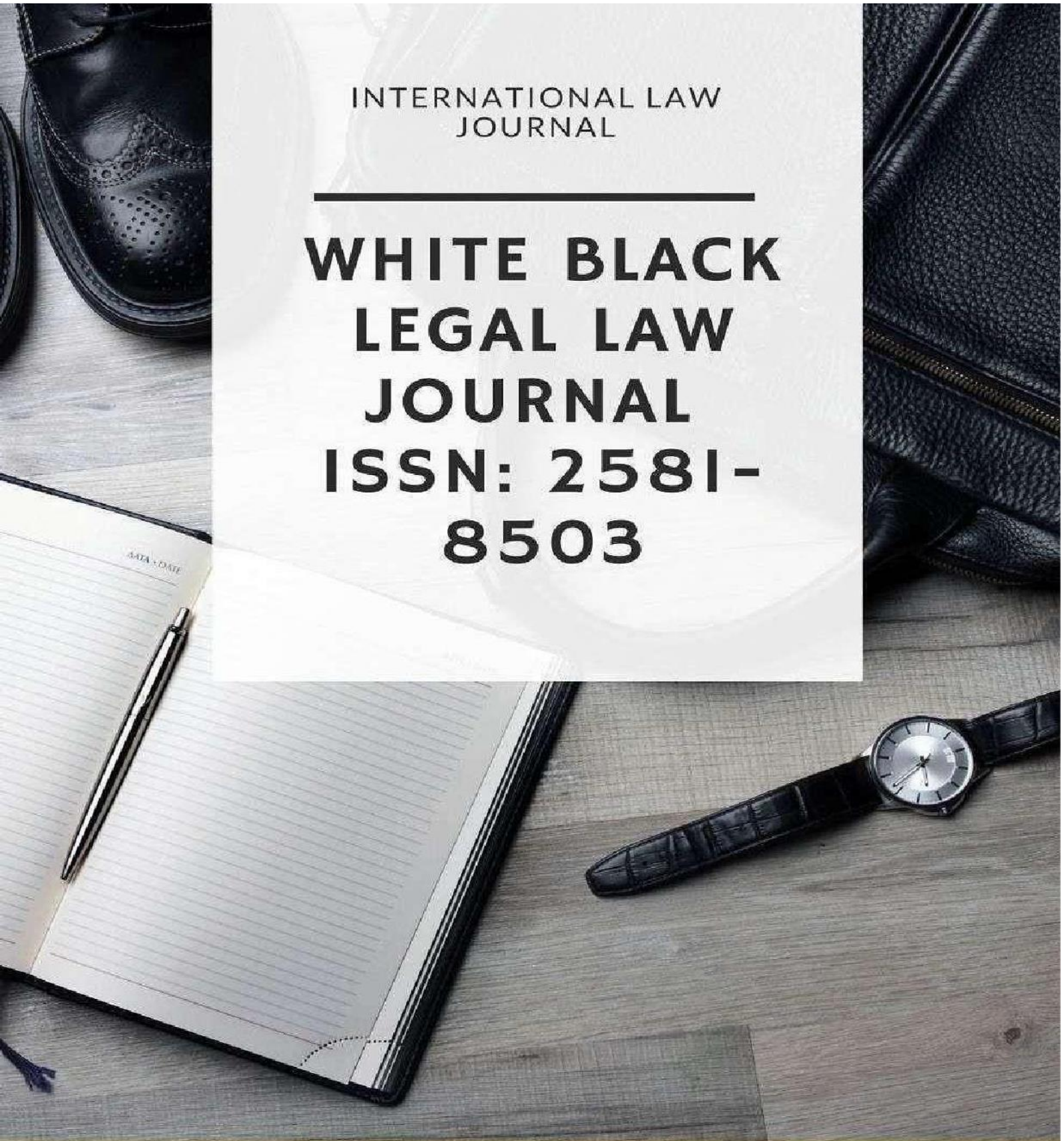




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A CRITICAL ANALYSIS OF CONSTITUTIONAL FRAMEWORK FOR GENDER JUSTICE IN INDIA

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CHAPTER I – INTRODUCTION

ABSTRACT

The Constitution of India establishes equality, non-discrimination, dignity and liberty as central principles of the legal order. Yet gender inequality is produced through social practices, institutional structures, family relations, labour markets, political representation and access to justice. The constitutional framework for gender justice therefore cannot be assessed merely by asking whether the Constitution formally prohibits discrimination. It must also be examined in terms of substantive equality, affirmative action, autonomy, dignity and the ability of individuals to participate in public and private life on equal terms. This study critically analyses that framework through the text of the Constitution, constitutional amendments, statutory developments and leading judicial decisions.

The study examines the relationship among Articles 14, 15, 16 and 21, the Directive Principles and Fundamental Duties, and special measures permitted by the Constitution. It also considers the constitutional relevance of political representation through the Constitution (One Hundred and Sixth Amendment) Act, 2023, which introduced Articles 330A, 332A and 334A and was brought into force in April 2026. The study further examines workplace sexual harassment, domestic violence, criminal law, property rights, reproductive autonomy and the recognition of transgender persons. Landmark decisions such as *Vishaka v State of Rajasthan*, *NALSA v Union of India*, *Anuj Garg v Hotel Association of India*, *Joseph Shine v Union of India*, *Babita Puniya*, *Lt Col Nitisha* and *Vineeta Sharma* demonstrate how constitutional interpretation has progressively moved from formal equality towards a more substantive understanding of gender justice.

1.1 Background of the Study

Gender justice refers to a legal and constitutional order in which persons are able to enjoy rights and opportunities without discrimination arising from sex, gender identity or socially imposed gender roles. In India, the constitutional commitment to equality is expressed through

Articles 14, 15 and 16, while Article 21 has become a broad source of dignity, autonomy and bodily integrity. Articles 39(a), 39(d), 39(e) and 42 place social and economic justice within the constitutional policy structure, and Article 51A(e) directs citizens to renounce practices derogatory to the dignity of women. The framework therefore combines enforceable rights with positive duties and policy commitments.

The constitutional text, however, operates within a society where discrimination may be direct, indirect, structural or rooted in stereotypes. A rule may appear neutral but still reproduce disadvantage when it ignores the actual conditions in which women and other gender minorities live. The Supreme Court has increasingly acknowledged this distinction. In *Anuj Garg*, the Court rejected a protective rule that excluded women from certain employment in liquor-serving establishments because it rested on assumptions about women's vulnerability rather than on an equality-based assessment. In *Lt Col Nitisha*, the Court expressly addressed indirect and systemic discrimination and explained that facially neutral criteria can produce unequal outcomes when they embed structural disadvantage. These decisions are central to assessing whether the constitutional framework is capable of addressing discrimination beyond its most visible forms.

The development of gender justice has also depended on judicial recognition of dignity and autonomy. *Vishaka* treated workplace sexual harassment as a constitutional injury implicating equality, freedom to work and personal dignity. Justice K.S. Puttaswamy (Retd.) v Union of India recognised privacy as a fundamental right, with implications for personal autonomy and decisional freedom. *Suchita Srivastava* and later reproductive-rights cases connect bodily integrity and reproductive choice with constitutional liberty. *Joseph Shine* questioned patriarchal assumptions embedded in criminal law by invalidating the offence of adultery, while *Independent Thought* limited the operation of the marital exception in relation to a girl child. The constitutional conversation has consequently moved beyond equal treatment in public institutions to questions of power, autonomy and the private sphere.

The framework is also no longer limited to a binary understanding of gender. In *NALSA v Union of India*, the Supreme Court recognised transgender persons' constitutional rights and affirmed that gender identity is integral to dignity and autonomy. The Transgender Persons (Protection of Rights) Act, 2019 subsequently created a statutory regime dealing with discrimination, identity, employment, education, health and welfare. This expansion raises a further question: whether a framework designed largely around women and sex-based discrimination can sufficiently address the different forms of exclusion faced by transgender and gender-diverse persons.

Against this background, the present study treats gender justice as a constitutional project rather than as a collection of isolated protective laws. The focus is on the coherence of the constitutional principles, the role of courts in developing them, the interaction between constitutional rights and statutes, and the remaining gaps between formal legal guarantees and meaningful equality in practice.

1.2 Significance of the Study

The study is significant because the constitutional language of equality is broad, while gender inequality often appears through context-specific institutions and practices. Articles 14, 15 and 16 provide the central equality guarantees, but their practical meaning depends on judicial interpretation and legislative design. Special measures under Article 15(3), reservation in local government under Articles 243D and 243T, and the later constitutional insertion of Articles 330A and 332A show that the Constitution permits affirmative measures to address under-representation. The study therefore examines both prohibition of discrimination and positive constitutional action.

The study is also significant because the judiciary has played a major role in translating constitutional values into concrete protections. Vishaka formulated workplace safeguards before Parliament enacted a dedicated statute. Githa Hariharan read the guardianship law in a manner that avoided treating the father as automatically superior to the mother. Vineeta Sharma clarified daughters' equal coparcenary rights under the amended Hindu Succession Act. Babita Puniya and Lt Col Nitisha addressed institutional barriers to women's advancement in the armed forces. These cases reveal an evolving judicial method in which equality is evaluated against social context, stereotypes and actual consequences.

1.3 Review of Literature

Flavia Agnes, in her scholarship on law and gender inequality, examines the interaction between women's movements, personal laws and state law, showing that legal reform cannot be understood separately from social power. Ratna Kapur and Brenda Cossman's feminist work on law in India critiques the assumption that neutral legal rules necessarily produce neutral outcomes and draws attention to the ways law can both challenge and reproduce gender hierarchy. Kalpana Kannabiran's work on constitutional equality and non-discrimination is useful for understanding why substantive equality requires attention to structural disadvantage rather than only to formal classification.

Nivedita Menon's feminist constitutional and social analysis helps situate legal rules within

everyday practices and challenges the idea that gender justice can be achieved solely through protective legislation. Pratiksha Baxi's work on rape trials examines how legal institutions, evidentiary practices and courtroom narratives may shape the experience of justice. The Justice J.S. Verma Committee Report, prepared in 2013 after the Delhi gang-rape, is also important because it linked sexual violence with broader questions of institutional accountability, gender stereotypes, police conduct and constitutional rights.

The literature therefore provides substantial work on women, sexuality, violence, family law and discrimination. Judicial scholarship has also separately analysed workplace harassment, reproductive autonomy, military service, political representation and transgender rights. The present study builds on these strands but seeks to place them within a single constitutional framework, thereby examining both common principles and areas where the existing approach remains fragmented.

1.4 Research Gap

Existing scholarship on gender justice in India is extensive but often organised around individual legal domains: violence against women, workplace equality, personal law, reproductive rights, political representation or transgender rights. Such sectoral studies are valuable, but they can leave less attention to the internal relationship among the constitutional guarantees that support each field. There remains a need for a doctrinal examination of whether Articles 14, 15, 16 and 21, read with the Directive Principles and affirmative-action provisions, operate as a coherent framework or as separate sources of protection.

A further gap concerns the distinction between formal equality and substantive equality. The Supreme Court's more recent reasoning on stereotypes, indirect discrimination and structural disadvantage suggests a shift in constitutional doctrine, yet the consequences of this shift have not been uniformly developed across all fields of law. The same constitutional principle can operate differently in employment, family law, criminal law, reproductive choice and political representation. A critical analysis is therefore required to identify where the doctrine is consistent and where legal protection remains dependent on fragmented statutes or case-specific intervention.

There is also a gap in connecting women's constitutional rights with the legal recognition of transgender persons and other gender minorities. NALSA expanded the constitutional understanding of gender identity, while subsequent legislation addressed transgender discrimination. The doctrinal relationship between this recognition and the traditional equality provisions concerning women requires further analysis. In particular, the questions of positive

obligations, affirmative action, access to institutions and protection from violence remain comparatively under-developed in a unified constitutional account.

1.5 Research Objectives

The study has the following objectives:

- To examine the constitutional provisions forming the legal foundation of gender justice in India.
- To analyse the development of substantive equality through the Supreme Court's interpretation of Articles 14, 15, 16 and 21.
- To examine statutory measures dealing with violence, workplace discrimination, family relations, property, reproductive autonomy and transgender rights.
- To critically assess the constitutional limitations and implementation gaps that continue to affect gender equality.
- To study the significance of political representation and the constitutional framework created by the 106th Amendment.
- To suggest doctrinal and institutional measures for strengthening constitutional gender justice.

1.6 Research Questions

The study seeks to answer the following questions:

- What constitutional provisions constitute the core framework for gender justice in India?
- How has the Supreme Court developed the meaning of substantive equality in gender-related cases?
- To what extent do existing statutes translate constitutional guarantees into effective legal protection?
- What structural, institutional and doctrinal gaps limit the achievement of substantive gender justice?
- How does the constitutional recognition of transgender identity affect the scope of gender justice?
- What reforms can strengthen the coherence and practical effectiveness of the constitutional framework?

1.7 Research Methodology

This study adopts a purely doctrinal research methodology. It does not use questionnaires,

surveys, interviews or field observation. The research is based on the systematic collection, reading and analysis of primary and secondary legal materials. The objective is to identify the governing constitutional principles, examine the development of the law through judicial precedent, compare statutory measures with constitutional guarantees, and critically evaluate the gaps that remain.

Primary sources include the Constitution of India; constitutional amendment Acts; central statutes relating to women and transgender persons; rules and notifications; and decisions of the Supreme Court of India. Particular attention is given to Articles 14, 15, 16, 19, 21, 38, 39, 42, 51A, 243D, 243T, 330A, 332A and 334A. The study also examines the Bharatiya Nyaya Sanhita, 2023, the Protection of Women from Domestic Violence Act, 2005, the Sexual Harassment of Women at Workplace Act, 2013, the Hindu Succession (Amendment) Act, 2005, the Medical Termination of Pregnancy Act, 1971 as amended, and the Transgender Persons (Protection of Rights) Act, 2019.

Secondary sources include books, peer-reviewed articles, law reviews, committee reports, Law Commission materials and credible legal databases. International materials, particularly the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Committee's General Recommendation No. 35 on gender-based violence, are used only for comparative and interpretive purposes. The legal materials are analysed thematically rather than statistically, with the emphasis placed on constitutional doctrine and its relationship to legislative design.

The study applies a critical doctrinal approach. The relevant rules are first identified; the reasoning of leading cases is then compared; and the results are assessed against the concepts of formal equality, substantive equality, dignity, autonomy, non-discrimination and effective access to justice. The study does not claim to measure the social impact of laws through empirical methods. Its conclusions are therefore limited to the legal framework and the issues that can be established through the selected doctrinal materials.

1.8 Limitations of the Study

- The study is purely doctrinal and does not include empirical surveys, interviews or field research.
- The primary focus is the Indian constitutional framework; foreign materials are used for limited comparison.
- Gender justice is a broad field, and the paper cannot examine every gender-related statute or policy in equal detail.

- The study relies on published constitutional, statutory and judicial materials and therefore does not independently measure implementation outcomes.
- Some areas of gender law remain constitutionally contested or subject to pending litigation, and their final legal position may change over time.
- The discussion of transgender and gender-diverse persons is principally doctrinal and does not attempt to capture the full diversity of lived experiences.

CHAPTER II – CONCEPT AND CONSTITUTIONAL FOUNDATIONS OF GENDER JUSTICE

2.1 Meaning and Scope of Gender Justice

Gender justice may be understood as the achievement of equal rights, equal status, equal participation and equal freedom from discrimination for persons of different genders, together with measures designed to remove structural barriers that prevent real enjoyment of those rights. The concept therefore extends beyond identical treatment. Where historical and social disadvantage affects the ability of persons to access employment, education, political institutions, property, healthcare or justice, substantive equality may require differential measures that are constitutionally justified.

The concept also includes freedom from gender-based violence and from stereotypes that assign fixed social roles to women or gender minorities. CEDAW General Recommendation No. 35 treats gender-based violence as a form of discrimination and emphasises that the phenomenon can be structural rather than merely individual. This understanding is relevant to Indian constitutional law because Articles 14 and 15 are not confined to isolated acts of unequal treatment; they can support an examination of the conditions that produce systematic disadvantage.

2.2 Constitutional Commitment to Equality

Article 14 guarantees equality before the law and equal protection of the laws. Articles 15 and 16 apply the equality principle more specifically by prohibiting discrimination on stated grounds and guaranteeing equality of opportunity in public employment. Article 15(3) expressly permits the State to make special provisions for women and children. This clause is significant because it recognises that substantive equality may require positive measures rather than simple non-discrimination. The constitutional structure therefore contains both a general equality guarantee and an express basis for affirmative action.

Article 21 adds a broader dimension by protecting life and personal liberty. Through constitutional interpretation, Article 21 has become associated with dignity, bodily integrity, decisional autonomy and privacy. Although the Constitution does not use the expression 'gender justice', these principles together form its substantive foundation. Articles 38 and 39 further direct the State to promote a social order informed by justice and to secure equal livelihood and equal pay for equal work, while Article 42 refers specifically to just and humane conditions of work and maternity relief.

2.3 Article 14 and Substantive Equality

The traditional approach to Article 14 focused on reasonable classification: the classification must be based on an intelligible differentia and have a rational relation to the object of the law. Modern constitutional doctrine has expanded this inquiry by treating arbitrariness, discrimination and substantive disadvantage as relevant to equality analysis. In gender cases, this development matters because gender discrimination often arises from rules that classify women as a separate and supposedly vulnerable group, while appearing to protect them.

Anuj Garg v Hotel Association of India illustrates the movement away from paternalistic protection. The Court invalidated a restriction that prevented women from being employed in premises where liquor was served. The decision emphasised that the State should not preserve social stereotypes in the name of protection. Equality requires enabling women to exercise their choices, subject to legitimate regulation that is not founded on stereotypical assumptions. The case is therefore important for distinguishing genuine protective measures from regulations that restrict women's autonomy.

Lt Col Nitisha v Union of India deepened this reasoning by recognising indirect and systemic discrimination. The Court analysed how selection criteria in the Army disproportionately affected women because they were applied against the background of earlier structural disadvantages. The judgment is significant for doctrinal purposes because it demonstrates that Article 14 can require courts to examine effects and institutional context, not only the wording of a rule. Substantive equality consequently becomes an inquiry into whether a formally neutral system reproduces existing disadvantage.

2.4 Articles 15 and 16: Anti-discrimination and Affirmative Action

Article 15(1) prohibits discrimination by the State on grounds including sex, while Article 15(3) permits special provisions for women and children. The clause has historically supported

welfare and protective laws, but its constitutional meaning is broader: it provides a textual basis for measures aimed at correcting historical disadvantage. The challenge is to ensure that affirmative measures remain empowerment-oriented rather than paternalistic. A policy that strengthens access to education, employment or political participation is constitutionally different from a rule that excludes women because they are assumed to be weak or incapable.

Article 16 extends equality to public employment. The jurisprudence has increasingly connected equality of opportunity with institutional practices such as recruitment, promotion and career progression. Cases concerning women in the armed forces show that apparently neutral assumptions about marriage, pregnancy and family responsibilities can influence employment structures. Constitutional equality therefore reaches beyond entry into public employment and includes the ability to progress within public institutions on equal terms.

2.5 Directive Principles and Fundamental Duties

The Directive Principles strengthen the equality framework by directing the State to pursue social and economic justice. Article 39(a) refers to adequate means of livelihood for men and women equally; Article 39(d) directs equal pay for equal work; Article 39(e) addresses protection of the health and strength of workers, including women; and Article 42 calls for just and humane conditions of work and maternity relief. Although these provisions are not directly enforceable in the same manner as Fundamental Rights, constitutional interpretation has treated them as important indicators of the values against which legislation and State action may be understood.

Article 51A(e) imposes a Fundamental Duty on citizens to renounce practices derogatory to the dignity of women. Its normative significance is important because gender justice cannot be achieved through State action alone. The constitutional design recognises that social attitudes, customs and private conduct can also reproduce inequality. At the same time, fundamental duties cannot be used as a substitute for enforceable rights. The stronger constitutional approach is to read them as part of the broader value structure supporting legislation and constitutional interpretation.

2.6 Political Representation and the 106th Amendment

Political participation is an essential component of equality because representative institutions influence law, budgets, public priorities and institutional culture. The Constitution has long supported women's political participation through reservations in local self-government under Articles 243D and 243T. The Constitution (One Hundred and Sixth

Amendment) Act, 2023 adds a parliamentary and state legislative dimension by inserting Articles 330A and 332A and corresponding provisions in Article 239AA for the Delhi Legislative Assembly. The amendment reserves, as nearly as may be, one-third of directly elected seats for women, including an internal share for women belonging to Scheduled Castes and Scheduled Tribes within the constitutionally reserved seats.

The amendment was brought into force on 16 April 2026. Article 334A, however, links the operation of the seat reservations to a delimitation exercise after the publication of the relevant figures of the first census taken after commencement of the amendment. This design separates constitutional creation of the reservation from its operational commencement in legislatures. The provision therefore has immediate constitutional significance while also creating a timing and implementation question. From a gender-justice perspective, the amendment recognises political representation as a constitutional equality concern rather than leaving it entirely to party practice or electoral convention.

2.7 Gender Justice and Intersectionality

Gender disadvantage does not operate in isolation. Caste, class, disability, religion, geography, sexuality and gender identity can shape the form and intensity of discrimination. The Constitution addresses some of these dimensions expressly, particularly through Articles 15(4), 15(5) and 16(4), but the practical interaction among gender and other statuses is often complex. A constitutional approach that treats 'women' as a single homogeneous category can miss the different barriers experienced by Dalit women, Adivasi women, women with disabilities, Muslim women, rural women and transgender persons.

The intersectional approach is therefore useful as an analytical method even where the constitutional text uses separate categories. It asks whether a legal rule that is formally equal produces unequal effects for persons situated at the intersection of multiple disadvantages. This method is particularly relevant to access to education, employment, healthcare, property and justice. It also supports a more precise understanding of affirmative action, because the beneficiaries of gender-based measures do not necessarily experience the same social and economic conditions.

NALSA v Union of India represents a significant expansion of this constitutional field. The Supreme Court recognised the right of transgender persons to self-identify their gender and linked that recognition with Articles 14, 15, 16, 19 and 21. The constitutional logic is broader than a simple demand for formal recognition: denial of identity can result in exclusion from public services, employment, education and social participation. The case therefore

demonstrates that gender justice includes the legal recognition of identity and the removal of barriers that arise from gender non-conformity.

The constitutional foundations discussed in this chapter reveal a framework that contains both negative and positive dimensions of equality. Articles 14 to 16 prohibit discriminatory State action; Article 15(3) permits special measures; Article 21 protects dignity and autonomy; the Directive Principles provide social and economic objectives; and the political-reservation provisions address representation. The central issue for later chapters is whether these principles are sufficiently coherent and effectively implemented across different legal fields.

CHAPTER III – STATUTORY FRAMEWORK AND JUDICIAL DEVELOPMENT

3.1 Criminal Law and Protection Against Gender-Based Violence

The criminal-law framework is a major component of gender justice because violence, sexual offences, stalking, harassment and offences relating to marriage directly affect bodily integrity and dignity. The Bharatiya Nyaya Sanhita, 2023 places offences against women and children in Chapter V. Section 63 defines rape; sections 74 to 79 cover, among other matters, assault with intent to outrage modesty, sexual harassment, disrobing, voyeurism, stalking and insulting the modesty of a woman. The statute therefore retains a substantial set of gender-specific offences within the general criminal law.

At the same time, the framework remains contested in relation to marital sexual violence. Section 63, Exception 2 continues to provide that sexual intercourse or sexual acts by a man with his own wife, where the wife is not under eighteen, are not rape. Section 67 separately criminalises sexual intercourse by a husband with his wife during separation without her consent. The distinction demonstrates that the criminal law recognises some forms of non-consensual spousal sexual conduct while continuing to preserve a broader marital exception. The issue raises constitutional questions concerning equality, dignity and bodily autonomy and remains a significant gap in the gender-justice framework.

The Supreme Court in *Independent Thought v Union of India* had earlier removed the discriminatory effect of the former marital rape exception in relation to girls between fifteen and eighteen years of age by reading the law consistently with the constitutional protection of children. The case illustrates how constitutional interpretation can limit statutory distinctions when they conflict with equality and dignity. It also shows, however, that judicial intervention may address only the precise issue presented before the Court and may leave wider questions

for legislative or future constitutional determination.

3.2 Sexual Harassment at the Workplace

Workplace sexual harassment implicates equality, the freedom to work, dignity and personal security. In *Vishaka v State of Rajasthan*, the Supreme Court framed sexual harassment as a violation of fundamental rights and issued binding guidelines in the absence of dedicated legislation. Parliament later enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The statute establishes duties for employers, provides for Internal Committees, and creates procedures for complaints and inquiry. It represents a clear example of judicially articulated constitutional norms later translated into legislation

3.3 Domestic Violence and Family Law

The Protection of Women from Domestic Violence Act, 2005 defines domestic violence broadly and provides civil remedies such as protection orders, residence orders, monetary relief and custody-related measures. Its long title expressly refers to more effective protection of constitutional rights of women who experience violence within the family. The Act is significant because it recognises that gendered harm is not confined to conventional criminal offences and that access to residence, economic security and protection from continuing abuse may be necessary for meaningful equality.

Family law has also been a major field of constitutional change. *Githa Hariharan v Reserve Bank of India* interpreted the guardianship provision in a manner that avoided treating the father as the exclusive natural guardian during his lifetime and recognised the mother's constitutional equality. *Vineeta Sharma v Rakesh Sharma* affirmed that daughters are coparceners by birth under the amended Section 6 of the Hindu Succession Act, 1956, thereby strengthening women's equal property rights within a joint Hindu family. These cases demonstrate that gender justice can require courts to reinterpret family-law rules that reflect older assumptions about male authority.

3.4 Property and Economic Equality

Economic independence is closely related to constitutional equality. Property and inheritance rules can influence a person's bargaining power within the family and ability to withstand economic dependence. The Hindu Succession (Amendment) Act, 2005 substantially expanded daughters' coparcenary rights, and *Vineeta Sharma* resolved uncertainty by treating

the right as one arising by birth. This development illustrates the relationship between legislative reform and constitutional equality: the statute created a formal entitlement, while judicial interpretation clarified its scope and practical effect.

Economic equality also extends beyond property. Article 39(d) expresses the principle of equal pay for equal work, while Article 16 requires equality of opportunity in public employment. The Maternity Benefit Act, 1961, as amended in 2017, expanded maternity-related benefits and introduced measures concerning crèche facilities, work from home in specified circumstances, and benefits for adoptive and commissioning mothers. Such measures seek to reconcile reproductive responsibilities with continued participation in employment. Their effectiveness, however, depends on coverage, enforcement and the ability of workers to use the statutory protections without career penalties.

3.5 Reproductive Autonomy and Bodily Integrity

Constitutional gender justice includes the freedom to make decisions concerning one's body and reproductive life. *Suchita Srivastava v Chandigarh Administration* recognised reproductive choice as an aspect of personal liberty and bodily integrity. The Supreme Court later reaffirmed that reproductive autonomy is linked with privacy, dignity and decisional freedom. In *X v Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi*, the Court held that the right to reproductive choice could not be made dependent solely on marital status and emphasised the woman's autonomy in relation to an unwanted pregnancy within the framework of law.

The Medical Termination of Pregnancy Act, 1971, as amended in 2021, forms the main statutory structure for lawful termination of pregnancy subject to the conditions prescribed by Parliament. From a constitutional perspective, the significance of reproductive legislation lies in the relationship between statutory conditions and the woman's decisional autonomy. The law must therefore be interpreted in a manner that respects privacy, dignity and bodily integrity while recognising the regulatory framework created by legislation.

3.6 Rights of Transgender Persons

NALSA v Union of India is a foundational judgment for the constitutional recognition of transgender persons. The Supreme Court held that gender identity is part of personal autonomy and dignity and that transgender persons are entitled to constitutional protection under the equality and liberty guarantees. The judgment also directed governments to treat transgender persons as socially and educationally backward for purposes of affirmative action and to take

welfare measures, though the precise form and implementation of such measures has remained a subject of policy and legal development.

The Transgender Persons (Protection of Rights) Act, 2019 prohibits discrimination in education, employment, healthcare, access to goods and services, movement, residence and other areas. It also provides for recognition of identity, welfare measures, grievance redressal and a National Council. The statute is important but has also attracted sustained doctrinal criticism over its institutional design and the degree to which its procedures fully reflect the self-identification principle articulated in NALSA. The broader constitutional question is whether statutory recognition should be evaluated only for the absence of explicit discrimination or also for whether it enables substantive participation and equal citizenship.

3.7 Important Judicial Decisions and Constitutional Development

The evolution of gender justice in India can be traced through a line of constitutional cases. In *C.B. Muthamma v Union of India*, the Supreme Court questioned discriminatory service rules affecting women diplomats. *Air India v Nergesh Meerza* invalidated discriminatory provisions relating to termination and retirement of air hostesses where the rules were inconsistent with Article 14. *Vishaka* then connected workplace harassment with Articles 14, 19 and 21 and created an institutional framework through judicial directions.

Anuj Garg rejected paternalistic restrictions based on gender stereotypes. Justice K.S. Puttaswamy (Retd.) v Union of India established privacy as a fundamental right arising from the constitutional guarantees in Part III, strengthening the doctrinal basis for autonomy. *Joseph Shine v Union of India* struck down the offence of adultery, in part because its structure treated a married woman as an object of male control rather than as an autonomous individual. These cases demonstrate the constitutional shift from protection of women as a vulnerable category to recognition of women as rights-bearing autonomous persons.

In the military context, *Secretary, Ministry of Defence v Babita Puniya* held that women Short Service Commission officers could not be excluded from permanent commission through gendered assumptions concerning physical suitability, family responsibilities or command. The Court rejected arguments founded on stereotypes regarding women as a weaker sex. Lt Col Nitisha later extended the equality analysis by recognising indirect discrimination and the effect of institutional criteria on women who had already experienced structural disadvantage. Together, these cases make clear that Article 14 can reach institutional design and cumulative disadvantage, not merely overt classification.

The judicial development is therefore cumulative. Courts have used equality, dignity,

privacy and autonomy to challenge discriminatory rules in employment, family law, sexual violence, reproduction and identity. Yet constitutional adjudication is necessarily case-specific. The existence of a strong line of judgments does not automatically ensure consistent implementation by administrative institutions, nor does it resolve every contested question. The next chapter examines these limitations more directly.

CHAPTER IV – CRITICAL ANALYSIS OF CONSTITUTIONAL FRAMEWORK AND LIMITATIONS

4.1 From Formal Equality to Substantive Equality

A central strength of the Indian constitutional framework is that it has the doctrinal capacity to move beyond formal equality. Articles 14 and 15 can be interpreted in light of actual social conditions, while Article 15(3) authorises special measures for women. The decisions in *Anuj Garg* and *Lt Col Nitisha* demonstrate an emerging preference for examining stereotypes and effects. This is essential because gender discrimination often operates through institutional practices that do not openly state that women are inferior.

The difficulty is that substantive equality lacks a single, universally applied test across all areas of law. In one context, the Court may emphasise classification; in another, dignity or autonomy; in another, indirect discrimination or arbitrariness. The flexibility is valuable, but it can also create doctrinal uncertainty. A more articulated approach could require courts and public authorities to ask whether a rule has a legitimate purpose, whether it is based on evidence rather than stereotype, whether it disproportionately burdens a gender group, and whether less restrictive and more equal alternatives exist.

4.2 Gender Stereotypes and Institutional Discrimination

Gender stereotypes remain one of the most persistent barriers to substantive equality. The assumption that women will prioritise family over work, that women require paternalistic protection, or that men are naturally suited to leadership can influence employment rules, military service, family law and institutional decisions. *Babita Puniya* and *Nitisha* are particularly important because they identify assumptions about marriage, motherhood and physical capability as sources of discrimination. The constitutional problem is not merely the presence of an incorrect stereotype; it is the institutional consequences that follow when the State structures opportunities around it.

The challenge extends to private institutions. Fundamental Rights generally regulate State

action, but gender equality is often affected by private employers, educational institutions, families and digital platforms. Statutory schemes such as the workplace-harassment law and domestic-violence legislation therefore become important bridges between constitutional values and private conduct. Future constitutional development must continue to examine how horizontal effects, statutory duties and public-law remedies can work together without erasing legitimate distinctions between State and private actors.

4.3 Personal Laws and Constitutional Equality

Personal laws present a distinctive challenge because they govern intimate areas such as marriage, divorce, guardianship and inheritance while being shaped by religious and customary traditions. The constitutional system protects religious freedom, but that protection coexists with equality and dignity guarantees. Githa Hariharan and Vineeta Sharma show that statutory family law can be reinterpreted or amended to remove male-centred assumptions. The constitutional question becomes more difficult where a contested practice is rooted in personal law rather than an ordinary secular statute.

A coherent gender-justice framework requires courts and legislatures to distinguish between the protection of religious freedom and the continuation of discriminatory legal structures. The challenge is to avoid treating women merely as subjects of protection while still recognising constitutional commitments to equality and cultural freedom. The constitutional debate is therefore not simply about whether a practice is religious; it is about how competing constitutional values are balanced and whether the burden of the practice falls unequally on a gender group.

4.4 Representation versus Substantive Participation

The constitutional reservation framework for women in legislatures recognises representation as a dimension of equality. Yet numerical representation and substantive participation are not identical. A reserved seat may increase descriptive representation, but meaningful political equality also depends on institutional access, financial and party support, decision-making authority and freedom from gendered barriers. The 106th Amendment is therefore best understood as an important constitutional mechanism of representation, while its broader impact will depend on how reservation interacts with party structures and legislative institutions.

Article 334A also raises a constitutional design issue because the reservation does not become operational immediately upon the insertion of Articles 330A and 332A; it is linked to

the post-census delimitation process. This staged mechanism can be analysed as a question of institutional timing rather than as a simple question of legal recognition. From the perspective of constitutional accountability, the existence of a right or reservation in the text should be accompanied by a clear and predictable implementation pathway.

4.5 Violence, Dignity and Access to Remedies

The constitutional framework against gender-based violence is broad, but effective justice depends on accessible remedies, institutional competence and timely action. Criminal provisions may define offences, but survivors also require protection, medical care, compensation, privacy, legal assistance and fair procedures. The Supreme Court's jurisprudence on sexual harassment, rape and victim identity shows that dignity has procedural as well as substantive dimensions. The existence of an offence does not itself guarantee effective constitutional protection if institutions fail to register complaints, preserve evidence or provide timely adjudication.

The domestic-violence framework demonstrates the importance of civil remedies. Protection from continued abuse, residence, monetary relief and custody-related relief may be more immediately relevant to a survivor's safety than criminal punishment alone. A gender-justice framework should therefore avoid treating criminalisation as the only measure of legal protection. Constitutional dignity requires a connected system of preventive, protective, compensatory and adjudicatory remedies.

4.6 Transgender Inclusion and the Limits of the Existing Framework

NALSA substantially widened the constitutional idea of gender equality by treating gender identity as a matter of dignity and autonomy. The subsequent statutory framework is an important recognition of transgender rights, but the constitutional standard set by NALSA creates a demanding question: whether legal recognition must translate into positive access to employment, education, healthcare, housing and social security. Formal non-discrimination may be insufficient where structural exclusion is already established.

A further limitation is that much gender-related legislation remains organised around the category of 'woman' and may not readily address gender-diverse persons. The criminal law, workplace legislation and welfare schemes may operate differently depending on how an individual is legally categorised. Constitutional equality should therefore be interpreted in a way that prevents the fragmentation of rights according to rigid gender categories, while allowing targeted measures where a particular group experiences specific forms of

disadvantage.

4.7 Intersectionality and Unequal Outcomes

A constitutional framework can appear comprehensive while still producing uneven results because equality is affected by multiple, overlapping forms of disadvantage. For example, a rule designed for women in formal employment may have limited reach for informal workers; a property reform may have a different effect where women lack independent control over assets; and a criminal remedy may be inaccessible where social stigma or geographic distance limits access to police or courts. Intersectionality therefore requires legal analysis to consider the social position of the person claiming equality rather than treating all members of a category as similarly situated.

This does not mean that every constitutional claim requires a separate rule for every social group. Rather, it requires decision-makers to recognise when a supposedly uniform measure places distinctive burdens on particular groups. The combination of Article 15's anti-discrimination rule, affirmative-action provisions and the emerging substantive-equality jurisprudence provides a constitutional basis for such analysis, but the doctrine would benefit from more consistent articulation in legislation and administrative decision-making.

4.8 Implementation Gap and Institutional Accountability

The most persistent limitation is the gap between constitutional principle and institutional implementation. Parliament may enact progressive legislation, and courts may develop strong rights-based doctrines, but the practical value of the framework depends on police, employers, educational institutions, administrative agencies and courts applying those standards consistently. The workplace-harassment regime, for example, depends heavily on functioning Internal Committees, fair procedures and institutional willingness to act. Similar implementation concerns arise in domestic violence, transgender welfare, maternity protection and access to reproductive healthcare.

A constitutional gender-justice framework should therefore be assessed through institutional accountability as well as doctrinal rights. Authorities should be required to reason transparently, use non-discriminatory criteria, provide accessible complaint mechanisms and monitor compliance. The constitutional principle of equality is strongest when it becomes an institutional practice rather than merely a judicial statement. This implementation dimension is essential to the critical analysis undertaken in the final chapter.

CHAPTER V – FINDINGS, SUGGESTIONS AND CONCLUSION

5.1 Effectiveness of the Existing Constitutional Framework

The doctrinal analysis shows that the Constitution contains a substantial foundation for gender justice. Articles 14, 15, 16 and 21, supported by Articles 38, 39, 42 and 51A(e), create a normative structure that addresses equality, non-discrimination, employment, dignity, social justice, working conditions and respect for women. Article 15(3) confirms that the Constitution permits special measures, while the provisions concerning local-government and legislative representation recognise political participation as part of the equality project.

The judiciary has significantly developed these guarantees. Vishaka, NALSA, Anuj Garg, Puttaswamy, Joseph Shine, Babita Puniya, Nitisha and Vineeta Sharma illustrate different dimensions of the same constitutional idea: equality is not achieved merely by treating everyone according to identical rules. In appropriate cases, constitutional justice requires removing stereotypes, recognising autonomy, correcting structural disadvantage and ensuring meaningful access to institutions.

5.2 Gaps in the Existing Framework

The principal gaps are doctrinal fragmentation, uneven statutory coverage, implementation difficulties and the continuing presence of gender stereotypes. The criminal law still retains the marital-rape exception for adult wives under section 63 Exception 2 of the BNS. Personal-law disputes continue to raise complex questions about equality and autonomy. The transgender legal framework recognises rights but leaves significant questions about implementation and substantive inclusion. Political reservation has been constitutionally created but its operational mechanism depends on the process specified in Article 334A.

A second gap is the uneven development of substantive-equality doctrine. The Supreme Court has made important advances in recognising indirect discrimination and stereotypes, but the principles are not yet expressed through a single general statutory test that could guide administrators and lower courts. The result is a framework that can be strong in constitutional litigation while remaining less predictable in day-to-day decision-making.

5.3 Comparative International Perspective

India's constitutional approach can be understood alongside the international framework under CEDAW. India signed CEDAW in 1980 and ratified it in 1993. CEDAW obliges State parties to eliminate discrimination against women and adopt appropriate measures to secure

substantive equality. General Recommendation No. 35 further treats gender-based violence as a form of discrimination and emphasises access to justice, institutional response and freedom from stereotyping. These principles are broadly consistent with the direction of Indian constitutional jurisprudence, although the Indian framework derives its enforceability primarily from the Constitution and domestic legislation.

The international comparison is useful for two reasons. First, it reinforces the idea that discrimination can be structural and that equality requires institutional measures. Second, it encourages attention to implementation, monitoring and disaggregated information rather than judging equality only from the existence of statutes. Recent CEDAW materials concerning India's periodic reporting have also emphasised the need for data disaggregated by relevant social characteristics in order to assess substantive equality. Such approaches can inform Indian policy without replacing the constitutional standards developed domestically.

5.4 Major Findings

- The Indian Constitution provides a wide legal foundation for gender justice through equality, non-discrimination, dignity, liberty, affirmative action and socio-economic directives.
- The Supreme Court has progressively shifted from formal equality towards substantive equality by examining stereotypes, structural disadvantage and indirect discrimination.
- Legislation relating to workplace harassment, domestic violence, property, maternity, reproductive choice and transgender rights translates constitutional principles into sector-specific protections.
- The constitutional framework remains fragmented because different legal fields develop through separate statutes and case-by-case judicial intervention.
- Implementation, access to remedies and institutional accountability remain as significant as the formal existence of rights.
- The recognition of political representation and transgender identity shows that gender justice now encompasses participation and identity as well as protection against violence.

5.5 Suggestions and Recommendations

First, substantive equality should be articulated more consistently across legislation and administrative practice. Public authorities should evaluate gender-related rules for their direct and indirect effects, avoid reliance on stereotypes and record reasons when differential treatment is adopted. A structured equality-impact approach would help translate the reasoning

of cases such as Anuj Garg and Nitisha beyond constitutional litigation.

Second, gender-justice legislation should be supported by stronger implementation mechanisms. Internal Committees under the workplace-harassment law, protection officers under domestic-violence legislation, police officers dealing with sexual offences and institutions handling transgender welfare should receive regular legal and procedural training. Complaint systems should be accessible, confidential where required by law, and capable of timely action.

Third, the constitutional principle of bodily autonomy should guide continuing review of laws affecting reproductive choice and sexual violence. The marital-rape exception under the BNS deserves sustained constitutional scrutiny because it creates a legal distinction between sexual violence within marriage and sexual violence outside marriage. The study does not predetermine the outcome of that constitutional debate; it identifies the issue as a major point at which equality, dignity and autonomy must be addressed directly.

Fourth, political representation should be accompanied by substantive participation. Implementation of the 106th Amendment should be transparent within Article 334A, while political institutions should support equal access to leadership and decision-making.

Fifth, transgender inclusion should be treated as part of the general equality framework rather than only as a welfare subject. The principles of self-identification, non-discrimination, dignity and equal opportunity recognised in NALSA should inform employment, education, healthcare, housing and public-service policies.

5.6 Conclusion

The constitutional framework for gender justice in India is neither confined to a single provision nor complete in itself. It is an evolving system built from equality, non-discrimination, dignity, liberty, affirmative action and social-justice directives. Articles 14, 15 and 16 provide the central equality guarantees, Article 21 supplies a strong foundation for autonomy and dignity, and the Directive Principles broaden the constitutional objective towards social and economic equality. The Constitution also contains express mechanisms for positive representation and special measures.

Judicial development has been central to making these principles meaningful. Vishaka connected workplace harassment with fundamental rights and anticipated legislative reform. NALSA established constitutional recognition of gender identity. Anuj Garg and Nitisha moved equality analysis away from paternalism and formal neutrality towards substantive evaluation of stereotypes and structural disadvantage. Puttaswamy strengthened the autonomy

and privacy dimensions of gender justice. Babita Puniya and related decisions challenged institutional assumptions in the armed forces, while Vineeta Sharma consolidated women's equal property rights. These judgments show the capacity of constitutional law to respond to changing understandings of equality.

At the same time, the study identifies clear limits. Constitutional protection remains fragmented across sector-specific statutes, some important issues remain contested, and implementation frequently determines whether rights become meaningful. The BNS continues the adult marital-rape exception; personal-law disputes continue to raise difficult questions about equality and autonomy; transgender rights require deeper institutional implementation; and the legislative-reservation provisions introduced by the 106th Amendment involve a staged constitutional mechanism under Article 334A.

The central conclusion is that gender justice should be understood as substantive constitutional equality. Formal non-discrimination is necessary, but it is insufficient where institutional structures reproduce stereotypes or historical disadvantage. A coherent framework must therefore combine equality, dignity, autonomy, affirmative measures, effective legislation, judicial review and institutional accountability. India's constitutional development provides these elements, but their practical value depends on converting legal guarantees into accessible rights and equal participation. The continuing constitutional task is to ensure that gender equality operates consistently across the institutions in which power, opportunity and legal status are determined.

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S. No.	Name of the Case	Year
1	<i>C.B. Muthamma v Union of India</i>	1979
2	<i>Air India v Nergesh Meerza</i>	1981
3	<i>Vishaka v State of Rajasthan</i>	1997
4	<i>Githa Hariharan v Reserve Bank of India</i>	1999
5	<i>Anuj Garg v Hotel Association of India</i>	2008
6	<i>Suchita Srivastava v Chandigarh Administration</i>	2009
7	<i>NALSA v Union of India</i>	2014
8	<i>Shayara Bano v Union of India</i>	2017
9	<i>Justice K.S. Puttaswamy (Retd.) v Union of India</i>	2017
10	<i>Independent Thought v Union of India</i>	2017

11	<i>Joseph Shine v Union of India</i>	2018
12	<i>Navtej Singh Johar v Union of India</i>	2018
13	<i>Vineeta Sharma v Rakesh Sharma</i>	2020
14	<i>Secretary, Ministry of Defence v Babita Puniya</i>	2020
15	<i>Lt Col Nitisha v Union of India</i>	2021
16	<i>X v Principal Secretary, Health and Family Welfare Department, GNCTD</i>	2022

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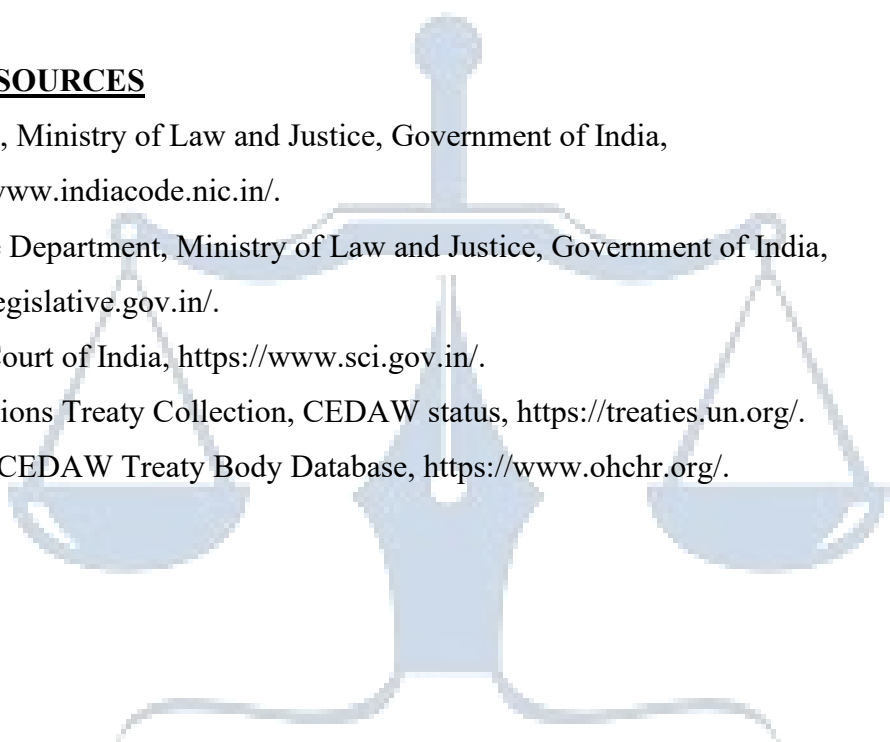
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