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Q12

Explain the constitutional perspectives of Gender Justice with the help of relevant Constitutional Provisions and case laws.

UPSC Civil Services Mains 2023 · GS II · 15 marks · Indian Constitution

Indian Constitution - historical underpinnings, evolution, features, amendments, significant provisions and basic structure.

Core demand of the question

- Explain the constitutional perspectives of Gender Justice
- Use relevant constitutional provisions and case laws

Revision summary

Articles 14, 15(1) and 16 bar sex discrimination; Article 15(3) allows special provisions for women.

Directive Principles 39 and 42 and duty 51A(e) set the social-economic frame.

Articles 243D and 243T reserve seats for women in local bodies; the 106th Amendment extends reservation to Assemblies and the Lok Sabha after delimitation.

Vishaka, Independent Thought, Joseph Shine, Shayara Bano, Vineeta Sharma and Babita Puniya are the main case-law pillars.

The constitutional perspective is formal plus substantive equality.

Introduction

Gender justice in the Constitution is both equal citizenship and special measures to correct historic disadvantage. The text in Part III, Part IV and the local-government chapters, read with the Court's equality cases, is the perspective; social practice is still catching up.

Body

Equality and non-discrimination

- Article 14 guarantees equality before the law and equal protection of the laws; gender justice uses it against arbitrary sex-based classifications.
- Article 15(1) bars discrimination on grounds only of sex; Article 15(3) expressly allows special provisions for women and children, which is the constitutional basis of affirmative action, not a contradiction of equality.
- Article 16 guarantees equality of opportunity in public employment; reservations and special recruitment for women rest on this cluster with Article 15(3).
- Article 15(4) and later 15(5) and 15(6) address caste and educationally weaker groups; women inside those groups need the sex and the caste lenses together.

Directive Principles, duties and political space

- **Article 39(a) and 39(d)** direct equal right to livelihood and equal pay for equal work; **Article 42** directs just and humane conditions of work and maternity relief.
- **Article 51A(e)** makes it a fundamental duty to renounce practices derogatory to the dignity of women.
- **Articles 243D and 243T** reserve seats for women in Panchayats and municipalities, which is the strongest textual guarantee of political presence below the State legislature.
- The Constitution (One Hundred and Sixth Amendment) Act, 2023, inserts reservation for women in the Lok Sabha and State Assemblies, to operate after a census and delimitation; it is the Union-level completion of a demand that the 73rd and 74th Amendments had already met locally.

Personal liberty, dignity and the family

- **Vishaka v. State of Rajasthan (1997)** used **Articles 14, 15, 19 and 21**, and CEDAW, to lay down workplace sexual-harassment guidelines until the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- **Independent Thought v. Union of India (2017)** read down the marital-rape exception for wives between 15 and 18, aligning the Indian Penal Code with the Protection of Children from **Sexual Offences Act, 2012**.
- **Joseph Shine v. Union of India (2018)** struck down the adultery offence as treating the woman as property of the husband.
- **Shayara Bano v. Union of India (2017)** held instant triple talaq unconstitutional; Parliament then enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019.
- **Vineeta Sharma v. Rakesh Sharma (2020)** held that a daughter is a coparcener by birth under the Hindu Succession (Amendment) Act, 2005, which is statute read in a gender-just way.
- **Secretary, Ministry of Defence v. Babita Puniya (2020)** and **Lt. Col. Nitisha v. Union of India (2021)** opened permanent commission and struck facially neutral but discriminatory army criteria.
- **Indian Young Lawyers Association v. State of Kerala (2018)** on Sabarimala used freedom of religion against exclusion of women of a certain age; review remains pending, which shows that gender justice and essential religious practice still collide.

Perspective

- Formal equality (same rule for all) is the **Article 14** starting point; substantive equality (**Article 15(3)**, reservations, maternity, harassment law) is the second.
- The Constitution therefore does not treat gender justice as charity. It treats it as equal citizenship plus correction of structural sex inequality.

Flow diagram

Gender justice -> Arts 14 15 16
 Gender justice -> Art 15 3 special provisions
 Gender justice -> Arts 243D 243T
 Arts 14 15 16 -> Vishaka Joseph Shine Shayara Bano
 Art 15 3 -> Vishaka Joseph Shine Shayara Bano

Conclusion

Constitutional gender justice is **Articles 14, 15(1) and 15(3), 16, 39, 42, 51A(e)** and local-body reservation, applied in Vishaka, Shayara Bano, Joseph Shine, Vineeta Sharma and the military-commission cases. The perspective is equal citizenship with special measures, not a choice between the two.

Facts & figures

Article 15(3)

Permits special provisions for women and children; the textual hook for many gender-specific laws and quotas.

Articles 243D and 243T

Reservation of seats for women in Panchayats and municipalities, including offices of chairpersons.

Vishaka v. State of Rajasthan (1997)

Laid down binding sexual-harassment guidelines until the 2013 POSH Act.

Joseph Shine v. Union of India (2018)

Struck down **Section 497** IPC (adultery) as violating equality and dignity of women.

Constitution (106th Amendment) Act, 2023

Provides reservation for women in the Lok Sabha and State Legislative Assemblies, to take effect after census and delimitation.

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