



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

INTERSECTIONALITY AND GENDER JUSTICE IN INDIA: REASSESSING LEGAL PROTECTION FOR WOMEN, LGBTQIA+ AND MARGINALISED COMMUNITIES

**Taranbir Singh*

ABSTRACT

The concept of intersectionality provides an important tool in analysing how different types of discrimination impact people in multiple and intersecting ways based on their various social identifications, such as gender, caste, class, religion, sexuality, and others. In India, the debates surrounding gender justice have been limited in the sense that they consider all women as one homogeneous category without taking into account the different kinds of oppression that Dalit women, Adivasis, religious minorities, disabled, and LGBTQIA+ communities face. This paper examines the extent to which India's constitutional and legal framework is capable of addressing issues of intersectional discrimination and whether the protections available are adequate in light of the concerns raised by marginalised communities. Specifically, this paper will discuss the constitutional provisions, legislative measures, and judicial cases that have influenced the contemporary gender jurisprudence of India, including transgender rights, sexual autonomy, workplace equality, and substantive equality. Finally, the limitations of approaches based on formal equality will be examined, and a call for transforming the approach towards gender justice through the use of intersectionality will be made.

Keywords- *Intersectionality, Gender Justice, LGBTQIA+ Rights, Transformative Constitutionalism, Dalit Feminism, Substantive Equality.*

INTRODUCTION

There has been considerable evolution in the concept of gender justice in India, moving from a limited perspective on formal equality to a more comprehensive approach that takes into consideration issues of substantive equality, respect, and inclusion. In the past, the discussion on gender justice in law and society was centred around the issue of oppression faced by women

in patriarchal societies. Though this discussion had its merits in helping to highlight the rights of women and ensuring their constitutional safeguards, it did not address the issue of the complex layers of oppression experienced by people who belonged to multiple disadvantaged communities.¹

Intersectionality was coined by Kimberlé Crenshaw, who highlighted that traditional frameworks used within feminism were problematic as they considered women as a homogeneous social group.² Crenshaw proposed that there is an interaction between various forms of discrimination that produce distinct forms of oppression, especially in relation to women from communities that have been marginalised historically. This is highly relevant to India in particular due to its historical caste system, religious differences, economic disparity, and colonisation, which influence access to justice and opportunities. Women from the Dalit community, Adivasi community, Muslim community, transgender community, queer community, and people with disabilities are often excluded not only based on their gender, but also due to other forms of oppression.³

The Indian Constitution promises a transformational idea of equality through its provisions of Fundamental Rights and Directive Principles of State Policy. Articles 14, 15, 16, and 21 provide for equality before the law, prohibition against discrimination, and protection of individual dignity and liberty.⁴ Throughout the years, the judiciary has increasingly interpreted these clauses to broaden the ambit of gender justice. The judicial pronouncements with respect to workplace sexual harassment, reproductive choice, privacy rights, decriminalisation of homosexuality, and transgender identity are examples of an evolving constitutional ideal of inclusivity.⁵ Nonetheless, there are considerable discrepancies between constitutional ideals and practical realities.

In most cases, the legal system in India has been protective towards women without considering an intersectional perspective on their issues. Some laws have been put in place to address domestic violence, sexual harassment, trafficking, and workplace discrimination against women who have been historically disadvantaged. However, many of these laws tend to assume that all women experience similar challenges. This is because they fail to consider

¹ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. Chi. Legal F. 139 (1989).

² *Id.*

³ Sharmila Rege, *Writing Caste/Writing Gender: Narrating Dalit Women's Testimonios* 6–12 (Zubaan 2006).

⁴ INDIA CONST. arts. 14, 15, 16 & 21.

⁵ *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241; *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1.

people who face discrimination from various angles within society.⁶ For example, women from the Dalit community experiencing sexual abuse can find it difficult to receive justice due to the existence of caste structures within the justice system. In addition, transgender persons still face problems such as joblessness, inadequate access to medical care, police brutality, and social isolation despite the enactment of laws recognising their existence.⁷

The rise of the discussion around LGBTQIA+ rights in India has broadened the concept of gender justice to encompass more than just men and women as the primary actors. Two landmark judgments by the Indian Supreme Court, in particular, have made important changes to the concept of constitutional morality to ensure that autonomy, identity, and sexual orientation become important elements of dignity and equality.⁸ In both *National Legal Services Authority v. Union of India* and *Navtej Singh Johar v. Union of India*, the Court affirmed that the former takes precedence over the latter and that all citizens, regardless of their sexual identity, should receive equal constitutional protection. Nevertheless, the lack of proper antidiscrimination legislation shows the limits of legal protection.

The intersectional feminism movement in India has also brought out the inadequacies of mainstream feminism movements that have, in the past, prioritised experiences of higher castes and cities while silencing the voices of Dalits, tribes, and minorities.⁸ Scholars of Dalit feminism have claimed that caste and patriarchy operate hand in hand in a system of “Brahmanical patriarchy,” wherein women of the lower castes are oppressed based on their caste as well as gender.⁹ Thus, any discussion on gender justice in India cannot ignore the fact that gender oppression is not a monolithic concept.

This research paper attempts to undertake a critical analysis of the association between intersectionality and gender justice in India. Constitutional provisions, legislation, judicial evolution, and feminist theories will be reviewed to assess whether the current legal protections reflect the ground realities of women, the LGBTQIA+ community, and other marginalised groups. Moreover, the impact of transformative constitutionalism and judicial activism in ensuring substantive equality will be assessed, along with the challenges that persist.

⁶ *National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438.

⁷ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

⁸ Nivedita Menon, *Seeing Like a Feminist* 45–61 (Zubaan 2012).

⁹ Uma Chakravarti, *Conceptualising Brahmanical Patriarchy in Early India: Gender, Caste, Class and State*, 28 *Econ. & Pol. Wkly.* 579 (1993).

A doctrinal and analytical approach is taken in the study in terms of constitutional interpretation, statutory analysis, judicial rulings, and recent academic debates. The study is an attempt to reconsider whether the growing Indian law and jurisprudence concerning gender justice takes adequate intersectional perspectives into consideration or if legal reforms have been translated into meaningful social change. The key conclusion made in the study is that gender justice in India needs to transcend formal equality and embrace an intersectional perspective instead.

CONCEPTUAL FRAMEWORK: INTERSECTIONALITY AND GENDER JUSTICE

1. UNDERSTANDING INTERSECTIONALITY

Gender justice discourse has been profoundly shaped by the development of intersectionality theory. Previous theories related to gender equality assumed that all women shared one common experience when it came to discrimination. This perspective did not take into account how different social realities were for different women depending on their caste, class, religious belief, sexual orientation, disability, ethnic identity, and socioeconomic status. Thus, intersectionality became a useful tool to understand how oppression functions in different ways and creates unique forms of discrimination.¹⁰

The phrase “intersectionality” was coined by Kimberlé Crenshaw in relation to discrimination experienced by African-American women based on both race and gender in the United States.¹¹ According to Crenshaw, discriminatory mechanisms cannot be studied in isolation since identities intersect with each other and influence each other. As a result, people who occupy several disadvantaged positions end up being ignored under conventional legal and sociological models. While intersectionality was formulated in an American framework, it has profound significance for India owing to its social stratification along lines of caste, patriarchy, religion, and economic inequality.

Discrimination in India cannot be explained purely based on gender. For instance, a Dalit woman faces discrimination not because she is oppressed by patriarchal forces but due to the caste system and poverty. The same case applies to transgender individuals in marginalised

¹⁰ Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *Stan. L. Rev.* 1241 (1991).

¹¹ *Id.*

groups who face multiple forms of discrimination based on their gender identity, poverty, societal stigma, and institutional discrimination.¹²

2. MEANING AND SCOPE OF GENDER JUSTICE

Gender justice goes beyond the notion of equality in law. Instead, it strives for substantive equality by taking into account the injustices of the past, structures of inequality, and institutionalised discrimination. Gender justice is concerned with equality, dignity, autonomy, and equal opportunity regardless of gender identity.¹³

The concept of formal equality presupposes that uniform treatment will guarantee equality. Nevertheless, substantive equality is aware that disadvantaged groups may need different treatment and positive discrimination for real equality to be attained. In a society characterised by significant social disparities, such as India, giving everyone the same legal protection will not be enough to end discrimination. Gender justice, consequently, will require reforms in law, society, and institutions to overcome social inequality.

This concept is embodied in India's constitution through constitutional articles that ensure equality as well as the right to affirmative action. These constitutional articles include Articles 14, 15, and 16, which all serve to prohibit discrimination and ensure the equality of all before the law. On the other hand, Articles 15(3) and 15(4) give the state the power to make special provisions for women and backward social groups, respectively.¹⁴

3. FEMINIST JURISPRUDENCE AND INTERSECTIONAL THEORY

Feminist legal theory has helped immensely in grasping the link between the law and discrimination against individuals on the grounds of their sex. The liberal theories of feminism mainly concentrated on ensuring equality between men and women in terms of rights and opportunities under the laws that prevailed at the time. Radical feminism highlighted patriarchy as an overarching system of oppression entrenched within the political, social, and legal order.¹⁵

While these theories were vital to feminist jurisprudence, they faced criticism for their tendency to generalise women's experiences without taking into account the differences that exist within

¹² Sharmila Rege, *Dalit Women Talk Differently: A Critique of "Difference" and Towards a Dalit Feminist Standpoint Position*, 33 *Econ. & Pol. Wkly.* WS39 (1998).

¹³ Nancy Fraser, *Feminist Politics in the Age of Recognition: A Two-Dimensional Approach to Gender Justice*, 1 *Stud. Soc. Just.* 23 (2007).

¹⁴ INDIA CONST. arts. 14, 15 & 16.

¹⁵ Catharine A. MacKinnon, *Toward a Feminist Theory of the State* 161–90 (Harvard Univ. Press 1989).

women. The concept of intersectionality was developed as a critique of the dominant narrative within feminism by asserting that oppression could not be viewed solely based on gender.

Caste became an integral component of Indian feminism, especially in terms of its impact on the lives of women. Dalit feminism was concerned that feminist movements failed to address violence against women based on caste, as they were generally informed by the perspective of upper-caste women.¹⁶ The notion of Brahmanical patriarchy highlights the intersection of the caste system and patriarchy and helps us understand how both these social systems work together to enforce social control and gender inequality.

4. INTERSECTIONALITY IN THE INDIAN CONTEXT

The social stratification of India is a crucial reason why intersectionality becomes so relevant here, since inequalities exist across many intersecting institutions. Caste continues to be an important factor in determining the social standing, economic prospects, and legal justice of an individual. Women from the Scheduled Castes and Scheduled Tribes communities have experienced violence and exclusion regularly. For example, sexual violence against Dalit women indicates both patriarchy and caste dominance.

Religion also makes an important contribution to gendered experiences. For minority women, it is not just the patriarchy that discriminates against them; they also have to deal with communal discrimination and socio-political marginalisation. Muslim women in India often face difficulties in areas such as personal laws, education, economics, and stereotyping.

The economic condition also heightens their vulnerability. Persons who belong to economically backward communities have very little access to health care facilities, education, legal help, and jobs. Poverty makes it difficult for the underprivileged people to avail themselves of their rights as guaranteed by the Constitution and laws of India. The same is true for persons with disabilities.

The lives of the LGBTQIA+ community members offer examples of how intersectionality works in India today. The queer people from the elite urban sections have more access to educational opportunities and legal knowledge compared to the queer people from the rural or lower castes, who go unnoticed in mainstream society. Thus, intersectionality shows that the experience of discrimination depends on one's social position.¹⁷

¹⁶ Gopal Guru, *Dalit Women Talk Differently*, 30 *Econ. & Pol. Wkly.* 2548 (1995).

¹⁷ Nivedita Menon, *Seeing Like a Feminist* 45–61 (Zubaan 2012).

5. TRANSFORMATIVE CONSTITUTIONALISM AND GENDER JUSTICE

Transformative constitutionalism entails the notion that constitutional interpretation ought to facilitate social transformation and dismantle structures of oppression.¹⁸ Transformative constitutional ideas have increasingly been embraced by the judiciary in India during the interpretation of fundamental rights concerning equality, dignity, privacy, and liberty.

The Supreme Court of India recognised the transgender community as a "third gender" and highlighted that the recognition of gender is an integral part of one's dignity and self-respect.¹⁹ It was clearly stated that all constitutional protections would be extended to all people without discrimination based on gender. Also, in *Navtej Singh Johar v. Union of India*, the Supreme Court of India decriminalised homosexual relationships and acknowledged that sexual orientation is an essential element of privacy, dignity, and equality.²⁰

It is apparent from the above cases that there has been a paradigm shift in the way courts view the idea of constitutional morality and substantive equality. Nonetheless, although there have been progressive trends within the judicial system, the mere acknowledgement of the law has not been able to put an end to discrimination and social exclusion.

This is because transformative constitutionalism is required to go beyond the rhetoric and reach out to legislative policies, administrative institutions, and society. Gender justice can thus be said to occur only when the constitution translates itself into social action.

6. CONCLUSION

The ideas of intersectionality and gender justice are interrelated and offer a holistic approach to understanding discrimination and inequalities existing in Indian society. While intersectionality emphasises the relationship between the categories of caste, gender, sexuality, religion, disability, and economic background in determining oppression, gender justice aims at achieving equal treatment and respect for all.

While the Constitution of India offers considerable transformative power to counter structural discrimination, advances in the Indian judiciary have broadened the ambit of rights in regard to gender, sexual orientation, dignity, and autonomy. Yet despite this progress, existing institutional blockages and societal biases have proved to be obstacles for the implementation

¹⁸ Karl E. Klare, *Legal Culture and Transformative Constitutionalism*, 14 S. Afr. J. Hum. Rts. 146 (1998).

¹⁹ *National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438.

²⁰ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

of these rights. It is, thus, important to adopt an intersectional approach to gender justice to address the multifaceted needs of marginalised communities in India.

CONSTITUTIONAL VISION OF EQUALITY AND GENDER JUSTICE IN INDIA

1. INTRODUCTION

India's constitution acts as the basic framework for safeguarding the values of equality, respect, and freedom. The constitutional ideal of gender equality is based on the concepts of substantive equality and transformation, which involve the destruction of past discriminatory structures and processes. As opposed to the idea of formal equality, the Indian constitutional structure acknowledges that there is a need for affirmative actions in order to uplift those sections that have historically been marginalised.²¹ It should be noted that through judicial interpretation over the years, the concept of equality has evolved to include concepts such as gender, sexuality, privacy, and autonomy.

When one discusses intersectionality, the importance of the constitution becomes even more pronounced since discrimination in India often occurs due to the combined effects of caste, class, religion, gender, disabilities, and sexual orientation. The constitution is thus an indispensable tool in combating any form of discrimination experienced by women, LGBTQIA+ individuals, and other minority groups.

2. EQUALITY UNDER ARTICLE 14

The right to equality before law and the equal protection of laws has been provided under Article 14.²² This article reflects both formal equality and substantive equality. While the former means that no one should be arbitrarily discriminated against, the latter allows for reasonable classifications in order to achieve social justice.

Judicial decisions have evolved to include the notions of fairness, non-arbitrariness, and respect for human dignity in their interpretation of Article 14. The Supreme Court has consistently ruled that equality is not synonymous with treating everyone alike and that it must take into consideration the current social and structural inequalities that exist.

In cases relating to LGBTQIA+ rights, Article 14 has been revolutionary. In *Navtej Singh Johar v. Union of India*, the Supreme Court ruled that Section 377 of the Indian Penal Code breached

²¹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 50–83 (Oxford Univ. Press 1966).

²² INDIA CONST. art. 14.

Article 14 since it unfairly discriminated against homosexuals.²³ The Court acknowledged that constitutional equality was applicable to all people, regardless of their sexual orientation or gender identity.

3. NON-DISCRIMINATION UNDER ARTICLE 15

According to Article 15, discrimination based on religion, race, caste, gender, or place of birth is illegal.²⁴ It represents the constitutional effort aimed at combating discrimination in Indian society. Meanwhile, according to Article 15(3), certain provisions can be made for women and children by the government, and according to Article 15(4), affirmative action can be done for socially and educationally backward classes.

The importance of Article 15 is that it acknowledges the need for more than merely formal equality to compensate for past disparities. Affirmative discrimination or affirmative action is permissible since some categories need special consideration to guarantee substantive equality.

It has been judicially interpreted that “sex” in Article 15 can be extended to cover gender identity and sexual orientation as well. In *National Legal Services Authority v. Union of India*, it was established that any form of discrimination on the grounds of gender identity is violative of Article 14 and 15.²⁵ The Court affirmed that constitutional protections extend beyond the male-female binary and include transgender persons and gender minorities.

Intersectional discrimination still exists even though there are legal protections. For instance, Dalit women suffer discrimination as a result of the joint effect of both caste and gender bias. In addition, people who identify as queers and hail from poor economic status or religious minorities continue to be at risk of exclusion.

4. EQUALITY OF OPPORTUNITY UNDER ARTICLE 16

Equality of opportunity is guaranteed by Article 16 regarding public employment.²⁶ This article bans discrimination, allowing affirmative action for the disadvantaged sections underrepresented in governmental jobs.

Employment forms an essential part of gender justice as economic empowerment plays a key role in enabling people to exercise freedom and self-respect. Over the years, women and sexual

²³ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

²⁴ INDIA CONST. art. 15.

²⁵ *National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438.

²⁶ INDIA CONST. art. 16.

minorities have encountered several hurdles when it comes to employment due to stereotypical patriarchal notions and discrimination in the workplace.

There have been developments concerning discrimination in the workplace on account of the idea of equality in employment being a part of constitutional law. The Supreme Court of India has ruled that sexual harassment in the workplace is indeed an act of discrimination violating the right of equality.²⁷ This decision is an important milestone, indicating that safe working environments are also integral to gender justice.

Nevertheless, transgender people as well as queer individuals suffer from widespread employment discrimination. Social stigma, lack of education, and prejudice prevent many individuals belonging to such groups from being truly included in the structures of employment. Thus, the constitutional right guaranteed by Article 16 is only partly implemented.

5. RIGHT TO LIFE, DIGNITY, AND PRIVACY UNDER ARTICLE 21

Article 21 grants the right to life and personal liberty except as authorised by a procedure prescribed by law.²⁸ Through judicial interpretation, Article 21 has become one of the most inclusive clauses in the Constitution since it encompasses dignity, privacy, autonomy, reproductive rights, health, and sexual orientation.

According to Indian law, the right to life, as stated in Article 21, includes the right to live with dignity. This ruling has had a significant impact on gender justice jurisprudence. The Supreme Court acknowledged privacy as a fundamental right while deciding *Justice K.S. Puttaswamy v. Union of India*, and also noted that decisional autonomy relating to sexuality and personal relationships forms part of the right to privacy.²⁹

The acceptance of dignity and autonomy in Article 21 was crucial to the reasoning used in *Navtej Singh Johar*, wherein the Court held that consensual homosexual relations are part of individual freedom and dignity.³⁰ Likewise, in *Suchita Srivastava v. Chandigarh Administration*, the Court held that reproductive autonomy is part of individual liberty and bodily integrity.³¹

²⁷ *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241.

²⁸ INDIA CONST. art. 21.

²⁹ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1.

³⁰ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

³¹ *Suchita Srivastava v. Chandigarh Admin.*, (2009) 9 S.C.C. 1.

Thus, Article 21 can be considered a constitutional basis for acknowledging intersectional aspects of identity and autonomy. However, there remain many obstacles in practice, including stigmatisation, economic disparity, and structural discrimination, which prevent the realisation of these freedoms for disadvantaged groups.

6. DIRECTIVE PRINCIPLES AND CONSTITUTIONAL MORALITY

Furthermore, the constitutional vision for gender justice and social equality is reinforced by the Directive Principles of State Policy. These include Articles 39(a) and 39(d), which mandate the State to ensure livelihood opportunities to all irrespective of sex, equal remuneration to both sexes for the same work, and Article 42 that provides for just and humane working conditions, including maternity benefits.³² Even though non-justiciable in nature, these directive principles are intended to aid in enacting legislation and policies that serve the purpose of social welfare and distributive justice.

Constitutional morality has become an important aspect of gender jurisprudence in contemporary times. Constitutional morality demands that one follow constitutional values such as liberty, equality, dignity, and fraternity, irrespective of what may be the social morals or opinion of the majority.³³ The courts have repeatedly used constitutional morality to safeguard the interests of minorities and individuals.

Constitutional morality, according to the Supreme Court in *Navtej Singh Johar*, should triumph over social morality in issues related to personal identity and autonomy.³⁴ This doctrine has provided an increased level of constitutional protection for the LGBTQIA+ community and other minorities who face social discrimination and ostracism.

7. CRITICAL ANALYSIS AND CONCLUDING OBSERVATIONS

India's constitution creates an emancipatory basis for the promotion of gender equality and substantive equality. The Fundamental Rights and Directive Principles together aim at the elimination of discrimination that has existed in the past and work towards promoting respect, autonomy, and inclusion. Interpretation by the judiciary has greatly increased the scope of constitutional protection.

Nevertheless, constitutional safeguards by themselves are inadequate in eradicating systemic inequality. Marginalised populations will still have to contend with discriminatory acts based

³² INDIA CONST. arts. 39 & 42.

³³ Manoj Mate, *Constitutional Morality and Transformative Constitutionalism*, 13 NUJS L. Rev. 1 (2020).

³⁴ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

on the caste system, patriarchal oppression, religious bigotry, poverty, and heterosexism. Thus, there is a considerable discrepancy between constitutional aspirations and social reality.

A framework of intersectionality in the context of constitutional equality is critical to guaranteeing that legislation will adequately address the social realities of women, the LGBTQIA+, and other vulnerable sectors of society. For the constitution's concept of gender equality to become a transformative reality, its promise must be realised in social, institutional, and economic terms for all people.

INTERSECTIONALITY, TRANSFORMATIVE CONSTITUTIONALISM AND THE FUTURE OF GENDER JUSTICE

1. INTERSECTIONAL DISCRIMINATION AGAINST WOMEN AND MARGINALISED COMMUNITIES

Though women and minorities in India have been guaranteed equality and dignity through the Indian constitution, the reality is that there exists a structural form of discrimination against both of these groups within the country. The issue of gender discrimination in India should not be looked at through a single prism, as oppression usually takes place along the lines of caste, religion, sexuality, disability, class, and socio-economic status.³⁵

The Dalits and Adivasis continue to belong to the most marginalised groups in India. The use of sexual violence by men against Dalit women has been known to be motivated by both patriarchy and caste dominance.³⁶ In several cases, institutional barriers like police apathy, investigations not initiated, and social intimidation have further prevented them from accessing justice. Thus, the convergence of caste and gender is responsible for another kind of structural violence that needs to be addressed beyond gender neutrality.

In a similar vein, religious minority women have faced issues that involve multiple forms of marginalisation due to communal biases, socio-economic discrimination, and patriarchal customs in their communities. For example, Muslim women have long been facing issues in terms of access to education, economic participation, and laws pertaining to marriage and divorce. This demonstrates that intersectionality reveals that discrimination is not homogenous among all women.

³⁵ Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *Stan. L. Rev.* 1241 (1991).

³⁶ Sharmila Rege, *Writing Caste/Writing Gender: Narrating Dalit Women's Testimonios* 18–35 (Zubaan 2006).

Economic disparities further increase vulnerability along gender lines. Poor women and lesbian individuals typically do not have access to healthcare, legal services, educational opportunities, and jobs. Often, poverty leads to dependence and limits the proper use of the constitution. Similarly, individuals with disabilities are denied due to barriers in transportation, discrimination at work, and societal stigmas, whereas disabled women suffer greater chances of exploitation and neglect.

Transgender individuals also serve to highlight the multidimensional character of discrimination in India. Despite legal recognition of gender identity rights, social exclusion, lack of employment opportunities, homelessness, police brutality, and lack of access to health care facilities remain prevalent among the transgender community.³⁷ It is even more difficult for transgender individuals from lower castes and rural communities to navigate these issues.

2. LGBTQIA+ RIGHTS AND TRANSFORMATIVE CONSTITUTIONALISM

The evolution of LGBTQIA+ rights in India through legal jurisprudence reflects a major constitutional turn towards inclusion and equality. Traditionally, moral values inherited from the colonial era and heterosexuality-based social norms have been used to ostracise and discriminate against queerness.³⁸ Section 377 of the Indian Penal Code, which dates back to British colonisation, criminalised homosexual relationships.

Transformative constitutionalism became one of the major judicial tools for combating this discrimination. This principle views the Constitution as a dynamic tool intended to transform society by breaking down existing systems of inequality and enhancing human dignity.³⁹ Constitutional protection was broadened to cover areas like sexual orientation, gender identity, privacy, and autonomy.

In *National Legal Services Authority vs Union of India*, the Supreme Court acknowledged transgender individuals as a 'third gender' and noted that their gender identity is an important part of dignity, autonomy, and freedom.⁴⁰ The Court also ordered the governments to consider transgender individuals as socially and educationally backward communities to provide them with reservations and benefits.

³⁷ *National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438.

³⁸ Indian Penal Code, No. 45 of 1860, § 377.

³⁹ Karl E. Klare, *Legal Culture and Transformative Constitutionalism*, 14 S. Afr. J. Hum. Rts. 146 (1998).

⁴⁰ *National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438.

The rights of the LGBTQIA+ community also received constitutional recognition in the case of *Navtej Singh Johar v. Union of India*, wherein the court declared Section 377 to be unconstitutional.⁴¹ According to the judgment in the case, Section 377 violates Articles 14, 15, 19, and 21 of the Constitution of India by discriminating against a person on the grounds of sexual orientation. It is noteworthy that the court's decision prioritised constitutional morality over social morality.

This is because such decisions mark a transformation in the field of constitutional law in India by shifting from mere tolerance to full acceptance and dignity for those who identify as LGBTQIA+. Unfortunately, however, the lack of an anti-discrimination act continues to hinder the actual enforcement of such rights. Rights pertaining to same-sex marriage, adoption, inheritance, and non-discrimination are not fully recognised legally.

3. JUDICIAL TRENDS AND LEGAL DEVELOPMENTS

A progressive judicial approach towards gender justice is being followed by the Indian judiciary. Interpretation of the law through the judiciary has been vital to give a wider scope to the principles of equality and dignity under the Constitution.

The case of *Vishaka v. State of Rajasthan*⁴² held that sexual harassment in the workplace is a contravention of Articles 14, 15, and 21, and guidelines should be made to protect women in their working environment. The judgment provided the basis for the passage of the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*.

Just like this, in *Suchita Srivastava v. Chandigarh Administration*, the Court acknowledged reproductive rights to be a dimension of personal liberty and physical integrity as per Article 21.⁴³ The affirmation of the right to privacy as a fundamental right in *Justice K.S. Puttaswamy v. Union of India* further added to the constitutional protections of decision-making, individuality, and sexual preference.⁴⁴

Trends in the judiciary also suggest an increased emphasis on constitutional morality and transformative constitutionalism in cases involving the right to freedom in respect to gender identity and sexual orientation. It is increasingly recognised that equality should be substantive

⁴¹ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.

⁴² *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241.

⁴³ *Suchita Srivastava v. Chandigarh Admin.*, (2009) 9 S.C.C. 1.

⁴⁴ *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1.

and encompassing. However, judicial activism in itself will not address structural discrimination without legislative and institutional reform.

4. LIMITATIONS OF EXISTING LEGAL FRAMEWORKS

While progressive interpretations of constitutional provisions and legislation have been made, there are still considerable flaws that hamper the efficacy of India's gender justice regime. The first major flaw is the disparity between the existence of provisions in law and their actual implementation. Marginalised sections of society face structural impediments, social discrimination, financial dependence, and ignorance about accessing justice.⁴⁵

The majority of legislation governing women's rights still takes a protective rather than an intersectional perspective. Domestic abuse, sexual abuse, and workplace discrimination are examples of legislation that usually do not consider caste, disabilities, sexual orientation, or gender identity. Consequently, the lived realities of Dalit women, LGBTQ, and transgender individuals are often overlooked.

The Transgender Persons (Protection of Rights) Act, 2019, which was introduced to protect the rights of transgender individuals, has itself been criticised for not giving importance to the issue of self-identification and lacking measures for protection from discrimination and violence.⁴⁶ Likewise, a lack of legislation regarding discrimination puts LGBTQIA+ individuals at risk of exclusion.

The institutional biases within police and judiciary organisations continue to be one of the important issues. The victims of caste- and gender-based crimes have to endure intimidation, delay in the investigation process, and even hostile processes within the courts of law.

Furthermore, patriarchal and heteronormative societal constructs still shape laws and politics. Rights under constitutions become curtailed due to the dominance of social conservatism, which reduces the possibility for changes through legal reforms.

5. REFORMS AND POLICY RECOMMENDATIONS

Any effort to attain true gender justice in India should be a multidimensional and intersectional effort that goes beyond merely ensuring that women have equal rights within the law. Firstly,

⁴⁵ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 1–20 (Oxford Univ. Press 1999).

⁴⁶ The Transgender Persons (Protection of Rights) Act, No. 40 of 2019.

what is required is anti-discrimination laws that prohibit discrimination on grounds of sex, caste, sexual orientation, ability, religion, and gender identification.⁴⁷

Secondly, laws regarding gender-based violence and discrimination should consider an intersectional approach to take into account the unique vulnerabilities that marginalised groups have. Thirdly, the system should work on reinforcing legal aid, victim assistance programs and policing that is mindful of gender issues.

Third, socio-economic integration of the marginalised is vital. This entails extending the reservation policy and education, training, and healthcare access to women, transgender individuals, and poor socio-economic strata.

Fourth, programs to sensitise educational institutions, workplaces, law enforcement institutions, and the judicial system are necessary to combat patriarchal and heteronormative mindsets. Legislation alone will not bring about change without social transformation.

Furthermore, processes involved in the making of policies must be inclusive of the voices of Dalit women, Adivasis, LGBTQIA+ people, people with disabilities, and all other marginalised communities. Inclusive governance is essential in ensuring that laws and policies made do not ignore actualities and instead make blanket assumptions about equality.

CONCLUDING OBSERVATIONS AND FINDINGS

The discourse around gender justice in India has witnessed a major constitutional shift, whereby the traditional formalistic approach to equality has shifted toward a more meaningful and holistic conception of equality based on dignity, autonomy, and social justice.⁴⁸ Nevertheless, this shift is not complete. The existence of intersectional discrimination illustrates that mere legal acknowledgement is not sufficient to break down the existing caste hierarchy, patriarchy, heteronormativity, economic marginalisation, and institutional biases.

This research proves that the constitution of India has transformational potential in itself through its promises of equality, freedom, and non-discrimination. The judgments of *National Legal Services Authority vs. Union of India* and *Navtej Singh Johar vs. Union of India* have redefined the concept of constitutional morality by stating that gender identity and sexual

⁴⁷ Tarunabh Khaitan, *A Theory of Discrimination Law* 117–40 (Oxford Univ. Press 2015).

⁴⁸ INDIA CONST. arts. 14, 15, 16 & 21.

orientation are an integral part of human dignity and personhood.⁴⁹ Such events mark significant turning points in the path of inclusive citizenship and gender justice.

However, the further marginalisation of Dalit women, Adivasis, religious minorities, people with disabilities, and the LGBTQIA+ community is indicative of the limitations of current measures aimed at addressing these inequalities. The gap between constitutional principles and their implementation indicates the importance of a more comprehensive framework that takes into account multiple systems of oppression.

For a transformative understanding of gender justice in India, there is an urgent need for legal measures to fight discrimination; inclusive reform of institutions; redistribution of resources in terms of socio-economics; and participatory decision-making processes where those who were traditionally marginalised participate as well.

However, gender justice in India will not be achieved by any piecemeal changes in the laws alone. Rather, there has to be an unwavering commitment within the constitution itself to the principles of intersectional equality, in which everyone can realise their potential regardless of any social or personal markers.

⁴⁹ *National Legal Services Authority v. Union of India*, (2014) 5 S.C.C. 438; *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1.