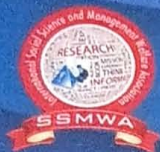


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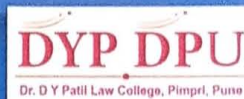
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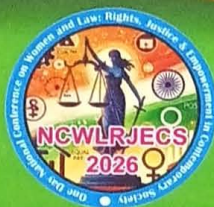


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Women and Law: Rights, Justice &
Empowerment in Contemporary Society**



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Bridging the Gap Between Constitutional Ideals and Contemporary Realities: A Human Rights Approach to Working Women

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Abstract :- This paper critically examines the disjunction between the constitutional commitment to gender equality and the lived realities of working women in India. Situated within a human rights framework and the paradigm of transformative constitutionalism, it argues that although the Indian Constitution enshrines equality, dignity, and non-discrimination as foundational democratic values, women's participation in the workforce remains structured by systemic inequality. Persistent wage disparities, occupational segregation, the feminization of informal and precarious labour, the disproportionate burden of unpaid care work, and pervasive workplace harassment reflect the structural limitations of formal legalism.

Drawing on normative political theory—particularly liberal egalitarianism, feminist anti-subordination theory, the capability approach, and intersectionality—the paper evaluates whether India's constitutional and statutory framework has advanced substantive equality. It analyses relevant constitutional provisions alongside key legislative instruments, including the Equal Remuneration Act, the Maternity Benefit Act, and the Sexual Harassment of Women at Workplace Act, as well as landmark judicial decisions that have expanded the jurisprudence of workplace dignity and autonomy.

The paper contends that notwithstanding a robust normative architecture, weak enforcement mechanisms, entrenched socio-cultural hierarchies, and structural economic barriers impede transformative change. It concludes that bridging the gap between constitutional ideals and lived realities requires a rights-based model of governance grounded in redistribution, recognition, representation, and institutional accountability—one that reimagines equality as a lived democratic practice rather than

merely a formal constitutional guarantee.

1.Introduction :- The status of working women constitutes a critical indicator of a democracy's commitment to equality and social justice. Although women's labour force participation has expanded globally, their experiences continue to reveal structural inequalities embedded in economic arrangements, social norms, and institutional practices. In India, this tension is particularly acute. The Constitution guarantees equality, dignity, and non-discrimination; yet the everyday conditions of working women frequently fall short of these normative commitments.

Women contribute across diverse sectors—including agriculture, informal labour, corporate employment, public administration, education, healthcare, and entrepreneurship. Nevertheless, their participation remains shaped by persistent wage gaps, occupational segregation, precarious employment conditions, and underrepresentation in leadership positions. The disproportionate burden of unpaid care work further constrains economic mobility and professional advancement. These realities demonstrate that access to employment alone is an inadequate measure of equality; the quality, security, and dignity of work are equally determinative.

A human rights framework offers a critical lens through which to assess this disparity. Equality is not merely aspirational but enforceable, encompassing equal remuneration, safe working conditions, maternity protection, and freedom from discrimination and harassment. Both international human rights instruments and the Indian constitutional framework impose positive obligations on the State to dismantle structural barriers that impede women's full participation in economic and public life.

The Indian Constitution articulates a conception of substantive equality that transcends formal neutrality. Through its fundamental rights and directive principles, it acknowledges historical disadvantage and authorizes affirmative action as an instrument of social transformation. This vision of transformative constitutionalism conceives the State not as a passive guarantor of rights but as an active agent of gender justice. Yet constitutional morality demands effective implementation. Legislation, institutional accountability, coherent policy design, and purposive judicial interpretation must operate in concert to translate normative guarantees into lived realities.

This paper argues that despite a comprehensive constitutional and statutory framework, the persistence of informalization, socio-cultural constraints, and weak enforcement mechanisms continues to undermine substantive equality for working women. By integrating normative political theory with constitutional and empirical analysis, the study assesses whether India's legal architecture has meaningfully transformed women's lived experiences. It contends that bridging the gap between constitutional ideals and contemporary realities requires rights-based governance grounded in accountability, intersectionality, and structural reform.

2. Normative Political Theory and the Human Rights Framework :- Normative political theory furnishes the evaluative framework through which laws and institutions are assessed for justice, legitimacy, and moral coherence. At its core lie questions of distributive fairness, equality, and the justification of power. The condition of working women thus becomes a critical site of inquiry, testing whether constitutional democracies genuinely fulfil their egalitarian commitments or merely articulate them in principle.

Within liberal egalitarian thought, particularly Rawls' conception of justice as fairness, social and economic inequalities are permissible only insofar as they benefit the least advantaged and operate under conditions of fair equality of opportunity. Transposed to labour

relations, this framework requires more than formal non-discrimination; it necessitates structural reforms that dismantle barriers restricting women's access to employment, advancement, and economic security. Feminist scholarship, however, has long criticized liberalism's emphasis on formal equality for neglecting deeply embedded gendered hierarchies within family structures, labour markets, and socio-cultural norms.

Feminist anti-subordination theory, alongside Nancy Fraser's tripartite model of redistribution, recognition, and representation, reorients the analysis toward substantive equality. Justice, from this perspective, demands the transformation of structural conditions that sustain disadvantage—including the unequal distribution of unpaid care work, occupational segregation, and women's exclusion from institutional decision-making. Equality must therefore be transformative in substance rather than merely procedural in form.

The human rights framework reinforces this substantive orientation by translating normative claims into binding legal obligations. It imposes positive duties upon the State to dismantle systemic discrimination and to secure conditions under which women can participate fully and equally in economic and public life. Complementing this approach, the capability framework evaluates justice in terms of effective freedoms—such as agency, economic independence, and participatory capacity—rather than the mere formal recognition of rights.

Taken together, these theoretical perspectives converge on a central constitutional premise: democratic legitimacy is inseparable from substantive gender justice. A constitutional order that proclaims equality while permitting entrenched structural disadvantage remains normatively deficient. Accordingly, the lived experiences of working women provide a decisive measure of whether constitutional democracy achieves transformative equality in practice rather than merely in rhetoric.

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3. Constitutional and Legal Framework in India :-

3.1 Constitutional Safeguards :- The Indian Constitution embodies transformative constitutionalism, seeking not only to establish governance structures but to restructure social relations grounded in justice, equality, liberty, and dignity. For working women, it functions both as a shield against discrimination and as an instrument of empowerment within a socio-political context historically shaped by patriarchy, caste hierarchy, and economic exclusion.

The Preamble guarantees social, economic, and political justice and equality of status and opportunity, affirming women's participation in public and economic life as essential to democratic legitimacy. The constitutional equality code—Articles 14, 15, and 16—forms the foundation of legal protection. Article 14 prohibits arbitrary state action and discriminatory employment practices. Article 15(1) forbids sex-based discrimination, while Article 15(3) authorizes affirmative action, recognizing that formal equality may perpetuate disadvantage where social conditions are unequal. Article 16 ensures equality of opportunity in public employment and rejects exclusionary or paternalistic service norms.

Article 21 further strengthens protections by expanding the right to life to include dignity, livelihood, privacy, and safe working conditions. Judicial interpretation has thus integrated workplace rights into constitutional jurisprudence.

The Directive Principles reinforce this framework. Articles 39(a) and 39(d) mandate adequate livelihood and equal pay for equal work; Article 39(e) protects workers' health; and Article 42 requires humane working conditions and maternity relief. Article 51A(e) imposes a fundamental duty to renounce practices derogatory to women's dignity. Constitutional amendments providing reservations for women in local self-government (Articles 243D and 243T) enhance political representation and participatory justice.

Collectively, these provisions establish a multidimensional framework linking legal equality, social justice, and political inclusion, imposing

affirmative obligations on the State to secure substantive gender equality.

3.2 Statutory Safeguards :- The constitutional guarantee of equality and dignity for working women is given effect through a set of comprehensive statutory provisions. While the Constitution articulates general normative values, statutory law gives effect to these guarantees by establishing enforceable rights, well-defined obligations for employers and the State, monitoring bodies, and remedial pathways. These safeguards are essential as they convert general constitutional values into specific, actionable rights that women can claim before administrative authorities and courts of law. In this regard, statutory safeguards constitute the "operational wing" of constitutional equality.

One of the earliest and most important statutory measures to address gender-based economic discrimination was the Equal Remuneration Act, 1976, which is now consolidated under the Code on Wages, 2019. This statute provides for equal remuneration to men and women for the same work or work of a similar character. This statute prohibits discrimination not only in the payment of wages but also in the recruitment process, thereby addressing the problem of occupational segregation. The "equal pay for equal work" formula enhances women's negotiating power in the labour market and aims to close the wage gap. The affirmation of economic equality as a statutory right reinforces the constitutional mandate under Article 39(d) and recognizes that economic independence is the core of gender justice.

The Maternity Benefit Act, 1961 (as amended in 2017) is another important legislative protection that engages with the nexus of gender, reproduction, and work. The Act provides for paid maternity leave, medical bonuses, nursing breaks, and protection against dismissal during pregnancy. The 2017 amendment that added paid leave up to twenty-six weeks was a major move towards recognizing care work as a social responsibility rather than a personal obligation. The provision requiring crèche facilities in establishments employing a certain number of workers is also a

move towards institutionalizing childcare support. However, there has been controversy surrounding the economic burden being placed entirely on the employer and the need for social insurance schemes. However, the Act gives tangible effect to Article 42 of the Constitution, which requires the State to ensure just and humane conditions of work and maternity protection.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 is a major milestone in workplace law. The Act, which is based on constitutional values enunciated in *Vishaka v. State of Rajasthan*, is broad in its definition of sexual harassment and considers it a violation of Articles 14, 15, and 21. The Act requires Internal Complaints Committees in workplaces and Local Complaints Committees at the district level to cover the unorganized sector. Notably, the Act places the burden on employers to develop preventive measures through training, awareness, and disclosure statements. The Act brings constitutional dignity into the governance of the workplace by institutionalizing grievance redressal and moving from punishment to prevention.

The recent harmonization of labour laws into comprehensive labour codes has also impacted the legal framework. The Code on Wages, 2019 ensures uniformity in wage-related protections and promotes gender non-discrimination in wages. The Occupational Safety, Health and Working Conditions Code, 2020 ensures protections in relation to working hours, health standards, and welfare facilities, including night shifts and hazardous occupations. The Code on Social Security, 2020 extends coverage to include certain unorganized, gig, and platform workers. This is a particularly significant move in light of the feminization of the gig economy. Extending social security benefits such as maternity benefits, insurance, and welfare schemes will help fill the protection gap that has existed for women who are not formally employed.

Apart from labour-specific legislation, other laws also influence women's working conditions. The Protection of Women from

Domestic Violence Act, 2005 recognizes economic abuse and protects women's rights to residence, maintenance, and protection orders. By addressing violence and financial dependence at home, it helps women remain in the workforce. Likewise, anti-trafficking laws, child labour prohibitions, and bonded labour regulations target forms of structural exploitation that disproportionately affect women and girls. Together, these laws acknowledge that workplace inequality is closely linked to broader social vulnerabilities.

Despite this broad legal framework, serious implementation challenges remain. A large number of Indian women work in the informal sector, domestic service, agriculture, or home-based industries, where enforcement is weak. Many women are unaware of their legal rights. Institutions such as labour inspectors and complaints committees often lack adequate training, independence, or resources. Fear of retaliation, job loss, social stigma, and financial dependence further discourage women from seeking remedies. As a result, the gap between legal provisions and lived realities continues to limit the transformative impact of these safeguards.

Although the statutory framework reflects progressive intent and aligns with constitutional principles, its success depends on strong governance. Improving labor inspections, digitizing grievance systems, ensuring time-bound inquiries, expanding legal awareness, and extending protections to gig and platform workers are essential steps. Better coordination between central and state governments, along with gender-sensitive budgeting and monitoring, can strengthen accountability.

In this sense, statutory safeguards act as a bridge between constitutional ideals and workplace realities. When properly implemented, they do more than regulate employment—they promote substantive equality, economic independence, and gender justice.

4. Empirical Reality and Contemporary Circumstances :- Despite constitutional and statutory protections, the lived experiences of

working women reveal persistent structural inequalities. Legal guarantees are necessary but insufficient to dismantle entrenched socio-economic hierarchies. The gap between formal and substantive equality is evident in labour participation, wage patterns, mobility, and workplace safety.

The gender wage gap remains significant, particularly in informal and semi-formal sectors where regulation is weak. Occupational segregation confines many women to low-paying and insecure work—domestic labour, agriculture, textiles, caregiving, and informal retail—while they remain underrepresented in high-paying sectors such as technology, finance, and senior management. Limited access to leadership positions further entrenches systemic inequality.

Women are disproportionately concentrated in informal employment, often lacking written contracts, stable wages, social security, and legal protection. Informality heightens vulnerability to exploitation, unsafe conditions, and arbitrary dismissal, especially for domestic, home-based, and gig workers.

Social norms intensify these disparities. The disproportionate burden of unpaid care work creates a “double burden,” restricting career advancement, mobility, and skill development. Economic inequality is therefore closely linked to cultural expectations.

Workplace safety remains precarious. Although laws prohibit harassment and unsafe conditions, enforcement gaps persist. Inadequate complaint mechanisms and fear of retaliation deter reporting. Marginalized groups—including migrant, Dalit, tribal, and disabled women—experience compounded discrimination.

These realities demonstrate that equality in law does not ensure equality in practice. Gender discrimination intersects with caste, class, region, education, and employment status, producing layered disadvantages. Reform must therefore be grounded in empirical realities rather than formal guarantees alone.

5. Governance Responses: Assessment :- In recent decades, governance efforts to support working

women have expanded. Legislative reforms, welfare schemes, labour codes, gender budgeting, and awareness initiatives reflect growing recognition of gender justice as a policy priority. Institutions such as Internal Complaints Committees, labour inspectorates, and women's commissions monitor compliance, while courts have strengthened protections through progressive interpretation.

Targeted programs—including skill development, entrepreneurship support, financial inclusion, and self-help groups—aim to enhance economic participation. Gender-responsive budgeting and digital grievance systems seek to improve transparency.

However, implementation remains uneven. Administrative constraints, inadequate funding, bureaucratic delays, and weak monitoring undermine effectiveness. Coordination across governmental levels is often insufficient.

Certain measures retain a protectionist orientation. Restrictions justified on safety grounds, such as limits on night work, may inadvertently restrict opportunity rather than reform conditions. Grievance systems can be slow and inaccessible, creating barriers to justice.

Transformative governance requires integrated and accountable mechanisms, stronger enforcement, greater representation of women in decision-making, and intersectional policy design. Technology and community-level awareness initiatives can strengthen implementation. Despite progress, structural reform and socio-cultural change remain essential.

6. Case Laws and Landmark Judgments :- Judicial interpretation has been central in translating constitutional principles into enforceable rights. Indian courts have increasingly treated equality as a substantive commitment rather than mere formal symmetry.

In **Vishaka v. State of Rajasthan (1997)**, the Supreme Court recognized sexual harassment as a violation of constitutional rights and relied on international human rights standards to frame guidelines. This decision marked a significant step in recognizing workplace harassment as structural

discrimination.

In **Air India v. Nergesh Meerza (1981)**, the Court questioned discriminatory service conditions for women employees, signaling a move away from gender stereotypes.

In **Municipal Corporation of Delhi v. Female Workers (2000)**, maternity benefits were extended to casual and daily wage workers, emphasizing social justice and expanding protections to vulnerable women.

In **Anuj Garg v. Hotel Association of India (2007)**, the Court struck down restrictions barring women from working in establishments serving alcohol, rejecting protective paternalism and affirming women's autonomy.

In **Shayara Bano v. Union of India (2017)**, the invalidation of instant triple talaq reinforced the principle that constitutional equality overrides discriminatory practices.

Collectively, these judgments reflect a shift toward a more structural and intersectional understanding of equality.

7. Towards Rights-Based Policymaking :- Bridging the gap between ideals and reality requires a rights-based approach to policymaking. This framework treats women as rights-holders and the State as accountable for delivering measurable outcomes.

Ensuring fair equality of opportunity requires more than formal access—it demands structural reform. Policies must enhance real capabilities, not just legal entitlements. An intersectional perspective is essential, as gender discrimination often overlaps with caste, class, religion, disability, and migration status.

Effective policymaking should focus on three key areas :-

- **Redistribution:** reducing economic inequality through wage parity, social security, and investment in care infrastructure.
- **Recognition:** challenging stereotypes and discriminatory norms.
- **Representation:** ensuring women's meaningful participation in decision-making bodies.
- **Gender-responsive budgeting, digital inclusion,**

skill development, and leadership opportunities are practical tools for empowerment. At the same time, technology-driven solutions must remain transparent and participatory to avoid reinforcing existing inequalities.

- A rights-based approach ultimately requires structural transformation, not symbolic reform.

8. Conclusion :- India's constitutional and statutory framework reflects a profound normative commitment to gender equality, grounded in liberal egalitarian theory, the capability approach, feminist anti-subordination thought, and the doctrine of transformative constitutionalism. Through its guarantees of dignity, non-discrimination, and substantive equality, the constitutional order aspires not merely to formal parity but to structural redress of historical disadvantage. In design and intent, it provides a robust normative and institutional foundation for advancing gender justice in the sphere of work.

Yet empirical realities reveal a persistent disjunction between constitutional promise and social practice. Enduring wage disparities, the feminization of informal and precarious labour, unequal care burdens, and entrenched socio-cultural hierarchies underscore the limits of formal legal reform. Equality proclaimed in text does not automatically translate into equality experienced in fact. As contemporary theories of justice emphasize, gender justice requires the simultaneous pursuit of redistribution (economic restructuring), recognition (dignitary and cultural transformation), and representation (meaningful participation in decision-making processes).

Bridging this normative-empirical divide demands more than incremental policy adjustments. It requires institutional accountability, intersectional and evidence-based policymaking, participatory governance structures, and an explicit shift from protective paternalism toward empowerment-oriented reform. The State's constitutional obligation extends beyond non-discrimination to the active dismantling of structural barriers that constrain women's agency and autonomy in the labour market.

Ultimately, the legitimacy of a constitutional democracy is measured not by the eloquence of its guarantees but by its capacity to convert rights into lived freedoms. The realization of gender justice for working women depends upon sustained structural transformation—within economic institutions, governance frameworks, and social norms—so that equality, dignity, and opportunity cease to be aspirational ideals and become concrete, everyday realities.

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