

Gender Justice in Practice: From Exclusion to Empowerment

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ABSTRACT

Gender justice is often celebrated as a constitutional promise, yet for millions of women in India, it remains a distant reality. While the Constitution of India guarantees equality, dignity, and non-discrimination under Articles 14, 15 and 21, the everyday lives of women continue to be shaped by deep-rooted social exclusion. This article examines gender justice not as a theoretical concept, but as a lived practice. It argues that exclusion of women is not accidental but structural, rooted in patriarchy, caste, class, religion, and economic inequality. The paper traces the journey of women from exclusion to empowerment through three lenses: social, legal, and institutional. It critically analyzes the limitations of protective legislation, including maternity benefits and workplace laws, and highlights how motherhood, care work, and social norms become tools of exclusion. The article further explores transformative pathways such as shared parental responsibility, state-funded social security, gender budgeting, legal literacy, and grassroots leadership. The central thesis is that true empowerment cannot be achieved through welfare alone; it requires dismantling the structures that produce exclusion. Gender justice, therefore, must evolve from a protectionist approach to an enabling one where women are recognized as equal citizens, decision-makers, and agents of change.

Keywords: Gender Justice, Social Exclusion, Women Empowerment, Intersectionality, Motherhood Penalty, Constitution of India.

Introduction

The Promise and the Paradox

"You can tell the condition of a nation by looking at the status of its women." - Jawaharlal Nehru

On 15th August 1947, when India awoke to freedom, the Constitution makers made a radical promise. In a society deeply divided by caste, religion, and patriarchy, they promised equal citizenship to women. It was revolutionary. At a time when women in France could not yet vote and women in Switzerland would not vote for another 24 years, India granted universal adult suffrage to women from day one. Article 14 promised equality before the law. Article 15 prohibited discrimination on the ground of sex. Article 15(3)¹ went a step further - it empowered the State to make special provisions for women and children, recognizing that formal equality is not enough to correct centuries of historical disadvantage. Article 21 promised life with dignity. Article 39(d) promised equal pay for equal work. Article 42 directed the State to provide just and humane conditions of work and maternity relief. On paper, it was a perfect beginning. Nearly eight decades later, we must ask a difficult question: Has that constitutional promise been translated into lived reality? The answer is both inspiring and unsettling. Inspiring, because we have seen progress that our grandmothers could not have imagined. India has had a woman Prime Minister, a woman

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¹ Constitution of India

President, women astronauts, fighter pilots, CEOs of Fortune 500 companies, and Chief Justices of High Courts. The literacy rate of women has risen from 8.6% in 1951 to 77% in 2023. Girls now outnumber boys in higher education enrolment in many states. Laws that were unimaginable two decades ago - the Protection of Women from Domestic Violence Act 2005, the Sexual Harassment of Women at Workplace Act 2013, the Maternity Benefit Amendment 2017, and the Nari Shakti Vandan Adhiniyam 2023 providing 33% reservation for women in Parliament - now exist. Unsettling, because despite all this, the ground reality remains deeply exclusionary. Consider these contradictions that define gender justice in India today: We worship Durga as a symbol of power, but we file a dowry death case every 90 minutes¹. We celebrate Mother's Day with emotional advertisements, but ask a mother in a job interview, "How will you manage both home and office?" We have a Maternity Benefit Act that gives 26 weeks of paid leave - one of the highest in the world - but a TeamLease study found that after this law, job offers for women fell by 11%². We have 50% reservation for women in Panchayati Raj Institutions, creating over 1.4 million elected women representatives - the largest number in the world - yet in many villages of Rajasthan, including in Deeg and Kaman region, the concept of "Sarpanch Pati" persists, where the husband takes oath and attends meetings in place of his elected wife³. This is the central paradox of gender justice in India: On paper, we have empowerment; in practice, we have exclusion. This paradox is visible in global data. According to the World Economic Forum's Global Gender Gap Report 2023, India ranks 127th out of 146 countries⁴. We rank 142nd in economic participation and opportunity. Our Female Labour Force Participation Rate, despite a recent rise to 32.8% in PLFS 2023-24, is still far below the global average of 47% and male participation of 78% in India. The World Bank's Women, Business and Law Index 2024 gives India a score of 74.4 out of 100, noting gaps in parental leave, pay parity, and workplace safety. Why does this happen? Why do progressive laws fail to produce progressive outcomes?

The answer lies in understanding that exclusion is not an accident; it is a structure.⁵ Feminist scholars like Simone de Beauvoir in *The Second Sex* argued that woman is not born, but made - made by society, by patriarchy, by institutions that define what a woman should be. Pierre Bourdieu called it symbolic violence - a violence where the dominated accepts her domination as natural.

In India, this structure has three deep roots:

- **First, Patriarchy as Culture.** Patriarchy is not just a set of bad men; it is a system of thought that places value on masculinity over femininity. It defines public as male and private as female. So when a woman enters the public sphere - court, police station, office, panchayat - she is seen as an outsider. Her credibility is questioned, her safety is conditional, and her success is exceptionalized.
- **Second, Exclusion as Intersectional.** A woman does not face patriarchy alone. As American legal scholar Kimberlé Crenshaw explained through her theory of intersectionality, a Dalit woman faces caste and gender together, a Muslim woman faces religion and gender together, a disabled woman faces ableism and gender together. A single law for "women" cannot address all these layered exclusions.
- **Third, Empowerment as Welfare, Not Transformation.** For decades, the State has seen women as beneficiaries to be protected, not as citizens to be empowered. Schemes give sewing machines, not land rights; give free gas cylinders, not equal wages. Protectionist approach treats women as weak. A transformative approach, which gender justice demands, treats women as equal agents.

Understanding Social Exclusion: The Invisible Walls

Social exclusion is not merely poverty or lack of resources. According to sociologist Amartya Sen, exclusion is a capability deprivation - it denies individuals the freedom to participate in social, economic, and political life⁶. For women, exclusion operates at four levels:

¹ National Crime Records Bureau, Crime in India 2022.

² TeamLease Services, Impact of Maternity Benefit Amendment on Hiring (2019)

³ Ministry of Panchayati Raj, Study on Elected Women Representatives (2022); Field observation in Deeg-Kaman region, Rajasthan

⁴ World Economic Forum, Global Gender Gap Report 2023.

⁵ Census of India 1951; National Sample Survey Office, 78th Round, 2023.

⁶ Amartya Sen, Social Exclusion: Concept, Application, and Scrutiny, ADB (2000)

- **Social Exclusion:** Rooted in patriarchy. From birth, girls are socialized to be submissive. Practices like son preference, early marriage, dowry, honour killings, and restriction on mobility limit their agency. The National Family Health Survey (NFHS-5) shows that only 25% of women in India can visit a health centre alone¹. When a woman cannot step out of her house without permission, how can she access justice?
- **Economic Exclusion:** India's Female Labour Force Participation Rate (FLFPR) is one of the lowest in the world. According to Periodic Labour Force Survey 2023-24, FLFPR is around 32.8% (up from historic low of 23% in 2017-18) but still far behind male participation at 78%. Women perform 3.2 times more unpaid care work than men (NSSO Time Use Survey, 2019). This unpaid work - cooking, cleaning, child-rearing, elder care - is never counted in GDP, yet the economy runs on it.
- **Legal Exclusion:** Laws exist, but access to justice is gendered. Women constitute only 11% of judges in High Courts and 4% in the Supreme Court (as of 2024). 70% of women prisoners are under trials from marginalized backgrounds, often unaware of their bail rights. For a Dalit woman in Rajasthan or a tribal woman in Chhattisgarh, the police station is often a place of fear, not justice.
- **Political Exclusion:** Despite 50% reservation for women in Panchayati Raj, many elected women representatives act as proxies for their husbands - the phenomenon of "Sarpanch Pati". In Parliament, women hold only 14% of seats. Power remains male-dominated².

Intersectionality: When Exclusion Multiplies

Kimberlé Crenshaw, an American legal scholar, coined the term 'intersectionality' in 1989 to show that oppression is not single-axis.³ A woman is not just a woman. She is also located in caste, class, religion, disability, and sexual orientation. A Brahmin woman in Delhi and a Dalit woman in Kaman, Rajasthan face different forms of patriarchy. For Dalit women, exclusion is double - as a woman and as a Dalit. They face sexual violence as a tool of caste dominance, wage discrimination, and lack of access to schemes. For Muslim women, exclusion is triple - gender, religion, and stereotyping. Their literacy rate is lower, labour participation is lowest at 14%, and they face stigma in both community and state. For Disabled women, exclusion is almost complete. They are considered asexual, unfit for motherhood, and invisible in both disability rights and women's rights movements. Only 0.3% of disabled women have access to higher education. For Single mothers, widows, and LGBTQ+ individuals, the law itself excludes them. Motherhood is defined as married heterosexual motherhood. Maternity benefits do not cover transgender parents. Therefore, any discussion of gender justice that does not take intersectionality into account will only empower the already privileged women.

The Law on Paper: Protective Laws and their Paradox

The Indian Constitution is one of the most gender-just constitutions in the world. Article 14 guarantees equality before law, Article 15(1) prohibits discrimination on grounds of sex, Article 15(3) allows special provisions for women and children, Article 16 provides equality of opportunity, Article 21 guarantees right to life with dignity, Article 39(d) calls for equal pay for equal work, Article 42 directs the State to secure just and humane conditions of work and maternity relief. Parliament has enacted numerous laws: Dowry Prohibition Act 1961, Equal Remuneration Act 1976, Protection of Women from Domestic Violence Act 2005, Sexual Harassment of Women at Workplace Act 2013, Maternity Benefit (Amendment) Act 2017. However, protective laws often become restrictive.

Case Study: The Maternity Benefit Act and the Motherhood Penalty

The Maternity Benefit (Amendment) Act, 2017 increased paid maternity leave from 12 weeks to 26 weeks⁴. It was celebrated as progressive. But its impact reveals the paradox. Under Section 5, the entire financial burden is on the employer. For an employer, especially MSMEs which employ 30% of India's workforce, hiring a woman of childbearing age becomes a financial risk. A study by TeamLease Services found that after the amendment, net job creation for women in 2018-19 declined⁵. An estimated 1.1 to 1.8 million women lost jobs. 26% of small employers admitted they would prefer to hire men to

¹ Ministry of Health and Family Welfare, National Family Health Survey-5 (2019-21)

² Constitution (One Hundred and Sixth Amendment) Act, 2023 (Nari Shakti Vandan Adhiniyam)

³ Kimberlé Crenshaw, Demarginalizing the Intersection of Race and Sex, 1989 U. Chi. Legal F. 139

⁴ Maternity Benefit (Amendment) Act

⁵ Centre for Monitoring Indian Economy, Report on Employment (2019)

avoid maternity costs. The World Bank's Women, Business and Law 2023 report noted that such employer-funded models discourage female hiring globally. Secondly, the Act covers only the organized sector, which is less than 10% of women workers. The 90% women in agriculture, domestic work, construction, and street vending get no paid leave. The Janani Suraksha Yojana and Pradhan Mantri Matru Vandana Yojana provide only Rs. 5000-6000, which is not a substitute for wages for six months. Thirdly, there is no corresponding paternity leave law. The Central Civil Services (Leave) Rules give 15 days paternity leave, but the private sector has no mandatory provision. This reinforces the stereotype that childcare is a woman's job alone. When only women get long leave, employers see them as less committed. Thus, a law meant to retain women at work ends up pushing them out. This is called the Motherhood Penalty vs. Fatherhood Bonus - globally, mothers earn 5-10% less than non-mothers for same work, while fathers earn 6% more after childbirth. This is not a failure of intention, but of design. Gender justice in practice requires not just protective laws, but enabling ecosystems.

Judicial Interpretation: Expanding the Horizon of Gender Justice

The Indian judiciary has often stepped in to convert formal equality into substantive justice.

- **Vishaka v. State of Rajasthan (1997)¹**: Before there was a law, the Supreme Court laid down guidelines against sexual harassment at workplace, recognizing that safe workplace is part of right to life under Article 21.
- **Municipal Corporation of Delhi v. Female Workers (Muster Roll) (2000)²**: The Supreme Court held that maternity benefit is not a bounty but a fundamental right to dignity. A woman who does daily wage work cannot be denied maternity leave.
- **Secretary, Ministry of Defence v. Babita Puniya (2020)³**: The Court granted permanent commission to women in Armed Forces, striking down stereotypes that women are physiologically weaker.
- **Anupama Sharma v. GNCTD (2022) & Deepika Singh v. CAT (2022)**: Courts have held that maternity cannot be a ground for denial of employment and that atypical family forms, including step-motherhood, are entitled to maternity benefits.
- **Supriyo v. Union of India (2023)**: though denying marriage equality: The dissenting opinions strongly affirmed that family is diverse and care work must be recognized beyond heteronormative marriage. These judgments show a shift from protectionist to transformative justice - where the court does not see women as weak needing protection, but as equals needing equal opportunity.

From Exclusion to Empowerment: A Roadmap for Gender Justice in Practice

Empowerment is not about giving power to women. Women already have power. It is about removing the barriers that stop them from exercising it. Based on feminist praxis and international best practices, five pillars are essential:

- **Shift the Burden: From Employer Liability to State Social Insurance**: India must move from an employer-funded maternity model to a social insurance model, as mandated by ILO Convention C183. In 58 countries, maternity benefits are paid through public funds or insurance. A contributory Maternity Fund, where employer, employee and government contribute, would remove hiring bias. Sweden's model of 480 days of shared parental leave, where 90 days are reserved for father, has increased female employment to 81%.⁴
- **Recognize, Reduce, and Redistribute Care Work The 5 R framework of ILO**: Recognize care work, Reduce drudgery through technology and infrastructure, Redistribute it between men and women and between family and state. This means: Mandatory crèches, not just on paper but with audits. Flexible work, work-from-home, and part-time work with same benefits. Universal paternity leave and making it non-transferable to encourage men to take it.
- **Intersectional Gender Budgeting**: India introduced Gender Budgeting in 2005-06, but less than 5% of the Union Budget is allocated as Gender Budget and most of it is concentrated in few ministries. True gender budgeting means auditing every scheme from a Dalit, Muslim,

¹ A.I.R. 1997 S.C. 3011

² 5 S.C.C. 707

³ 7 S.C.C. 469

⁴ International Labour Organization, Convention C183, Maternity Protection Convention, 2000.

disabled, and single woman's perspective. For example, does the Skill India Mission train women in high-paying trades like electrician and plumbing or only in tailoring and beauty?

- **Legal Literacy and Access to Justice:** Law on paper is useless if women do not know it. The Tele-Law scheme and Nyaya Bandhu app must be localized in dialects. More women judges, police officers, and support persons at police stations will make justice accessible.¹
- **Changing Narratives: Education and Media:** The deepest exclusion is in the mind. NCERT textbooks still show women as nurses and teachers, men as doctors and pilots. Social media often amplifies misogyny. Gender studies must be made compulsory from school level, not as an optional subject. Media must show women not as victims or goddesses, but as normal citizens - flawed, ambitious, and diverse.

Conclusion: Justice as a Daily Practice

Gender justice cannot be achieved by one law, one scheme, or one judgment. It is a daily practice. It is practiced when a family lets its daughter travel alone to Jaipur to study law. It is practiced when a law college has a functional Internal Complaints Committee. It is practiced when a male colleague says, "I will take paternity leave, you present the case." It is practiced when a panchayat listens to a Dalit woman sarpanch, not her husband. From exclusion to empowerment is not a straight line. It is a constant struggle against centuries of conditioning. True empowerment will come when a woman in India does not have to choose between being a mother and being a worker, between being safe and being free, between being respected and being powerful. The goal of gender justice is not to make women like men. The goal is to create a world where gender does not determine destiny. Let motherhood be a choice that is supported, not a penalty that is punished. Let womanhood be an identity that includes, not excludes. That is gender justice in practice.

Dr. B.R. Ambedkar-, "I measure the progress of a community by the degree of progress which women have achieved."



¹ Justice J.S. Verma Committee Report (2013)