

## **REIMAGINING GENDER JUSTICE IN INDIA: CONSTITUTIONAL RIGHTS, LEGAL REFORMS, AND JUDICIAL ACTIVISM**

**Rekha Chavan**

Professor,

Vijnaneshwar Government Law College, Kalburgi

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### **ABSTRACT**

Gender inequality in India has deep historical roots shaped by patriarchal norms. The concept of gender justice refers to equal treatment and opportunity for all genders — a core human right that the Indian Constitution enshrines through its Preamble, Fundamental Rights, Directive Principles of State Policy, and Fundamental Duties. Articles 14–18 ensure equality before the law, prohibit sex-based discrimination, and empower the State to adopt positive measures for women’s and gender minorities’ advancement. Despite strong constitutional provisions, social practices and implementation gaps have hindered genuine equality. Recent judicial pronouncements — including the Supreme Court’s recognition of menstrual health as a fundamental right and the constitution of a nine-judge bench to revisit discrimination in religious spaces — reflect an evolving constitutional engagement with gender justice. These developments highlight both legal progress and ongoing challenges in making de jure rights a de facto reality.

**Key words:** Gender equality, gender justice, constitution of India, fundamental rights, Fundamental Duties, Preamble, Directive Principles of State Policy.

### **INTRODUCTION**

Equality expresses the symmetry of equal opportunities between various people, object, processes and situations. From the time the concept of equality has the familiar connection with morality and justice and it bounds every individual equivalent fortuity irrespective of their background. The dynamics of equality have evolved throughout history, society is no longer allied with powerful upperclassmen men but instead, it admits those who are from different positions and aspects. However, there an ongoing struggle to attain equality by several groups and categories of society. One such category is gender equality. Gender equality is not only a constitutional goal but also a cornerstone of democratic justice. As former UN Secretary-General Kofi Annan observed, gender equality is both a right and a necessary condition for sustainable development and good governance. Since independence, India’s constitutional framework has guaranteed universal adult franchise and sought to eliminate discrimination. However, deeply entrenched patriarchal systems continue to present barriers to gender justice in the social, economic, and legal spheres.

### **Constitutional framework for gender equality**

#### **Article 14: Equality Before Law and Equal Protection**

Article 14 assures that “the State shall not deny to any person equality before the law or the equal protection of the laws.” This provision establishes both procedural and substantive equality — preventing arbitrary discrimination by the State while obligating it to protect individual rights without bias. Article 14 specifically states that: “The states shall no deny to any person equality before law or equality of laws within the territory of India.” The concept of equality has been taken from the “equal protection clause” of the American Constitution. Article 14 precludes discrimination on a basic level.

According to Article 14, the state cannot refuse equality to any person and it can neither decline the protection of individual laws within the territorial boundary of India.

The expression 'equality before law' has its base in the English common law. Which means that equal law shall be equal and all these laws shall be equally administered. The expression 'equal protection of laws' has its source or its origin in section 1 of the 14<sup>th</sup> amendment of the U.S. Constitution. Article 14 applies to 'any person' including any of the company, association, unions, citizens, non-citizens, natural persons as well as legal persons.

### **Articles 15 and 16: Prohibition of Discrimination and Equal Opportunity**

- **Article 15** prohibits discrimination on grounds including sex and empowers the State to make special provisions for women and children.
- **Article 16** ensures equal opportunity in public employment and forbids discrimination in recruitment, while permitting reservations for backward classes to address systemic disadvantage.

These provisions collectively promote gender equality not only in legal theory but also in public policies that seek to remedy historical injustices.

The basic proposition of gender equality has been embodied in the Preamble, Fundamental Rights, as well as the Fundamental Duties. The right to equality has been mentioned in the Indian Constitution from Article 14 to 18, these articles brief on how every individual is equal in front of the law and nobody can be discriminated against on the basis of their race, caste, gender or place of birth. It is important to understand that women in India have been oppressed and neglected by the male dominant society for a long time. The sense of morality and jurisdiction in India has evolved from one end to the other, practices like Sati and Child marriage have been abolished, women have the right to vote and express their opinions, there are laws that ensure that women get reservations in education and employment sectors and laws related to gender basic needs of women such as maternity leave is also implied. Yet, women are still facing trouble in achieving the social, political and economic equalities the Constitution claims to provide them.

The Indian Constitution has provided new dimensions to Indian society. The term **gender** is not used in the Constitution. Instead of 'Gender' they used the word 'sex'. In Articles 15 (1), 16 (2), and 325, which prohibit discrimination based on sex, the word **sex** is used. Although the term 'sex' has a narrower definition than the word gender. Discrimination is based upon on sex, colour, creed, caste, race, religion, and other factors has been prohibited under the constitution as they are violative of the Fundamental Rights.

In a similar vein, Article 14 of the Constitution guarantees equality before the law, while Articles 15 and 16 eliminate prohibitions or discrimination based on religion, race, caste, sex, or place of birth, among other factors, and provides the state guidance to establish provisions for women and children. Indian Constitution, surprisingly, gives the authority to state to make specific provisions for the protection and development of women and children. From time to time, a slew of laws have been established to empower them and elevate their status.

### **Recent judicial developments and Gender rights**

#### **Recognition of Menstrual health as fundamental right**

In a landmark judgment in **January 2026**, the **Supreme Court of India** declared that **the right to menstrual hygiene is an intrinsic component of the right to life under Article 21 of the Constitution**. The Court held that access to menstrual hygiene products, functional sanitation,

privacy, and related facilities is fundamental to dignity, equality, and education. It directed States and Union Territories to provide free biodegradable sanitary pads in schools, ensure gender-segregated toilets with water and soap, and establish menstrual hygiene management corners in all educational institutions. Waste disposal and privacy-protecting infrastructure were also mandated as part of gender-inclusive educational environments.

This judgment recognized that the lack of menstrual hygiene infrastructure disproportionately affects girls' schooling, educational participation, and well-being — thereby undermining substantive equality and dignity.

### **Implementation Challenges and Ground Realities**

Despite the constitutional recognition, reports have surfaced that many educational institutions still lack adequate menstrual hygiene facilities, highlighting the implementation gap between legal directives and social practice. A recent investigation at Lucknow University revealed non-functional washrooms and vending machines, underscoring ongoing challenges in translating judicial mandates into on-ground conditions.

### **Re-Examining Discrimination at Religious Places**

The Supreme Court has constituted a **nine-judge Constitution Bench** to revisit petitions concerning discrimination against women in religious places, including the long-standing Sabarimala Temple case. This broader review aims to examine constitutional principles concerning religious freedom and non-discrimination, potentially redefining how women's equality interacts with religious practices.

This development is significant because it demonstrates judicial willingness to tackle complex questions at the intersection of culture, religion, and gender equality.

### **Directive Principles, Policy, and Socio-Legal Instruments**

The **Directive Principles of State Policy** further guide gender justice efforts:

- **Article 39(d)**: Ensures equal pay for equal work for men and women.
- **Article 41**: Advocates the right to work and social protection.

These principles inform policy formulations and legislative interventions, influencing policies in health, education, labor, and welfare sectors.

Recent sensitization programmes aimed at empowering the third gender community reflect an expanding understanding of gender justice that goes beyond binary categories, promoting legal awareness, access to welfare schemes, and social inclusion for gender minorities.

### **Social and Institutional Dynamics**

While the legal framework has broadened significantly, entrenched social attitudes and implementation challenges remain key hurdles. Debates around discriminatory religious practices, resistance from traditional organizations, and gaps in infrastructure reveal the limits of legal pronouncements without corresponding social transformation.

Empowerment initiatives, community dialogues, and advocacy for both men and women to confront patriarchal biases are therefore essential for creating a gender-sensitive society capable of translating constitutional ideals into lived equality.

## CONCLUSION

The Indian Constitution provides a robust and dynamic framework for gender justice — articulating equality not only in formal legal terms but evolving through judicial interpretation and legislative action. The Supreme Court's **recognition of menstrual health as a fundamental right** represents a significant step in expanding the constitutional understanding of dignity and substantive equality, signaling new directions in gender jurisprudence.

However, constitutional provisions and judicial rulings must be backed by effective implementation, social awareness, and institutional accountability to bridge the gap between theory and lived reality. True gender justice in India will depend on sustained efforts by the State, civil society, and citizens to realize equality, dignity, and human rights for all genders.

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