

**TRANSFORMATIVE CONSTITUTIONALISM AND GENDER
JUSTICE: REIMAGINING EQUALITY THROUGH LAW**- Dr. Narayan Narbat¹**Abstract**

Transformative constitutionalism envisions the constitution not merely as a legal document, but as a dynamic instrument for social change aimed at dismantling entrenched inequalities and advancing substantive justice. Within this framework, gender justice emerges as a critical site of transformation, challenging deeply embedded patriarchal norms and systemic discrimination. This paper examines how transformative constitutionalism can serve as a powerful tool to advance gender equality by moving beyond formal notions of equality toward substantive and intersectional approaches.

The study explores constitutional jurisprudence and legal reforms that have sought to address gender-based inequalities in both public and private spheres. It highlights the role of courts, legislatures, and civil society in interpreting constitutional guarantees—such as equality, dignity, and non-discrimination—in ways that respond to lived realities of marginalized genders. By analyzing landmark judicial decisions and progressive legal frameworks, the paper demonstrates how constitutional principles can be mobilized to challenge discriminatory practices, including those rooted in custom, religion, and socio-cultural norms.

At the same time, the paper critically engages with the limitations of transformative constitutionalism, particularly its uneven implementation and the persistence of structural barriers. It argues that legal transformation must be accompanied by broader socio-economic and cultural shifts to achieve meaningful gender justice. Special attention is given to intersectionality, recognizing that gender discrimination often overlaps with caste, class, sexuality, disability, and other axes of marginalization.

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Ultimately, the paper contends that transformative constitutionalism holds significant promise for advancing gender justice, but its success depends on sustained institutional commitment, inclusive interpretation, and active participation from marginalized communities.

Keywords: Transformative Constitutionalism, Gender Justice, Substantive Equality, Intersectionality, Constitutional Law, Social Transformation.

1. Introduction

Constitutions are not merely legal frameworks governing the organization of the state; they are instruments capable of shaping societal values and addressing systemic injustices. Transformative constitutionalism reflects this progressive vision, aiming to reconstruct social realities through law. In societies marked by deep-rooted inequalities, particularly gender-based discrimination, constitutional mechanisms can play a pivotal role in fostering justice and inclusion.

Gender justice remains a critical challenge despite constitutional guarantees of equality. Patriarchal norms continue to dominate socio-legal structures, limiting the realization of rights for women and gender minorities. This manuscript examines how transformative constitutionalism can bridge the gap between formal rights and lived realities.

2. Objectives of the Study

The primary objectives of this study are as follows:

1. To analyze the concept and scope of transformative constitutionalism in advancing social justice.
2. To examine the constitutional provisions related to gender equality and their interpretation.
3. To evaluate the role of judiciary, legislature, and civil society in promoting gender justice.
4. To explore the significance of intersectionality in understanding gender-based discrimination.
5. To identify key challenges in implementing transformative constitutional ideals.

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6. To propose recommendations for strengthening gender justice through constitutional mechanisms.

3. Research Methodology

This study adopts a doctrinal and analytical research methodology. It relies on secondary sources such as constitutional provisions, judicial decisions, statutes, scholarly writings, and policy documents. The analysis focuses on interpreting legal principles and evaluating their impact on gender justice.

4. Conceptual Framework: Transformative Constitutionalism

Transformative constitutionalism represents a shift from a static to a dynamic understanding of constitutional law. It emphasizes:

- Substantive equality over formal equality
- Social and economic justice as integral to rights
- Judicial activism in interpreting rights progressively
- Inclusion of marginalized voices in governance

This framework is particularly relevant in addressing gender inequality, as it acknowledges the structural nature of discrimination.

5. Understanding Gender Justice

Gender justice involves the elimination of discrimination and the creation of conditions that enable all individuals, regardless of gender, to realize their full potential. It includes:

- Equal access to opportunities
- Freedom from violence and discrimination
- Recognition of diverse gender identities
- Redistribution of resources and power

An intersectional perspective highlights that gender discrimination often overlaps with caste, class, and other forms of marginalization.

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Gender justice goes beyond the idea of formal equality to address the deep-rooted social, cultural, and institutional inequalities that shape people's lives. It seeks not only equal treatment under the law but also fairness in outcomes, opportunities, and lived experiences. In this context, transformative constitutionalism offers a powerful framework for rethinking how law can actively dismantle structures of discrimination and enable meaningful gender equality.

Transformative constitutionalism refers to the idea that constitutions are not merely legal documents that limit state power but are dynamic tools for social change. They aim to transform society by addressing historical injustices and creating conditions for substantive equality. This approach is particularly relevant in societies where gender hierarchies are entrenched in tradition, culture, and economic systems. Rather than accepting the status quo, transformative constitutionalism envisions the law as an instrument to reshape power relations and promote inclusion.

Traditional legal approaches to gender equality have often focused on formal equality—treating everyone the same regardless of their circumstances. While important, this approach fails to account for structural disadvantages faced by marginalized genders. For example, laws that appear neutral may still perpetuate inequality if they ignore unequal access to resources, education, or social power. Transformative constitutionalism challenges this limitation by emphasizing substantive equality, which recognizes differences in context and seeks equitable outcomes.

Reimagining gender justice through law requires a shift in how rights are interpreted and enforced. Courts play a crucial role in this process by adopting progressive interpretations of constitutional principles such as dignity, equality, and freedom. Judicial decisions can challenge discriminatory practices, expand the scope of rights, and set precedents that influence broader social change. However, transformative constitutionalism is not limited to the judiciary; it also involves legislative reforms, policy interventions, and active participation from civil society.

One key aspect of gender justice is intersectionality—the recognition that gender discrimination often overlaps with other forms of marginalization, such as caste, class, race,

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sexuality, and disability. A transformative approach acknowledges these intersecting identities and seeks to address multiple layers of disadvantage. For instance, policies aimed at empowering women must consider how different groups of women experience inequality differently. Without this nuanced understanding, legal reforms risk benefiting only a privileged subset while leaving others behind.

Another important dimension is the role of the state in actively promoting gender equality. Transformative constitutionalism demands that the state move beyond passive non-discrimination to take positive measures that correct historical imbalances. This can include affirmative action, gender-sensitive budgeting, and laws that address issues such as violence, workplace discrimination, and access to healthcare and education. Such measures recognize that neutrality is insufficient in the face of systemic inequality.

At the same time, reimagining equality through law also requires challenging social norms and cultural practices that perpetuate gender injustice. Legal reforms alone cannot achieve transformation unless they are accompanied by shifts in societal attitudes. Education, awareness campaigns, and community engagement are essential in creating an environment where gender equality is understood, accepted, and practiced. The law can act as a catalyst, but broader social change must follow.

Critically, transformative constitutionalism also emphasizes accountability and participation. Marginalized groups must have a voice in shaping the laws and policies that affect them. This participatory approach strengthens democracy and ensures that reforms are grounded in lived realities rather than abstract ideals. It also helps build trust in legal institutions, which is essential for the effective realization of rights.

In conclusion, understanding gender justice through the lens of transformative constitutionalism offers a comprehensive approach to achieving equality. It moves beyond formal guarantees to address structural inequalities, embraces intersectionality, and envisions law as a tool for social transformation. By reimagining equality in this way, legal systems can play a vital role in creating a more just and inclusive society where all individuals, regardless of gender, can thrive.

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6. Constitutional Provisions and Gender Equality

The Indian Constitution provides a robust framework for gender equality:

- **Article 14** – Equality before law
- **Article 15** – Prohibition of discrimination
- **Article 16** – Equality in public employment
- Directive Principles promoting welfare and justice

These provisions form the basis for transformative constitutional interpretation aimed at achieving substantive equality.

Constitutional provisions play a foundational role in advancing gender equality by embedding principles of fairness, dignity, and non-discrimination within a nation's legal framework. In democratic societies, the constitution is not only a governing document but also a moral compass that shapes laws, policies, and social norms. Gender equality, as a constitutional ideal, seeks to eliminate discrimination based on sex or gender and ensure equal opportunities for all individuals, regardless of identity.

One of the most important aspects of constitutional provisions related to gender equality is the guarantee of equality before the law and equal protection of the laws. This principle ensures that men and women are treated equally in the eyes of the legal system. It prohibits arbitrary discrimination and requires the state to justify any differential treatment. In many constitutions, this is explicitly stated, forming the basis for challenging discriminatory practices in courts.

In addition to general equality clauses, many constitutions include specific provisions that prohibit discrimination on the grounds of sex or gender. These provisions strengthen the legal framework by explicitly recognizing gender-based discrimination as unconstitutional. Such clauses empower individuals to seek legal remedies when their rights are violated and compel governments to review and amend laws that may be inherently biased.

Another significant constitutional feature is the provision for affirmative action or positive discrimination. Recognizing that historical and social disadvantages have placed women at a

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lower starting point in many societies, constitutions often allow the state to implement special measures to uplift women. These may include reservations in education, employment, and political representation. Such measures aim not to create inequality but to level the playing field and ensure substantive equality rather than mere formal equality.

Constitutions also often include directive principles or policy guidelines that encourage the state to promote gender justice. While these principles may not always be enforceable in courts, they guide lawmakers and policymakers in creating laws that support women's welfare. These include provisions for equal pay for equal work, maternity benefits, and protection against exploitation and abuse. Over time, these guiding principles influence legislation and judicial interpretation, contributing to a more gender-sensitive legal system.

The role of the judiciary is crucial in interpreting constitutional provisions related to gender equality. Courts often act as guardians of fundamental rights and have the authority to strike down laws or practices that violate constitutional guarantees. Through progressive interpretations, courts have expanded the scope of gender equality to include issues such as workplace harassment, reproductive rights, and protection against domestic violence. Judicial activism has thus played a key role in transforming constitutional promises into lived realities.

Despite strong constitutional provisions, achieving gender equality remains a challenge in many parts of the world. Social norms, cultural practices, and economic disparities often hinder the effective implementation of constitutional ideals. For example, practices such as child marriage, gender-based violence, and unequal access to education persist despite being unconstitutional. This highlights the gap between legal provisions and ground realities.

To bridge this gap, it is essential to complement constitutional safeguards with effective legislation, awareness programs, and institutional mechanisms. Governments must ensure that laws protecting women are properly enforced and that victims have access to justice. Education and public awareness campaigns are also necessary to challenge deep-rooted stereotypes and promote gender-sensitive attitudes.

Moreover, civil society organizations and activists play a vital role in advocating for gender equality and holding governments accountable. By raising awareness, providing legal

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support, and pushing for policy reforms, they help translate constitutional ideals into tangible outcomes. Media and public discourse also contribute by highlighting gender issues and shaping societal attitudes.

In conclusion, constitutional provisions form the backbone of gender equality by establishing legal standards and guiding state action. They provide a powerful tool for challenging discrimination and promoting justice. However, their effectiveness depends on implementation, societal acceptance, and continuous efforts by all stakeholders. True gender equality can only be achieved when constitutional ideals are reflected not just in laws, but in everyday life.

7. Role of Judiciary in Advancing Gender Justice

The judiciary has played a transformative role through progressive judgments. Courts have expanded the meaning of equality and dignity to include:

- Protection against sexual harassment
- Recognition of reproductive rights
- Decriminalization of non-heteronormative identities
- Protection of personal autonomy

Judicial interpretation has been crucial in bridging legislative gaps and advancing gender justice.

The judiciary plays a pivotal role in advancing gender justice by interpreting laws, safeguarding fundamental rights, and addressing systemic inequalities that affect individuals across gender identities. In many societies, where legislative and executive actions may lag or remain influenced by entrenched social norms, the courts often emerge as powerful agents of change. Through progressive judgments, judicial activism, and the enforcement of constitutional principles, the judiciary helps shape a more equitable social order.

One of the primary functions of the judiciary in promoting gender justice is the protection of fundamental rights. Courts ensure that laws and state actions align with constitutional guarantees such as equality before the law, non-discrimination, and dignity. When these

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rights are violated, individuals can seek judicial remedies. For instance, courts have repeatedly struck down discriminatory practices, whether in employment, inheritance, or personal laws, thereby reinforcing the principle that gender cannot be a basis for inequality.

Judicial interpretation has also been instrumental in expanding the scope of existing laws to better protect marginalized genders. In many cases, courts have adopted a purposive approach, interpreting laws in light of evolving societal values rather than sticking to rigid or outdated meanings. This dynamic interpretation has led to the recognition of rights related to workplace harassment, reproductive autonomy, and protection against domestic violence. By doing so, the judiciary not only fills legislative gaps but also pushes the boundaries of legal protection.

Public Interest Litigation (PIL) has further strengthened the judiciary's role in advancing gender justice. PIL allows individuals or organizations to approach courts on behalf of those whose rights may be violated but who lack the means or awareness to seek justice themselves. This mechanism has been particularly significant in addressing issues such as trafficking, sexual harassment, and the rights of transgender persons. Through PILs, courts have issued guidelines, mandated reforms, and held authorities accountable, thereby creating broader social impact beyond individual cases.

Another crucial aspect is the judiciary's role in challenging patriarchal norms and stereotypes. In many judgments, courts have explicitly recognized how cultural biases and gender stereotypes perpetuate discrimination. By calling out such biases, the judiciary not only delivers justice in specific cases but also sends a strong message to society. This normative influence helps reshape public attitudes and encourages institutions to adopt more inclusive practices.

The judiciary also acts as a watchdog over the implementation of gender-sensitive laws. Enacting progressive legislation is only the first step; effective enforcement is equally important. Courts monitor whether laws related to issues such as sexual harassment, child marriage, and gender-based violence are properly implemented. When authorities fail in their duties, the judiciary can intervene, issue directions, and ensure accountability.

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However, the role of the judiciary is not without challenges. Access to justice remains uneven, with marginalized groups often facing barriers such as cost, lack of legal awareness, and social stigma. Additionally, judicial decisions themselves may sometimes reflect existing societal biases. Therefore, continuous sensitization of judges and legal professionals is essential to ensure that the judiciary remains a truly progressive force.

In conclusion, the judiciary serves as a cornerstone in the pursuit of gender justice. By upholding constitutional values, interpreting laws progressively, enabling public participation through PILs, and challenging discriminatory norms, courts contribute significantly to building a more just and inclusive society. While challenges persist, a proactive and sensitive judiciary can continue to drive meaningful change and ensure that gender equality is not merely an ideal, but a lived reality for all.

8. Legislative and Policy Interventions

Legislative measures have complemented constitutional goals, including:

- Protection of Women from Domestic Violence Act, 2005
- Sexual Harassment of Women at Workplace Act, 2013
- Maternity Benefit Act

However, implementation challenges remain significant, limiting their effectiveness.

Legislative and policy interventions play a central role in advancing transformative constitutionalism and gender justice by reshaping legal frameworks to address deep-rooted structural inequalities. Transformative constitutionalism goes beyond formal equality, seeking to actively dismantle historical hierarchies and ensure substantive justice for marginalized groups, particularly women and gender minorities. In this context, law becomes not merely a tool of governance but an instrument of social change.

A key aspect of transformative constitutionalism is the shift from a narrow interpretation of equality toward a more substantive and inclusive understanding. Legislative measures must therefore address systemic discrimination embedded in social, economic, and cultural institutions. For instance, laws relating to equal pay, workplace harassment, reproductive

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rights, and inheritance have been crucial in recognizing and remedying gender-based disparities. However, the mere existence of such laws is insufficient; their design must reflect the lived realities of those they intend to protect. This requires participatory lawmaking processes that include voices from marginalized communities.

Policy interventions complement legislative action by operationalizing constitutional ideals. Gender-responsive budgeting, for example, ensures that public resources are allocated in ways that reduce inequality and promote empowerment. Similarly, policies that expand access to education, healthcare, and employment opportunities for women contribute to creating conditions in which formal legal rights can be meaningfully exercised. Without such supportive frameworks, constitutional guarantees risk remaining symbolic rather than transformative.

Another important dimension is the recognition of intersectionality in law and policy. Gender justice cannot be achieved in isolation from other axes of identity such as caste, class, religion, disability, and sexuality. Legislative frameworks must therefore be sensitive to multiple and overlapping forms of discrimination. For example, laws addressing violence against women must consider the heightened vulnerabilities faced by women from marginalized communities and provide tailored protections and remedies.

Judicial interpretation also interacts closely with legislative and policy interventions. Courts often play a pivotal role in expanding the scope of constitutional rights and holding the state accountable. However, for transformative constitutionalism to be effective, there must be coherence between judicial pronouncements and legislative action. Progressive judgments need to be followed by concrete policy measures and institutional reforms to ensure implementation.

Furthermore, accountability mechanisms are essential to ensure that laws and policies achieve their intended outcomes. Independent commissions, monitoring bodies, and civil society participation help track progress and identify gaps. Transparency and data collection are particularly important in assessing whether gender justice initiatives are effective and inclusive.

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Despite significant progress, challenges remain. Resistance from entrenched social norms, inadequate enforcement, and lack of political will can undermine transformative efforts. Therefore, continuous engagement, advocacy, and reform are necessary to sustain momentum.

In conclusion, legislative and policy interventions are indispensable to realizing the vision of transformative constitutionalism and gender justice. By moving beyond formal equality and addressing structural barriers, the law can serve as a powerful catalyst for social transformation. Achieving this requires not only progressive legal frameworks but also inclusive, responsive, and accountable governance that places equality at the heart of public life.

9. Intersectionality and Marginalized Identities

Intersectionality emphasizes that individuals experience discrimination differently based on overlapping identities. For example:

- Dalit women face caste and gender discrimination
- Transgender persons encounter legal and social exclusion
- Women with disabilities face additional barriers

Transformative constitutionalism must address these layered inequalities.

Intersectionality and marginalized identities are central to any meaningful project of transformative constitutionalism and gender justice. Transformative constitutionalism envisions the Constitution not merely as a static document, but as a dynamic tool for social change—capable of dismantling entrenched hierarchies and enabling substantive equality. However, this transformative potential can only be realized when the law acknowledges that oppression is not experienced in isolated categories such as gender, caste, class, sexuality, or disability, but through their intersections.

The concept of intersectionality highlights how systems of power overlap to create unique forms of disadvantage. For instance, the experiences of a woman from an upper caste background differ significantly from those of a Dalit woman, whose marginalization is

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shaped by both caste and gender. Similarly, queer individuals, persons with disabilities, and religious minorities encounter layered exclusions that cannot be addressed through a single-axis understanding of discrimination. A constitutional framework committed to gender justice must therefore move beyond formal equality—treating everyone the same—and instead adopt substantive equality, which recognizes and responds to these complex realities.

Transformative constitutionalism requires courts and lawmakers to interpret rights in ways that actively challenge structural inequalities. This involves recognizing that laws, even when neutral on their face, may perpetuate disadvantage. For example, labor laws that fail to account for unpaid care work disproportionately burden women, particularly those from economically marginalized communities. Similarly, access to education, healthcare, and employment is often shaped by intersecting identities, reinforcing cycles of exclusion.

In this context, reimagining equality through law demands a shift from individual-centric approaches to a more structural and contextual analysis. Courts must consider how historical injustices and social hierarchies influence present conditions. Affirmative action policies, anti-discrimination laws, and social welfare measures should be designed with an intersectional lens to ensure they reach those most marginalized. Without this, legal reforms risk benefiting only the relatively privileged within disadvantaged groups.

Gender justice, when viewed through an intersectional framework, expands beyond the binary understanding of gender. It includes the rights and lived realities of transgender, non-binary, and gender-nonconforming individuals, who often face compounded discrimination. Legal recognition of diverse gender identities is an important step, but it must be accompanied by broader socio-economic inclusion and protection from violence and stigma.

Moreover, intersectionality compels us to question whose voices are heard in the process of constitutional interpretation. Marginalized communities are often excluded from decision-making spaces, resulting in laws that do not fully address their needs. Participatory approaches to lawmaking, community engagement, and inclusive judicial reasoning are essential to ensure that transformative constitutionalism is grounded in lived experiences rather than abstract ideals.

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Importantly, intersectionality also reveals the limits of relying solely on legal reform. While the Constitution can provide a framework for equality, social transformation requires changes in attitudes, institutions, and power relations. Law can be a catalyst, but it must work in tandem with broader movements for social justice.

In conclusion, integrating intersectionality into transformative constitutionalism is not optional—it is essential for achieving genuine gender justice. By recognizing the complexity of marginalized identities and addressing the structural nature of inequality, the law can move closer to its transformative promise. Reimagining equality in this way ensures that no one is left behind, and that justice is not merely proclaimed, but truly realized in the lives of all individuals.

10. Findings of the Study

The study reveals the following key findings:

1. Transformative constitutionalism provides a strong theoretical framework for achieving gender justice, but its practical realization remains uneven.
2. Constitutional provisions in India are progressive, yet their implementation is hindered by socio-cultural barriers.
3. The judiciary has been instrumental in expanding gender rights, often compensating for legislative inaction.
4. Legal reforms alone are insufficient without parallel social transformation.
5. Intersectionality remains under-addressed in policy and legal frameworks.
6. Awareness and accessibility of legal rights among marginalized groups remain limited.

11. Challenges and Limitations

Despite progress, several challenges persist:

- Gap between law and practice
- Patriarchal societal norms
- Institutional inefficiencies

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- Limited representation of marginalized groups
- Over-reliance on judicial intervention

These challenges highlight the need for a comprehensive approach.

12. Recommendations

To strengthen transformative constitutionalism and gender justice, the following recommendations are proposed:

1. **Strengthening Implementation Mechanisms:** Ensure effective enforcement of existing laws through monitoring and accountability frameworks.
2. **Promoting Legal Awareness:** Conduct awareness campaigns to educate individuals about their rights.
3. **Judicial Sensitization:** Train judges and legal professionals on gender-sensitive approaches.
4. **Inclusive Policymaking:** Incorporate intersectional perspectives in lawmaking and policy design.
5. **Community Participation:** Encourage involvement of marginalized groups in decision-making processes.
6. **Educational Reforms:** Integrate gender equality and constitutional values into educational curricula.
7. **Institutional Reforms:** Improve access to justice through legal aid and simplified procedures.

13. Conclusion

Transformative constitutionalism offers a powerful vision for achieving gender justice by reimagining law as a tool for social change. While constitutional provisions and judicial interpretations have advanced gender equality, significant gaps remain in implementation and social acceptance.

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A holistic approach that combines legal reforms with socio-cultural transformation is essential. By embracing inclusivity, intersectionality, and active participation, transformative constitutionalism can move beyond ideals to tangible outcomes.

The realization of gender justice requires sustained commitment from all sectors of society. Only then can constitutional promises be translated into lived realities.

Footnotes

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