

# From Global Standards to Marginalized Spaces- Gender Justice Worldwide and Among Tribal Communities in India

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## **Abstract:**

Gender justice remains a core objective of international human rights discourse, with global legal instruments and national frameworks evolving to ensure equality, autonomy, and dignity for all genders. While countries have increasingly adopted progressive gender-responsive laws ranging from Iceland's shared parental leave and Spain's comprehensive anti-violence mechanisms to Australia's corporate equity mandates implementation often reveals structural and cultural limitations. This paper critically examines international benchmarks in gender equality and explores their relevance and limitations in diverse socio-legal contexts. Parallely, the paper turns to the often-overlooked experiences of tribal women in India, who face intersectional discrimination based on gender, indigeneity, and socio-economic marginalization. Despite constitutional protections and affirmative action policies, tribal women continue to encounter systemic barriers in accessing justice, education, healthcare, and political representation. By juxtaposing global gender frameworks with the lived realities of tribal women in India, this research highlights the disconnect between normative legal ideals and ground-level impact.

The study employs a comparative methodology, drawing from international conventions, landmark judgments, and ethnographic accounts to analyze how gender justice is conceptualized and operationalized across different settings. Ultimately, the paper argues for a more inclusive and intersectional approach to gender justice one that recognizes both global aspirations and localized struggles, especially in the case of indigenous and marginalized communities.

**Keywords:** Gender Justice; International Legal Frameworks; Tribal Women; Intersectionality; Human Rights.

## **1. Introduction**

Gender justice, broadly understood as the fair and equitable treatment of individuals regardless of gender, is central to both international human rights discourse and national legal commitments. It encompasses not only the elimination of overt discrimination but also the dismantling of systemic inequalities that limit access to rights, resources, and opportunities—particularly for marginalized and underrepresented groups. At the global level, numerous legal instruments and policy frameworks aim to promote gender equality through progressive legislation and institutional reforms. However, the translation of these global standards into local realities remains uneven.

In India, the principles of gender justice are deeply embedded in the Constitution and reinforced through an evolving body of statutes and judicial decisions. Yet, entrenched patriarchal norms, socio-cultural hierarchies, and institutional deficiencies continue to obstruct the achievement of substantive equality. This disparity is especially stark in the case of tribal women, who experience layered marginalization due to their gender, socio-economic status, and indigenous identity. Often excluded from mainstream gender discourse, tribal communities face unique challenges that require tailored approaches rather than generalized policy solutions.

## **2. The Role and Reach of Gender-Responsive Legislation**

Law plays three interrelated roles:

- an identifying role, recognizing specific gendered harms such as domestic violence and unequal pay;
- a symbolic role, signaling social norms and expectations, such as the criminalization of marital rape or recognition of same-sex marriage; and
- a pluralistic role, addressing the needs of diverse identities within the category of 'women' including Dalit, disabled, LGBTQ+, and rural populations.

In India, while the legal system often embraces the first role, it struggles with the symbolic and pluralistic aspects, especially in the face of regressive social norms and gender-blind policy design.

## **3. Constitutional and Legislative Commitments**

The Indian Constitution contains several provisions establishing equality and non-discrimination, such as Articles 14, 15, 16, and 21. Additionally, the Directive Principles of State Policy in Articles 38, 39, 42, 243D, and 243T affirm social justice, economic equity, and women's political participation. Complementary legislation includes the Hindu Succession (Amendment) Act of 2005, the Dowry Prohibition Act of 1961, the Maternity Benefit Act (1961, amended in 2017), the Protection of Women from Domestic Violence Act of 2005, the Sexual Harassment of Women at Workplace Act of 2013, and the Transgender Persons (Protection of Rights) Act of 2019.

## **4. Comparative Models and Global Benchmarks**

Gender-responsive laws worldwide, such as Iceland's paid parental leave scheme, which promotes shared caregiving between parents through gender-neutral policies; Spain's integrated gender-based violence reforms, which combine legal, social, and economic support mechanisms; and Australia's Workplace Gender Equality Act, which mandates corporate reporting on gender equity. India can draw lessons from these models, particularly through the use of gender audits, dedicated legislative indices, and mainstreaming gender considerations across all domains—not just in family or sexual violence law.

Gender justice remains a central concern of modern legal systems, with nations across the globe adopting diverse strategies to achieve substantive equality. While India has taken several progressive steps, a review of international models reveals opportunities for deeper reform. This paper examines three leading global frameworks: Iceland's gender-neutral parental leave scheme, Spain's integrated response to gender-based violence, and Australia's corporate gender equality legislation and explores how these benchmarks can inform and improve Indian policy and legislative design.

Iceland's gender equality framework stands out for its transformative parental leave policy. Under its legislation, each parent is entitled to three months of non-transferable paid leave, with an additional three months that may be shared between them. This approach encourages a more equitable distribution of

caregiving duties and challenges the traditional association of child-rearing with women alone. The gender-neutral nature of the law effectively incentivizes male participation in caregiving, contributing to workplace equality and shifting cultural expectations surrounding parenting roles.<sup>1</sup> India, by contrast, mandates 26 weeks of paid maternity leave under the Maternity Benefit (Amendment) Act, 2017, but offers no corresponding paternity leave at a national level.<sup>2</sup> The absence of shared caregiving provisions entrenches gender stereotypes and exacerbates discrimination against women in employment.

Spain presents another model of holistic legal reform through its comprehensive framework addressing gender-based violence. The Organic Law 1/2004 on Integrated Protection Measures against Gender Violence created specialized courts with jurisdiction over both criminal and civil matters relating to violence against women. These courts streamline victim support by consolidating legal proceedings and coordinating protective and welfare measures. Furthermore, Spain's recent Organic Law 10/2022, popularly known as the "Only Yes Means Yes" law, redefines sexual offenses by requiring affirmative consent and removes the distinction between assault and abuse. In 2024, the Spanish government allocated €160 million to regional governments to enhance enforcement and support services. Compared to this integrated framework, India's Protection of Women from Domestic Violence Act, 2005<sup>3</sup>, and related criminal provisions are often fragmented and lack coordinated institutional support. While fast-track courts and helplines have improved response times, a comprehensive, survivor-centered ecosystem is still in development.

Australia's Workplace Gender Equality Act 2012 offers another instructive model. The Act mandates that organizations with more than 100 employees report annually on key gender equality indicators, including gender composition, pay equity, and flexible work practices.<sup>4</sup> This mandatory reporting fosters transparency and places the onus on companies to self-assess and reform internal disparities. Non-compliant organizations can face reputational damage and be excluded from government contracts.<sup>5</sup> In 2024, official data indicated a marginal reduction in the gender pay gap, underscoring the impact of regulatory oversight.<sup>6</sup> India currently lacks equivalent legislation mandating comprehensive gender disclosures in the private sector. The Companies Act, 2013, requires limited diversity disclosures, and the mandate for women directors remains minimal.<sup>7</sup> Voluntary initiatives, such as the Gender Equality Index by BSE, are steps in the right direction but need broader adoption and legal backing.

India has indeed taken laudable steps, including the passage of the Constitution (One Hundred and Sixth Amendment) Act, 2023, which reserves one-third of seats in the Lok Sabha and state assemblies for women.<sup>8</sup> However, this electoral reform must be complemented by gender-sensitive legislation across domains—not just limited to safety or political representation. India can greatly benefit from introducing

<sup>1</sup> *Parental Leave in Iceland*, The Icelandic Centre for Gender Equality, available at: [https://www.government.is/media/velferdarraduneyti-media/media/acrobat-enskar\\_sidur/Parental\\_Leave\\_in\\_Iceland\\_Bringing\\_the\\_Fathers\\_in.pdf](https://www.government.is/media/velferdarraduneyti-media/media/acrobat-enskar_sidur/Parental_Leave_in_Iceland_Bringing_the_Fathers_in.pdf)

<sup>2</sup> Maternity Benefit (Amendment) Act, No. 6 of 2017, § 5(3), India Code.

<sup>3</sup> The Protection of Women from Domestic Violence Act, No. 43 of 2005, India Code.

<sup>4</sup> Workplace Gender Equality Act 2012 (Cth) s 13, Austl.

<sup>5</sup> Workplace Gender Equality Agency, Reporting Requirements, Available at: <https://www.wgea.gov.au/about/what-we-do/reporting>

<sup>6</sup> Reuters, *Gender Pay Gap Narrows Marginally in Australia*, (Nov. 20, 2024), <https://www.reuters.com/world/asia-pacific/gender-pay-gap-narrows-marginally-australia-government-report-shows-2024-11-20/>

<sup>7</sup> Companies Act, No. 18 of 2013, § 149(1), India Code.

<sup>8</sup> The Constitution (One Hundred and Sixth Amendment) Act, 2023, India Code.

mandatory gender audits of public policy, similar to Sweden's "Gender Mainstreaming in Government" (GMIG) model, and by developing gender impact assessments for new laws and programs.

India's efforts to advance gender justice have laid a critical foundation, but comparative insights from Iceland, Spain, and Australia reveal significant gaps and opportunities. Integrating global best practices such as shared parental leave, comprehensive violence prevention systems, and mandatory corporate disclosures can accelerate India's trajectory toward gender equity. Institutionalizing gender audits, developing legislative indices to evaluate inclusivity, and mainstreaming gender perspectives in all areas of governance are necessary next steps.<sup>9</sup> The global experience makes clear that legal reform, when backed by institutional innovation and societal engagement, can transform the lives of women and other marginalized genders.

## 5. Judicial Activism and Constitutional Morality

Indian constitutional jurisprudence has played a vital role in shaping and advancing the discourse on gender rights. The Supreme Court of India has progressively interpreted the guarantees of equality, liberty, and dignity enshrined in the Constitution to challenge entrenched norms and promote inclusivity. Through a series of landmark judgments, the Court has not only addressed specific instances of gender discrimination but also established normative frameworks that continue to influence policy and societal attitudes.

One of the earliest judicial milestones was *Vishaka v. State of Rajasthan* (1997), where the Supreme Court responded to the absence of statutory protections against workplace sexual harassment by formulating binding guidelines under Articles 14, 15, 19(1)(g), and 21 of the Constitution.<sup>10</sup> The case arose from the brutal gangrape of Bhanwari Devi, a social worker attempting to prevent a child marriage in Rajasthan. Recognizing the need for immediate redressal mechanisms, the Court laid down what became known as the "Vishaka Guidelines," which required all workplaces to establish complaint committees and internal safeguards. These guidelines served as the foundation for the subsequent enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013<sup>11</sup>. The case exemplifies how the judiciary can fill legislative voids and protect gendered experiences within evolving societal contexts.

Another major ruling came in *Shayara Bano v. Union of India* (2017), where the Court declared the practice of "talaq-e-biddat" (instant triple talaq) unconstitutional.<sup>12</sup> The Court's majority held that the practice violated fundamental rights guaranteed under Article 14 and Article 21, striking a balance between religious freedom and gender justice. While the judgment was grounded in constitutional morality, it also responded to the lived realities of Muslim women who faced arbitrary and unilateral divorces without due process or recourse. The case marked a departure from previous judicial reluctance to interfere with personal laws and established that gender equality cannot be sacrificed at the altar of religious orthodoxy.

In *Navtej Singh Johar v. Union of India* (2018), the Court went further by decriminalizing consensual same-sex relations between adults, thus reading down Section 377 of the Indian Penal Code.<sup>13</sup> The five-

<sup>9</sup> Tribal women have a significant role in India's transformation. Available at: <https://www.hindustantimes.com/ht-insight/gender-equality/tribal-women-have-a-significant-role-in-india-s-transformation-101659968704115.html>

<sup>10</sup> *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241 (India).

<sup>11</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013.

<sup>12</sup> *Shayara Bano v. Union of India*, (2017); AIR 2017 SC 4609 (India).

<sup>13</sup> *Navtej Singh Johar v. Union of India*, (2018); AIR 2018 SC 4321 (India).

judge constitutional bench unanimously recognized that LGBTQ+ individuals are entitled to the full spectrum of constitutional rights, including dignity, privacy, and freedom of expression. The Court emphasized that majoritarian morality cannot dictate individual liberties and that constitutional morality must prevail. This decision not only advanced gender and sexual autonomy but also served as a historic moment for intersectional justice in India's constitutional framework.

Later that year, the Court in *Joseph Shine v. Union of India* (2018) invalidated Section 497 of the Indian Penal Code, which criminalized adultery but only penalized men for engaging in extramarital affairs with married women.<sup>14</sup> The Court found the provision to be archaic, paternalistic, and violative of women's dignity and autonomy under Article 21. Chief Justice Dipak Misra noted that the law treated women as property of their husbands and denied them agency. In decriminalizing adultery, the Court signaled a broader shift towards individual autonomy and equal partnership within marriage, rather than adherence to Victorian moral codes.

In *Indian Young Lawyers Association v. State of Kerala* (2019), commonly referred to as the Sabarimala case, the Court struck down the practice that barred women of menstruating age from entering the Sabarimala temple in Kerala.<sup>15</sup> A 4:1 majority held that the ban violated Articles 14, 15, 17, and 25, reiterating that constitutional guarantees must transcend traditional customs that perpetuate exclusion. The Court recognized the intersectional discrimination faced by women, especially in the context of caste and religious practice, and emphasized the need to dismantle barriers rooted in purity-pollution taboos. While implementation remains contentious, the symbolic power of the judgment lies in affirming women's right to religious participation and bodily autonomy.

Together, these judgments underscore the transformative potential of constitutional interpretation in challenging deep-seated patriarchal norms. They reflect the evolving judicial understanding of gender justice—not merely as formal equality but as substantive empowerment. The courts have demonstrated that legal institutions can be powerful arenas for renegotiating social hierarchies, affirming that the Constitution is a living document capable of responding to the moral and ethical claims of marginalized groups.

## 6. Gender Equality and activism for Tribal Women in India

India's tribal communities, often referred to as Adivasis—a term that signifies “original inhabitants” are the country's indigenous population with unique cultural, linguistic, and ecological identities that set them apart from the mainstream society. As per the 2011 Census, approximately 104 million people belong to these communities, accounting for 8.6% of India's total population. These communities are spread across 30 states and union territories, with a significant presence in central and northeastern India.<sup>16</sup>

The empowerment of tribal communities, particularly tribal women, and the promotion of gender equality are critical for the inclusive development of these marginalized groups. However, tribal women face numerous obstacles, including limited access to education and healthcare, inadequate control over economic and productive resources, and exposure to various forms of violence and discrimination.<sup>17</sup> Despite their vital contributions especially in the management of minor forest produce they often remain

<sup>14</sup> *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39 (India).

<sup>15</sup> *Indian Young Lawyers Ass'n v. State of Kerala*, AIR ONLINE 2018 SC 243 (India).

<sup>16</sup> Manna, A. (2024). Empowerment and Gender Equality Among Tribal Women. *Integrated Journal for Research in Arts and Humanities*, 4(1), 11–17. <https://doi.org/10.55544/ijrah.4.1.2>

<sup>17</sup> Soni, A. (2019). Status and Empowerment of Central Indian Tribal Women. *Indian Journal of Research in Anthropology*, 5(1), 5–9. <https://doi.org/10.21088/ijra.2454.9118.5119.1>



excluded from decision-making and political representation. While government policies at different levels aim to support their development, implementation gaps persist. Additionally, the patriarchal norms both within the broader society and at the household level continue to restrict the autonomy and agency of tribal women. As a result, there is a pressing need for affirmative action and inclusive development strategies that guarantee equal rights and opportunities for tribal women.

Empowerment and gender equality are interconnected and foundational concepts for achieving a just and thriving society. Empowerment involves expanding the choices, skills, and opportunities of individuals and groups particularly those who have been historically marginalized. On the other hand, gender equality is about ensuring equal rights, responsibilities, and opportunities for all individuals, regardless of gender<sup>18</sup>. Together, these principles are not only essential for realizing human rights but also serve as critical enablers of economic growth, social equity, and environmental balance.

Tribal women, predominantly residing in remote and underdeveloped regions of central and northeastern India, are often deprived of essential infrastructure and public services like roads, electricity, clean water, sanitation, education, healthcare, and communication facilities. They are also highly vulnerable to natural calamities such as floods, droughts, and landslides, which threaten their safety and livelihoods. The educational attainment of tribal women remains far below the national average. The 2011 Census reported a literacy rate of 49.35% among tribal women, significantly lower than the national female average of 65.46%.<sup>19</sup> High dropout rates among tribal girls, especially at secondary and higher education levels, are caused by factors like poverty, cultural practices, language barriers, early marriages, domestic duties, and lack of accessible and quality education.

Despite these challenges, tribal women contribute richly to their communities through traditional knowledge and practices in areas such as farming, herbal medicine, crafts, and local sports. They also play a crucial role in preserving indigenous cultures, languages, and traditions. However, certain cultural customs can pose barriers to their progress. Some tribal societies adhere to patriarchal and patrilineal norms, which marginalize women in matters like inheritance, property ownership, marriage decisions, and leadership roles. Harmful practices such as child marriage, witch-hunting, dowry, and polygamy are still prevalent in certain areas, further undermining the dignity and rights of tribal women.

These interconnected social, economic, and cultural challenges influence the overall empowerment and equality of tribal women. They limit their access to essential resources—whether material, educational, or technological and hinder their participation in governance, economic activities, and even family decision-making. Moreover, such constraints negatively impact their health, safety, emotional well-being, and self-worth.

## **7. Conclusion**

Achieving gender justice requires more than universal legal standards, it demands an inclusive, context-sensitive approach that addresses the specific challenges faced by marginalized groups, including tribal women in India. While international frameworks provide valuable benchmarks, their effectiveness is limited without ground-level engagement and cultural sensitivity. This paper underscores the need for intersectional strategies that bridge the gap between global norms and local realities. Empowering tribal

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<sup>18</sup> Goyal, A. (2021, March 8). Tribal women have a significant role in India's transformation. *The Economic Times*. Available at: <https://economictimes.indiatimes.com/blogs/et-commentary/tribal-women-have-a-significant-role-in-indias-transformation/>

<sup>19</sup> Kumar, R., & Singh, A. K. (2014). Empowerment of tribal women through livelihood development. *International Journal of Humanities and Social Science Invention*, 3(11), 1-6.

women through participatory governance, legal literacy, and tailored social interventions is essential. Only by acknowledging and addressing these layered inequalities can gender justice evolve from an aspirational goal into a lived reality for all.