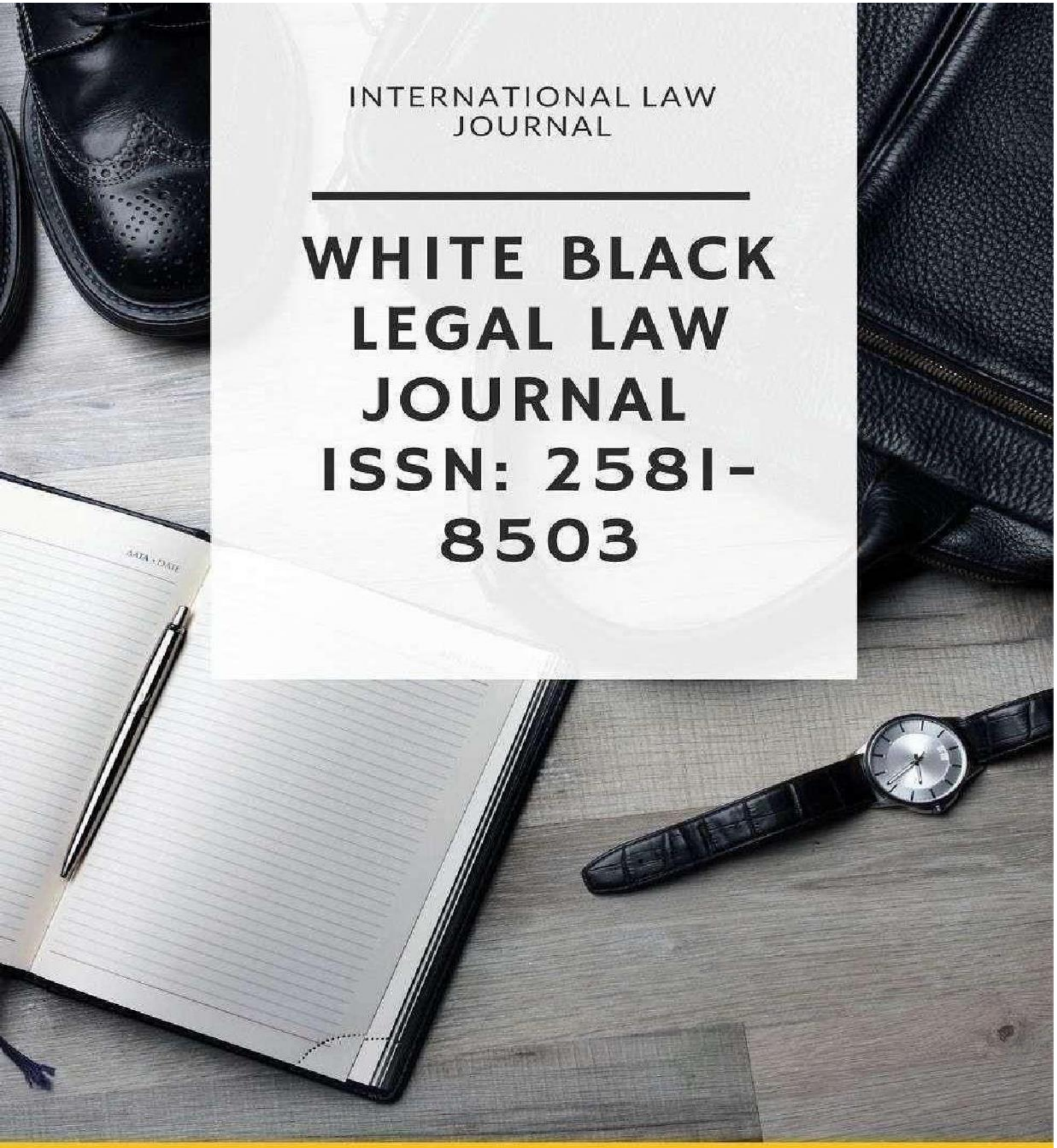


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A STUDY ON JUDICIAL ACTIVISM IN WOMEN'S RIGHTS

AUTHORED BY - R MURALI ANAND

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A STUDY ON JUDICIAL ACTIVISM IN WOMEN'S RIGHTS

Chapter- I

1.1 Background of the study

Judicial activism has been playing a major part in developing and protecting women's rights in India.

The Constitution of India ensures equality, dignity, liberty and freedom from discriminations, yet women have historically faced social, economic, political and legal inequality for several years. Laws made by Parliament which have often dealt with the changing forms of gender-based discrimination have not been enough. In this situation, the Indian judiciary, especially the Supreme Court of India and various High Courts, have taken an active approach aimed at bringing a real change in the way the Constitution is interpreted.

Judicial activism for women's rights is seen in many areas, which includes protection against sexual harassment at the workplace, freedom of reproductive choice, domestic violence, equality in inheritance, women's employment in the armed forces, freedom of choice within marriage, personal laws, trafficking, sexual violence, and the protection of dignity and privacy. Landmark judgments such as *Vishaka v. State of Rajasthan, Suchita Srivastava v. Chandigarh Administration, Anuj Garg v. Hotel, Association of India, Shayara Bano v. Union of India, Joseph Shine v. Union of India, Secretary and X v. Principal Secretary, Health and Family Welfare Department show the judiciary has helped turn equality like equality on paper into substantive equality in real life.*

This article provides a clear overview of the constitutional foundations, historical development, achievements, and limits of judicial activism in advancing women's rights. It also examines judicial activism from the perspective of feminist jurisprudence, also known as feminist legal theory, and explores the tension between the creative role of judges and the separation of powers. The study argues that judicial activism is constitutionally justified when it protects fundamental rights, fills genuine gaps in the law, ends discriminatory practices, and gives practical effect to constitutional morality. At the same time, courts must avoid overreach, because lasting gender justice ultimately requires legal reform, effective administration, social change and accountable institutions.

1.2 Significance of the study

This shows how a society treats the women and how far it has progressed in justice and in following its constitution. Women are about half of the population, yet for a long time they

have faced unfair treatment in many areas of life like education, jobs, owning property, taking part in politics, marriage, Inheritance, decisions about their own, and protection from violence. The Indian Constitution changed the old social order, where some groups were ranked above others, into one based on equality, freedom, dignity and social justice. It does not only ban discrimination against women. It also allows the government to take active steps to help women move forward.[1]

Even with these constitutional assurances, discrimination against women is continuing in different forms.

Sone of it is open and easy to see. Some of it is hidden in social customs, but somehow the institutions work, and in laws that look fair but are not. Because of this, the courts have taken on an important role and that is reading the Constitution. Because of this, the courts have taken on an important role like reading the Constitution in a way that is sensitive to gender.

This judicial activism has mattered most where there was no law, a weak law, or about like law that went against the values of the Constitution. By interpreting the Constitution, the courts have given much wider meaning to equality, dignity, privacy, and personal freedom. They have treated like the women as independent individuals with their own constitutional rights, not just as members of a family or a protected group.

The Supreme Court's decision in Vishaka v. State of Rajasthan[2]is a good example. At that time, there was no complete law on sexual harassment at the workplace. So, the Court made guidelines that everyone had to follow, based on constitutional rights and international agreements. The Court clearly connected workplace sexual harassment with Articles 14,15,19 and 21 of the Constitution.[33] Even today, the Supreme Court treats Vishaka as a key judgment in the development of the law on gender issues at the workplace.

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1.3 Review of Literature

In India, the role of Judicial Activism has been very vital to promote and protect women's rights. The Indian judiciary has been very progressive, in particular the Supreme Court and High court have established the democratic values through the interpretation of constitutional provisions by advancing gender equality, protecting women's dignity and addressing discriminatory practices. Articles 14, 15, 16 and 21 of the Constitution of India engrave the fundamental legal framework for protecting women's rights.

Women's rights jurisprudence has developed greatly through the judicial decisions down the history. In Vishaka v. State of Rajasthan (1997) 6 SCC 241, the Supreme Court prescribed guidelines to prevent sexual harassment at the workplace when no specific legislation exists.

This judgment paved way subsequently for the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

In Shayara Bano v. Union of India (2017) 9 SCC 1, the Supreme Court invalidated the practice of instant triple talaq through a majority decision, highlighting the relationship between gender justice and constitutional principles. Similarly, in Joseph Shine v. Union of India (2019) 3 SCC 39, the Court struck down the adultery provision under Section 497 of the Indian Penal Code, recognising women's equality, dignity, and individual autonomy.

In Vineeta Sharma v. Rakesh Sharma (2020) 9 SCC 1, the Supreme Court affirmed the equal coparcenary rights of daughters in Hindu joint family property. Likewise, in Secretary, Ministry of Defence v. Babita Puniya (2020) 7 SCC 469, the Court addressed gender discrimination in the grant of permanent commissions to women officers in the Indian Army.

These judgments demonstrate the judiciary's contribution to workplace protection, matrimonial autonomy, inheritance rights, and equality in employment. International instruments such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) have also influenced discussions on gender equality.

However, existing legal scholarship identifies certain limitations of judicial activism, including difficulties in implementing judicial decisions, unequal access to justice, and concerns regarding judicial overreach. The present study seeks to examine both the achievements and limitations of judicial activism in promoting substantive gender equality in India.

1.4 Research Gap

Although the Constitution assures and checks equality between men and women, women do not yet fully enjoy that equality in practice. Women continue to face consistently like:

- Gender discrimination
- Sexual harassment
- Domestic violence
- Sexual violence
- Unequal job opportunities
- Discriminatory personal laws and practices
- Unequal inheritance practices
- Restriction on reproductive choices
- Discrimination at the workplace
- Trafficking and exploitation

- Social expectations based on stereotypes
- Institutional barriers to equality

The central problem addressed by this study is therefore, we can take it as How much has judicial activism helped to protect and improve women's rights in India, and what limits does the Constitution place on courts when they step in?

1.5 Research objectives

The main objectives are:

1. To understand what judicial activism means.
2. To study the constitutional basis of women's rights.
3. To trace how judicial activism for women has grown over time.
4. To study major court decisions on gender justice.
5. To study how the Supreme Court has helped bring equality in real life, not just on paper.
6. To study how courts have stepped into religious personal laws like on marriage, inheritance, etc. that affect women.
7. To study how courts protect women's right to make their own choices about reproduction and their dignity.
8. To study how feminist legal thinking is connected to judicial activism.
9. To identify the criticisms and limits of judicial activism.
10. To suggest ways to make the court's protection of women's rights stronger.

1.6 Research Questions

The study seeks to answer the following questions:

1. What does judicial activism mean?
2. Which parts of the Constitution form the basis of women's rights in India?
3. How has judicial activism helped bring justice for women?
4. What role have the courts played in filling gaps in the law that affect women?
5. Has judicial activism led to equality in real life, not just on paper?
6. How has feminist legal thinking influenced the way judges' reason?
7. What limits does the Constitution place on judicial activism?
8. Can judicial activism alone bring justice for women?

1.7 Research Methodology

This study uses a doctrinal and analytical method which means studying the law as it is written in Statutes, court cases, and legal principles.

Primary sources or original legal materials which include:

- The Constitution of India
- Statutes
- Court judgements
- Constitutional provisions
- International agreements

Secondary sources where the writings explain or discuss the law which include:

- Books
- Scholarly articles
- Legal commentaries
- Reports
- Academic writings
- Judicial research materials

The study mainly spotlights on decisions of the Supreme Court of India. It also refers to important Developments in the High Courts where relevant.

1.8 Limitations of Study

The present study primarily focuses on judicial activism concerning women's rights in India, particularly the decisions of the Supreme Court and selected High Courts. It does not provide an exhaustive comparative analysis of judicial activism in other countries.

The study concentrates on selected areas, including gender equality, workplace sexual harassment, matrimonial rights, inheritance, and employment opportunities. Since women's rights encompass numerous civil, political, economic, social, and cultural dimensions, every aspect cannot be examined in detail within the scope of this research.

The research mainly adopts the doctrinal method of legal research, relying on constitutional provisions, statutory enactments, judicial precedents, and secondary literature. It does not involve extensive fieldwork, interviews, surveys, or statistical analysis. Therefore, the practical impact of judicial decisions cannot be measured comprehensively through empirical evidence.

Another limitation concerns the implementation of judicial decisions. Although courts may recognise and protect women's rights, effective enforcement depends on government

authorities, institutional mechanisms, legal awareness, and access to affordable legal assistance. Social customs, patriarchal attitudes, economic dependence, and other forms of inequality may also prevent women from fully exercising their rights.

Furthermore, the study examines selected landmark judgments rather than every judicial decision concerning women. Consequently, its findings may not represent the entire range of judicial approaches to gender justice. The study acknowledges these limitations while seeking to provide a balanced legal analysis of the role of judicial activism in protecting women's rights.

1.9 Scheme of Study

Chapter I- This chapter deals with Background of the study, significance of the study, Review of literature, Research Gap, Research objective, Research question, Research methodology, Limitations of Study and scheme of study.

Chapter II- Concepts and Meaning of Judicial Activism

This chapter deals with meaning of Judicial Activism, Judicial Activism and Judicial Review, Judicial Activism and Judicial Restraint, Public Interest Litigation and Judicial Activism

Chapter III- Constitutional Framework for Women's Rights in India

This chapter deals with Preamble, Article 14 – Equality Before Law, Article 15–Prohibition of Discrimination, Article 16 –Equality of Opportunity in Public Employment, Article 21 – Life and Personal Liberty, Directive Principles of State Policy, Fundamental Duties, Constitutional Foundation of Gender Justice

Chapter IV - Historical Development of Judicial Activism in Women's Rights

This chapter deals with Early Judicial Approach, Expansion of Article 21, Public Interest Litigation, The Era of Transformative Constitutionalism

Chapter V - Judicial Activism and Protection against Sexual Harassment

This Chapter deals with *Vishaka v.* State of Rajasthan, Significance of Vishaka, International Law and Vishaka, Apparel Export Promotion Council v. A.K Chopra, Medha kotwal Lele v. Union of India,The POSH Act.

Chapter VI - Judicial Activism and Personal Laws

This chapter deals with The Shah Bano Begum Case, Shayara Bano v. Union of India Joseph Shine v. Union of India.

Chpater VII Judicial Activism and Women's Right to Equality in Employment

This chapter deals with Anuj Garg v. Hotel Association of India, Secretary, Ministry of Defence v. Babita Puniya, Lt.Cdr.Annie Nagaraja v. Union of India,Lt. Col. Nitisha v. Union of India

Chapter VIII-Judicial Activism and Women's Property Rights

This chapter deals with Historical Position, Hindu Succession Amendment Act, 2005, Vineeta Sharma v. Rakesh Sharma, Feminist Significance

Chapter IX -Judicial Activism and Reproductive Autonomy

This chapter deals with Reproductive Rights Suchita Srivastava v. Chandigarh Administration, X v. Principal Secretary, Medical Termination of Pregnancy and Equality

Chapter X -Judicial Activism in Protection against Violence

This chapter deals with Sexual Violence, Rape and Consent, A Victim-Centered Approach, Acid Attacks, Trafficking and Exploitation

Chapter XI-Feminist Jurisprudence and Judicial Activism

This chapter deals with meaning of Feminist Jurisprudence, Formal Equality versus Substantive Gender Stereotypes, Intersectionality.

Chapter XII- Major Contributions of Judicial Activism

This chapter deals with Workplace Equality, Sexual Harassment Protection, Equality in the Armed Forces, Property Rights, Personal Autonomy, Reproductive Autonomy, Personal Law Reform Dignity

Chapter XIII- Criticism and Limitations of Judicial Activism

This chapter deals with Separation of Powers, Judicial Overreach, Democratic Legitimacy, Implementation Problem, Access to Justice, Uneven Judicial Outcomes

Chapter XIV- Judicial Activism versus Judicial Restraint

Chapter XV -Constitutional Morality and Transformative Constitutionalism

This chapter deals with Constitutional Morality, Transformative Constitutionalism from Protection to Empowerment

Chapter XVI -Critical Analysis of Landmark Cases

This chapter deals with Vishaka, Anuj Garg, Shayara Bano, Joseph Shine, Babita Puniya Vineeta Sharma

Chapter XVII -Judicial Activism and International Law

Chapter XVIII -Judicial Activism and the Role of the Supreme Court Chapter XIX - Challenges before Judicial Activism

This chapter deals with Patriarchal Social Structures, Weak Implementation, Lack of Legal Awareness, Economic Dependence, Access to Justice, Intersectional Discrimination, Institutional Patriarchy.

Chapter XX -Suggestions and Future Directions

This chapter deals with strengthening Gender-Sensitive Judicial Training, Effective

Implementation of Judgements,Legislative Follow-Up, Greater Access to Legal Aid, Gender-Sensitive Institutional Structures, Recognition of intersectionality,Greater Representation of Wome

Chapter XXI -Findings of the Study Chapter XXII - Conclusion

2. Concepts and Meaning of Judicial Activism

2.1 Meaning of Judicial Activism

Judicial activism broadly explains about an approach in which courts interpret its constitutional and

Statutory provisions in a flexible way and, where necessary, give remedies or directions that go Beyond a narrow or word for word reading of the law.[4]

Judicial activism is not the same as judicial legislation where the court make laws. Instead, it generally means widening the interpretations of existing constitutional principles to deal with current day problems.

Judicial activism doesn't have any definition that everyone accepts. It may refer to:

- Vast interpretation of the Constitution
- Protection of fundamental rights
- Judicial review of government action
- Development of new legal principles
- Filing gaps in the law
- Public interest litigation
- Enforcement of constitutional values
- Protection of vulnerable groups

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2.2 Judicial Activism and Judicial Review

Judicial review is recognized in India by constitutional provisions including Articles 13, 32 and 226.[5]

Judicial review allows courts to check whether the actions of the legislature and the executive follow the Constitution. Judicial activism is a particular way of using these constitutional powers and Therefore the Judicial review is a constitutional power; judicial activism is an approach to using judicial power.

2.3 Judicial Activism and Judicial Restraint

Judicial restraint stresses that courts should ordinarily respect the roles of Parliament and the executive.

In the aspect of Judicial activism, on the other hand, becomes prominent where:

- Fundamental rights are seriously threatened
- The law fails to deal with a constitutional problem
- Government authorities fail to carry out their constitutional duties
- Discriminatory practices continue
- Vulnerable groups lack effective protection
- Constitutional values need to be developed through interpretation

In cases on women's rights, judicial activism has often been justified on the ground that constitutional
equality must be real and meaningful, not merely formal.

2.4 Public Interest Litigation and Judicial Activism

Public Interest Litigation (PIL) greatly widened access to constitutional Justice.

Traditionally, the person who was affected had to approach the court. PIL relaxed the traditional rules of *locus standi* which means the right to bring a case before a court. It allowed public spirited individuals and organizations to approach courts on behalf of disadvantaged persons.

This was especially important for women, because victims of sexual violence, trafficking, domestic exploitation and institutional discrimination may not have the money or social power to go to court on their own.

3. Constitutional Framework for Women's Rights in India

3.1 Preamble

The Preamble promises:[6]

- Justice – social, economic and political
- Liberty
- Equality of status and opportunity
- Dignity of the individual

These principles give women's rights their philosophical foundation. [7]

Gender justice cannot be understood only as formal equality by treating everyone the same on

Paper. It requires removing the structural disadvantages where disadvantages build into the way
society and institutions work. This stops women from enjoying their constitutional rights on equal
terms.

3.2 Article 14 – Equality Before Law

Article 14 guarantees equality before the law and equal protection of the laws.[8]
It is one of the most important constitutional provisions for women's rights. Through judicial interpretation, Article 14 has changed from a formal guarantee into a substantive principle that can challenge arbitrary and discriminatory practices.

3.3 Article 15– Prohibition of Discrimination

Article 15(1) prohibits discrimination on grounds that include sex.[9]
However, Article 15(3) allows the State to make special provisions for women and children.10
This provision accepts that treating groups that have been disadvantaged for a long time in exactly the same way may not always produce real equality.
Thus, affirmative action which means a special measures to help disadvantaged groups. This action is for women is constitutionally permitted.

3.4 Article 16 –Equality of Opportunity in Public Employment

Article 16 guarantees equality of opportunity in public employment.[11]
The judiciary has used Article 16 together with Articles 14 and 15 to challenge discrimination against women within institutions.
The military-service cases show this development.

3.5 Article 19

Article 19 guarantees fundamental freedoms, including:[12]

- Freedom of speech and expression
- Freedom of movement
- Freedom to reside and settle
- Freedom to practice a profession or occupation

Gender stereotypes should not ordinarily be used to place unnecessary limits on women's use of these freedoms.

3.6 Article 21 – Life and Personal Liberty

Article 21 has become one of the strongest and most appreciated constitutional foundations for women's rights.[13]

The Supreme Court has interpreted women's life to include:

- Dignity
- Privacy
- Bodily autonomy
- Reproductive choice
- Personal liberty
- Sexual autonomy
- Freedom from degrading treatment
- Meaningful participation in society

This wide interpretation has strongly influenced feminist thinking on constitutional law.

3.7 Directive Principles of State Policy

Important provisions include:[14]

Article 39(a). The State should secure an adequate means of livelihood for men and women equally.

Article 39(d). The State should secure equal pay for equal work for both men and women. Equally.

Article 39(e). The health and strength of workers, men and women, should not be misused.

Article 42. The State shall make provision to secure fail and humane conditions of work and maternity relief.

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3.8 Fundamental Duties

Article 51A(e) requires citizens to give up practices that are insulting to the dignity of women.[15]

This provision reflects the Constitution's commitment to ending patriarchal like male dominated Social practices.

3.9 Constitutional Foundation of Gender Justice

The constitutional framework may therefore be shown as:

Equality + Non – discrimination + Liberty + Dignity + Autonomy + Social Justice

= Constitutional Gender Justice

4. Historical Development of Judicial Activism in Women's Rights

4.1 Early Judicial Approach

In the early decades after independence, judicial interpretation concerning women was often closely tied to the interpretation of statutes and to personal law.

The power of Articles 14 and 21 to bring change had not yet reached the wide level seen in present-day constitutional law.

4.2 Expansion of Article 21

The widening of Article 21 greatly changed litigation on women's rights. The right to life came to mean more than mere physical existence. Gradually, it came to include:

- Dignity
- Privacy
- Autonomy
- Health
- Reproductive freedom
- Protection against sexual violence
- Freedom from arbitrary State interference

4.3 Public Interest Litigation

The rise of PIL gave courts the chance to deal with structural inequalities which means inequalities built into society and its institutions.

As a result, litigation on women's rights moved beyond private disputes and became a way of examining discrimination within institutions.

4.4 The Era of Transformative Constitutionalism

In the current day constitutional law increasingly sees the Constitution as a tool for changing the Structures of society. This idea is called transformative constitutionalism.[16]

Under this approach, constitutional interpretation must respond to the following factors:

- Patriarchy
- Caste
- Gender stereotypes

- Social exclusion
- Economic inequality
- Institutional discrimination

Judicial activism concerning women therefore forms part of the larger project of transformative constitutionalism.

5. Judicial Activism and Protection against Sexual Harassment

5.1 *Vishaka v.* State of Rajasthan

The most important example of judicial activism concerning women in Vishaka v. *State of Rajasthan*, (1997) 6 SCC241.[17]

The case arose from the sexual assault of a social worker in Rajasthan. At that time, India did not have a Complete law specifically dealing with sexual harassment at the workplace. Then the Supreme Court held that sexual harassment violated women's fundamental rights under Articles 14,15,19 and 21.[18]

The Court laid down the Vishaka Guidelines, which were binding until suitable legislation was passed and the judgement was shown as a landmark example of the creative role of courts, because the Court created a set of rules in a legislative vacuum where no law existed.

The Supreme Court itself later elaborate Vishaka as a case about enforcing the fundamental rights of working women and about the link between workplace sexual harassment and constitutional guarantees.[19]

5.2 Significance of Vishaka

The importance of Vishaka depends on several principles:

1. Sexual harassment at the workplace violates fundamental rights.
2. Equality includes protection from gender-based hostility.
3. The right to work includes the right to work in a safe environment.
4. International conventions can help in interpreting the Constitution.
5. Courts may issue guidelines when no law exists.
6. Gender justice requires proper systems and procedures within institutions.

5.3 International Law and Vishaka

The Court relied on international norms, particularly CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women), to strengthen its interpretation

of the Constitution.[20]

This established an important principle that the International human rights standards may guide the Interpretation of the Indian Constitution where they are consistent with fundamental rights and domestic law.

5.4 Apparel Export Promotion Council v. A.K Chopra

The Supreme Court strengthened the principle that sexual harassment at the workplace goes Against women's constitutional equality and dignity.[21]

The Court took a broader view of sexual misconduct and did not limit protection only to Completed physical assault.

5.5 Medha kotwal Lele v. Union of India

The Supreme Court later examined how the *Vishaka* framework was being implemented.[22] The case showed an important limit of judicial activism that the court directions work only when administrative bodies actually carry them out.

5.6 The POSH Act

The court's intervention in Vishaka eventually led to action by the legislature and the Parliament Passed the Sexual Harassment of Women at Workplace like Prevention, Prohibition and Redressal and Implemented as Act, 2013 (the POSH Act).[23]

This shows an important link between judicial activism and the development of legislation like Judicial innovation → social recognition → legislative response rights built into institutions.

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6. Judicial Activism and Personal Laws

Personal laws which are applied to people according to their religion, have long been of the most complex areas of women's rights.

Questions about marriage, divorce, maintenance, inheritance and guardianship often overlap with religion, culture and constitutional equality.[24]

6.1 The Shah Bano Begum Case

In *Mohd. Ahmed Khan v. Shah Bano Begum*, the Supreme Court recognized the right of a Divorced Muslim woman to claim maintenance like financial support under the secular

criminal Procedure law.[25]

The decision caused much political and social controversy and finally led to action by Parliament.

The case shows both the possibilities and the limits of judicial activism in personal law.

6.2 Shayara Bano v. Union of India

Shayara Bano v. Union of India, (2017) 9 SCC 1, the Supreme Court examined whether *talaq-e-biddat*, commonly called instant triple talaq, was constitutionally legitimate.[26]

The Court's decision striking down the practice was an important development for Muslim Women's rights. The Supreme Court's records describe the case as a constitutional challenge to triple talaq and show that it was decided on 22 August 2017.

The case raised questions about:

- Gender equality
- Religious freedom
- Constitutional morality
- Personal law
- Arbitrariness
- Dignity

The judgment showed that personal law practices that affect women's fundamental rights can be tested against constitutional principles.

6.3 Joseph Shine v. Union of India

In *Joseph Shine v. Union of India*, decided on 27 September 2018 and reported at 2019, the Supreme Court struck down the Criminal offence of adultery under Section 497 of the Indian Penal Code.[27]

The Court found that the provision reflected a patriarchal idea of marriage in which the husband was treated as having control over his wife's sexuality.[28]

The Court's reasoning clearly focused on gender equality, autonomy and dignity. The judgement Itself discusses at length gender, patriarchy, sexual autonomy and transformative constitutionalism.

Significance *Joseph Shine*marks an important shift like woman as property which woman as an independent Individual under the Constitution.

The decision therefore marks a major development in feminist thinking on constitutional law.

7. Judicial Activism and Women's Right to Equality in Employment

7.1 Anuj Garg v. Hotel Association of India

In Anuj Garg v. Hotel Association of India, (2008) 3 SCC 1, the Supreme Court considered a Law that restricted the employment of women in places where liquor was served.[29]

The State defended the restriction as a protective measure.

The Supreme Court rejected the assumption that women must be protected in a paternalistic way as if others know what is best for them by being kept out of employment.

The Court held that such protective laws may actually keep gender stereotypes alive. The decision is important because the Court stressed that women's safety should not be secured by denying them opportunities. Later Supreme Court decisions have described *Anuj Garg*as rejecting laws that kept oppression alive and as applying a stricter test to Classifications based on sex. The principle explains the protection which should not become a reason for discrimination.

7.2 Secretary, Ministry of Defence v. Babita Puniya

In Secretary, Ministry of Defence v. Babita Puniya, (2020) 7 SCC 469, the Supreme Court dealt with the question of Parliament Commission for women Short Service Commission offers in the Indian Army.[30]

The Court rejected stereotyped assumptions about women's:

- Physical capacity
- Family responsibilities
- Motherhood
- Childcare
- Domestic duties
- Leadership abilities

The judgment was an important move from formal equality towards substantive equality. The Supreme Court's later judgments and official records describe *Babita Puniya* as a important decision on women's right to Permanent Commission in the Army.[31]

7.3 Lt. Cdr. Annie Nagaraja v. Union of India

The Court continued to deal with equality for women officers in the armed forces. The wider Principle is that the institutional policies cannot be justified merely by traditional gender stereotypes.

7.4 Lt. Col. Nitisha v. Union of India

In Lt. Col. Nitisha v. Union of India, (2021) 4 SCC 670, the Supreme Court took a particularly Important approach to substantive equality.[32]

The Court recognizedthat criteria that look neutral can still produce discriminatory results. The important feminist insight in Formal Equality which says treat everyone the same and Substantive equality says the Identity structural disadvantages and ensures genuine equality. The second approach is particularly important for women.

8. Judicial Activism and Women's Property Rights

8.1 Historical Position

In the previous era, women had unequal rights in property and inheritance under several Personal law systems. The Hindu Succession Act, 1956 improved women's inheritance rights, but major inequalities remined.[33]

8.2 Hindu Succession Amendment Act, 2005

The 2005 amendment gave daughters equal coparcenary rights in Hindu joint family Property where a coparcener is a person who gets a share in joint family property by birth.[34]

Courts had to step in to settle the question whether a daughter's birth before or after the Amendment affected her rights.

8.3 Vineeta Sharma v. Rakesh Sharma

In Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1, the Supreme Court clarified that daughters have coparcenary rights by birth and that a daughter's right does not depend on whether her father was alive on the date of the amendment.[35]

The Supreme Court has recorded the working principle that the amended Section 6 gives coparcenary status to daughters born before or after the amendment, in the same way as sons, with equal rights and liabilities.[36]

In viewing its significance, the judgement broke down a major part of patriarchal property Structures.

It recognized that the birth, not gender, decides coparcenary status.

8.4 Feminist Significance

Economic independence is essential for substantive equality. Property rights give women the

Following power:

- Economic security
- Bargaining power
- Independence within marriage
- Protection against economic exploitation
- Greater freedom to make their own decisions

Finally, Judicial protection of inheritance rights is directly contributing to the empowerment of women.

9. Judicial Activism and Reproductive Autonomy

9.1 Reproductive Rights

Reproductive autonomy which is a woman's freedom to decide about her own reproductive life and a part of personal liberty and dignity.[37]

A woman's reproductive choices involve deeply decisions about:

- Pregnancy
- Childbirth
- Contraception
- Continuing or ending a pregnancy
- Motherhood
- Bodily integrity

9.2 Suchita Srivastava v. Chandigarh Administration

In*Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC 1,* the Supreme Court recognized reproductive choice as an important part of personal liberty under Article 21.[38]

The decision stressed that a woman's right to make reproductive choices is linked to her dignity and control over her own body.

9.3 X v. Principal Secretary

The Supreme Court's law on reproductive rights has continued to develop. The Court has Increasingly recognized that a woman's reproductive autonomy cannot depend entirely on Her marital status.[39]

This is especially important because unmarried women have in the previous stages had faced more legal and social restrictions on reproductive healthcare.

9.4 Medical Termination of Pregnancy and Equality

The court's approach to reproductive rights shows a wider constitutional principle.[40] where a women's body is not a tool of State policy, family honor or social morality.

Rather, the woman is the constitutional decision-making person in matters affecting her own body, subject to reasonable legal regulation.

10. Judicial Activism in Protection against Violence

10.1 Sexual Violence

The judiciary has gradually come to see sexual violence as an attack not only on physical Integrity but also on dignity, autonomy and a person's identity under the Constitution.[41]

10.2 Rape and Consent

Modern judicial interpretation increasingly stresses that consent must be understood in terms of independence and free choice.

The law has moved away from stereotyped assumptions about women's conduct, clothing, past sexual history or social behavior.

10.3 A Victim-Centered Approach

Recent court decision increasingly recognizes the need to avoid:

- Victim blaming
- Gender stereotypes
- Intrusive questioning
- Assumptions about ideal behavior
- Stereotypes about sexual morality

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10.4 Acid Attacks

Courts have also dealt with the problem of acid attacks and the need for compensation, medical treatment and rehabilitation Cases on acid violence show that the judiciary recognizes that women's bodily integrity and dignity need effective protection from institutions.

10.5 Trafficking and Exploitation

Judicial activism has also helped protect women and children against trafficking, sexual exploitation and forced labour.

The courts have increasingly taken a rights-based approach, instead of treating victims merely As offenders or as objects to be regulated.

11. Feminist Jurisprudence and Judicial Activism

11.1 Meaning of Feminist Jurisprudence

Feminist jurisprudence or the feminist legal theory studies how law interacts with gender and with male-oriented social structures.[42]

Traditional legal systems have often been criticized for presenting men's experience as if they were everyone's experience.[43]

Feminist jurisprudence asks:

- Whose experience does the law recognize?
- Whose voice is missing?
- Does a law that looks neutral still continue inequality?
- Does the legal system recognize women's autonomy?
- Does the law challenge patriarchy or reinforce it?

11.2 Formal Equality versus Substantive

One of the major contributions of feminist jurisprudence is the distinction between formal and substantive equality.[44]

The formal equality requires identical treatment whereas the substantive equality recognizes that groups that have been disadvantaged for a long time may need different legal treatment to reach actual equality. Indian constitutional law has increasingly adopted the second approach.

11.3 Gender Stereotypes

Judicial decisions such as *Anuj Garg, Babita Puniya* and *Nitisha show that the* courts recognize that stereotypes may be built into laws and institutional policies.[45] Examples include assumptions that:

- Women are physically weaker
- Women should stay in domestic roles
- Motherhood reduces professional ability
- Women need to be protected by others in a paternalistic way
- Women are responsible for maintaining family honour
- Women cannot do certain jobs

- Women are naturally dependent on men Such assumptions weaken connotational equality.

11.4 Intersectionality

Women's experiences are not all the same. Gender interacts with:

- Caste
- Class
- Disability
- Religion
- Ethnicity
- Marital status
- Age
- Poverty
- Occupation
- Rura or urban location

There, the law on women's rights should recognize theintersectional discrimination that the discrimination that arises when several of these factors overlap.

A poor rural woman may experience discrimination very defiantlyfrom an economically privileged urban woman.

12. Major Contributions of Judicial Activism

Judicial activism has contributed greatly to women's rights in several areas.

12.1 Workplace Equality

Through *Vishaka,* the judiciary turned workplace safety into a constitutional issue.[46]

12.2 Sexual Harassment Protection

The judiciary directly helped develop the legal framework that eventually led to the POSH Act.[47]

12.3 Equality in the Armed Forces

Babita Puniya and Nitisha challenged institutional stereotypes about women's professional ability.[48]

12.4 Property Rights

Vineeta Sharma strengthened daughters' equal coparcenary rights.[49]

12.5 Personal Autonomy

Joseph Shine recognized women's sexual and personal autonomy.[50]

12.6 Reproductive Autonomy

Suchita Srivastavastrengthened constitutional protection of reproductive choice.[51]

12.7 Personal Law Reform

Shayara Bano showed that discriminatory personal-law practices can be tested against constitutional principles.[52]

12.8 Dignity

Decisions under Article 21 have made dignity an important constitutional foundation for women's rights.[53]

13. Criticism and Limitations of Judicial Activism

Judicial activism, though valuable, is not free from criticism.

13.1 Separation of Powers

The Constitution divides legislative, executive and judicial functions among different bodies. Critics argue that too much judicial activism may lead courts into areas that the Constitution has given to Parliament.[54]

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13.2 Judicial Overreach

Judicial activism becomes judicial overreach when courts, in effect, make policy without enough constitutional or statutory basis. The difference between interpreting the law and making the law must therefore be kept.

13.3 Democratic Legitimacy

Judges are not elected representatives. Therefore, major policy decisions involving competing social interests may sometimes be better handled through democratic law-making processes.

13.4 Implementation Problem

A court judgement does not automatically change social reality. For example, if we take *Vishaka* showed that guidelines need to be carried out effectively by employers and Administrative authorities.[55]

Judicial intervention must therefore be supported by:

- Legislation
- Institutional mechanisms
- Budgets and resources
- Awareness
- Enforcement
- Social change

13.5 Access to Justice

Judicial activism benefits only those who can reach the courts. Poor and marginalized women may lack:

- Legal awareness
- Financial resources
- Access to lawyers
- Transport
- Institutional support
- Social freedom to go to court

Thus, judicial activism cannot replace institutions that make justice easily accessible

13.6 Uneven Judicial Outcomes

Not every judicial decision produces progressive results. Judges are influenced by their social background and their methods of interpretation.

Therefore, feminist judicial activism needs constant attention to stereotypes and unconscious Biases.

14. Judicial Activism versus Judicial Restraint

Judicial Activism and Judicial Restraint are two different approaches to how judges interpret the law.

Judicial Activism is characterized by a wide interpretation of the law, a strong protection of rights, and a willingness to fill gaps in the law. It involves a flexible interpretation of the Constitution, more intervention in social issues, and plays a strong role in protecting minorities.

In contrast, Judicial Restraint follows a narrow interpretation of the law and shows greater respect for the legislature. It avoids policy-making and puts more emphasis on the exact text of the Constitution and statutes. This approach is marked by institutional caution and a greater stress on the separation of powers.

Neither approach is better in every situation. The right judicial approach depends on Several factors like the text of the Constitution, the nature of the right involved, how serious the discrimination is, whether remedies already exist in law, institutional competence i.e. whether the court is the right body to decide the issue, democratic considerations, and how urgently constitutional protection is needed.

15. Constitutional Morality and Transformative Constitutionalism

15.1 Constitutional Morality

Constitutional morality requires institutions to uphold constitutional values even when those values conflict with the prevailing morality of society.[56]

This is especially important in cases on women's rights. Traditional morality may be used to justify:

- Patriarchal family structures
- Unequal inheritance
- Restrictions on women's employment
- Control over women's sexuality
- Discriminatory personal practices

Constitutional morality requires these practices to be tested against:

- Equality
- Dignity
- Liberty
- Autonomy
- Fraternity

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- Non-discrimination

15.2 Transformative Constitutionalism

Transformative constitutionalism sees the Constitution as a tool for changing unjust social structures.

Women's rights law and particularly the aim is not merely not to discriminate against women only but it is also to transform the social, legal and institutional conditions that produce women's inequality

15.3 From Protection to Empowerment

Earlier approaches sometimes treated women as vulnerable persons who needed protection. Modern constitutional law increasingly treats women as independent individuals with rights. This change may be shown as Protection, Equality, Dignity, Autonomy and Empowerment. This is one of the central developments in the present-day law on gender in India.

16. Critical Analysis of Landmark Cases

16.1 Vishaka

Contribution: Filled a gap in the law and created protections at the workplace.[57]

Activist Element: Guidelines were issued by the Court when no law existed.

Feminist Significance: Recognized sexual harassment as structural gender discrimination Which is built into the system Limitation: Implementation remained dependent on institutions.

16.2 Anuj Garg

Contribution: Rejected paternalistic (over-protective) restrictions on employment.[58]

Activist Element: Applied substantive equality and closely examined gender stereotypes.

Feminist Significance: Recognized that "protective" laws can themselves be discriminatory.

16.3 Shayara Bano

Contribution: Strengthened constitutional examination of instant triple talaq.[59]

Activist Element: Dealt directly with the relationship between personal law and Constitutional rights.

Feminist Significance: Recognized the claim of Muslim women to equality and dignity.

16.4 Joseph Shine

Contribution: Removed the patriarchal criminalization of adultery.[60]

Activist Element: Read criminal law afresh in the light of autonomy and constitutional equality.

Feminist Significance: Rejected the idea of women as the property of their husbands.

16.5 Babita Puniya

Contribution: Advanced equal professional opportunities for women in the Army.[61]

Activist Element: Rejected stereotyped assumptions held by institutions.

Feminist Significance: Promoted substantive equality in institutions traditionally dominated by men.

16.6 Vineeta Sharma

Contribution: Confirmed the equal coparcenary rights of daughters.[62]

Active Element: Read the equality in the statue in line with constitutional values. Feminist Significance: Promoted women's economic independence.

17. Judicial Activism and International Law

Indian case law on women's rights has also interacted with international human rights standards.

Important international instruments include:[63]

1. Universal Declaration of Human Rights, 1948.
2. Convention on the Elimination of All Forms of Discrimination Against Women,1979.
3. International Covenant on Civil and Political Rights, 1966.
4. International Covenant on Economic, Social and Cultural Rights,1966.
5. Beijing Declaration and Platform for Action, 1995.
6. International Labour Organization (ILO) conventions on equality and maternity protection.

CEDAW is particularly important because it sets international standards for ending discrimination against women.[64]

In *Vishaka*, the Supreme Court relied on international norms while interpreting fundamental

rights.[65]

Through this we can remember the principle that the international law can strengthen constitutional protection when domestic law is silent and international standards are consistent with constitutional guarantees.

18. Judicial Activism and the Role of the Supreme Court

Under Article 32, the Supreme Court has a unique position as the protector of fundamental rights.[66]

Its role in women's rights can be understood through five functions:

1. Rights Protection:
   The Court protects women against unconstitutional action by the State.
2. Rights Expansion:
   It widens the interpretation of existing constitutional rights.
3. Gap Filling:
   It may lay down guidelines where no law exists.
4. Institutional Accountability:
   It directs government authorities to carry out their constitutional duties.
5. Social Transformation:
   It challenges discriminatory social assumptions
6. Challenges before Judicial Activism
   Despite considerable progress, several challenges remain.

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18.1 Patriarchal Social Structures

Law cannot immediately remove deeply rooted social practices.

18.2 Weak Implementation

Rights declared by courts may remain ineffective without proper implementation by institutions.

18.3 Lack of Legal Awareness

Many women are unaware of their constitutional and legal rights.

18.4 Economic Dependence

Economic dependence can stop women from asserting their legal rights.

18.5 Access to Justice

Legal procedures can be expensive, slow and intimidating.

18.6 Intersectional Discrimination

Women form economically and socially disadvantaged groups may face several forms of discrimination at once.

18.7 Institutional Patriarchy

Police, courts, workplaces and other institutions may themselves continue gender stereotypes.

19. Suggestions and Future Directions

19.1 Strengthening Gender-Sensitive Judicial Training

Judges, lawyers and court staff should receive continuing education on:

- Gender stereotypes
- Sexual violence
- Domestic violence
- Reproductive autonomy
- Intersectionality
- Feminist constitutional principles

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19.2 Effective Implementation of Judgements

Court decisions should come with effective ways of monitoring compliance where necessary.

19.3 Legislative Follow-Up

Where courts point out gaps in the law, Parliament should promptly consider suitable Legislation.

The *Vishaka* experience shows how courts and legislatures can support each other.[67]

19.4 Greater Access to Legal Aid

Legal aid should be strengthened for women, especially those facing:

- Domestic violence
- Sexual violence
- Property disputes
- Disputes within marriage
- Workplace discrimination
- Trafficking

19.5 Gender-Sensitive Institutional Structures

Police stations, courts, workplaces and educational institutions should have effective systems that are sensitive to gender issues.

19.6 Recognition of intersectionality

Judges should consider in their reasoning how gender interacts with caste, class, disability, Poverty, age, marital status and other structural disadvantages.

19.7 Greater Representation of Women

More women in the following areas can make institutions more sensitive to gender issues:

- The judiciary
- The legal profession
- The police
- Public administration
- Legislatures
- Decision-making institutions

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20. Findings of the Study

The study arrives at the following major findings:

Finding 1. Judicial activism has greatly helped develop woman's constitutional rights in India.

Finding 2. Article 21 has become one of the most important constitutional foundations for women's independence and dignity.

Finding 3. The judiciary has gradually moved from formal equality towards substantive equality.

Finding 4. Judicial activism has been especially important where legal protection was missing

or inadequate.

Finding 5. *Vishaka* is one of the strongest examples of judicial activism in women's rights.

Finding 6. *Anuj Garg, Babita Puniya* and *Nitisha* show that the judiciary is increasingly Rejecting gender stereotypes.

Finding 7. *Shayara Bano* and *Joseph Shine* show the link between personal freedom, equality and constitutional morality.

Finding 8. *Vineeta Sharma* shows how important property rights are for achieving real gender equality.

Finding 9. Judicial activism alone cannot end gender inequality.

Finding 10. Lasting gender justice needs cooperation between the judiciary, the legislature, the executive and civil society.

21. Conclusion

Judicial activism has become one of the most important tools for protecting and advancing women's rights in India. The Constitution laid the legal foundation for gender equality, but the judiciary has played an essential role in turning constitutional promises into practicalrights.

The journey form *Vishaka* to *Vineeta Sharma, Babita Puniya, Nitisha and Joseph Shine* reflects a basic change in constitutional thinking.

The woman is no longer seen merely as:

- A wife
- A daughter
- A mother
- A dependent
- A vulnerable person who needs paternalistic care
- A member of a family

She is recognized as an independent individual under the Constitution, with equal dignity, liberty and legal identity.

The important of *Vishaka* lies in recognizing workplace sexual harassment as a violation of the Constitution and in creating a legal framework when no law existed. The decision shows the

constructive role courts can play when fundamental rights are at stake and the legal system has a real gap in regulation.

Anuj Garg moved the law away from over-protective safeguarding and towards substantive Equality. *Babita Puniya* and *Nitisha* challenged institutional stereotypes about women's ability to serve in the military. The Supreme Court's reasoning in *Babita Puniya* specifically dealt with equality of opportunity and the need to confront deep-rooted assumptions about women in the armed forces.

Vineeta Sharma strengthened women's economic equality by confirming equal coparcenary rights for daughters. The judgement made clear that daughters hold coparcenary status by birth and enjoy the same rights and liabilities as sons.

Joseph Shine brought a deeper change in the law on sexuality and marriage. The Court rejected a legal idea under which a woman's sexuality could be treated as an extension of her husband's ownership rights. Its reasoning clearly dealt with patriarchy, gender and transformative constitutionalism.

Similarly, *Shayara Bano* showed the constitutional importance of examining practices that affect women within personal-law systems. However, judicial activism must stay within constitutional limits. Courts cannot permanently replace legislatures or executive institutions. Judicial intervention is most justified when it protects fundamental rights, corrects unconstitutional discrimination, fills real gaps in the law and ensures that constitutional commands are carried out.

Judicial activism is most effective when it works together with the mixture of Legislative reform, Executive implementation, Judicial protection and social transformation.

Women's equality cannot be achieved through judgements alone. It needs changes in family structures, educational institutions, workplaces, political institutions, economic relationship and social attitudes.

The constitution provides the basic framework; courts interpret and enforce it; legislatures create complete legal systems; the executive carries them out; and society must finally accept

their values as its own.

The growth of women's rights law therefore represents a continuing constitutional dialogue. The most important change brought by judicial activism is not merely the creation of individual legal remedies. It is the change in our understanding of equality itself from equality as identical treatment to equality as freedom from structural disadvantage.

Consequently, judicial activism in women's rights can be seen as an important part of India's project of transformative constitutionalism.

Its ultimate purpose is not to give women privileges over men, but to build a constitutional order in which gender no longer decides a person's opportunities, dignity, autonomy and legal status.

In this sense, gender justice is not a special concession granted to women. It is a Constitutional requirement of equality, liberty, dignity and justice

Final Observation

The growth of women's rights through judicial activism shows the dynamic character of the Indian Constitution. The judiciary has repeatedly interpreted constitutional guarantees in a way that responds to the changing ideas of equality, dignity and autonomy.

The central lesson is that gender-neutral language does not necessarily produce gender equality, Constitutional adjudication must sometimes look at the social effects of laws and institutional practices. Indian judicial activism has finally moved from protection to equality, from equality to substantive equality, from substantive equality to dignity, from dignity to autonomy, and from autonomy towards empowerment. That path is one of the most significance developments in present day Indian constitutional law.

Appendix: Selected Landmark Case-law Table

SI.no.	**Case**	**Year**	**Principal contribution**
1	*Shah Bano*	1985	Maintenance rights of a divorced Muslim woman

2	*Vishaka v. State of Rajasthan*	1997	Sexual harassment at the workplace
3	*Apparel Export Promotion Council v. A.K. Chopra*	1999	Sexual misconduct at the workplace
4	*Githa Hariharan v.RBI* [68]	1999	Women's guardianship rights
5	*Anuj Garg v. Hotel Association of India*	2008	Gender stereotypes and employment
6	*Suchita Srivastava v. Chandigarh Administration*	2009	Reproductive autonomy
7	*Shayara Bano v. Union of India*	2017	Instant triple talaq
8	*Joseph Shine v. Union of India*	2018	Adultery and women's autonomy
9	*Babita Puniya*	2020	Permanent Commission for Women officers.
10	*Vineeta Sharma*	2020	Equal Coparcenary rights
11	*Lt. Col. Nitisha v. Union of India*	2021	Substantive equality
12	*X v. Principal Secretary*	2023	Reproductive autonomy and equality.

Bibliography

Note: The footnotes refer to the entries below by Part and number. For example, "Bibliography B-2" means Part B, No. 2.

A. Constitutional and statutory materials

1. Constitution of India, 1950
2. Indian Penal Code, 1860, and corresponding provisions under the Bharatiya Nyaya Sanhita, 2023
3. Special Marriage Act, 1954
4. Hindu Marriage Act, 1956
5. Hindu Succession Act, 1956
6. Maternity Benefit Act, 1961
7. Dowry Prohibition Act, 1961
8. Medical Termination of Pregnancy Act, 1971, as amended
9. Code of Criminal Procedure, 1973.
10. Equal Remuneration Act, 1976.
11. Protection of Women from Domestic violence Act, 2005.
12. Protection of Children from Sexual Offences Act, 2012.

13. Sexual Harassment of Women at Workplace Act,2023.

B. Important Judicial Decisions

1. *Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556.*
2. *Vishaka v. State of Rajasthan, (1997) 6 SCC 241.*
3. *Apparel Export Promotion Council v. A.K Chopra, (1999)1 SCC 759.*
4. *Githa Hariharan v. Reserve Bank of India, (1999) 2 SCC 228.*
5. *Anuj Garg v Hotel Association of India, (2008) 3 SCC 1.*
6. *Suchita Srivatsa v. Chandigarh Administration, (2009) 9 SCC 1.*
7. *Medha Kotwal Lele v. Union of India, (2013) 1 SCC 297.*
8. *Shayara Bano v. Union of India, (2017) 9 SCC 1.*
9. *Joseph Shine v. Union of India, (2018) 2 SCC 324.*
10. *Secretory, Ministry of Defence v. Babita Puniya. (2020) 7 SCC 469.*
11. *Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1.*
12. *Lt. Col. Nitisha v. Union of India, (2021) 4 SCC 670.*
13. *Xv.Principal Secretary, Health and Family welfare Department, (2023)14 SCC 1.*

C. International instruments

1. Universal declaration of human rights, 1948.
2. Convention of the elimination of all forms of discrimination against women, 1979.
3. International covenant on civil and political rights, 1966.
4. International covenant on economic, social and cultural rights, 1966.
5. Beijing declaration and platform for action, 1995.
6. International Labour Organization conventions and equality and women's employment.

D. Books and Academic Materials

1. M.P. Jain, *Indian Constitutional Law.*
2. V.N. Shukla, *Constitution of India*
3. H.M. Seervai, *Constitutional Law of India.*
4. D. Basu, *Introduction to the Constitution of India.*
5. Flavia Agnus, *Law and Gender Inequality: The Politics of Women's Rights in India.*
6. Ratna Kapur and Brenda Cossman, *Subversive sites: Feminist Engagements with Law in India.*
7. Catharine A. MacKinnon, *Feminism Unmodified.*

8. Susan Moller Okin, Justice, Gender *and the Family*.
9. Patricia Smith, *Feminist Jurisprudence*.
10. Relevant reports of the law commission of India supreme court of India and national commission for women.

---

[1] Constitution of India, 1950, Preamble, Bibliography A-1.
[2] *Vishaka v. State of Rajasthan, (1997) 6 SCC 241,* Bibliography B-2.
[3] Constitution of India, 1950, arts. 14,15,19, and 21, Bibliography A-1.
[4] See generally M.P. Jain, Indian Constitutional Law, Bibliography D-1.
[5] Constitution of India, 1950, arts. 13, 32 and 226, Bibliography A-1.
[6] Constitutional of India, 1950, Preamble, Bibliography A-1.
[7] See generally D.D Basu, Introduction to the Constitution of India, Bibliography D-4, V.N. Shukla, Constitution of India, Bibliography D-2.
[8] Constitution of India, 1950, art. 14, Bibliography A-1.
[9] Constitution of India, 1950, art. 15(1), Bibliography A-1.
[10] Constitution of India, 1950, art. 15(3), Bibliography A-1.
[11] Constitution of India, 1950, art. 16, Bibliography A-1.
[12] Constitution of India, 1950, art. 19, Bibliography A-1.
[13] Constitution of India, 1950, art. 21, Bibliography A-1.
[14] Constitution of India, 1950, arts.39(a), 39(d) and 42, Bibliography A-1.
[15] Constitution of India, 1950, art. 51A(e), Bibliography A-1.
[16] See, e.g., Joseph Shine v. Union of India, (2019) 2 SCC 324, Bibliography B-9.
[17] *Vishaka (n-2), Bibliography B-2.*
[18] *Vishaka(n-2), Bibliography B-2. Constitution of India, 1950, arts. 14,15,19 and 21,* Bibliography A-1.
[19] Vishaka (n-2), Bibliography B-2. See also the not under Part B of the Bibliography on the Supreme Court's Official materials.
[20] Convention on the Elimination of All Forms of Discrimination Against Women, 1979, Bibliography C-2.
[21] Apparel Export Promotion Council v. A.K. Chopra, (1999) 1 SCC 759, Bibliography B-3.
[22] Medha Kotwal Lele v. Union of India, (2013) 1 SCC 297, Bibliography B-7. *Vishaka (n-2), Bibliography B-2*
[23] Sexual Harassment of Women at Workplace Act, 2013, Bibliography A-13.
[24] See generally *Flavia Agnes, Law and Gender Inequality: The Politics of Women's Rights in India* , Bibliography D-5.
[25] Mohd Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556, Bibliography B-1. Code of Criminal Procedure, 1973,
Bibliography A-9.
[26] Shayara Bano v. Union of India, (2017) 9 SCC 1, Bibliography B-8.
[27] Joseph Shine (n 16), Bibliography B-9. Indian Penal Code, 1860, and corresponding provisions under the Bharatiya Nyaya Samhita, 2023, s. 497, Bibliography A-2.
[28] See generally Susan Mother *Okin, Justice, Gender and the Family*, Bibliography D-8.
[29] *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1, Bibliography B-5.
[30] Secretary, *Ministry of Defence v. Babita Puniya*, (2020) 7 SCC 469, Bibliography B-10.
[31] Babita Puniya (n 30), Bibliography B-10. See also the note under Part B of the Bibliography on the Supreme Court's official materials.
[32] Lt. Col Nitisha v. Union of India, (2021) 4 SCC 670, Bibliography B-12.
[33] Hindu Succession Act, 1956, Bibliography A-5.
[34] *Hindu Succession Act*, 1956, as amended in 2005, Bibliography A-5.
[35] *Vineeta Sharma* v. *Rakesh Sharma,* (2020) 9 SCC 1, Bibliography B-11.
[36] Hindu Succession Act, 1956, s.6, as amended in 2005, Bibliography A-5.
[37] Constitution of India, 1950, art. 21, Bibliography A-1.
[38] Suchita Srivastava v. Chandigarh Administration, (2009) SCC 1, Bibliography B-6.
[39] *X v. Principal Secretary, Health and Family Welfare Department*,2022 SCC OnLine SC 1321, Bibliography B-13.
[40] *Medical Termination of Pregnancy* Act, 1971, as amended, Bibliography A-8.
[41] See Indian Penal Code, 1860, and corresponding provisions under the Bharatiya Nyaya Sanhita, 2023, Bibliography A-2.
[42] See generally *Patricia Smith, Feminist Jurisprudence*, Bibliography D-9; *Ratna Kapur and Brenda Cossman*,
[43] See generally *Catharine A. MacKinnon, Feminism Unmodified*, Bibliography D-7.

[44] See generally *Catharine A. MacKinnon, Feminism Unmodified*, Bibliography D-7.
[45]*Anuj Garg*(n 29), Bibliography B-5. *Babita Puniya* (n 30), Bibliography B-10. *Nitisha* (n 32), Bibliography B-12.
[46]*Vishaka (n 2), Bibliography B-2.*
[47] Sexual Harassment of Women at Workplace Act, 2013, Bibliography A-13. [48]*Babita Puniya* (n 30), Bibliography B-10. *Nitisha* (n 32), Bibliography B-12. [49]*Vineeta Sharma* (n 35), Bibliography B-11.
[50]*Joseph Shine* (n 16), Bibliography B-9. [51]*Suchita Srivastava* (n 38), Bibliography B-6. [52]*Shayara Bano*(n 26), Bibliography B-8.
[53] Constitution of India, 1950, art 21, Bibliography A-1.
[54] See generally *H.M Seervai, Constitutional Law of India*, Bibliography D-3; M.P Jain, Indian Constitutional Law,
Bibliography D-1.
[55]*Vishaka (n 2), Bibliography B-2, Medha Kotwal Lele (n 22), Bibliography B-7.*
[56] See, e.g., *Shayara Bano* (n 26), Bibliography B-8, *Joseph Shine* (n 16), Bibliography B-9
[57] *Vishaka* (n 2), Bibliography B-2.
[58]*Anuj Garg* (n 29), Bibliography B-5.
[59]*Shayara Bano* (n 26), Bibliography B-8.
[60]*Joseph Shine* (n 16), Bibliography B-9.
[61]*Babita Puniya* (n 30), Bibliography B-10.
[62]*Vineeta Sharma* (n 35), Bibliography B-11.
[63] The full list of these Instruments is given in Part C of the Bibliography (C-1 to C-6).
[64] Convention on the *Elimination of All Forms of Discrimination Against Women*, 1979, Bibliography (C-2)
[65]*Vishaka* (n 2), Bibliography B-2.
[66] Constitution of India, 1950, art. 32, Bibliography A-1.
[67] Vishaka (n 2), Bibliography B-2. Sexual Harassment of Women at Workplace Act, 2013, Bibliography A-13.
[68]*Githa Hariharan v. Reserve Bank of India,* (1999) 2 SCC 228, Bibliography B-4.

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