

WOMEN'S RIGHT TO SUBSTANTIVE EQUALITY IN INDIA: A CONSTITUTIONAL CRITIQUE OF FORMAL NEUTRALITY IN LAW

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Abstract

The Indian Constitution guarantees equality through Articles 14, 15, and 16, while simultaneously permitting affirmative measures to address historical and structural disadvantages experienced by women. Despite these constitutional guarantees, women continue to face systemic discrimination in education, employment, political participation, property rights, reproductive autonomy, and access to justice. This disparity demonstrates that legal equality, when interpreted merely as identical treatment, often fails to eliminate entrenched gender inequalities. The distinction between **formal equality**, which emphasizes equal treatment before the law, and **substantive equality**, which seeks equitable outcomes by addressing structural barriers, has become increasingly significant in constitutional jurisprudence. This paper critically examines whether the Indian legal framework has progressed beyond formal neutrality toward achieving substantive gender equality. It analyses constitutional provisions, judicial interpretation, and legislative developments through the lens of feminist constitutional theory and transformative constitutionalism. The study argues that laws framed in gender-neutral language may inadvertently reinforce existing inequalities by ignoring the unequal social, economic, and cultural realities affecting women. Drawing upon landmark judgments of the Supreme Court of India, including *Air India v. Nergesh Meerza*, *Anuj Garg v. Hotel Association of India*, *Joseph Shine v. Union of India*, *Secretary, Ministry of Defence v. Babita Puniya*, and *Vineeta Sharma v. Rakesh Sharma*, the paper demonstrates the judiciary's gradual transition from a formal conception of equality to a substantive constitutional approach. The study adopts a doctrinal and analytical methodology based on constitutional provisions, judicial precedents, statutes, Law Commission reports, and scholarly literature. It concludes that while constitutional jurisprudence has evolved significantly, persistent patriarchal norms, institutional bias, inadequate implementation of protective legislation, and limited gender-sensitive policymaking continue to hinder the realization of substantive equality. The paper recommends

adopting a transformative constitutional approach that integrates intersectionality, gender-responsive governance, and proactive institutional reforms to ensure that constitutional equality translates into genuine social justice for women.

Keywords: Substantive Equality, Formal Equality, Gender Justice, Indian Constitution, Feminist Jurisprudence, Transformative Constitutionalism, Women's Rights.

1. Introduction

Equality is one of the foundational values of the Constitution of India and forms an essential pillar of constitutional democracy. The Preamble promises justice, liberty, equality, and dignity to every citizen, while Part III guarantees enforceable Fundamental Rights intended to eliminate discrimination and ensure equal protection of laws. Among these constitutional guarantees, gender equality occupies a particularly significant position because Indian society has historically been characterized by patriarchal norms that have systematically disadvantaged women across social, economic, political, and legal spheres.

Although constitutional equality has existed since 1950, women in India continue to experience inequalities in employment opportunities, wage parity, inheritance rights, political representation, reproductive autonomy, access to education, healthcare, and protection against violence. These disparities raise an important constitutional question: **Is equal treatment under law sufficient to achieve genuine equality for women?**

Traditional constitutional interpretation largely emphasized **formal equality**, which requires that similarly situated individuals be treated alike irrespective of existing social disadvantages. Under this approach, equality is achieved by ensuring that laws do not expressly discriminate on prohibited grounds such as sex. However, scholars and courts have increasingly recognized that identical legal treatment does not necessarily produce equal outcomes where historical discrimination and structural inequalities persist. Women often begin from unequal social and economic positions; consequently, laws that appear neutral may perpetuate disadvantage instead of eliminating it.

The concept of **substantive equality** has therefore emerged as a more meaningful constitutional principle. Unlike formal equality, substantive equality acknowledges historical disadvantage and requires positive measures capable of addressing structural discrimination. It recognizes that equal

opportunity cannot exist without correcting unequal starting conditions. Consequently, affirmative action, gender-sensitive legislation, maternity benefits, workplace protections, reservation policies, and judicial recognition of indirect discrimination are regarded as constitutionally legitimate mechanisms for achieving genuine equality.

The Indian Constitution itself reflects this dual commitment. Article 14 guarantees equality before law and equal protection of laws. Article 15(1) prohibits discrimination on the grounds of sex, while Article 15(3) expressly authorizes the State to enact special provisions for women and children. Similarly, Article 16 ensures equality of opportunity in public employment, whereas the Directive Principles of State Policy encourage equal pay for equal work, humane working conditions, maternity relief, and social justice. Together, these provisions indicate that the Constitution does not advocate mechanical neutrality but rather embraces substantive justice.

Judicial interpretation has played a transformative role in expanding the meaning of constitutional equality. Early decisions often focused on procedural equality and classification tests under Article 14. Over time, however, the Supreme Court adopted a more purposive interpretation emphasizing dignity, autonomy, non-discrimination, and constitutional morality. Decisions concerning women's employment, inheritance, military service, sexual autonomy, workplace safety, and reproductive rights demonstrate an increasing judicial commitment to substantive equality rather than formal neutrality.

Nevertheless, significant challenges remain. Gender-neutral laws frequently overlook women's lived experiences. Institutional bias, unequal access to legal remedies, inadequate implementation of protective legislation, and intersectional discrimination based on caste, class, religion, disability, rural residence, and economic status continue to impede the realization of constitutional equality. Consequently, constitutional guarantees alone cannot ensure substantive justice unless accompanied by effective legislative implementation, judicial sensitivity, administrative accountability, and social transformation.

This paper critically analyses the constitutional framework governing women's equality in India through the theoretical distinction between formal and substantive equality. It examines constitutional provisions, landmark judicial decisions, and contemporary feminist constitutional scholarship to evaluate whether Indian constitutional jurisprudence has genuinely embraced substantive equality or continues to remain constrained by formal neutrality. The study argues that

while constitutional interpretation has progressively moved toward transformative constitutionalism, achieving genuine gender justice requires greater recognition of structural inequality and stronger institutional commitment to substantive equality.

2. Literature Review

The concept of women's equality in India has evolved from a traditional understanding of **formal equality**, which emphasizes equal treatment under the law, to **substantive equality**, which seeks to eliminate structural and historical disadvantages. Indian constitutional scholars and feminist jurists have argued that identical treatment does not always produce equitable outcomes, particularly in a society marked by patriarchy and social inequalities.

Upendra Baxi (2002) argues that the Constitution of India is a transformative document intended to achieve social justice rather than merely formal legal equality. According to him, constitutional interpretation should address historical discrimination and ensure that marginalized groups, including women, enjoy meaningful equality. His work supports the idea that equality requires positive state intervention rather than mere legal neutrality.

Flavia Agnes (2011) critically examines the limitations of formal legal equality in matters relating to marriage, inheritance, domestic violence, and personal laws. She argues that constitutional guarantees often fail to protect women because patriarchal social structures continue to influence legal institutions. Agnes emphasizes that substantive equality requires effective implementation of laws along with social and institutional reforms.

Ratna Kapur (1996) challenges the traditional liberal concept of equality by advocating a feminist constitutional approach. She argues that women experience discrimination through multiple intersecting identities such as caste, class, religion, and sexuality. According to Kapur, constitutional equality should promote autonomy, dignity, and freedom rather than merely ensuring equal treatment.

Kalpana Kannabiran (2014) views equality as an essential component of democratic citizenship. She argues that constitutional rights must be interpreted in light of social realities and constitutional morality. Her work highlights that women continue to experience unequal access to justice despite constitutional guarantees.

Nivedita Menon (2012) argues that gender-neutral laws often fail to recognize structural inequalities affecting women. She emphasizes that equality requires dismantling institutional patriarchy and challenging gender stereotypes embedded within legal systems. Her scholarship supports the transition from formal to substantive equality.

M. P. Jain (2023) provides a comprehensive analysis of Articles 14, 15, and 16 of the Constitution and traces the evolution of equality jurisprudence through Supreme Court decisions. His work demonstrates how constitutional interpretation has gradually expanded from formal classification to a broader understanding of substantive justice.

Overall, the existing literature indicates a significant shift from formal equality towards substantive equality in Indian constitutional law. While scholars acknowledge the progressive role of the judiciary, they also emphasize that constitutional guarantees alone are insufficient without effective implementation, institutional reforms, and gender-sensitive policymaking. The literature further suggests that transformative constitutionalism provides the most appropriate framework for realizing genuine gender justice in India.

3. Research Objectives

The present study seeks to achieve the following objectives:

1. To examine the constitutional framework governing women's equality in India.
2. To distinguish between formal equality and substantive equality in constitutional jurisprudence.
3. To analyse the evolution of the Supreme Court's interpretation of gender equality.
4. To critically evaluate the limitations of formally neutral laws in addressing structural discrimination.
5. To suggest constitutional and policy reforms for realizing substantive gender equality.

4. Research Methodology

The present research adopts a **doctrinal and analytical legal research methodology**. The study primarily relies upon secondary sources, including constitutional provisions, statutes, judicial precedents of the Supreme Court and High Courts, Law Commission Reports, Parliamentary

Committee Reports, government publications, scholarly books, peer-reviewed journal articles, and international human rights instruments. The research critically analyses constitutional jurisprudence relating to Articles 14, 15, 16, 21, and Directive Principles of State Policy through the theoretical framework of substantive equality and feminist constitutionalism. Comparative references to international norms, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), are incorporated wherever relevant. The research is descriptive, analytical, and critical in nature, aiming to evaluate the extent to which Indian constitutional law has moved beyond formal neutrality toward transformative gender justice.

5. Research Problem

Existing studies primarily examine constitutional equality, feminist jurisprudence, or women's rights separately. Limited research specifically analyses the constitutional doctrine of **formal neutrality** and its impact on women's substantive equality in India. Moreover, few studies comprehensively evaluate recent Supreme Court jurisprudence through the framework of transformative constitutionalism. This study seeks to bridge this gap by critically examining whether India's constitutional framework has effectively moved beyond formal equality toward achieving substantive gender justice.

6. Analysis and Interpretation

The constitutional framework of India reflects a commitment to gender equality through Articles 14, 15, 16, and 21, which collectively prohibit discrimination and guarantee equal protection of laws. However, a critical analysis of constitutional provisions, judicial decisions, and existing literature reveals that **formal legal equality alone has not been sufficient to achieve substantive equality for women**. While the Constitution guarantees equal treatment, social realities continue to expose women to discrimination in employment, education, property rights, political participation, healthcare, and access to justice.

The distinction between **formal equality** and **substantive equality** is central to understanding the constitutional position of women in India. Formal equality assumes that treating everyone alike ensures justice. However, such an approach ignores historical disadvantages and structural barriers that prevent women from enjoying equal opportunities. Substantive equality, on the other hand, recognizes these inequalities and supports affirmative measures to ensure equitable outcomes.

The constitutional scheme itself supports substantive equality. Article 15(3) empowers the State to make special provisions for women and children, indicating that the Constitution does not advocate absolute neutrality but rather recognizes the need for protective and corrective measures. Similarly, Directive Principles under Articles 39(a), 39(d), and 42 emphasize equal livelihood opportunities, equal pay for equal work, and maternity relief, reflecting the Constitution's welfare-oriented approach.

Judicial interpretation has significantly contributed to the evolution of substantive equality. In **Air India v. Nergesh Meerza (1981)**, the Supreme Court struck down discriminatory service conditions imposed on air hostesses, thereby recognizing that employment policies cannot be based on gender stereotypes. This marked an early attempt to address gender discrimination in public employment.

A more progressive approach emerged in **Anuj Garg v. Hotel Association of India (2008)**, where the Supreme Court invalidated Section 30 of the Punjab Excise Act, which prohibited women from working in establishments serving liquor. The Court held that laws based on stereotypical assumptions about women's vulnerability violate Articles 14 and 15. The judgment emphasized that the State must empower women instead of restricting their opportunities under the guise of protection.

Similarly, in **Secretary, Ministry of Defence v. Babita Puniya (2020)**, the Supreme Court held that women officers in the Indian Army are entitled to permanent commission on par with male officers. The Court rejected gender stereotypes relating to physical ability and leadership, observing that constitutional guarantees cannot be denied based on traditional assumptions regarding women's roles.

The decision in **Joseph Shine v. Union of India (2018)** further strengthened substantive equality by declaring the offence of adultery unconstitutional. The Court recognized that the previous law treated women as the property of their husbands and violated constitutional principles of dignity, autonomy, and equality.

In **Vineeta Sharma v. Rakesh Sharma (2020)**, the Supreme Court affirmed equal coparcenary rights for daughters under the Hindu Succession (Amendment) Act, 2005, irrespective of whether the father was alive at the commencement of the amendment. This judgment significantly

advanced women's economic empowerment by eliminating historical discrimination in inheritance rights.

These judgments collectively indicate a clear judicial shift from formal equality towards substantive equality. The Supreme Court increasingly recognizes that constitutional interpretation must dismantle systemic discrimination rather than merely prohibit explicit discrimination.

Despite these judicial advancements, several practical challenges remain. Implementation of gender-sensitive laws continues to be inconsistent due to institutional bias, inadequate legal awareness, delayed judicial processes, and limited access to legal remedies, particularly for women belonging to marginalized communities. Gender-neutral legislation sometimes fails to account for women's lived experiences, thereby perpetuating indirect discrimination.

Another significant finding is that substantive equality cannot be achieved through judicial intervention alone. Effective implementation requires coordinated efforts by the legislature, executive, judiciary, educational institutions, and civil society. Gender-responsive policymaking, institutional accountability, legal literacy, and social awareness are essential to translate constitutional promises into practical realities.

7. Conclusion

The Indian Constitution is a transformative document that seeks to establish a just and egalitarian society founded upon the principles of equality, liberty, dignity, and social justice. While Articles 14, 15, 16, and 21 guarantee equality before law and prohibit discrimination on the ground of sex, the constitutional vision extends beyond mere formal equality. The inclusion of Article 15(3) and the Directive Principles demonstrates the framers' intention to adopt a substantive approach capable of addressing historical and structural inequalities faced by women.

The study reveals that formal neutrality, although essential for preventing explicit discrimination, is insufficient to eliminate deeply entrenched patriarchal structures. Laws that appear neutral may continue to disadvantage women if they fail to recognize unequal social and economic realities. Consequently, substantive equality has emerged as the appropriate constitutional standard for achieving genuine gender justice.

Indian constitutional jurisprudence has gradually embraced this transformative approach through landmark decisions such as *Anuj Garg*, *Joseph Shine*, *Babita Puniya*, and *Vineeta Sharma*. These judgments emphasize constitutional morality, dignity, autonomy, and anti-stereotyping, thereby expanding the scope of women's constitutional rights.

Nevertheless, constitutional guarantees alone cannot ensure equality unless accompanied by effective implementation, institutional sensitivity, and public awareness. Persistent gender stereotypes, economic inequality, limited access to justice, and inadequate enforcement of protective legislation continue to hinder the realization of substantive equality.

The study concludes that India's constitutional framework possesses sufficient normative strength to achieve gender justice. However, realizing this constitutional promise requires continuous judicial activism, progressive legislation, gender-sensitive governance, and active participation of civil society. Only by moving beyond formal neutrality and embracing substantive equality can India fulfil its constitutional commitment to ensuring equal dignity and opportunities for all women.

8. Suggestion

The realization of substantive equality for women requires a multidimensional approach that combines constitutional interpretation, legislative reforms, effective implementation of laws, and social transformation. Although the Indian Constitution provides a strong foundation for gender equality, the persistence of structural discrimination indicates the need for continuous institutional and policy reforms.

The judiciary should continue to adopt a purposive and gender-sensitive interpretation of constitutional provisions, particularly Articles 14, 15, 16, and 21, by recognizing that equality requires the removal of historical and structural disadvantages rather than merely ensuring identical treatment. Constitutional adjudication should consistently reject gender stereotypes and promote the principles of dignity, autonomy, and constitutional morality.

The legislature should undertake a periodic review of existing laws to identify provisions that, despite being facially neutral, produce discriminatory effects on women. Necessary amendments should be introduced to ensure that legislation reflects the constitutional vision of substantive equality and adequately addresses the changing socio-economic realities of women.

Greater emphasis should also be placed on the effective implementation of women-centric laws. Protective legislations relating to domestic violence, workplace sexual harassment, maternity benefits, equal remuneration, and property rights should be enforced through stronger monitoring mechanisms, institutional accountability, and periodic evaluation of their implementation.

The Government should strengthen legal awareness programmes to educate women about their constitutional and statutory rights. Legal literacy campaigns, particularly in rural and economically weaker regions, should be conducted through educational institutions, legal services authorities, and civil society organizations to improve access to justice and encourage the effective exercise of legal rights.

Capacity-building and gender-sensitization programmes should be made mandatory for judges, police officers, prosecutors, public servants, and other stakeholders involved in the administration of justice. Such training would help reduce institutional bias, improve the quality of decision-making, and ensure a more victim-sensitive legal system.

Public policies should adopt an intersectional approach while addressing women's issues. The experiences of women belonging to Scheduled Castes, Scheduled Tribes, minority communities, persons with disabilities, and economically disadvantaged backgrounds should receive special consideration so that constitutional equality benefits all women rather than only those in relatively privileged positions.

The participation of women in decision-making institutions, including the judiciary, legislature, executive, public administration, and local self-government, should be further strengthened. Greater representation of women in governance is likely to contribute to more inclusive policymaking and better protection of women's constitutional rights.

Finally, achieving substantive equality requires a broader transformation of social attitudes. Educational institutions, media organizations, community leaders, and civil society should actively promote constitutional values of equality, dignity, and non-discrimination. Sustainable gender justice cannot be achieved solely through legal reforms; it also depends upon eliminating patriarchal stereotypes and fostering a culture that respects women's equal status in every sphere of life. A coordinated effort by the State, judiciary, legal institutions, and society is therefore

essential to translate the constitutional promise of equality into meaningful and lasting social justice for women.

9. References

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