

RECOGNIZING STRUCTURAL GENDER DISCRIMINATION IN INDIAN PUBLIC SECTOR INSTITUTIONS: A JUDICIAL PERSPECTIVE

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Abstract

Despite the Constitutional guarantees of equality under the Constitution of India, women face deep-rooted structural discrimination in public sector workplaces. While explicit discrimination isn't as common, indirect discrimination remains a persistent, under-recognized challenge, existing in forms of policies, practices, and institutional cultures. Mere formal equality is inadequate in dealing with the structural barriers, such as gendered promotion tracks, caregiving penalties, discriminatory service rules, and workplace cultures that devalue women's contributions. Courts have often stepped in to expose and address these forms of structural bias, especially through a series of progressive judgments. This paper tracks the judicial journey of addressing indirect structural discrimination starting from *Air India v. Nargesh Meerza* (1981) to *Secretary, Ministry of Defence v. Babita Puniya* (2020). Together, these judicial milestones lay the foundation for understanding how constitutional interpretation has evolved to recognize gender bias not just in overt policies but also in the subtle, everyday practices that continue to disadvantage women in public employment. The authors, through this paper, also explore the contemporary manifestations of structural discrimination in Indian public institutions, like rigid working hours and lack of support for caregiving, gendered expectations in promotion and appraisal systems, unequal access to decision-making roles, and inadequate grievance redressal systems for harassment and bias. The paper aims to expose that while judicial recognition of indirect discrimination has advanced, the same doesn't prove true in the case of administrative reform, which still to this day remains inconsistent. The final section of the paper proposes concrete remedial strategies, including gender audits in public offices, affirmative action in promotions and robust enforcement of anti-discrimination guidelines. Through a legal lens, the paper asserts that realizing true equality for women in public employment requires more than protective-laws, it demands structural change, catalyzed and sustained by an active, empathetic, and reform-oriented judiciary.

Keywords: Discrimination; Employment; Equality; Judiciary; Women.

Introduction

The concept of structural discrimination is discriminatory policy that appears to be neutral yet has significantly negative effects on a particular group of people ((ESCWA), 1999). Structural discrimination is different from the active intention that direct discrimination requires: it functions deviously, almost invisibly, in the regulations, norms and interstices of systems to keep minority groups subordinated without explicit malice. Fred Pincu refers to this as discrimination by impact instead of intent, where the policy ordains and the culture encourages the rule-maker at the expense of groups with a disadvantage (Fred L. Pincus, 2000).

In "A Theory of Gendered Organizations", Joan Acker critically problematizes the standard approach of treating organizations to be gender-neutral (Acker, 1990). She maintains that the forms and practices of organizations are deliberately gendered to replicate male domination (Acker, 1990). Work organizations historically were male defined and constructed; men still predominate in power; and evaluations of performance and commitment are still influenced by male expectations. For example, reviews can penalize women for taking maternity leave while rewarding men for fatherhood. This bias is anchored in the "male breadwinner" model, which historically absolves men of taking care of anyone but themselves, and requires women to put home care above all else (Acker, 1990). While gendered roles have changed, many institutions continue to be based on these archaic ideas. Accordingly, women's caregiving duties disproportionately disadvantage them in the workplace evaluation, promotion, and retention.

Examples from Indian public sector institutions show how this structural discrimination plays out. In Prayagraj, Uttar Pradesh, there are police stations where male and female workers use the common toilet (*Anjali Pandey & Ors. v. State of U.P.*, 2021);(India Legal Live , 2021). Appearing neutral or just infrastructural, this design is too gender-blind to consider women's need for privacy, safety and hygiene. This lack of gender-appropriate facilities means that many women limit the amount of water that they drink, which leads to a range of health problems, psychological discomfort and undermines women's participation and effectiveness, especially in women's agricultural field work. It's symbolic of how institutions default to design language that supports male preferences, at the expense of female workers' dignity and safety.

Another one is in the form of the aftermath of the Maternity Benefit (Amendment) Act, 2017 – a law that extended the duration of paid maternity leave to 26 weeks in order to safeguard working mothers (Maternity Benefit (Amendment) Act, 2017). Contrary to the spirit of the law, a 2024 Aon “Voice of Women” study found “maternity penalty” experience is common, and this means women return to the workplace after maternity leave to demotions, performance ratings effectively downgraded, and leadership opportunities withheld (Voice of Women 2024 Report, 2024). The penalties emerge not from set rules but from systemic designs of the workforce to reward people for ascension up promotion ladders, for instance, or to evaluate people on the amount of “product” they produce that inadequately accommodate caregiving pauses. This is because the structural failing it represents punishes women for performing their biological and social functions and perpetuates the fiction that women of childbearing age are less dedicated workers and the pool of female workers shrinks.

Just as water governance practices in India structure an embedded form of gender injustice. Women, who are the traditional household water managers, spend hours every day fetching paltry supplies of water, such as in India’s Rajasthan where one in five rural women walk at least 2.5 kilometers to obtain the life-saving liquid (Uplifting Women’s Role in Water Governance , 2025). India’s water policies at a national level (1987, 2002, 2012) are centred on the ownership of water being tied to the ownership of land; however, women do not own land as a consequence of patriarchal succession practices (Uplifting Women’s Role in Water Governance , 2025). Consequently, although women are the main water end users and managers, they are not party to water access rights and management decisions. While WUAs promote participation, women are dissuaded from participating by logistical and cultural barriers, and when they do, they appear to be sidelined. Therefore, the policy structure institutionalizes and perpetuates exclusion in the name of neutrality.

These instances demonstrate that India’s public structures, infrastructure and policies open to all, but apparently neutral, continue to systematically discriminate against women. Dealing with this means acknowledging that such structural discrimination is embedded: normalised, unseeable, hard to challenge through the law (since it lacks overt intent). Such small or incomplete reforms are also easily possible without a nuanced redesign that recognises the world as pervasively gendered.

Constitutional Guarantees and the Limits of Formal Equality

The Constitution of India enshrines ambitious principles to ensure gender equality, particularly in public employment. Fundamental Rights such as Articles 14, 15, and 16 guarantee equality before the law, prohibit discrimination based on sex, and ensure equality of opportunity in public employment, respectively (Constitution of India, arts. 14, 15, 16). Article 15(1) specifically forbids sex-based discrimination, while Article 15(3) empowers the State to enact special provisions for women and children, including protective workplace measures (Constitution of India, arts. 15 (1), 15 (2)). These constitutional provisions are complemented by Directive Principles, such as Article 39(a), which mandates equal livelihood rights for men and women, and Article 39(d), which requires equal pay for equal work (Constitution of India, arts 39 (a), 39 (d)).

These constitutional mandates form the foundation for various statutory enactments governing workforce rights, including the Companies Act, 2013; Equal Remuneration Act, 1976; Maternity Benefit Act, 1961; Factories Act, 1948; and Employees’ State Insurance Act, 1948 (Companies Act); (Equal Remuneration Act); (Maternity Benefit Act, 1961); (Factories Act, 1948, 1948); (Employees’ State Insurance Act, 1948). Together, these laws have advanced women’s participation in public institutions and safeguarded them from overt discrimination. For instance, under the Companies Act, by November 2024, around 11.6 lakh women directors serve across public and private companies (Affairs, 2024) (Employment, 2021). The Maternity Benefit Act facilitated nearly 50,000 maternity claims in 2020, amounting to ₹383 crore in payouts. The Equal Remuneration Act and the Code on Wages continue to protect wage parity (Equal Remuneration Act); (Code on Wages , 2019).

Despite these gains, the laws largely address explicit and direct discrimination and often overlook deeper structural barriers women face in the workplace. For example, although the Companies Act mandates at least one woman director on boards, public sector undertakings (PSUs) have seen female representation decline from 94.4% of listed PSUs having women directors in FY18 to 67.1% in 2025 (News Bite App, 2025). Tokenistic appointments, where women lacking genuine decision-making influence are appointed due to proximity to promoters, reflect superficial compliance rather than structural reform. Similarly, while maternity laws support working mothers, many experience a “maternity penalty” upon their return: 75% report career setbacks like lower pay, stalled promotions, and poorer performance evaluations, reflecting systemic flaws in workforce design that fail to accommodate caregiving breaks (Voice of Women 2024 Report, 2024); (Economic Times, 2024).

This gap in efficacy stems from reliance on a formal equality framework, which assumes identical treatment achieves equality. However, formal equality overlooks historic and structural disadvantages, failing to address effects that disproportionately impact women. Scholars argue that substantive equality, as embraced by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), better addresses this by focusing on equal outcomes rather than mere equal treatment (Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979). Substantive equality recognizes women’s historic disadvantages and mandates state action to dismantle systemic barriers. For example, a “no career breaks for promotion” policy might appear neutral, but disproportionately harms mothers who take maternity leave or fulfil caregiving roles. Substantive equality encourages

scrutiny of policies' impacts, exposing embedded structural discrimination masked by formal compliance. The judiciary plays a crucial role by interpreting constitutional guarantees through this substantive lens, allowing for recognition and remedies against impact-based discrimination.

In India's public sector context, entrenched hierarchies and outdated promotion norms rooted in gender stereotypes continue to hinder genuine equality. While constitutional provisions and laws have produced significant gains, their limitations in confronting structural challenges reveal the need for robust judicial interpretation and systemic reforms. The judiciary's evolving approach toward recognizing structural discrimination is critical for meaningful progress beyond formal equality towards substantive justice for women in the public workforce.

Milestones in Judicial Recognition of Structural Discrimination

C.B. Muthamma v. Union of India (*C.B. Muthamma v. Union of India*) is one of the earliest cases where the Indian judiciary recognized structural discrimination against women in public employment, even if it did not explicitly use that term. Muthamma, a senior Indian Foreign Service officer, was overlooked for promotion due to her gender and challenged rules requiring women to seek government permission before marriage and allowing forced resignation if domestic duties interfered with official work. Justice V.R. Krishna Iyer noted that "sex prejudice against Indian womanhood pervades the service rules even a third of a century after Freedom," recognizing the problem as embedded in the service rules rather than isolated individual discrimination. Though the petition was dismissed due to the repeal of the rules and Muthamma's promotion, the court directed a review to remove gender bias, famously stating, "We dismiss the petition, but not the problem." This case marked an early recognition of systemic barriers in public sector employment for women.

However, judicial engagement with systemic bias has been inconsistent. In *Air India v. Nergesh Meerza* (*Air India v. Nergesh Meerza*), discriminatory service rules allowed the discretionary early retirement of women hostesses at age 35 and termination upon marriage within four years or first pregnancy. The court struck down the discretionary power and pregnancy termination as arbitrary and unreasonable under Article 14, but failed to frame these rules as discriminatory under Articles 15 and 16. By upholding the retirement age and marriage-related termination as reasonable, the Court reinforced stereotypes tying women's worth to youth, beauty, and marital status, legitimizing structural discrimination instead of challenging it. Feminist critiques argue for reading Articles 14, 15, and 16 together to recognize how such rules produce structural disadvantage and for substantive equality to address their real impact.

The 1996 *Savita Samvedi v. Union of India* (*Savita Samvedi v. Union of India*) case marked judicial evolution in recognizing structural disadvantage created by neutral-seeming rules. Samvedi, a married Indian Railways employee, was denied regularization of her quarters after her father's retirement because married daughters were excluded from the family under railway policies, assuming they belonged to their husbands' families. The court found the marital status distinction irrational and discriminatory under Articles 15 and 16, rejecting stereotypical assumptions about women's familial roles and acknowledging how such policies perpetuate structural gender disadvantage.

In *Vishaka v. State of Rajasthan* (*Vishaka v. State of Rajasthan*), the court tackled structural discrimination related to workplace sexual harassment. The absence of specific legal protections institutionalized women's vulnerability at work, where power imbalances often led to harassment with little recourse. The Court held this absence unconstitutional under Articles 14, 15, 19(g), and 21 and laid down guidelines mandating complaint committees, awareness, and victim protections. This landmark judgment explicitly adopted a substantive equality approach, recognizing that women require effective conditions to truly enjoy workplace equality, not merely formal rights.

Conversely, *Anuj Garg v. Hotel Association of India* (*Anuj Garg v. Hotel Ass'n of India*) highlighted how purportedly protective laws can perpetuate discrimination. Section 30 of the Punjab Excise Act prohibited women from working where liquor was served, justified as protecting women and societal morality. The Court struck down this provision as violating Articles 14 and 19(1)(g), recognizing that continued exclusion based on outdated stereotypes ignored women's agency and perpetuated structural disadvantage by restricting professional opportunities unnecessarily.

Recent military service cases further illustrate evolving judicial recognition of structural discrimination. In *Babita Puniya v. Union of India* (*Babita Puniya v. Union of India*) and its Supreme Court appeal *Secretary, Ministry of Defence v. Babita Puniya* (*Secretary, Ministry of Defence v. Babita Puniya*), the court addressed gender bias in army commissioning policies. Women short service commission officers were denied permanent commissions and leadership roles based on stereotypes of weakness, family obligations, and social norms. The Supreme Court found these exclusions reflected indirect and systemic discrimination violating Articles 14 and 15(1), rejecting "romantic paternalism" that justified protective but restrictive policies. The Court emphasized that constitutional equality requires overcoming societal biases, not reinforcing them, and treating women as autonomous individuals rather than a class defined by fragility or domestic roles.

The evolution continued in *Col. Nitisha v. Union of India* (*Col. Nitisha v. Union of India*), where the Court scrutinized the Indian Army's evaluation criteria for women officers post-Puniya. The same medical fitness and annual confidential reports (ACRs) standards used for men, disadvantaged women whose earlier careers lacked equal access to training, combat postings, and leadership roles. The Court recognized these "neutral" criteria locked in past discrimination, perpetuating it, and held the policy systemically discriminatory under Articles 14 and 15(1). This reaffirmed the importance of substantive equality, which requires dismantling historical and systemic barriers, not merely formal equal treatment.

From C.B. Muthamma in 1979 to Col. Nitisha in 2021, Indian courts have gradually shifted from viewing gender discrimination as arbitrariness to recognizing deep patriarchal and structural norms reinforcing systemic disadvantages. They now critically assess how neutral-seeming policies perpetuate historical inequalities and use substantive equality principles to dismantle such barriers. Despite this progress, judicial engagement remains uneven, underscoring the ongoing struggle for genuine equality in the public sector.

Contemporary Challenges in Public Sector Gender Equality

While the judiciary has progressively evolved in recognizing gender-based structural discrimination in public employment, legal victories alone aren't enough to dismantle the deeply ingrained barriers. Structural discrimination survives in subtler forms and is rooted in administrative and legal frameworks and workplace cultures. Most of the time, issues of structural discrimination are not even raised as a legal matter that needs judicial opinions since they are so normalized as a professional obstacle rather than a constitutional wrong.

One of the most pressing issues at hand at the moment is the persistence of inflexible work structures and gendered posting norms in the public sector. Women face a double-bind problem in an issue like this. Women are often denied posting on paternalistic grounds like “unsafe,” “too tough,” “not suitable for women”. And sometimes women themselves avoid such postings. These choices are usually due to a lack of institutional support (childcare, transport, safe housing). Either way, they are penalized in the area of promotion and are confined to less prestigious jobs. These can be substantiated through data like that of 30% of UPSC entrants being women, but only 19% of DMs nationwide are women. In states like Haryana (4%) and Bihar (8%), there are barely any appointments of women as DMs (The Print, 2023). Former IAS officer Renuka Viswanathan stated that women are usually seen as ill-suited for a 24/7 job since they are expected to bear domestic and family responsibilities even by their seniors at work (Citizen Matters, 2018). When the government service lowers the representation of women in those areas. According to data analyzed by India Spend, as of 3 January 2022, there were only 14 per cent (13) women appointed as secretaries out of a total of 92 secretaries to the Centre, and only two chief secretaries who are women (The Print, 2023).

While provisions under Maternity Benefit (Amendment) Act, 2017 exist in order to provide for support to working moms by mandating paid maternity leave for government employees to 26 weeks and crèche facilities in establishments with more than 50 employees, it remains a fact that instances where women notice delayed promotions after availing long maternity leave and poor compliance with the rules under the Maternity Benefit Act, as per 2018 report prepared by VV Giri National Labour Institute, on matter of childcare facilities (Annual Report 2018-2019, 2018-2019). It found that 75% of the employers in the formal sector interviewed said that there are no crèche facilities provided in their establishments (most of which had more than 50 employees) (The Hindu, 2023). There is a gap in implementation though we have laws governing the same. Another issue is the exclusion of men from the caregiving role under the legal frameworks. Paternity leave in central government services is a mere 15 days, compared to 26 weeks for women (Central Civil Service Rules, Rule 551 (A), 1972). This exclusion further perpetuates the stereotype that only women are meant for the caregiving role, giving a leeway to further establish this structural disadvantage. Further, even with the SC intervention issuing directives for governments and employers to ensure the proper constitution of Internal Complaints Committees (ICCs) and timely action, the lack of awareness, fear of retaliation, ineffective ICCs and slow bureaucratic processes persists nonetheless in both public and private sectors alike (Aureliano Fernandes v. State of Goa).

What emerges from these few of many examples is the reflection of how the workforce structure is built on a male-centric model. Work achievements are measured through uninterrupted service, 24/7 availability, and field postings, benchmarks that systematically disadvantage women, since the system still views caregiving as a women's primary responsibility. At the same time, workplace safety frameworks remain weak in implementation, lack functional mechanism and is treated as a formality. This explains why legal victories alone cannot dismantle the systemic barriers to gender equality in public employment. Judicial and legislative interventions can declare principles of equality and mandate reforms and provide for legal frameworks, but they cannot alone solve the issue of structural discrimination in a field that is entrenched with stereotypes, exclusion of women and treatment of safety protocols as formality. Thus without executive will and structural redesign, judicial victories risk remaining symbolic, rather than providing for equality for women in public employment.

Conclusion and Suggestions

Over the past few decades, judicial interventions have played a crucial role in advancing gender equality in the public sector. Early judicial pronouncements primarily focused on ensuring *formal equality* the principle that men and women should be treated the same under the law. Landmark judgments underscored the elimination of overt discrimination and upheld the rights of women to equal opportunity in employment, pay, and promotions. However, more recent judicial thinking reflects a nuanced understanding that formal equality, while necessary, is not sufficient. The courts have increasingly recognized the concept of *substantive equality*, which requires attention to structural barriers and systemic biases ingrained within institutions. This shift to structural sensitivity means acknowledging that identical treatment can perpetuate disadvantage if underlying inequalities are ignored. Judicial rulings have thus begun emphasizing affirmative action measures, reasonable accommodations, and policies that address the real-world contexts of women in public employment.

Experience shows, however, that in practice, promoting gender equality reform in the public sector remains a real challenge, in spite of legal obligations and court orders. Big problem? "Administrative momentum" of those public institutions. This state of inertia is reflected in the institutional will to implement court directions on the ground. Measures to reform are often stymied by policy resistance and bureaucratic red tape: there is everything from appeal to budget provisions and procedural intricacies to go right down to the rusted patriarchal attitudes. Such reluctance can also be linked to a fear of challenging current power structures, as well as of incurring new bureaucratic responsibilities.

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