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Gender Equality: A critical review

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Abstract

This article offers a broad overview of gender justice jurisprudence in India between 1993 and 2022. When analyzing some landmark judgments on women's rights in the intervening period, the authors find a court access to gender equality is uneven and sometimes contradictory. Despite significant progress in jurisprudence on gender equality and dignity, discrimination and inequality persist on a staggering scale. The article argues for the continued importance of subordinating equality jurisprudence to feminism critical inquiry that pays attention to the deeper structural and systemic issues that affect gender equality.

Keywords: Interestingly, overview, rulings, comparative

1. Introduction

Interestingly, many of the most important rulings on women's rights was not decided under Articles 14 and 15 of the Constitution but within the judicial discourse of gender justice. Those are decisions where The Court of Auditors did not have to deal with a comparative equality analysis. The differences between women and men – so significant in earlier jurisprudence rejection of equality claims - did not come into play. Instead they have courts focused on dignity and gender justice. At the same time, gender norms equality went beyond the narrower area of non-discrimination on the basis of gender protected by Article 15. Regardless of whether the Court has treated as a case of discrimination based on sex under Articles 14 and 15 or some broader rights to gender justice, a protectionist approach The court decision once seemed so entrenched, it has given way at times to a more substantive vision of women's equality. Courts repeatedly he distanced himself from the idea that women were fragile and in need of protection, a vision that has been used to justify differential and discriminatory treatment. Supreme Court landmark decision in 2020 according to Women's Army officers have the same rights as male army officers and the ability to lead combat position is among the most recent cases challenging gender stereotypes.⁸ In Babita Puniya, the court specifically rejected the government's argument that the restrictions on women were justified because of a special "operational pressure" or "inherent risks".⁹ The court rejected this idea that women were either the 'weaker' or 'inferior' sex. Instead, it applied "arguments based on men's physical strengths and weaknesses and women and on assumptions about women in the social context of marriage and the family do not constitute a constitutionally valid basis for denying equality opportunity for women officers." The court also rejected the government's the argument that the soldiers were not mentally prepared to take command female officer, to hold that such a view was based on "sexual stereotypes". They attribute specific roles to women and are therefore discriminatory.¹⁰

Yet, despite significant progress in gender jurisprudence equality and dignity, discrimination and inequalities persist in a staggering state scale. There is, of course, an inevitable gulf between the law on the books law in action. However, other factors also play a role in judicial approaches themselves. Despite advances in the judicial promotion of women rights, the discourse within which these rights were often protected remains problematic. First, the judicial approach to gender issues remains divided at best. The shift to a more substantive vision is anything but unanimous. Consider split decision of the Delhi High Court on whether it is marital rape exemption in the Indian Penal Code violates Articles 14, 15(1), 19(1) and 21 of the Constitution.¹¹ Justice Shakhder struck down this provision as unconstitutional on all these grounds, with consent at the heart of it sexual relations and cannot be a reason for distinguishing between forced sex outside of marriage and the same act committed in marriage. He it was clear to state that the act constituted rape.¹² Provisions failed the test of reasonable classification under Article 14. In fairness Shakhder, the right to individual autonomy and consent is primary to both in and out of marriage. In contrast, in 2022, Justice Hari Shankar upheld the constitutionality an exception in the sense that sex in a marital relationship is different from other relations if the former carries a legitimate anticipation of sex.

From this perspective, a woman's consent to sex has less weight in marriage. Therefore, he believed that this distinction was sufficient to constitute a reasonable difference under Article 14 and classify non-consensual sex in marriage as "not rape". This decision not only tells how dominant gender norms remain deeply embedded in judicial discourse but also how the model of formal equality enables and justifies differences which can disrupt gender equality. A split decision presents two views which persist in equality jurisprudence.

On an even darker note, there is the issue of the lack of a judiciary commitment to one's own past decisions, evident in the abysmal performance of the Supreme Court, when one of them stood accused of sexual conduct harassment. In 2019, an employee filed a sexual harassment complaint with the court and the intimidation of the then Chief Justice of India, Ranjan Gogoi, who sat in the opening panel to hear the complaint. Justice Gogoi denied all charges and claimed there was a "larger conspiracy to destabilize" the judiciary.¹³ In a subsequent hearing conducted by a three-judge panel during two dates the complainant was denied legal representation, warned not to do so talk to a lawyer and denied several of her requests: to have support person present; for the hearing to be conducted on the Vishaka pattern guidelines for sexual harassment in the workplace; have a video recording and a written record of her statements; call and cross-examine her witnesses; and request and submit relevant records and reports mobile numbers. Not only was the investigation conducted behind closed doors in secrecy, but there was also minimal documentation of the process. Finally the applicant submitted a widely circulated statement of her refusal to participate in a denial of due process proceeding. The former chief justice appeared before the panel to deny the charges. Next on the panel acquitted his Justice brothers and ruled that he did not exist the substance of the accusation. She further stated that the report of the committee formed part of an internal procedure and was not "likely to be carried out public". The court not only failed to adhere to the principles of its own decision in the judgment of Vishaka, but he also used the privileges and power of the Supreme.

The trial judges stand as without reproach and at the same time to question the character and speech of the complainant. Subsequent mass street protests against the disgraceful speech of the judges closing ranks to protect their own were met by the state by force water cannons and the deployment of rapid deployment force personnel and the Delhi Police. Several dozen protesters, including young people women, were injured and detained. The court sent a chilling message to women across the country that their complaints will not be heard they will remain suspect and their testimony will remain questionable. This report reproduces the very gender norms that the principle of gender equality is meant to challenge and resolve. The performance of the court had a detrimental impact on aspiring law students and a new generation of young people lawyers who have been trained and live in a world where there is gender equality not a favor or an exception - it's an entitlement. These two cases testify to the intransigence of dominant gender norms, the persistence of the myth that decades later, opposition persists as seen in the Triple Talaq decision.¹⁶

In 2017, Shayara Bano, a Muslim, filed a constitutional challenge as a wife and mother of two, supported by the Indian Muslim Women's Movement, against the practice of triple talaq. The complainant argued that the law had been broken

her fundamental rights to equality under Articles 14 and 15 of the Indian Act

The Constitution and its life and liberty under Article 21. The Supreme Court considered whether the practice of triple talaq was fundamental to Islam and protected by the fundamental right to freedom of religion at Articles 25 and 26. In short, the majority of the Court said no, threefold talaq was not necessary for religion, it was not protected within freedom of religion, and yes, it violated the equality rights of Muslim women.

Many hailed the ruling as a decisive victory for Muslim women's rights; others expressed concern about how the decision translates into politics agenda and discourse of the Hindu right.¹⁷ Throughout the judgment the Muslim woman is repeatedly referred to in protectionist language. Yippee represented as a patient victim to be saved either by the courts or the legislature. For example, the treatment of Muslim women under personal law is described as "oppressive" and "disgraceful". They exist repeated references to the "plight" and "suffering" of Muslim women who they are assumed to experience a worse fate than women of other faiths.

While in some contexts courts have moved away from such protectionist discourse regarding Muslim women and the opposition between their equality and religion, it doesn't have it.

Conclusion

Equality is not against the Hindu religion but is a part of it. Justice Nariman similarly approached the issue as one of equal access for women to the fundamental rights to freedom of religion: "fundamental rights of women between the ages of 10 and 50 to enter the Sabarimala temple is undoubtedly recognized in Article 25(1).²² This is not a case of pitting gender equality against the right to freedom of religion but reading both as equally guaranteed. Justice Chandrachud went further namely the adoption of a substantive approach to equality.²³

On the one hand, the case is a victory for Hindu women who did not reinforce the opposition between equality and religion. In many opinions, the court avoided the conflict between gender equality and the majority religion. But it is important to note the difference in treatment between Hindu and Muslim women and their respective religions. By repeating the exemplary nature of Hinduism in non-discrimination against women the right to worship the Hindu faith comes out unscathed – unlike the court treatment of Islam. The case also caused a significant backlash with a storm of protests against the government's efforts to enforce the decision, protests supported by the Hindu right.²⁴ While favoring equal treatment Muslim and Hindu women are not as enthusiastic about the treatment of Hindu women as well as Hindu men.

Unequal and sometimes contradictory approaches to gender equality are telling to the need to subject equality jurisprudence to feminist critical scrutiny. In returning to this topic 30 years after our original work, which remains obvious is that gender equality does not move in a linear and progressive direction. It remains a site of contention where visions of gender and equality compete to continue fighting alongside secularism and the religious majority and the rights of religious minorities. Feminist critical inquiry remains attentive to the deeper structural and systemic issues that affect gender equality, as well as how struggles for equality

are tied to normative ones understanding of gender, sex and the very identity of the postcolonial personation. It is for this reason that jurisprudence in the field of gender equality is needed to be constantly watched, visited and interrogated.

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