmai Pratapa rejected this argument, holding that discriminating against a trans woman solely on the ground of reproductive capacity violates Articles 14, 15, and 21.

The Court held that denying a transgender woman the legal status of "woman" is unconstitutional. It emphasized that a woman is not defined by her womb or her reproductive capacity. The judgment is significant because it affirms that transgender women are entitled to the same legal protections as any woman under Indian law.

As the article notes, this judgment carries a profound historical irony. British colonial rule, through measures like the Criminal Tribes Act of 1871, first systematically criminalized India's hijra communities. Now, while Western legal systems are busy dismantling rights, the Indian judiciary is ensuring they are being built.

13. Critiques and Limitations of the Court's Jurisprudence

Despite the many landmark judgments, the Supreme Court's gender justice jurisprudence has significant limitations.

First, the Court has sometimes failed to apply Article 15 with the rigor it deserves. As the analysis of *X v. Principal Secretary* shows, even in cases that cry out for equality analysis, the Court has sometimes relied on other provisions. This means that the full potential of Article 15 as a tool for challenging gender discrimination remains unrealized.

Second, the Court has been slow to hear important cases. The marital rape exception challenge has been pending for years. Petitions challenging the constitutionality of restitution of conjugal rights have not been given sufficient time for hearing. Delay in these cases means continued violation of rights.

Third, there is often a gap between the Court's progressive rhetoric and ground-level implementation. The Vishaka guidelines were in place for years before they were codified, and even after codification, sexual harassment remains rampant in workplaces. The Sabarimala judgment has been met with resistance and non-compliance. Judgments alone do not change social reality.

Fourth, the Court has sometimes been inconsistent in its approach to personal laws. While it struck down triple talaq, it has not addressed other discriminatory practices within personal laws. The relationship between religious freedom and gender equality remains unresolved.

Fifth, as the critique of Justice Chandrachud's tenure notes, even progressive judges are constrained by institutional structures and the power of the Chief Justice over case allocation. The Master of the Roster power means that one person decides which cases get heard, and this power can be used to delay or prioritize certain issues.

14. What Needs to Change

Based on this analysis, here are some suggestions I would offer.

Resolve the marital rape exception. The Supreme Court should decide the pending challenge and strike down Exception 2 to Section 375. The constitutional arguments against it are overwhelming, and every day of delay means continued violation of married women's rights.

Apply Article 15 consistently. In all cases involving gender discrimination, the Court should explicitly analyze Article 15 and develop its anti-stereotyping principle. This would strengthen the constitutional foundation for gender justice.

Ensure timely hearing of important cases. The power of the Master of the Roster should be exercised transparently, and cases involving fundamental rights should be prioritized.

Monitor implementation. The Court should develop mechanisms to monitor the implementation of its judgments, ensuring that progressive rhetoric translates into ground-level change.

Address personal laws comprehensively. The relationship between religious personal laws and constitutional guarantees of equality needs to be addressed systematically, not case by case.

Extend protections to all marginalized genders. The recognition of transgender rights in NALSA and the Andhra High Court judgment should be built upon, ensuring that all individuals, regardless of gender identity, have equal access to legal protections.

15. Conclusion

I started this paper with a question about the gap between constitutional promises and lived reality. After tracing the Supreme Court's gender justice jurisprudence over seven decades, I am left with a complicated answer.

The Court has done remarkable things. It has struck down discriminatory employment rules, laid down guidelines on sexual harassment, expanded access to abortion, upheld the rights of Muslim women, recognized the dignity of sex workers, and extended constitutional protections to transgender individuals. In case after case, it has read the Constitution expansively, drawing on international law and feminist principles to give meaning to abstract guarantees of equality. The Vishaka guidelines, born from the gang-rape of a social worker, created a framework that eventually became law. The Shah Bano case, for all the controversy it sparked, established that Muslim women are entitled to maintenance. The Shayara Bano judgment struck down triple talaq, affirming that personal laws cannot violate fundamental rights. The Sabarimala decision held that even religious practices must yield to constitutional guarantees of equality. The Janshruti judgment reaffirmed that gender-specific protective legislation is constitutionally valid. The Andhra High Court's transgender rights judgment extended these protections to all women, regardless of reproductive capacity.

These are real achievements. They have changed the law and, in some cases, changed lives.

But the Court has also had its limitations. It has sometimes dodged hard questions, as seen in the marital rape exception litigation that remains unresolved. It has sometimes failed to apply Article 15 with the rigor it deserves. It has sometimes delayed important cases. And even when it has decided progressively, implementation has often lagged.

The story of gender justice under the Indian Constitution is not a simple narrative of progress. It is a complex and ongoing struggle, with victories and setbacks, breakthroughs and backlogs.

The Court has been a crucial actor in this struggle, but it cannot do it alone. Legislators must pass laws that implement constitutional principles. Executives must enforce those laws. Police and prosecutors must investigate and prosecute violations. Civil society must continue to organize and advocate. And ordinary citizens must continue to demand their rights.

The Constitution promises equality. The Court has done much to fulfill that promise. But the work remains unfinished. The marital rape exception still stands. Personal laws still discriminate. Violence against women continues unabated. Transgender individuals still face exclusion. Until these realities change, the project of gender justice will remain incomplete.

As Justice Chandrachud wrote in the Sabarimala case, "To treat women as children of a lesser god is to blink at the Constitution itself." The same could be said of any group denied the full measure of constitutional protection. The task ahead is to ensure that no one is treated as a lesser citizen, that the Constitution's promise of equality is realized for all.

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