

The Indian Constitutional Protection of Women: Intersections of Law, Society, and the Path to Social Transformation.

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Abstract

The counting of the favourable verdicts or the guarantees of the law cannot measure the constitutional protection. Whether legal institutions regard women as subjugated, autonomous persons, and whether conditions are removed to impede the exercise of equal citizenship, is significant. This paper explores the connections between equality embodied in the constitution, protection, bodily autonomy, economic independence, and institution. Using an analytical method which is doctrinal and socio-legal, it studies selected Supreme Court decisions as well as constitutional and statutory provisions, with an endpoint in January 2026 menstrual-health judgement. It suggests that protection can be transformative when it expands agency instead of replicating dependence assumptions. Different types of distinctions can be observed through workplace participation, reproductive decisions, inheritance and access to education. The paper also separates judicial recognition from demonstrated social outcome: litigation may change legal entitlements but not their effective enjoyment. A coherent method ties together all anti-stereotyping, material support and accessible remedies, while preserving the diversity of women's circumstances and choices.

Keywords: gender justice; constitutional protection; substantive equality; bodily autonomy; institutional accountability; social transformation.

Introduction

Women may need actions aimed at exclusion, violence, and unequal resources access. However, what is called protective may prevent working, replace someone else's judgment with their own or maintain dependence in the family. The difference is not between intervention and non-intervention. It is between arrangements that expand the conditions of agency¹ and arrangements that confine women to roles selected for them. Provisions 14, 15, 16, and 21² provide overlapping Constitution bases to probe that distinction.

The issue is how social transformation can be effectuated by legal protection, without the assumption that the category of women is homogeneous or that it is good to treat judicial declarations as an accomplished fact. Analysis is guided by two questions. At what time does differential treatment enhance substantive equality³? What unites the recognition of a right with the exercise of that right in the workplace, the healthcare setting, the family and the public institution? The protection is assessed through agency, material access and accountability together by the argument. No alternative is a suitable option for each other.

¹ *Anuj Garg v Hotel Association of India* (2008) 3 SCC 1.

² Constitution of India 1950, arts 14–16 and 21.

³ Sandra Fredman, 'Substantive Equality Revisited' (2016) 14(3) *International Journal of Constitutional Law* 712.

The approach is doctrinal along with a socio-legal interpretation of institutional arrangements. The judgments viewed are assessed for their holding, remedies and limits; the statutory are looked at as instruments⁴ through which constitutional values have a play beyond state action. This doesn't survey women's lived experience, nor is it an assessment of the judiciary's impact. During the COVID pandemic, it was widely claimed that the Constitution's emergency powers, whilst subject to a 20-year-old doctrine on extraordinary situations, remained available to tackle extraordinary events. The present endpoint is on this very question.

2. The constitutional architecture: equality, liberty and differentiated support

Article 14 guarantees equality before the law and equal protection; Article 15(1) forbids the state from discriminating in specified ways, including on grounds only of sex. Article 15(3)⁵ allows for provisions in the special spheres for women and children while Article 16 deals with equality of opportunity in public employment. Article 21 gives rise to the protection of life and personal liberty and has given rise to dignity and decisional autonomy⁶. These provisions work together, but the separate spheres they occupy should not be conflated into a monolithic fairness promise.

The organization of social and economic life is extended by the Directive Principles. Article 39 provides for adequate means of livelihood and equal pay for equal work. Article 42 ensures for humane working conditions and maternity relief. Article 37 states that the directive principles are not enforceable by courts⁷. However, they are fundamental in governance. According to Article 51A(e)⁸, it is everyone's fundamental duty to renounce practices derogatory to the dignity of women. Judicial remedy of an enforceable fundamental right cannot automatically be conferred on either a directive principle or a fundamental duty. The importance of them include interpretative orientation and the identification with public responsibilities.

The primary interpretative challenge pertains to Article 15 (3)⁹. The language of benefit cannot, on its own, establish a 'constitutionally permissible' distinction, even though such distinction may address a pregnancy-related need or historical exclusion. An exclusion that is likely to diminish recipients' opportunities will require scrutiny of its design and justification.

In *Anuj Garg v Hotel Association of India*¹⁰, the Court dismissed a statutory ban on women's employment in premises where liquor was consumed, questioning the stereotypes underlying the protection thus asserted. The importance of sex-conscious measures is not always unlawful. The focus of protection should be on addressing unsafe conditions instead of automatically eliminating women from relevant opportunities.

⁴ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013; Protection of Women from Domestic Violence Act 2005. These sources support the statutory-institutions discussion, not the separate assertion about COVID-era emergency powers in this paragraph.

⁵ Constitution of India 1950, arts 14, 15(1), 15(3) and 16.

⁶ *Justice K S Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

⁷ Constitution of India 1950, arts 37, 39(a), 39(d) and 42.

⁸ Constitution of India 1950, art 51A(e).

⁹ Constitution of India 1950, art 15(3); *Anuj Garg v Hotel Association of India* (2008) 3 SCC 1.

¹⁰ *Anuj Garg v Hotel Association of India* (2008) 3 SCC 1.

This distinction also avoids a false choice between being the same and being special. Sandra Fredman describes substantive equality as (in her words), “recognition of disadvantage, stigma, participation and accommodation”¹¹. By applying here, it makes us look at both

- (1) the resources this measure supplies and
- (2) the social meaning it imposes.

A maternity-related accommodation may enable participation and an assumption that all women are unsuitable may obstruct participation. The institutional effects and the context matters along with the legislative vocabulary.

3. Work, professional authority and the limits of formal inclusion

Access to a profession is not sufficient for workplace equality. Whether the admission leads to equality of professional status depends on recruitment standards, complaint procedures, promotion criteria and responsibility assumptions. The constitutional investigation must thus oscillate between express limitations¹² and the arrangement of seemingly neutral processes.

It must also differentiate governmental employment guarantees from statutory regulations of private workspaces.

*Vishaka v State of Rajasthan*¹³ constitutionally recognized sexual harassment at the workplace as affecting one’s equality, dignity and freedom to work. Due to the lack of sufficient legislation, the Court prescribed mandatory guidelines and also drew upon international principles compatible with fundamental rights for the content thereof. The Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act 2013¹⁴ thereafter provides for statutory institutions and employer duties including Internal and Local Committees. The shift represents a relationship between superior judicial recognition and legislation and is not a mere substitution of institutions.

A complaints mechanism however raises a separate challenge of institutional credibility. Just because the committee has been formally constituted, does not mean a complainant can approach the committee without retaliation, a reasoned decision or appropriate support. Similarly, to be effective a protection order must offer fair notice and a realistic opportunity¹⁵ to answer the allegations.

The legitimacy of a protective process boils down to its accessibility and reliable procedure which are compatible requirements. Assessment of implementation should be based on functioning rather than the name of the committee on the organogram.

The armed-forces situations shed light on a current shift. The refusal of permanent commission to women officers in the relevant streams of Army cannot be based on stereotypical reasoning, the Court held in

¹¹ Sandra Fredman, ‘Substantive Equality Revisited’ (2016) 14(3) *International Journal of Constitutional Law* 712.

¹² *Lt Col Nitisha v Union of India* 2021 SCC OnLine SC 261.

¹³ *Vishaka v State of Rajasthan* (1997) 6 SCC 241.

¹⁴ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, ss 4–7 and 19.

¹⁵ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, s 11.

Secretary, Ministry of Defence v Babita Puniya¹⁶. The ruling should not be construed as a declaration that opens all combat roles. The refusal to replace the examination of professional opportunity within the scheme before the Court with a generalised assumption about gender.

The disadvantages that would arise due to the application of evaluation criteria post historical exclusion were examined in *Lt Col Nitisha v Union of India*¹⁷. The way the Court reasoned the indirect discrimination case is illustrative of the point just made. Instructive is the difference between the two cases: one is not the same as the other, to remove an express barrier and to correct the inherited method of assessment of the institution. If an equality remedy does the first while leaving the other unaddressed, it may fail.

Both decisions do not suggest that every different professional outcome is a form of discrimination. The criteria used for the alleged discrimination must connect to the disadvantage¹⁸ and allow inquiry into bona fide occupational requirements. Need Reasoned Justification, Not Automatic Preference: The Constitutional Demand This method maintains the capacity for stringent standards, while at the same time questioning whether the standards measure the work or a history of restricted opportunity

4. Bodily autonomy and the material conditions of choice

4.1 Consent, disability and reproductive decision-making

When a woman's family, institution or physician is treated as the automatic author of her decisions, it undermines bodily autonomy. In the case of *Suchita Srivastava v Chandigarh Administration*¹⁹, the Supreme Court identified the reproductive choice as being part of personal liberty and stressed the importance of consent in the case of an intellectually disabled woman. Simply being disabled did not justify an evasion of consent. The case warns against interpreting the need for assistance as the absence of decision-making agency.

Decision making that is supported²⁰ and one that substitutes are thus to be distinguished. Information might need to be translated, made accessible, or it may take longer. Those provisions could enable a self-determined decision rather than displace it. A protective assessment should not infer incapacity by diagnostic label but identify the actual decision and the person's ability to understand its relevant consequences. It is not enough that something is convenient for an institution to replace consent with the views of the caretaker.

*X v Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi*²¹ dealt with the exclusionary impact of reading the medical-termination framework through marital status. The court interpreted the applicable statutory and rule-based provisions to include unmarried women within its protective ambit in the circumstances. The decision was limited to access under the Medical Termination of Pregnancy Act 1971 and the rules made thereunder and did not confer an unlimited right to terminate any pregnancy without regard to gestational limits and statutory conditions.

¹⁶ *Secretary, Ministry of Defence v Babita Puniya* (2020) 7 SCC 469.

¹⁷ *Lt Col Nitisha v Union of India* 2021 SCC OnLine SC 261.

¹⁸ *Lt Col Nitisha v Union of India* 2021 SCC OnLine SC 261; Vandita Khanna, 'Indirect Discrimination and Substantive Equality in Nitisha' (2022) 22(1) *International Journal of Discrimination and the Law* 74.

¹⁹ *Suchita Srivastava v Chandigarh Administration* (2009) 9 SCC 1; Medical Termination of Pregnancy Act 1971, as amended by the Medical Termination of Pregnancy (Amendment) Act 2021. See the consent requirement in s 3(4) of the Medical Termination of Pregnancy Act 1971.

²⁰ Convention on the Rights of Persons with Disabilities 2006, art 12.

²¹ *X v Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi* (2023) 9 SCC 433; Medical Termination of Pregnancy Rules 2003, as amended in 2021.

The judgment's treatment of marital rape requires a particularly precise approach. The interpretation of rape for the purposes of access to termination under the medical statute should not be understood as a declaration striking down the marital exception in the criminal law²². The legal change is overstated and conceals the different proceedings and different arguments necessary for the challenging of criminal responsibility. It is important that academic analysis does not blur the line between interpretive inclusion in healthcare and the adjudication of a different offence provision.

4.2 Menstrual health and educational participation

Autonomy and material conditions determine whether actors participate. The Court connected menstrual health in schools to substantive equality rights and principles, dignity, privacy and access to education in *Dr Jaya Thakur*. The guidelines do not treat menstruation as a private inconvenience but speak about facilities, menstrual absorbents, awareness and institutional monitoring. A rejection that may continue even with identical admission norms. Here's what the ruling reveals.

The structure of remedies is as important as the language of recognition. Oversight tasks and routine checks through anonymous student feedback and practices can improve deficiencies. The Court continued to monitor the functioning and sought compliance reports. What the court believes should happen is shown in this direction not what every school did. Consequently, a useful assessment must draw a differentiation between the reporting arrangement content, existence and performance established independently.

The reproductive-choice and menstrual-health cases taken together reveal two aspects of constitutional protection. The initial conflict concerns intrusions into the choices made by the person; the second is about constraints without which nominal freedom might be worthless.

According to the researchers, while women's situations may differ, their legal status may not. "It is the agency that connects them, not the presumption that all women share the same bodily reality or institutional needs," they write, pointing to differences in the bodily reality shared by survivors depending on social class and more. A rights-based approach must be sensitive to not only disability but also poverty, place and other circumstances that shape access. But it must not turn any of these circumstances into a reason to ascribe lesser legal worth.

5. Family relations, property and economic independence

The family does not escape constitutional concern or lend itself to any one pattern of power. Legal rules distribute property, power, and economic security²³ within it. Changes to those rules can alter bargaining conditions but their effect will depend on record access, advice and enforceable remedies. Therefore it is not simply whether the judgment speaks in the language of equality, but rather which relation of law it alters and how one can invoke that alteration.

²² *X v Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi* (2023) 9 SCC 433. The interpretation concerns access under the MTP framework; the judgment did not strike down the criminal-law marital exception.

²³ Hindu Succession Act 1956, as amended by the Hindu Succession (Amendment) Act 2005; Protection of Women from Domestic Violence Act 2005.

Vineeta Sharma v Rakesh Sharma²⁴ Supreme Court ruling relating to a daughter's coparcenary right under section 6 of the Hindu Succession Act 1956. The right is by birth and recognition of that right does not mean the father has to be alive on 9 September 2005. The ruling also preserves statutory treatment of qualifying earlier dispositions and partitions. Unless specified in the will, no past family transaction is reopened²⁵, and daughters do not receive a share in every form of parental property under every succession regime as a matter of rule.

Difference between entitlement and enjoyment is easy to see here. An individual might have a recognised legal share but may not be able to identify the property, obtain documents or contest a claimed partition. These barriers may obstruct enforcement, but they do not provide evidence against all inheritance disputes. They show how the relevance of accessible records and legal assistance²⁶ can help assess the practicality of doctrinal change. It is important to be recognised formally but it is an institutional question to mobilise it.

The case of Joseph Shine against the Union of India²⁷ is another instance. The striking down of the former adultery offence set aside a criminal law regime that revolved around control of the husband and unequal treatment of the wife. It can be argued that decriminalisation may not wash away all civil consequences at least within matrimonial law. The constitutional significance of the directive principle lies in treating the woman as a person possessed of dignity and autonomy rather than as a property. This reasoning contests an understanding of family stability that rests on unequal legal personhood, while at the same time not denying the existence of legal-relevant marital obligations.

The domestic violence law also functions through a differentiated remedial structure. The act provides for residence-related, protective, monetary and other reliefs²⁸. Under the protection of Women from domestic violence Act 2005, various forms of abuse are recognised. We should not interpret that every civil allegation leads to a criminal offence by the mechanisms. Security requires housing, financial remedies, and prohibitions on violent conduct. This stresses the international community's commitment to secure development.

6. Intersections and institutional accountability

When "women" serves as a stand-in for the inquiry into unequal conditions in the category, a constitutional account becomes incomplete. A workplace solution designed around an office worker, for example, raises different access questions from one designed for a domestic worker. A notice in writing may work for one complainant but not for another who needs translation or accessible formats²⁹. Recognizing variations does not splinter equality nor equality of outcome. It recognizes the circumstances when the same legal guarantee can work in an unequal manner.

There are entry points supplied by the statutes. The workplace-harassment law introduces Local Committees³⁰ instead of using only employer-based methods. The women mentioned in the Act would be entitled to legal service under the Legal Services Authorities Act 1987³¹, subject to the conditions prescribed under the Act. The provisions are designed to identify the institutional responsibilities but do not establish the uniform effectiveness of legal assistance or local

²⁴ *Vineeta Sharma v Rakesh Sharma* (2020) 9 SCC 1, para 129.

²⁵ Hindu Succession Act 1956, as amended by the Hindu Succession (Amendment) Act 2005, s 6. The statutory saving concerns qualifying dispositions, alienations and partitions before 20 December 2004. It is not a general will-based immunity for every past family transaction.

²⁶ Legal Services Authorities Act 1987, ss 12(c) and 13. The suggested access barriers are analytical possibilities, not empirical findings established by this statute.

²⁷ *Joseph Shine v Union of India* (2019) 3 SCC 39. The constitutional holding rests on fundamental rights, including equality, dignity and autonomy; it should not be described as a holding of a Directive Principle alone.

²⁸ Protection of Women from Domestic Violence Act 2005, ss 3, 17–23 and 31.

²⁹ Rights of Persons with Disabilities Act 2016, ss 2(y) and 3; Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

³⁰ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, ss 5–7.

³¹ Legal Services Authorities Act 1987, ss 12(c) and 13.

complaint systems. It is important to maintain the difference between design and delivery in research about social transformation.

Participation is another link between formal status and institutional voice. The constitutional reservation of seats for women in the Panchayats under Article 243D and the Municipalities under Article 243T³² has been made. The existence of a number is legally recognizable, but actual participation also relates to access to information, deliberation and freedom to exercise the office. Do not draw conclusions based solely on reservation, the analytical point. It questions whether representation can change who can express needs and impact the bodies that address those needs.

Accountability can be evaluated through the following three questions that are all linked with each other. Who has the obligation, how can one establish a fault, and what remedy is there for a justifiable complaint? A ruling that only responds to the first may hinder implementation clarity. A reporting system which answers only the second question may spotlight failure but not rectify it. A remedy not giving clear responsibility may diffuse compliance. One way in which duty, feedback and supervision³³ are connected is in the design of school-health directions. Similar context-specific analysis is needed for workplace and domestic-violence systems.

Complaints could reflect harm but could also mean a greater confidence in complaints. Just because there are fewer complaints does not mean the security is greater. A doctrinal study cannot resolve this empirical ambiguity. Nonetheless, it can point to the evidence that a subsequent study would require: the accessibility of procedures, reasons for non-use, operation and remedial outcomes and the experiences of affected persons. Confidentiality and informed consent³⁴ would certainly be essential to responsibly collect evidence.

Privacy and accountability are equally relevant in today's world. Institutions may require aggregate information that reveals delay or exclusion without naming complainants or disclosing intimate medical information³⁵. When a system demands too much disclosure access to protection becomes hard. Secrecy about institutional performance helps prevent a common evaluation. The correct distinction is between information needed to evaluate the institution and information whose release does not further that evaluation but exposes the person. The constitutional concern for dignity is bridged with the practical design of reporting, inspection and complaint mechanisms.

7. Conclusion

The law offers the most effective protection to women in the relationship between equal personhood and the institutions enabling agency. Decisions against stereotypes challenge exclusion under the pretext of protection. Decisions on reproduction should not impose institution or family preference for consent. Laws around inheritance and domestic violence speak to material relationships; obligations around education and health acknowledge being formally admitted does not exhaust equal access. These developments do not create a completed journey from legal recognition to social transformation. The remedy content, institutional accessibility and distribution of resources and powers determine the outcomes of the public policies. A constitutional framework must correspondingly uphold autonomy, differentiated support and procedural accountability. Personal and property integrity is a right that is normally recognized by law. This protection should ultimately enhance one's participation, choice, and access to remedy. Legal protection would restrict an individual if dependence or compulsion is considered as a condition to be entitled to legal concern. The distinction ought to guide the understanding of existing guarantees, as well as the evidence used to assess their effect in practice.

³² Constitution of India 1950, arts 243D(3)–(4) and 243T(3)–(4).

³³ *Dr Jaya Thakur v Government of India* 2026 INSC 97, paras 177–182.

³⁴ *Justice K S Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1. The paragraph proposes an empirical research design; the cited privacy principles do not establish the meaning of complaint counts.

³⁵ *Justice K S Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1; Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013. See also the confidentiality restriction in the 2013 Act, s 16.

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