



GENDER JUSTICE 2.0: TRANSFORMATIVE CONSTITUTIONALISM IN THE CHANGING INDIA

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ABSTRACT

Gender justice in India has moved through two distinct constitutional moments. The first, spanning the 1970s to the 1990s, secured formal equality through anti-discrimination rulings centred on employment, service conditions, and inheritance. The second “Gender Justice 2.0” unfolding over the past decade, is animated by transformative constitutionalism: an interpretive philosophy that treats the Constitution not as a static charter preserving existing social arrangements, but as an instrument for reordering them. This paper examines the evolution of gender justice through transformative constitutionalism, analyses landmark Supreme Court judgments, and evaluates contemporary challenges in achieving substantive equality. It argues that “Gender Justice 2.0” requires moving beyond formal equality towards inclusive, intersectional, and rights-based approaches that recognize diverse gender identities and lived experiences.

Keywords: Gender Justice, Transformative Constitutionalism, Equality, Supreme Court, Gender Justice.

1. INTRODUCTION

For much of independent India's constitutional life, “gender justice” was synonymous with formal equality: the removal of explicit textual barriers that prevented women from holding office, inheriting property, or retaining employment after marriage. Article 14's guarantee of equality before law and Article 15's prohibition of discrimination “on grounds of sex” were read, in the early decades, as commands of non-discrimination rather than as warrants for restructuring the social order that produced inequality in the first place. This first phase yielded important, if incremental, victories.

Since roughly 2014, however, the Supreme Court has articulated a markedly more ambitious vision of constitutional gender justice, openly invoking the language of “transformative constitutionalism” to justify judicial intervention in domains long left to legislative or religious authority: sexual orientation, marital intimacy, reproductive choice, gender identity, and the structure of marriage itself. This paper calls this emergent jurisprudence “Gender Justice 2.0” to capture both its continuity with, and its qualitative departure from, the founding-era equality cases. Where Gender Justice 1.0 asked whether a rule treated men and women identically, Gender Justice 2.0 asks whether a rule perpetuates the subordination,



stereotyping, or exclusion of women, queer persons, and gender-diverse citizens, regardless of formal symmetry.

The concept of transformative constitutionalism has provided a new framework for understanding constitutional rights. It views the Constitution not merely as a legal document but as an instrument of social transformation. The Supreme Court has increasingly invoked constitutional morality, dignity, autonomy, and substantive equality to challenge discriminatory social norms and state practices. This shift marks the emergence of what may be termed "Gender Justice 2.0" a phase characterized by intersectional inclusion, recognition of sexual autonomy, reproductive rights, workplace equality, and LGBTQIA+ rights.

2. CONSTITUTIONAL FOUNDATIONS OF GENDER JUSTICE

The Indian Constitution primarily lays down Equality and Non-Discrimination as foundational concept of Gender Justice. Articles 14, 15, and 16 collectively establish the constitutional framework for gender equality. Article 15(3) empowers the State to make special provisions for women and children, reflecting the Constitution's commitment to substantive equality.

Article 21 which guarantees Dignity and Personal Liberty has emerged as the cornerstone of gender justice jurisprudence. The Supreme Court has interpreted it to include privacy, dignity, bodily autonomy, reproductive choice, and decisional freedom.

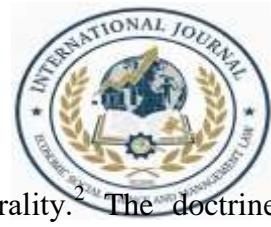
The Directive Principles and Fundamental Duties also under Articles 39(a), 39(d), 42, and 51A(e) further reinforce gender equality by directing the State to ensure equal pay, humane working conditions, and renunciation of practices derogatory to women's dignity.

3. TRANSFORMATIVE CONSTITUTIONALISM: AN EVOLVING CONCEPT

The phrase "transformative constitutionalism" originates in South African constitutional scholarship, where Karl Klare used it to describe a constitution-making and interpretive enterprise committed to a long-term, democratic reordering of a country's political and social institutions.¹ Indian courts have imported the term self-consciously. A defining feature of transformative constitutionalism has been the Court's insistence that constitutional morality must prevail over majoritarian social morality. This principle has significantly influenced gender justice jurisprudence, particularly in matters concerning sexuality and personal autonomy.

In *Navtej Singh Johar v. Union of India*, the Court described the Constitution as transformative precisely because it does not seek to preserve "pre-existing values and

¹Karl E. Klare, "Legal Culture and Transformative Constitutionalism", 14 *South African Journal on Human Rights* 146 (1998).



traditions” but to alter them where they offend constitutional morality.² The doctrine performs three functions relevant to gender jurisprudence. First, it displaces popular morality as the touchstone of constitutional validity with constitutional morality an internal normative standard drawn from the document's commitment to dignity, liberty, and equal citizenship. Second, it authorises substantive over formal equality: a rule may be facially neutral and still unconstitutional if it operates to entrench disadvantage. Third, it treats the Constitution as a living instrument, requiring courts to give expansive content to open-textured guarantees of dignity and personhood as social understanding evolves. The result is a jurisprudence less concerned with mechanical classification analysis and more with the lived experience of subordination precisely the register in which Gender Justice 2.0 operates.

4. GENDER JUSTICE 1.0: THE FOUNDATIONAL DECADES

The earlier jurisprudence, modest in ambition by comparison, built the doctrinal scaffolding on which the later transformation rests. In *C.B. Muthamma v. Union of India*, the Court struck down Foreign Service rules that required women officers to obtain government permission before marrying and permitted their discharge upon marriage, condemning the rules as reflecting a “male chauvinistic” conception of public service.³ *Air India v. Nergesh Meerza* extended the principle to the aviation sector, invalidating service conditions that terminated air hostesses on marriage or first pregnancy while imposing no comparable condition on male cabin crew.⁴ *Mary Roy v. State of Kerala* dismantled a colonial-era succession statute that gave Syrian Christian daughters only a quarter share of their brothers' inheritance, applying the general Indian Succession Act instead.⁵ The most institutionally consequential ruling of this period, however, was *Vishaka v. State of Rajasthan*, in which the Court confronting a legislative vacuum on workplace sexual harassment invoked Articles 14, 19, and 21 together with India's obligations under CEDAW to lay down binding guidelines that later crystallised into the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.⁶ These cases shared a common grammar as they asked whether women were treated worse than similarly situated men, and corrected the asymmetry. They did not yet ask whether the underlying categories marriage, motherhood, chastity, “modesty” were themselves constitutionally suspect. That question belongs to Gender Justice 2.0.

5. GENDER JUSTICE 2.0: THE NEW EMERGING WAVE

5.1 Privacy and Autonomy as the New Springboard

²*Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, para 156 (Misra, C.J., for himself and Khanwilkar, J.).

³*C.B. Muthamma v. Union of India*, (1979) 4 SCC 260.

⁴*Air India v. Nergesh Meerza*, (1981) 4 SCC 335.

⁵*Mary Roy v. State of Kerala*, (1986) 2 SCC 209.

⁶*Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.



Justice K.S. Puttaswamy v. Union of India's recognition of privacy as an intrinsic facet of Article 21 supplied the conceptual vocabulary for everything that followed.⁷ The nine-judge bench held that privacy encompasses decisional autonomy, including choices over one's body, sexuality, and reproductive life, which cannot be subordinated to majoritarian morality. Almost every major gender ruling since 2017 cites Puttaswamy as its analytical premise, marking a shift from group-based anti-discrimination reasoning to individual-centred autonomy reasoning which is the defining methodological feature of Gender Justice 2.0.

5.2 Decriminalising Identity and Intimacy

Navtej Singh Johar v. Union of India read down Section 377 of the Indian Penal Code to decriminalise consensual same-sex conduct, holding that sexual orientation is an inherent facet of identity protected under Articles 14, 15, 19, and 21 of the Constitution of India. Months later, Joseph Shine v. Union of India struck down the offence of adultery under Section 497 IPC, holding that the provision treated a married woman as her husband's property by criminalising only the male paramour while exempting the wife from prosecution altogether.⁸ Both rulings share a structural move: they locate the constitutional vice not in unequal treatment between men and women as such, but in the deployment of women's sexuality and intimate life as objects of male or state control.

5.3 Religious Equality and the Reform of Personal Law

Shayara Bano v. Union of India declared the practice of instantaneous triple talaq unconstitutional, holding that it permitted an arbitrary and unilateral termination of marriage available only to Muslim husbands, in violation of Article 14.⁹ Indian Young Lawyers Association v. State of Kerala addressed the exclusion of women of menstruating age from the Sabarimala temple, with the majority holding the custom violative of Articles 14, 15, 17, and 25 on the reasoning that religious practice cannot treat menstruation as a marker of impurity; the judgment remains contested and is presently before a larger reference bench, illustrating the friction between transformative constitutionalism and claims of religious autonomy.¹⁰

5.4 Reproductive Autonomy Beyond Marriage

In X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi, the Court held that Rule 3B of the Medical Termination of Pregnancy Rules, which permits abortion up to twenty-four weeks for specified categories of women, could not be confined to married women; reproductive autonomy, dignity, and privacy under Article 21 entitled an unmarried woman to terminate a pregnancy on a footing similar to a married woman.¹¹ Significantly, the Court also observed that the term “rape” within the Rules must, for the limited purpose of the MTP framework, be understood to include non-consensual intercourse

⁷Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

⁸Joseph Shine v. Union of India, (2018) 2 SCC 189.

⁹Shayara Bano v. Union of India, (2017) 9 SCC 1.

¹⁰Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1.

¹¹X v. Principal Secretary, Health and Family Welfare Department, Govt. of NCT of Delhi, 2022 SCC OnLine SC 1321 (decided 29 September 2022).



within marriage, an interpretive move that anticipates, without resolving, the constitutional challenge to the marital rape exception discussed in Part V.

5.5 Transgender Personhood: From Recognition to Reasonable Accommodation

National Legal Services Authority v. Union of India recognised the right of transgender persons to self-identify their gender without surgical or medical proof, treating gender identity as an attribute of personhood protected under Articles 14, 15, 16, and 21, and directed the State to extend reservations and welfare measures to the “third gender.”¹² More than a decade later, Jane Kaushik v. Union of India confronted the gap between that recognition and its enforcement. The petitioner, a transgender teacher dismissed by two private schools upon disclosure of her gender identity, was granted compensation; the Court held that transgender persons are entitled to “reasonable accommodation” as a positive constitutional duty rather than charity, characterised the States' failure to frame rules under the Transgender Persons (Protection of Rights) Act, 2019 as “omissive discrimination,” and constituted a monitoring committee chaired by a retired High Court judge.¹³ The judgment marks a doctrinal advance from formal recognition of identity to an affirmative State obligation to accommodate it. This arguably is the clearest instance of Gender Justice 2.0's substantive-equality logic operating outside the male–female binary altogether.

5.6 Marriage Equality and Its Limits

Supriyo @ Supriya Chakraborty v. Union of India tested the limits of judicial transformation. A five-judge bench unanimously declined to read a fundamental right to marry into Article 21 or to extend the Special Marriage Act, 1954 to same-sex couples through interpretation, holding that such recalibration of a civil-status regime required legislative rather than judicial action; the bench divided on whether queer couples nonetheless possessed a right to civil union and associated entitlements, with the plurality declining to issue binding directions and instead referring the matter to a high-powered committee.¹⁴ Supriyo is instructive precisely because it shows transformative constitutionalism encountering an institutional limit: the Court was prepared to dismantle criminal and reproductive restrictions on queer and female autonomy but unwilling to rewrite a status-conferring statute absent legislative consensus.

5.7 Workplace Equality, Maintenance, and the Limits of Procedure

Gender Justice 2.0 has also operated through more granular doctrinal interventions. In Aparna Bhat v. State of Madhya Pradesh, the Court issued guidelines prohibiting trial and appellate courts from imposing bail conditions, such as directing an accused to seek a rakhi from the complainant, or proposing marriage to her, that reflect stereotypical assumptions about female sexuality and “compromise” in sexual offence cases.¹⁵ In Secretary, Ministry of Defence v. Babita Puniya and the companion ruling concerning the Navy, the Court directed

¹²National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

¹³Jane Kaushik v. Union of India, 2025 INSC 1248 (Pardiwala and Mahadevan, JJ., decided 17 October 2025).

¹⁴Supriyo @ Supriya Chakraborty v. Union of India, 2023 INSC 920 (decided 17 October 2023).

¹⁵Aparna Bhat v. State of Madhya Pradesh, 2021 SCC OnLine SC 230.



the grant of Permanent Commission to women officers, rejecting the government's reliance on "inherent physiological differences" as resting on sex stereotypes about socially ascribed gender roles.¹⁶ Yet the jurisprudence is not univocal. In *Vaneeta Patnaik v. Nirmal Kanti Chakrabarti*, the Court dismissed a sexual harassment complaint as time-barred under Section 9 of the POSH Act, holding that complaints "patently barred" by limitation may be rejected at the threshold, even as it directed that the underlying finding be recorded for posterity in the respondent's professional record.¹⁷ Family law has also registered incremental gains which is reflected in *Farookh v. Kayyakkutty @ Kadeeja*, the Court held a mother's statutory right to maintenance from her adult children to be independent of her husband's continuing obligation to maintain her.¹⁸ Read together, these rulings show Gender Justice 2.0 advancing on multiple fronts simultaneously, but unevenly autonomy-expanding in some registers, procedurally restrictive in others.

6. THE UNFINISHED AGENDA: THE MARITAL RAPE EXCEPTION

No issue illustrates the incompleteness of Gender Justice 2.0 more starkly than the marital rape exception. Exception 2 to Section 375 of the IPC retained in materially identical form as Exception 2 to Section 63 of the *Bharatiya Nyaya Sanhita, 2023* provides that sexual intercourse by a man with his own wife is not rape. In *Independent Thought v. Union of India*, the Court struck down the exception only insofar as it applied to wives below eighteen years of age, expressly declining to address the position of adult married women.¹⁹ That question now awaits resolution in *Hrishikesh Sahoo v. State of Karnataka*, pending before the Supreme Court since 2022 after the Karnataka High Court refused to quash rape charges framed against a husband.²⁰ A connected batch of appeals arises from a split verdict of the Delhi High Court in *RIT Foundation v. Union of India*, where one judge held the exception unconstitutional as a violation of bodily autonomy and equality, while the other deferred to legislative competence.²¹ The Union government's affidavits before the Supreme Court have consistently urged judicial restraint, framing the exception as a matter for Parliament; meanwhile, private members' bills including one introduced in December 2025 have sought statutory deletion of the exception without success. The persistence of the exception, even as the Court has dismantled adjacent patriarchal assumptions in *Joseph Shine and X v. Principal Secretary*, exposes the limits of transformative constitutionalism when confronted with an express statutory text rather than an interpretive gap.

¹⁶*Secretary, Ministry of Defence v. Babita Puniya*, (2020) 7 SCC 469; *Union of India v. Lt Cdr Annie Nagaraja*, (2020) 13 SCC 1.

¹⁷*Vaneeta Patnaik v. Nirmal Kanti Chakrabarti & Ors.*, SLP (C) No. 17936 of 2025, decided 12 September 2025 (Mithal and Varale, JJ.).

¹⁸*Farookh v. Kayyakkutty @ Kadeeja* (2025), on the independence of a mother's right to maintenance under Section 144, *Bharatiya Nagarik Suraksha Sanhita, 2023*.

¹⁹*Independent Thought v. Union of India*, (2017) 10 SCC 800.

²⁰*Hrishikesh Sahoo v. State of Karnataka*, SLP (Crl.) No. 4063-4064 of 2022, interim stay granted 19 July 2022; pending before the Supreme Court of India.

²¹*RIT Foundation v. Union of India*, W.P. (C) No. 284 of 2015 and connected matters, Delhi High Court, split verdict dated 11 May 2022 (Shakdher and Hari Shankar, JJ.).



7. INTERSECTIONALITY: CASTE, DISABILITY, AND GENDER

A distinguishing feature of the newer jurisprudence is its explicit engagement with intersectionality the recognition that gender disadvantage compounds with caste, disability, and class rather than operating as an isolated axis of discrimination. In *Patan Jamal Vali v. State of Andhra Pradesh*, the Court, while affirming a rape conviction, observed that the survivor's vulnerability arose from the intersection of her gender, visual disability, and Dalit identity, and that constitutional courts must develop an intersectional approach sensitive to compounded forms of marginalisation rather than treating victims as undifferentiated members of a single protected class.²² In January 2025, the Court's directions for a stringent ban on manual scavenging and manual sewer cleaning across six metropolitan cities similarly recognised the disproportionate concentration of Dalit women in hazardous sanitation labour, framing the State's continued tolerance of the practice as a violation of the dignity guarantee under Article 21 rather than a mere regulatory lapse.²³ These rulings suggest that Gender Justice 2.0 is not simply about extending autonomy to an undifferentiated category of “women,” but about recognising that constitutional harm is experienced differently depending on a person's location within overlapping hierarchies.

8. AFFIRMATIVE ACTION AND HORIZONTAL RESERVATIONS FOR TRANSGENDER PERSONS: GANGA KUMARI V. STATE OF RAJASTHAN (2026)

Building on the foundational *National Legal Services Authority (NALSA) v. Union of India*²⁴ ruling which established the "third gender" identity recent litigations in 2025 and 2026 have actively focused on economic and educational access. In *Ganga Kumari v. State of Rajasthan (2026)*²⁵, the judiciary confronted the lack of structured opportunities for transgender individuals, who are often forced into marginalization or informal economies.

The jurisprudence has increasingly demanded that the State implement horizontal reservations for transgender persons in public employment and education. This shifts the focus from mere symbolic recognition of identity to substantive material equity, addressing the intersectional burdens of poverty and gender identity.

9. PERSISTENT FRICTION: THE GAP BETWEEN CONSTITUTIONAL MORALITY AND LIVED REALITY

²²*Patan Jamal Vali v. State of Andhra Pradesh*, (2021) 16 SCC 225 (Chandrachud, J.).

²³Supreme Court of India, directions on the eradication of manual scavenging and manual sewer cleaning in six metropolitan cities, January 2025.

²⁴Supra note 12.

²⁵Writ Misc Application No. 168/2026, Raj HC, Judgement dated: 02.04.2026.(Yogendra Kumar Purohit JJ).



Transformative constitutionalism often encounters a stark reality: the progressive language of the Supreme Court frequently runs ahead of legislative intent and societal compliance.

9.1 Legislative Inertia: Despite judicial signals in *Supriyo* (2023)²⁶, Parliament has shown resistance to enacting comprehensive anti-discrimination laws or altering civil codes to support non-heteronormative relationships.

9.2 Structural Resistance in Informal Forums: Recent scholarship on grassroots dispute resolution mechanisms, such as *Lok Adalats*, reveals that structural biases persist. Litigants from rural, lower-caste backgrounds frequently encounter institutional pressure from conciliators to "compromise" or "adjust" in domestic disputes to preserve family harmony, compromising their statutory and constitutional rights.

9.3 The Marital Rape Immunity: While recognized in reproductive health jurisprudence (*X v. Principal Secretary*), the general exception for marital rape under criminal statutes has remained a highly contested battleground, demonstrating the law's historical reluctance to fully enter the private domestic sphere.

10. THE IMPLEMENTATION DEFICIT: RHETORIC VERSUS REALITY

Transformative constitutionalism is, at bottom, a theory about interpretation; it says comparatively little about enforcement. The most candid acknowledgment of this gap comes from the Court itself. In *Jane Kaushik*, the bench observed that more than a decade after *NALSA* and five years after the 2019 Act, transgender rights “remain only an empty formality,” noting that apart from a handful of States, most governments had failed to frame rules, constitute Transgender Protection Cells, or allocate budgets for welfare boards.²⁷ The pattern recurs across the gender docket: compliance audits continue to reveal patchy constitution of Internal Complaints Committees more than a decade after *Vishaka's* codification; the Permanent Commission directions in *Babita Puniya* required repeated contempt proceedings before service-related benefits were extended to affected officers; and the MTP Act's 2021 liberalisation has been undercut by inconsistent application of Rule 3B by registered medical practitioners reluctant to perform late-term terminations without explicit judicial sanction. The implementation deficit suggests that the next stage of constitutional transformation cannot be purely adjudicative. It requires sustained institutional follow-through monitoring committees of the kind constituted in *Jane Kaushik*, contempt jurisdiction where directions are ignored, and legislative codification that converts judicially announced principles into administrable rules, if Gender Justice 2.0 is to outlast the judgments that announced it.

11. GENDER JUSTICE 2.0: THE WAY FORWARD

²⁶ Supra note 14.



Gender Justice 2.0 requires a comprehensive approach grounded in constitutional values.

Key priorities include:

1. Strengthening gender-sensitive governance.
2. Enhancing representation of women in decision-making institutions.
3. Recognizing intersectional discrimination.
4. Ensuring equal economic opportunities.
5. Expanding reproductive and sexual rights.
6. Protecting LGBTQIA+ rights through legislative reform.
7. Promoting gender-sensitive education and legal awareness.
8. Institutionalizing constitutional morality within public institutions.

The future of gender justice depends on collaboration among courts, legislatures, civil society, and educational institutions.

12. CONCLUSION

The arc traced in this paper from Vishaka's anti-harassment guidelines to Jane Kaushik's doctrine of reasonable accommodation reveals a judiciary that has progressively widened its understanding of what constitutional gender equality requires: not merely identical treatment of similarly situated men and women, but the dismantling of stereotypes, the recognition of bodily and reproductive autonomy, the extension of dignity-based protection to transgender and queer citizens, and an emerging sensitivity to how gender disadvantage compounds with caste and disability. This is Gender Justice 2.0, a jurisprudence that treats the Constitution, in the Court's own language, as transformative rather than preservative.

Yet the survey also counsels caution against triumphalism. The marital rape exception remains untouched eight years after Independent Thought left the question open. Marriage equality was extended to queer couples in rhetoric but not in civil status. And the most progressive declarations of transgender personhood have repeatedly run aground on State apathy that the Court itself has condemned as "grossly apathetic." Transformative constitutionalism supplies the grammar for gender justice in a changing India; whether that grammar produces a genuinely transformed society depends, increasingly, on legislative will and administrative compliance rather than further judicial articulation. The next decade of Gender Justice 2.0 will be defined less by what the Supreme Court is prepared to say than by what the State is compelled to do.

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