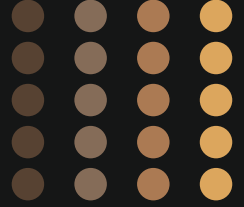


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Articles

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Nisha Bhaskar

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Managing Editor
Journal of National Law University Delhi
National Law University Delhi
Sector-14, Dwarka, New Delhi-110078
www.nludelhi.ac.in
[Email: jnlud@nludelhi.ac.in](mailto:jnlud@nludelhi.ac.in)
Tel. No: +91 11 28034255
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GENDER JUSTICE IN INDIA: AN ANALYSIS OF INDIA'S TRANSFORMATIVE JURISPRUDENCE

Richa and D. Ananda***

Abstract

This paper explores the impact of transformative jurisprudence on promoting gender justice within India's legal system. It investigates two primary questions: the extent to which transformative jurisprudence has shaped gender equality in India, and how the judiciary has confronted long-standing legal frameworks that have historically sidelined women's issues. By analysing key judgments from the Indian Supreme Court along with other relevant cases, the paper illustrates how progressive legal interpretations have advanced gender rights and supported marginalised groups. It also underscores the ongoing challenges in translating judicial decisions into practical outcomes, which are often obstructed by entrenched societal norms and systemic inefficiencies. The paper argues that while transformative jurisprudence has been pivotal in advancing gender justice, significant legal and policy reforms are needed to bridge the gap between legal pronouncements and real-world implementation. The paper concludes by proposing targeted reforms to enhance the practical application of gender justice principles.

Keywords: *Transformative Jurisprudence, Feminist Jurisprudence, Gender Justice in India, Intersectionality in Law, LGBTQ+ Rights*

* Research Scholar (UGC-SRF), Discipline of Political Science, School of Social Sciences, Indira Gandhi National Open University (IGNOU).

** Associate Professor, Discipline of Political Science, School of Social Sciences, Indira Gandhi National Open University (IGNOU).

I. INTRODUCTION

Transformative jurisprudence is a legal philosophy and approach to law that aims to harness the power of the law to effect social change. This approach is founded on the idea that laws and legal systems should resolve conflicts, transform social order, and actively participate in shaping society into a more egalitarian and inclusive one. Transformative jurisprudence seeks to address and correct systemic inequalities and discrimination in legal systems and societal structures. It challenges existing legal frameworks and practices that perpetuate disparities and advocates for legal reforms to ensure equitable treatment for all members of society. By focusing on social justice, it helps to align legal systems with the broader goals of fairness and equality.¹

Transformative jurisprudence promotes the dynamic interpretation of laws, with lawyers and judges interpreting legislations and constitution to reflect current values and society's changing requirements. As a result, the legal system remains relevant and responsive to contemporary societal concerns. Transformative jurisprudence strengthens marginalised and oppressed communities by providing them with legal instruments to combat discrimination and express their rights. It emphasises the necessity of universal access to justice, especially for those who have been previously denied legal protection.² By recognising the interconnection of social, economic, and political issues, transformative jurisprudence promotes a holistic understanding of the law's role within society. It advocates for legal solutions that consider the broader context of issues, aiming for systemic change rather than piecemeal reforms.³ Transformative jurisprudence provides a framework for employing legal mechanisms as social change agents by emphasising the empowerment of marginalised groups, arguing for progressive legal interpretations, and taking a holistic view of the role of the law. This approach solves the constraints of traditional jurisprudence and aligns the legal system with more extensive human rights and social justice goals.

1 Karl E Klare, 'Legal Culture and Transformative Constitutionalism' (1998) 14 SAJHR 146 <<https://www.tandfonline.com/doi/full/10.1080/02587203.1998.11834974>> accessed 14 August 2024.

2 *ibid* 150.

3 Robin West, 'Jurisprudence and Gender' (1988) 55 U Chi L Rev 1 <<https://scholarship.law.georgetown.edu/facpub/645>> accessed 6 June 2024.

A. Theoretical Framework and Methodology

This paper is anchored in two principal theoretical frameworks: transformative jurisprudence and gender justice. These frameworks offer a perspective for analysing selected legal cases and reforms to evaluate their influence on promoting gender equality in India.

Transformative Jurisprudence: Transformative jurisprudence is a legal philosophy aimed at utilising the law as an instrument of social transformation, challenging prevailing inequalities, and fostering a more equitable society.⁴ Unlike traditional legal interpretation, transformative jurisprudence involves a dynamic approach where laws are reinterpreted, amended, or established to address social injustices and disparities. It seeks to harmonise legal practices with social justice, human rights, and equality principles, fundamentally reshaping the relationship between law and society.⁵ This study employs transformative jurisprudence to analyse how Indian courts have utilised progressive legal interpretations to combat gender-based discrimination. By examining significant judgments and legal reforms, the research investigates how transformative jurisprudence has been applied to redefine legal standards regarding gender and challenge patriarchal structures within the judicial system. This concept is vital for understanding the judiciary's role in driving systemic change and evaluating judicial activism's strengths and limitations in furthering gender justice.

Gender Justice: Gender justice is a framework that stresses the necessity for laws and social institutions to confront and rectify gender-based inequalities. It extends beyond formal equality, which treats everyone identically, to focus on substantive equality, acknowledging the distinct needs, contexts, and obstacles individuals face based on gender.⁶ Gender justice seeks to dismantle systems of oppression and discrimination entrenched in legal frameworks and social norms, advocating for policies that are responsive to these differences and aim for equitable outcomes.⁷ In this paper, gender justice serves as a framework to evaluate the

4 Klare (n 1).

5 Theunis Roux, 'Transformative Constitutionalism and the Best Interpretation of the South African Constitution: Distinction Without a Difference?' (2009) 20 *Stell LR* 258 <<https://repository.up.ac.za/server/api/core/bitstreams/11f0a829-5ee6-46f1-ac2a-c81628fc9e3c/content>> accessed 14 June 2024.

6 Nancy Fraser, 'Feminist Politics in the Age of Recognition: A Two-Dimensional Approach to Gender Justice' (2007) 1 *Stud Soc Just* 23 <<https://journals.library.brocku.ca/index.php/SSJ/article/view/979>> accessed 13 April 2025; Raewyn Connell, *Gender: In World Perspective* (2nd edn, Polity Press 2009).

7 Shireen Hassim, *Women's Organizations and Democracy in South Africa: Contesting Authority* (University of Wisconsin Press 2006).

efficacy of legal reforms and judicial decisions in addressing gender inequalities in India. The framework assesses whether legal measures provide only formal equality or truly transform the lived experiences of women and other marginalised genders. Additionally, it incorporates feminist legal theory, which critiques the historical exclusion of women's perspectives from traditional legal systems and the perpetuation of gender biases.⁸ By applying the principles of gender justice, this study critically examines whether recent judicial rulings and legislative reforms in India have promoted or hindered the development of an inclusive and fair legal system.

B. Application of Theoretical Frameworks to Analysis

Integrating transformative jurisprudence and gender justice as theoretical frameworks facilitates a comprehensive examination of the selected legal cases and reforms. Transformative jurisprudence provides a foundation for understanding how the judiciary can catalyse social change by interpreting laws in ways that challenge existing inequalities. This perspective is especially relevant in cases where Indian courts have broadened legal definitions or acknowledged new rights in response to gender-based claims. Conversely, gender justice provides a critical framework for evaluating whether these legal modifications effectively tackle the root causes of gender inequality. This framework emphasises the significance of context, substantive equality, and dismantling patriarchal structures, enabling a more profound critique of the extent to which legal reforms have succeeded in advancing gender justice. By applying these frameworks, the study explores the transformative potential of judicial decisions and legal reforms in achieving gender justice. It examines whether these changes have led to substantial improvements in the status of women and other gender minorities in India or whether they have fallen short due to enduring systemic obstacles and societal norms.

C. Methodology

The paper primarily utilises content analysis to examine statutes and landmark judicial pronouncements that have influenced the discourse on gender justice in India. This method facilitates a nuanced exploration of how the judiciary has employed transformative jurisprudence to tackle issues of gender discrimination and inequality. Important cases from the Indian Supreme Court and High Courts were selected based on their significance to gender justice, the extent of

8 Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989).

legal reforms they prompted, and their broader impact on public policy. These cases encompass a range of topics, including reproductive rights, domestic violence, sexual harassment, and LGBTQ+ rights. Through this content analysis, judicial opinions were analysed and categorised to identify recurring themes and analyse the language used by the judiciary to articulate gender justice concerns. This approach helps uncover patterns in judicial reasoning and underscores the transformative potential of legal interpretations that contest traditional norms and promote gender equality.

D. Feminist Discourse in Jurisprudence

Feminist discourse in jurisprudence aims to dismantle the legal ‘liberal’ narrative that portrays it as gender-neutral. As MacKinnon states, ‘Liberal legalism is thus a medium for making male dominance both invisible and legitimate by adopting the male point of view in law at the same time as it enforces that view on society.’⁹ Feminist jurisprudence has been insufficiently acknowledged in traditional jurisprudence courses.¹⁰ It is also referred to as a ‘conceptual anomaly.’¹¹ However, despite the early rejection, ‘a feminist jurisprudence - both movement and discipline in one - has emerged.’¹² Feminist legal scholars like Littleton wrote about feminist jurisprudence in reformist terms as ‘challenging, subverting, or transforming legal relations at their core’.¹³ The existing status quo in jurisprudence was challenged.¹⁴ The different experiences of women were given prominence.¹⁵ Though different strands vary in centrality, the exclusively unrivalled and uniting essence of feminist jurisprudence is that women’s experiences must be brought into the public sphere and communicated forthrightly.¹⁶ The effective theory must translate into practical application, and in this pursuit, feminist jurisprudence navigates between opposing ends to uncover a middle ground and broaden the range

9 *ibid* 237.

10 Carol Smart, *Feminism and the Power of Law* (Routledge 1989).

11 Robin West, ‘Jurisprudence and Gender’ (1988) 55 U Chi L Rev 1
<<https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1642&context=facpub>> accessed 7 March 2024.

12 Lisa R Pruitt, ‘A Survey of Feminist Jurisprudence’ (1994) 16(2) U Ark Little Rock L Rev 183, 184
<<https://core.ac.uk/download/pdf/235516076.pdf>> accessed 5 February 2024.

13 *ibid* 185.

14 Mary J Mossman, ‘Feminism and Legal Method: The Difference It Makes’ (1987) 3 Wis Women’s LJ 147 <https://digitalcommons.osgoode.yorku.ca/scholarly_works/1558> accessed 23 July 2024.

15 Hester Eisenstein and Alice Jardine (eds), *The Future of Difference* (G K Hall 1980).

16 Deborah L Rhode, ‘Feminist Critical Theories’ (1990) 42(3) Stan L Rev 617
<<https://www.jstor.org/stable/1228887?origin=crossref>> accessed 4 February 2024.

of resistance strategies.¹⁷ Therefore, jurisprudence in feminist discourses requires more than mere examination; it necessitates an active commitment to advocating for change.

E. Concept of Gender Justice

Gender justice signifies integrating women's rights and needs into the broader societal fabric, aiming for a more equitable and balanced coexistence. It requires both redistribution and recognition.¹⁸ It encompasses a call for fair treatment, the cessation of violence, and the even distribution of essential resources within the social framework. Achieving gender justice requires dismantling discriminatory norms and fostering an environment where individuals of all genders enjoy equal rights, protection from violence, and access to fundamental societal resources. This pursuit is essential to creating a society that thrives on inclusivity, respect, and shared opportunities for everyone, regardless of gender. Gender justice has evolved from a gender-neutral approach to a gender-specific one, extending beyond non-discrimination and equality clauses. Basu declares, 'When feminist demands for reform are translated into new legal practices, substantive questions of gender equity may be lost in translation.'¹⁹ The development and upliftment of women are most often measured in terms of the 'male norms.'²⁰ Accordingly, while defining the multifaceted dimension of gender equality, the World Bank gives primary importance to gender equality under the law in terms of 'equality of opportunity.'²¹ It does not confine it to the predetermined notion of equal outcomes. This provides ample scope for transformative jurisprudence to underscore the law's potential to promote social justice and equality by following different paths and addressing various contextual goals in society. To make women's concerns and experiences count, the path of 'gender mainstreaming' is conducive to transforming the mainstream.²² Gender mainstreaming challenges the fixed nature of gender

17 Hilaire Barnett, *Sourcebook on Feminist Jurisprudence* (Routledge-Cavendish 1997).

18 Fraser (n 6) 34.

19 Srimati Basu, 'Judges of Normality: Mediating Marriage in the Family Courts of Kolkata, India' (2012) 37(2) *Signs: Journal of Women in Culture and Society* 469, 471 <<https://www.journals.uchicago.edu/doi/10.1086/661712>> accessed 30 August 2024.

20 Hazel Reeves and Sally Baden, *Gender and Development: Concepts and Definitions* (Bridge Report No 55, Institute of Development Studies 2000) 9 <<https://www.scirp.org/reference/referencespapers?referenceid=959228>> accessed 19 May 2024.

21 World Bank, 'Engendering Development' (2001), 2–3 <<https://documents1.worldbank.org/curated/en/512911468327401785/pdf/multi-page.pdf>> accessed 29 March 2024.

22 United Nations Economic and Social Council, 'Agreed Conclusions 1997/2: Mainstreaming the Gender Perspective into All Policies and Programmes in the United Nations System' (UN Doc E/1997/100, 18 July 1997) <<https://www.un.org/womenwatch/osagi/pdf/ECOSOCAC1997.2.PDF>> accessed 9 July 2025.

arrangements.²³ It focuses on the ‘transformation of gender norms and values.’²⁴ In feminist discourses, transformative jurisprudence seeks to dismantle existing structures of gender inequality and pave the way for a legal framework that aligns with the principles of gender justice and equality. It acknowledges that conventional legal frameworks may perpetuate gender-based discrimination and inequality. Consequently, it prompts legal practitioners and policymakers to explore alternative interpretations and applications of the law that are attuned to the evolving needs and perspectives of diverse gender identities. The relevance of transformative jurisprudence in feminist discourses lies in its recognition that legal systems must evolve to address emerging challenges related to gender justice, such as developing gender norms, addressing gender differences, recognising non-binary identities, and the complexities of intersectionality.

II. TRANSFORMATIVE JURISPRUDENCE AND GENDER JUSTICE IN INDIA

India, a nation of diverse cultures, traditions, and rich history, has grappled with deep-rooted gender disparities that have persisted for centuries. This acknowledgement delves into addressing gender disparities within the Indian legal framework. Transformative jurisprudence in the context of gender justice in India marks a substantial shift in the use of the law to solve long-standing gender imbalances and achieve gender equality. This technique has contributed to challenging and changing legal and societal standards that have traditionally marginalised women and other gender minorities. Through progressive legal rulings, revisions, and policies, India’s legal environment has moved towards greater gender equality and justice. The Constitution of India is an indispensable legal framework that ensures equality, non-discrimination, and fairness for all citizens. Article 15(1) expressly prohibits discrimination based on religion, race, caste, gender, or place of birth. However, Article 15(3) enables the State to adopt special measures for women and children. The Directive Principles of State Policy, particularly Article 39, mandate the State to direct its policies towards securing equal pay for equal work for both men and women, thereby fostering economic justice. Article 42 calls upon the State to make provisions for ensuring just and humane working conditions and maternity relief, reinforcing its commitment to

23 Connell (n 6) 11.

24 Maretha De Waal, ‘Evaluating Gender Mainstreaming in Development Projects’ (2006) 16 *Dev Pract* 209, 210 <<http://www.tandfonline.com/doi/abs/10.1080/09614520600562454>> accessed 28 February 2024.

women's well-being. Article 51A(e) renounces practices derogatory to the dignity of women. Articles 243D(3) and 243T(3) reserve 'not less than one-third of seats' for women in the Panchayat and Municipal elections.

These constitutional mandates are the foundation for transformative jurisprudence in gender justice.²⁵ The government, recognising the need for change, has made amendments to laws affecting women adversely, encompassing areas such as dowry, rape, cruelty, maintenance, marriage, domestic violence, prostitution, and obscenity. Various landmark judgments of the Supreme Court of India have demonstrated transformative jurisprudence in action, where the law has been used to advance gender justice. There has been a concerted effort to introduce welfare and development schemes to enhance women's living conditions and augment their access to material and social resources. These initiatives focus on legal reforms and address social constraints and disparities, ensuring that women effectively utilise their rights and opportunities.

A. Legislative Enactments in India

The evolution of the legal landscape reflects an ongoing commitment to fostering gender equality and rectifying historical imbalances. India's legal journey has evolved from 'rule by law,' where law used to serve colonial interests through the 'rule of law,' reflecting A.V. Dicey's principle of legal equality, to the 'rule of justice.' The Supreme Court uses the law to pursue justice. This progression highlights a shift towards using law to achieve societal fairness and justice.²⁶ However, it is crucial to recognise that specific legal measures were brought and implemented during the colonial era to tackle particular challenges confronted by women. Furthermore, reforms in customary laws governing marriage, divorce, and inheritance aimed to rectify discriminatory aspects, fostering equality within these legal frameworks. Collectively, these legislative milestones reflect a historical progression towards dismantling oppressive customs and promoting gender justice in India. The quest for women's rights and legal transformations gathered momentum in subsequent years. In the post-independence era, substantial legal reforms were initiated to confront gender disparities head-on and advance the cause of women's rights in India. Some notable legal reforms among these are discussed herein.

25 Gautam Bhatia, 'Directive Principles of State Policy: Theory and Practice' in *The Oxford Handbook of the Indian Constitution* (OUP 2015) <<https://ssrn.com/abstract=2411046>> accessed 7 July 2024.

26 Ranbir Singh, 'The March of Law in India—the Long Road from Oppression to Justice' (2017) 59 *J Indian L Inst* 288 <<https://www.jstor.org/stable/26826608>> accessed 24 August 2024.

The Protection of Women from Domestic Violence Act, 2005, aims to safeguard women from physical, mental, and financial violence within the shared household, emphasising the broader spectrum of familial violence. The Act's focus on heterosexual relationships may not adequately address violence in same-sex partnerships. Implementation challenges, such as delays in protection orders and a shortage of support services, hinder its effectiveness. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) focuses on creating a safe work environment, mandating Internal Committees (ICs) in workplaces. While recognising gender-based discrimination, the POSH Act could improve by adopting a more inclusive, non-binary approach. Concerns include the efficacy of ICs, with associated biases affecting impartial redressal. Although the POSH Act makes an effort to cover informal sectors, its enforcement is notably weak in non-traditional settings. Workers in unorganised fields, such as domestic labour, agriculture, and construction, often lack adequate protection. Similarly, those engaged in gig and platform-based jobs, such as freelancers and delivery personnel, face challenges due to the absence of clear employer accountability. Remote workers and those working from home also remain outside the effective scope of the Act. Additionally, incidents occurring in situations where the boundary between personal and professional spaces is unclear—such as during off-site meetings, work travel, or online interactions—are often inadequately addressed.

The Criminal Law (Amendment) Act, 2013, colloquially known as the Nirbhaya Act, strengthened India's sexual offence laws, particularly provisions in the Indian Penal Code, 1860 (IPC), the Code of Criminal Procedure, 1974 (CrPC), and the Indian Evidence Act, 1872 (IEA). However, it is essential to note that the IPC, CrPC, and IEA have been replaced with the *Bhartiya Nyaya Sanhita, 2023 (BNS)*, *Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS)*, and *Bhartiya Sakshya Adhinyam, 2023 (BSA)*, respectively, effective as of July 1, 2024. India's revamped criminal laws introduce robust measures to enhance the legal response to sexual offences by revising definitions, strengthening procedures, and ensuring victim-sensitive evidentiary norms. The BNS, through Section 63, reaffirms the legal definition of rape with improved clarity. In contrast, Section 64 prescribes harsher penalties, including life imprisonment or the death penalty in severe instances. An important innovation appears in Section 69, which penalises sexual acts induced by deceit or false promises—an area previously lacking clear legal

recognition.²⁷ Under the BNSS, Section 223 ensures that female police officers record survivor statements to promote a trauma-informed process, and Section 193 mandates that investigations into rape cases be concluded within 60 days, guaranteeing timely justice.²⁸ Meanwhile, the BSA, under Section 35, protects victims from being questioned about their prior sexual conduct, thus reinforcing the principles of dignity and fairness, as earlier provided under the IEA.²⁹

The Criminal Law (Amendment) Act, 2013 was enacted in the aftermath of the brutal 2012 Delhi gang rape and brought to the fore demands for stricter laws on sexual violence and greater support for victims.³⁰ The Act expanded the definition of rape, added new crimes such as stalking and voyeurism, increased penalties, introduced victim-sensitive procedures, prohibited questioning a victim's character or prior sexual conduct in court and addressed issues such as acid attacks. Fast-track courts were introduced for speedy trials, emphasising timely justice. However, challenges persist in legal proceedings due to backlogs and delays.

In 2017, the Maternity Benefit (Amendment) Act extended paid leave to 26 weeks, introduced a provision for work-from-home to help ensure a more supportive environment for working mothers. However, its application to establishments with ten or more employees excludes many from smaller enterprises. The Act's mandate for employers to inform women lacks robust enforcement in informal sectors. Additionally, the Act lacks explicit provisions for paternity leave, overlooking shared parenting responsibilities. Under the Central Civil Services (Leave) Rules, 1972, male central government employees are entitled to 15 days of paternity leave. However, private sector employees have no statutory right to paternity leave, and the proposed Paternity Benefit Bill, 2017,³¹ was never passed into law. In 2019, the Transgender Persons (Protection of Rights) Act recognised the dignity and protected the rights of transgender individuals, prohibiting discrimination and mandating welfare measures in areas like education, employment, and healthcare. However, the Transgender Persons (Protection of Rights) Act, 2019, read alongside the Transgender Persons (Protection of Rights)

27 The Bharatiya Nyaya Sanhita 2023.

28 The Bharatiya Nagarik Suraksha Sanhita 2023.

29 The Bharatiya Sakshya Adhinyam 2023.

30 Nidhi Upadhyay, 'The Impact of Nirbhaya Protest on the Contemporary Indian Women's Movement' (2015) 76 *Indian J Pol Sci* 885 <<https://www.jstor.org/stable/26575622>> accessed 5 July 2024.

31 'All About The Paternity Bill, 2017' (*B Comply Legal India*, 3 April 2018) <<https://share.google/dN8aOpidYu3RKT49F>> accessed 17 June 2025.

Rules, 2020, has attracted widespread criticism for provisions that appear to conflict with the constitutional guarantees of privacy, dignity, and equality. While Section 3 of the Act expressly prohibits discrimination against transgender persons in areas such as education, employment, healthcare, and access to public goods and services,³² this progressive intent is undermined by other provisions that impose restrictive procedural requirements. Notably, Section 6 requires individuals to apply to the District Magistrate for a certificate of identity as a transgender person, and Section 7 mandates proof of medical intervention for those seeking a change in their gender to male or female.³³ These requirements are reinforced by Rule 2 of the 2020 Rules, which vaguely defines ‘medical intervention’ and fails to establish adequate safeguards, thereby raising concerns about forced or medically unnecessary procedures.³⁴ Moreover, the involvement of a District Screening Committee in the certification process has been criticised as an invasive and paternalistic mechanism, conflicting with the right to privacy upheld in *Justice K.S. Puttaswamy v Union of India*³⁵ and the principle of self-identification affirmed in *National Legal Services Authority (NALSA) v Union of India*³⁶. Compounding these concerns is the Act’s silence on crucial civil rights such as the recognition of same-sex relationships and the right to marry, which results in continued exclusion of transgender persons from full legal personhood in intimate and familial spheres, despite the broader anti-discrimination mandate of Section 3.

The ‘Triple Talaq Act,’ or the Muslim Women (Protection of Rights on Marriage) Act of 2019, criminalises instant ‘triple talaq’ in India to protect Muslim women from impulsive divorces. It seeks to prohibit and penalise the practice of instant triple talaq by rendering it void under Section 3 and prescribing up to three years of imprisonment as per Section 4. The offence is made cognisable and non-bailable, allowing police intervention without a warrant, with bail subject to the magistrate’s discretion under Section 7(a) and 7(c). Although the Act introduces provisions under Sections 5 and 6 for subsistence allowance and child custody to safeguard affected women, many legal commentators argue that these protective measures are inadequately enforced. The emphasis on criminalisation, without a concurrent assurance of financial and social support, may leave Muslim women

32 The Transgender Persons (Protection of Rights) Act 2019, s 3.

33 *ibid*, ss 6-7.

34 The Transgender Persons (Protection of Rights) Rules 2020, r 2.

35 AIR 2018 SC 1841.

36 (2014) 5 SCC 438.

vulnerable, particularly when the husband's incarceration deprives them of economic stability. This has led to concerns that the Act, while intended to uphold women's rights, may inadvertently undermine their welfare in practical terms.³⁷ The Surrogacy (Regulation) Act, 2021 aims to reform the legal framework for surrogacy by banning commercial practices and supporting altruistic surrogacy. The law prioritises the welfare of surrogate mothers through counselling, insurance coverage, and access to medical facilities. In 2023, an amendment revised Form 2 of the rules, appended under the Act, to allow intending couples to use one donor gamete—either sperm or egg—if a medical condition, certified by a District Medical Board, necessitates it, provided the other gamete is from the intending couple. In the case of single women who are either widowed or divorced, the rules now mandate the use of their own eggs along with donor sperm for undergoing surrogacy. These changes mark a shift toward more inclusive reproductive rights while maintaining the regulatory framework's emphasis on medical necessity and genetic connection.³⁸ While emphasising informed consent and regulatory oversight, concerns arise regarding the eligibility criteria imposed on intending parents, potentially limiting reproductive choices and excluding certain groups like same-sex couples and LGBTQ+ members.

These legislative measures constitute crucial elements of the legal framework aimed at fostering equality and dismantling ingrained biases. Their enactment aligns with the transformative jurisprudential approach. However, their enforcement will cultivate an inclusive and equitable society in India only when these Acts are critically reviewed and further socio-legal reforms are carried out.

B. Legal Initiatives in Court Cases and Public Interest Litigation

Transformative jurisprudence on gender justice in India has manifested through legal initiatives addressing diverse facets of inequality. Court cases have been instrumental in shaping and reinforcing gender justice. Affirmative action policies for socially and educationally backward classes, including women, have enabled gender diversity and equality in educational and professional spheres through the *Indra Sawhney v Union of India*³⁹ judgement. Reproductive rights legislation has been another focal point, striving to guarantee access to

37 The Muslim Women (Protection of Rights on Marriage) Act 2019, ss 3-7.

38 The Surrogacy (Regulation) Amendment Rules 2023.

39 AIR 1993 SC 477.

comprehensive healthcare, contraception, and family planning, irrespective of gender. In the case of *Suchita Srivastava v Chandigarh Administration*,⁴⁰ the Supreme Court reinforced a woman's right to make reproductive choices, emphasising the importance of individual autonomy. The judgement affirmed that women have the right to terminate pregnancies in certain circumstances, safeguarding their reproductive choices and overall well-being. The granting of permission to terminate a pregnancy past 24 weeks on medical grounds in *Meera Santosh Pal v Union of India*⁴¹ and *Sarmishtha Chakraborty v Union of India*⁴² are notable achievements in this direction. The *Hiral P. Harsora v Kusum Narottamdas Harsora*⁴³ decision emphasised the need for a broad interpretation of domestic violence laws, encompassing emotional, economic, and verbal abuse. The court was once the resort of the people for complex legal issues, but it has now become the last resort for the oppressed.⁴⁴ Equal pay legislation has been instrumental in addressing the persistent gender wage gap. The case of *Air India v Nergesh Meerza*⁴⁵ marked a milestone, where the Supreme Court set a precedent for gender pay equality, challenging discriminatory practices and promoting economic equity in the workplace. Further, land and property rights have been addressed to ensure equal inheritance and challenge historical biases. In the case of *Danamma @ Suman Surpur v Amar*,⁴⁶ the Supreme Court ruled that daughters have equal rights in ancestral property, irrespective of when they were born. The recognition of sex workers' right to be free from sexual violence in the case of *Budhadev Karmaskar v State of West Bengal*⁴⁷ is another noteworthy judicial precedent.

In the landmark case of the *Ministry of Defence v Babita Puniya*,⁴⁸ the court recognised the inherent discrimination in denying women officers the opportunity for permanent commission, holding that such discrimination violated their constitutional rights. It also gave women the option to hold combat positions by refusing to characterise females as the inferior sex. In a parallel development, the

40 AIR 2009 SCW 5909.

41 AIR 2017 SC 461.

42 (2018) 13 SCC 339.

43 AIR 2016 SC 4774.

44 Upendra Baxi, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India' (1985) 4 Third World Legal Stud 107 <<https://scholar.valpo.edu/twls/vol4/iss1/6>> accessed 13 May 2024.

45 AIR 1981 SC 1829.

46 AIR 2018 SC 721.

47 AIR 2011 SCW 1303.

48 AIR 2020 SC 1000.

case of *Lieutenant Colonel Nitisha v Union of India*⁴⁹ addressed the issue of women's entry into the National Defence Academy (NDA). The judgement highlighted the need to dismantle gender-based barriers in military education and acknowledged the evolving role of women in the armed forces. The Supreme Court gave a landmark ruling in the case of *Mohammad Ahmad Khan v Shah Bano Begum*,⁵⁰ granting a Muslim woman maintenance from her husband after their divorce. This judgement was groundbreaking as it challenged discriminatory practices and advocated for gender justice within personal laws. However, the subsequent enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986 stirred controversy by diluting the decision of the court. Years later, the resistance endures, exemplified by the ruling of *Shayara Bano v Union of India*.⁵¹ However, the aspect of gender inequality did not play a more vital role in the argument than it could have.⁵² This case also contributed to ongoing debates on the Uniform Civil Code (UCC). UCC overlooks the persistent discrimination in Hindu personal laws despite seeking to bring significant amendments; however, an accessible justice system is a greater need of the hour than UCC.⁵³ Notably, Assam has become the third State in India to introduce uniform rules governing marriage, divorce, inheritance, and live-in relationships, following Gujarat and Uttarakhand.

Public interest litigation (PIL) in India functions as a vehicle for enforcing rights.⁵⁴ By addressing issues ranging from workplace harassment to the rights of transgender individuals and challenging discriminatory religious practices, these legal interventions through PIL have contributed to shaping a more inclusive and equitable society.

An impactful instance of the power of PIL can be seen in the case of *Vishaka v State of Rajasthan*.⁵⁵ The case arose from the gang rape of Bhanwari Devi, a social

49 (2021) 15 SCC 125.

50 AIR 1985 SC 945.

51 AIR 2017 SC 4609.

52 Tanja Herklotz, 'Shayara Bano versus Union of India and Others: The Indian Supreme Court's Ban of Triple Talaq and the Debate around Muslim Personal Law and Gender Justice' (2017) 50 *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 300 <<https://www.jstor.org/stable/26429244>> accessed 3 July 2024.

53 Flavia Agnes, 'Liberating Hindu Women' (2015) 50 *Economic and Political Weekly* 14 <<https://www.jstor.org/stable/24481448>> accessed 20 May 2024.

54 Zachary Holladay, 'Public Interest Litigation in India as a Paradigm for Developing Nations' (2012) 19 *Ind J Global Legal Stud* 555 <<https://muse.jhu.edu/article/520144>> accessed 30 June 2024.

55 AIR 1997 SC 3011.

worker, and highlighted the absence of protective mechanisms for women at work. The court invoked international conventions and norms, including the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW), to affirm that the dignity of women in the workplace ought to be ensured. Tiwari states, 'In a domestic setting, the Supreme Court has made women an apparent subject of international law.'⁵⁶ The 'Vishaka Guidelines' laid down a comprehensive framework defining sexual harassment, establishing complaint committees, and delineating procedures for redressal. However, there has arisen a concern about the judiciary's apparent disregard for its previous rulings, as demonstrated by the Supreme Court's dismal handling of a sexual harassment accusation against the then CJI, Ranjan Gogoi, who himself presided over the initial panel to address the complaint of sexual harassment and intimidation against him in 2019. Justice Gogoi refuted all allegations, asserting that there existed a larger conspiracy to destabilise the judiciary.⁵⁷ Another notable example of PIL is the case of *NALSA v Union of India*,⁵⁸ where the court recognised the rights of transgender persons, affirming their right to self-identify their gender and constitutional protection of their fundamental rights. This case addressed transgender people's historical marginalisation and went beyond legal recognition, advocating for affirmative action and socio-economic welfare measures for transgender communities. Furthermore, PILs have been instrumental in challenging discriminatory practices affecting women's access to religious spaces. The Sabarimala temple case, *Indian Young Lawyers Association v State of Kerala*,⁵⁹ challenged the ban on the entry of women of menstruating age into the temple, and the Supreme Court, in a historic decision, lifted the ban, asserting that such practices were a violation of women's constitutional rights. This judgment was based on the principle that such exclusionary practices contravene the constitutional guarantees of equality and non-discrimination. This case also ignited a shared menstrual taboo

56 Garima Tiwari, 'Gendered Decision Making: The Engagement of the Supreme Court of India with International Norms in the Area of Women's Rights' (2018) 51 *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 499 <<https://www.jstor.org/stable/26745779>> accessed 12 July 2024.

57 Ratna Kapur and Brenda Cossman, 'Gender Equality Redux' (2022) 16 *Natl L Sch J* 58, 60–61 <<https://repository.nls.ac.in/nlsj/vol16/iss1/5>> accessed 8 August 2024.

58 *NALSA* (n 36).

59 AIR Online SC 243.

across castes, which consolidated Hindu sentiments against entry into the Sabarimala temple.⁶⁰

While no specific court case directly addresses the issue of gender stereotyping, legal discourse in recent judgments has increasingly embraced gender-neutral language, signalling a shift towards a more inclusive legal system. The Handbook on Combating Gender Stereotypes, published by the Supreme Court of India in August 2023, highlights the problem associated with the verbal usage of gender stereotyping and the alternative words to combat it.⁶¹

C. Scope of Gender Reforms in Jurisprudential Resolutions

Jurisprudential resolutions have multifaceted impacts on socio-cultural and legal landscapes as significant legal pronouncements garner public attention and catalyse conversations across diverse communities. This sparks a broader cultural shift by influencing public morality, which is further defined by shared understandings of right and wrong, and often evolves based on legal precedents set by courts. Legal suggestions prompted by jurisprudential resolutions stimulate lawmakers to craft innovative measures, actively contributing to the ongoing gender reform agenda. In some instances, the approach of the judges varies. One such example is the issue of marital rape. Gender concerns in marital rape are rooted in the absence of legal recognition and criminalisation in many jurisdictions, perpetuating unequal power dynamics. Traditional norms treating marriage as an exemption to rape laws deny women equal protection against sexual violence within marital relationships. The question arose as to whether the exception of marital rape in the Indian Penal Code violates Articles 14, 15(1), 19(1) and 21 of the Constitution in *RIT Foundation v Union of India*.⁶² Diametrically opposing judgements were put forth by Justice Shikdher and Justice Hari Shankar regarding the criminalisation of marital rape. Justice Shikdher argued that individual autonomy and consent take precedence both within and outside the institution of marriage. In contrast, Justice Hari Shankar opined that the constitutionality of the exception is based in the

60 O B Roopesh, 'Sabarimala Protest: Politics of Standardising Religious Pluralism' (2018) 53(49) *Economic and Political Weekly* 12
<https://www.academia.edu/39246431/Sabarimala_Protest_Politics_of_Standardising_Religious_Pluralism> accessed 27 March 2024.

61 Supreme Court of India, 'Handbook on Combating Gender Stereotypes' (2023)
<https://main.sci.gov.in/pdf/LU/04092023_070741.pdf> accessed 6 May 2024.

62 (2022) SCC OnLine Del 1404.

understanding that sex in the marital relationship is distinct from other relationships insofar as the former carries a legitimate expectation of sex.⁶³ Kapur and Cossman⁶⁴ declare the above ruling as underscoring the persistence of deeply ingrained gender norms in jurisprudential discussions and highlight how the traditional equality norm supports ‘distinctions that can undermine gender equality.’⁶⁵ The divided decision reflects the ongoing divergence in equality jurisprudence. The strategy of the jurisprudential association is implied by the courts, stating that the court is ‘the arbiter merely of the constitutionality of the law.’⁶⁶ The tactic of jurisprudential dissociation serves as a crucial tool in ideologically condoning gender-based discrimination. The strategy of jurisprudential dissociation encapsulates the interconnection between ‘constitutional interpretation and the discursive sites for justification (or mystification/demystification/re-mystification) of practices and performances of governance’⁶⁷ as outlined by social expectations around marital roles compound the issue, enforcing the idea that wives must comply with their husbands’ desires irrespective of consent.⁶⁸ Underreporting is expected due to stigma, victim-blaming, and fear of retaliation, maintaining a cycle of silence in marital rape. Addressing these concerns necessitates legal reforms, challenging societal norms, promoting consent education, and establishing support systems for survivors. Initiatives focused on dismantling patriarchal structures and fostering gender equality are crucial to creating a society where marital rape is condemned, survivors are empowered, and justice is pursued without fear of judgment or reprisal.

The case of *Navtej Singh Johar v Union of India*⁶⁹ is a milestone in Indian jurisprudence and its approach to gender justice and the rights of LGBTQ+ individuals. The Supreme Court’s verdict to decriminalise consensual homosexual acts among consenting adults in private by striking down Section 377 of the IPC was a landmark victory for LGBTQ+ rights in India. This judgment is notable for its

63 *ibid.*

64 Kapur and Cossman (n 57).

65 *Vishaka* (n 55) 63.

66 OB Roopesh (n 60).

67 Upendra Baxi, ‘The (Im)Possibility of Constitutional Justice: Seismographic Notes on Indian Constitutionalism’ in Zoya Hasan, E Sridharan and R Sudarshan (eds), *India’s Living Constitution: Ideas, Institutions and Controversies* (Permanent Black 2005) 31, 55–56 <<https://www.academia.edu/8250168/>> accessed 3 June 2024.

68 Kalpana Kannabiran, ‘Judicial Meanderings in Patriarchal Thickets: Litigating Sex Discrimination in India’ (2009) 44(44) *Economic and Political Weekly* 88 <<https://www.jstor.org/stable/25663738>> accessed 29 July 2024.

69 AIR 2018 SC 4321.

direct impact on the rights of LGBTQ+ individuals, as well as its broader implications for the principles of equality, dignity, and personal autonomy of all individuals. The diverse approach to decriminalising homosexuality that the *Navtej Singh Johar* case takes is evidence of the broad impact that people's movements have had on Indian courtroom cultures. Kannabiran argues that *Johar's* case showcases an eclectic approach where 'song, performance, poetry and the outpouring of emotion' highlights the broader impact of people's movement on courtroom cultures.⁷⁰ The pivotal argument in the case was that Section 377 of the IPC, which criminalised 'carnal intercourse against the order of nature',⁷¹ violated several fundamental rights of the Constitution of India. The application of Section 377 is discriminatory on the grounds of sex and sexual orientation,⁷² which goes against the mandate of Article 15, which prohibits discrimination. The vague wording of Section 377 infringes on the right to privacy, dignity, and personal autonomy of LGBTQ+ individuals, restricting their ability to express their sexuality and form intimate relationships without fear of legal sanction. Justice D.Y. Chandrachud in *Johar's* case opined that 'sexual orientation is an essential attribute of privacy'⁷³ and that the criminalisation of consensual sexual conduct between two consenting adults in a private space violates the right to privacy. By decriminalising consensual same-sex relations, the judgement directly contributed to the dismantling of a colonial-era law that discriminated against and criminalised LGBTQ+ individuals. It marked a significant step towards recognising and respecting the sexual autonomy of individuals, irrespective of their sexual orientation.

The court recognised that sexual orientation is innate and an integral part of an individual's identity, which was an immense contribution to gender justice. It identified the differences in human sexuality and affirmed that discrimination based on sexual orientation is equivalent to a violation of the fundamental right to equality. The judgement expanded the understanding of the right to privacy to include the right to sexual orientation and personal choices regarding intimate relations. This broadened view of privacy under Article 21 set a precedent for protecting other

70 Kalpana Kannabiran, "'What Use is Poetry?'" Excavating Tongues of Justice around Navtej Singh Johar v Union of India' (2019) 31(1) National Law School of India Review 1 <<https://repository.nls.ac.in/nlsir/vol31/iss1/1>> accessed 5 July 2025.

71 The Indian Penal Code 1860, s 377.

72 *ibid.*

73 *Navtej Singh Johar* (n 69) (Chandrachud J).

individual liberties against unwarranted interference. The verdict paved the way for further legal reforms and debates around LGBTQ+ rights in India, including issues related to marriage and adoption laws. It has encouraged a more inclusive understanding of gender justice that includes the rights and freedoms of LGBTQ+ individuals.

D. Impact on Gender Justice

While transformative jurisprudence in India has been instrumental in advancing gender justice, it is essential to critically examine its impact, limitations, and the broader sociopolitical context in which these rulings and laws have been enacted. This analysis explores the gap between legal texts and their implementation and criticisms of the judiciary's role in promoting gender equality. Transformative jurisprudence in India has led to several landmark rulings aimed at promoting gender justice. Cases such as *Vishaka*,⁷⁴ which established guidelines against sexual harassment in the workplace, and *Navtej Singh Johar*,⁷⁵ which decriminalised consensual homosexual acts among adults in private, exemplify how the judiciary has sought to challenge and transform social norms.⁷⁶ These rulings reflect a proactive approach by the judiciary to interpret the Constitution in a manner that upholds gender equality and human rights. However, the impact of these rulings is often mitigated by significant gaps between legal texts and their practical implementation. For example, while the Vishaka Guidelines were a pioneering step towards protecting women in the workplace, their implementation has been inconsistent and inadequate, particularly in informal sectors where a large percentage of Indian women are employed. The lack of awareness, proper enforcement mechanisms, and resistance from employers have limited the effectiveness of these guidelines.⁷⁷

E. Limitations

One major limitation of transformative jurisprudence in India is the gap between progressive legal pronouncements and their actual enforcement. The Supreme Court's rulings often require comprehensive follow-up measures from various state and non-state actors to be effective. For instance, the decriminalisation

74 Agnes (n 53).

75 Baxi (n 67).

76 Saurabh Kirpal (ed), *Sex and the Supreme Court: How the Law is Upholding the Dignity of the Indian Citizen* (Hachette India 2020).

77 Naina Kapur, 'Workplace Sexual Harassment: The Way Things Are' (2013) 48(24) *Economic and Political Weekly* 27 <<https://www.jstor.org/stable/23527387>> accessed 17 August 2024.

of same-sex relationships in *Navtej Singh Johar*⁷⁸ was a significant step toward recognising LGBTQ+ rights; however, it did not address broader issues such as anti-discrimination protections in employment, education, and healthcare, leaving a gap in comprehensive legal protection for LGBTQ+ individuals.⁷⁹ Moreover, judicial activism in India has been criticised for overstepping its constitutional boundaries, sometimes encroaching on the domain of the legislature. Critics argue that the judiciary, in its quest to deliver social justice, may be neglecting the principle of separation of powers, which is fundamental to the democratic governance of the country.⁸⁰ For example, the case of *Shayara Bano*,⁸¹ which led to the invalidation of the practice of 'triple talaq', was criticised by some for being a form of judicial overreach, potentially undermining religious autonomy and personal laws that are constitutionally protected under Article 25.

(i) Socio-Political Context

The socio-political context in which these transformative rulings were enacted is also crucial to understanding their impact and limitations. India is characterised by deep-rooted patriarchy, caste hierarchies, and religious pluralism, which complicate the implementation of gender-just laws. For example, while the Protection of Women from Domestic Violence Act, 2005 provides comprehensive protections, its implementation has been hampered by patriarchal attitudes among law enforcement agencies, members of the judiciary, and society at large, which often perceive domestic violence as a private family matter. Additionally, the political will to enforce gender-just laws has often been lacking, particularly in states with strong patriarchal norms. For instance, despite the Supreme Court's directive in the *Vishaka* case, several states delayed the establishment of mechanisms to address workplace harassment, reflecting a lack of commitment to gender justice.⁸² The political influence of conservative religious groups also poses challenges to implementing progressive gender laws, as seen in the backlash against the *Sabarimala* judgement, which allowed women of all ages to enter the Sabarimala temple.

78 Baxi (n 67).

79 Arvind Narrain, 'That Despicable Specimen of Humanity: Policing of Homosexuality in India' in Kalpana Kannabiran (ed), *Challenging the Rule(s) of Law* (SAGE Publications 2008) 48 <<https://doi.org/10.4135/978813210027>> accessed 8 September 2024.

80 Abhinav Chandrachud, *The Informal Constitution: Unwritten Criteria in Selecting Judges for the Supreme Court of India* (OUP 2020).

81 *Shayara Bano v Union of India* AIR 2017 SC 4609.

82 Nivedita Menon, *Seeing Like a Feminist* (Penguin UK 2012).

(ii) Gaps between Legal Texts and Implementation

The gap between legal texts and their implementation remains evident in India. Laws such as the POSH Act and the Juvenile Justice (Care and Protection of Children) Act, 2015, have faced significant barriers in operationalisation. Issues such as inadequate training of enforcement personnel, lack of resources, and societal resistance undermine the effectiveness of these laws. For instance, the Domestic Violence Act, 2005, has been criticised for its poor implementation due to the lack of support services for victims, such as shelters, legal aid, and counselling. Furthermore, societal stigma attached to divorce and domestic violence prevents many women from seeking help under the law. Similarly, the lack of awareness and sensitisation among law enforcement officials often results in the re-victimisation of women seeking legal recourse, thereby discouraging them from pursuing justice. While transformative jurisprudence has played a crucial role in advancing gender justice in India, its impact is limited by significant implementation challenges. It highlights the need for a more comprehensive approach that includes societal education, capacity building among law enforcement, and a more substantial political commitment to gender equality. Addressing these gaps is essential to ensure that the principles of gender justice are fully realised in practice.

III. EFFORTS BY CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANISATIONS

Civil society, non-governmental organisations (NGOs), and social movements have played a pivotal role in shaping gender justice and transformative jurisprudence in India. These entities have influenced legal reforms and public policy by advocating for women's rights, challenging patriarchal norms, and holding the State accountable for implementing gender-just laws. Civil society organisations (CSOs) and NGOs have been instrumental in advocating for legal reforms that promote gender justice in India. A prominent example is the *Vishaka* Guidelines against sexual harassment in workplace, which emerged as an outcome of sustained advocacy by women's rights groups following the gang rape of Bhanwari Devi, a social worker in Rajasthan, in 1992. NGOs, such as Vishaka and Saheli, played a critical role in mobilising public opinion and filing a PIL in the Supreme Court, which led to the establishment of guidelines to prevent sexual harassment at the workplace.⁸³ This landmark judgment laid the foundation for the enactment of the POSH Act, showcasing the direct influence of civil society on

83 Kirpal (n 76).

legislative outcomes. Similarly, the Mathura Rape Case of 1972 sparked widespread protests and advocacy by women's groups, leading to significant amendments. The Indian government enacted the Criminal Law (Amendment) Act, 1983, introducing crucial changes to strengthen rape laws. New sections (376A to 376D) were added to the Indian Penal Code to address aggravated forms of sexual assault, including custodial rape, gang rape, and abuse of authority. Section 114A was inserted into the Indian Evidence Act, establishing a presumption of absence of consent in certain cases when the victim states so. The Code of Criminal Procedure was amended to mandate in-camera rape trials under Section 327(2), while Section 228A of the IPC prohibited disclosure of a rape survivor's identity. These amendments marked a pivotal shift towards recognising structural nature of power imbalances and enhancing victim protection in sexual violence cases.⁸⁴ Feminist activists and organisations such as the Forum Against Oppression of Women (FAOW) and All India Democratic Women's Association (AIDWA) were crucial in highlighting the inadequacies of the existing laws and pressing the government to enact more stringent anti-rape legislation.⁸⁵ The civil society's relentless efforts resulted in the Criminal Law (Amendment) Act of 1983, which strengthened the provisions related to custodial rape and the burden of proof.

Women's movements and NGOs have played a crucial role in advancing gender justice in India, working tirelessly to challenge societal norms, advocate for policy changes, and empower women. These movements have been instrumental in addressing issues ranging from violence against women to economic disparities and discriminatory practices. One prominent example is the '*Chipko Movement*' in the 1970s, led by women in the Himalayan region, notably Gaura Devi. While primarily an environmental movement, it showcased the strength and agency of women. Through this movement, women hugged trees to prevent them from being cut down, linking environmental protection with local livelihoods. The NGOs like the Self-Employed Women's Association (SEWA), founded by Ela Bhatt, focus on organising and supporting women in the informal sector. The SEWA has significantly enhanced women's economic agency in India by providing financial services, skills training, and advocating for workers' rights. The One Million Signatures Campaign in the early 2000s, inspired by the global movement for gender equality, sought to repeal or amend discriminatory laws against women in India.

84 The Criminal Law (Amendment) Act 1983.

85 Kannabiran (n 68).

These grassroots campaigns, supported by NGOs, aimed to change societal attitudes and influence legislative reforms. The '*Pink Chaddi Campaign*' in 2009 is another noteworthy example initiated by a group called the Consortium of Pub-Going, Loose and Forward Women. In response to moral policing and violence against women in pubs, this campaign encouraged people to send pink underwear to the office of the Sri Ram Sene, a right-wing group involved in the attacks. This innovative protest used humour and symbolism to challenge patriarchal attitudes and assert women's rights in public spaces.

A collective named '*Gulabi Gang*', known for its distinctive pink attire, operates in Uttar Pradesh. Led by activist Sampat Pal Devi in 2006, the group members (mostly Dalit women) confront issues such as child marriage, domestic violence, and corruption. The *Gulabi Gang* raises awareness against abuse of power and promotes childhood education, becoming a symbol of resilience and collective action against gender-based injustices. The *Gulabi Gang* is also identified as a strategic social movement, as put forth by Charles Tilly, combining non-violent protests and selective use of force (mainly '*lathis*') to combat oppression.⁸⁶ NGOs like Breakthrough have employed media and communication strategies to challenge gender norms. Their '*Bell Bajao*' campaign urged men to intervene and prevent domestic violence. This initiative utilised multimedia platforms to spread awareness and encourage societal change, emphasising the role of bystanders in addressing gender-based violence. The '*#MeToo*' movement gained momentum in India as well, with various women coming forward to share their experiences of sexual harassment. This movement was not directly led by NGOs but was supported by organisations like the Indian Women's Press Corps and Lawyers Collective. The *#MeToo* movement has converted an online phenomenon into tangible change, sparking legal, political, and social changes in the short run.⁸⁷ These examples underscore the diverse and impactful ways these movements have contributed to the ongoing struggle for gender justice.

While civil society, NGOs, and social movements in India have made significant progress, they face several challenges. One key issue is the imposition of state controls and regulatory barriers. The amendments to the Foreign Contribution Regulation Act, 2010 (FCRA) in 2020 brought stricter regulations on foreign

86 Katy Miller, 'The Gulabi Gang as a Social Movement: An Analysis of Strategic Choice' (M.Sc. M.A. Dissertation, L-Università ta' Malta 2013).

87 Jamillah Williams, Lisa Singh and Naomi Mezey, '*#MeToo* as Catalyst: A Glimpse into 21st Century Activism' (2019) U Chi Legal F 1.

funding, significantly reducing the operational capacities of numerous NGOs, particularly those dealing with sensitive issues like gender justice. These constraints limit their ability to access necessary resources and carry out sustained advocacy efforts over the long term. Additionally, there is often insufficient coordination and collaboration between various organisations and movements, which can weaken their overall impact. For example, while many women's groups have advocated for personal law reforms to achieve gender equality, the differing ideological perspectives, such as those favouring a UCC and those advocating for reforms within existing religious frameworks, have occasionally led to disjointed efforts and reduced the effectiveness of their advocacy. Civil society organisations, NGOs, and social movements have been crucial in advancing gender justice and shaping transformative jurisprudence in India. They have made significant strides in influencing legal frameworks and public policy through advocacy for legal reforms, raising public awareness, and mobilising collective opinion. However, their effectiveness is frequently limited by state restrictions, societal pushback, and difficulties in implementing reforms. To maximise their impact, these groups must focus on increasing collaboration, maintaining persistent advocacy, and addressing the systemic barriers that hinder the full achievement of gender justice in practical terms.

IV. CONCLUSION

India has made notable strides towards achieving gender justice, but several challenges persist. These include deeply ingrained societal attitudes, inconsistencies in the implementation of laws, and the need for further legal reforms. Key priorities moving forward include strengthening the enforcement of existing laws, broadening legal protections to encompass all forms of gender-based violence, and ensuring that justice is accessible to all gender minorities. Transformative jurisprudence remains a vital instrument in this process. By reinterpreting and modifying laws to align with constitutional values of justice and equality, there is potential to foster a more equitable and humane society.

The pursuit of gender justice in India's legal system is a continuous process, marked by both progress and persistent hurdles. While legislative and judicial developments have fostered greater equality, systemic barriers and deeply rooted cultural norms continue to present significant challenges. Addressing these issues requires a transformative and dynamic approach to ensure sustained progress. The future demands ongoing efforts to bridge existing gaps, address intersectional

inequalities, and build a legal framework that reflects the diverse values and equality embedded in the Constitution of India. Achieving gender justice is not just a matter of creating laws; it requires a coordinated and comprehensive strategy to implement them effectively. Though major advances have been made through groundbreaking rulings and legislation, the real challenge lies in translating these legal frameworks into meaningful societal change. A collaborative and persistent effort is necessary to transform legal principles into tangible progress, ensuring that gender justice becomes a living reality for all individuals.



NATIONAL LAW UNIVERSITY DELHI

Sector-14, Dwarka, New Delhi-110078

Phone : +91 11 280 34253, Fax : +91 11 280 34256

Website : www.nludelhi.ac.in