

# Gender Equality under the Indian Constitution

Gender equality is a fundamental aspect of human rights and social justice. The Indian Constitution, with its robust framework, seeks to ensure equality and non-discrimination on the basis of gender. Despite these constitutional guarantees, the realisation of gender equality in India remains a complex challenge.

## Constitutional Provisions

The Indian Constitution explicitly guarantees equality through several key articles. Article 14 ensures equality before the law and equal protection of the laws within the territory of India. Article 15 prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth.

Specifically, Article 15(3) empowers the state to make special provisions for women and children. Article 16 guarantees equality of opportunity in matters of public employment, and Article 39(a) and (d) under the Directive Principles of State Policy mandate that the state directs its policy towards securing that men and women equally have the right to an adequate means of livelihood and equal pay for equal work.

## Judicial Interpretation

The judiciary in India has played a significant role in interpreting and expanding the scope of gender equality under the Constitution. In **C Masilamani Mudaliar v Idol of Sri Swaminathaswami Thirukoil**, the Supreme Court recognized that the right to eliminate gender-based discrimination is implicit in Articles 14, 15, and 21 of the Constitution, emphasising the trinity of justice, equality, and liberty .

Similarly, in **Githa Hariharan v Reserve Bank of India**, the Supreme Court used the interpretive tool of "reading down" to include the mother as the natural guardian of a child, thereby promoting gender equality within personal laws .

## Formal vs. Substantive Equality

The Indian judiciary has historically oscillated between formal and substantive approaches to equality. The formal approach, focusing on treating likes alike, has often been criticised for its limitations in addressing the historical and structural disadvantages faced by women. Conversely, the substantive approach aims to achieve actual equality by taking into account the different circumstances and barriers that affect women.

In **State of Kerala v NM Thomas**, the Supreme Court began to articulate a substantive model of equality, recognizing that measures compensatory in character are necessary to ensure equality of opportunity .

This approach was further developed in **Indra Sawhney v Union of India**, where the Court acknowledged that equality of opportunity might require different treatments for different individuals to achieve real equality .

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### **Protectionist Approach and Familial Ideology**

Despite these advancements, the judicial approach to gender equality has often been influenced by protectionist ideologies. The understanding of women as inherently different and in need of protection has sometimes reinforced their subordinate status. This is evident in cases dealing with domestic violence, maintenance, and sexual harassment.

The Protection of Women Against Domestic Violence Act, 2005, is a progressive law aimed at protecting women from domestic abuse. However, its application has faced challenges, including claims that it discriminates against men. The Delhi High Court, in upholding the Act, emphasised the dire situation of women in India and the necessity of protective measures .

### **Challenges and Criticisms**

One of the significant challenges in achieving gender equality is the interplay between constitutional mandates and personal laws derived from religious scriptures. In **John Vallamattom v Union of India**, the Supreme Court struck down Section 118 of the Indian Succession Act, 1925, which was discriminatory against Christians, citing it as arbitrary and violative of Article 14 . This case indicates the ongoing struggle to align personal laws with constitutional principles of equality.

Another challenge is the judiciary's reliance on traditional notions of gender roles. For instance, in cases of sexual harassment, courts have sometimes reinforced stereotypes by considering factors such as the complainant's marital status and past sexual conduct, thereby excluding certain women from legal protection .

### **Progress and Future Directions**

Despite these challenges, there have been notable advancements in promoting gender equality. Legislative measures such as the Maternity Benefit (Amendment) Act, 2017, which extends maternity leave to 26 weeks, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, reflect ongoing efforts to create a more equitable environment for women.

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The future of gender equality in India hinges on the judiciary's willingness to adopt a more substantive approach to equality, recognizing and addressing the unique barriers faced by women. This involves not only interpreting laws in a gender-sensitive manner but also actively challenging and deconstructing patriarchal norms and stereotypes that persist in legal and social frameworks.

