International Journal of Enhanced Research in Educational Development (IJERED)
ISSN: 2320-8708, Volume 14, Issue 2, March-April

Gender Justice, NEP-2020 and the Indian Constitution: A Critical Analysis

Dr. Komal Dahiya[1], Dr. Khushboo Natholia[2]

[1,2]Bennett University

ABSTRACT

India's National Education Policy 2020 (NEP-2020) envisions an inclusive, gender-sensitive education system. It explicitly recognizes girls and transgender students as socio-economically disadvantaged groups (SEDGs) and establishes a Gender-Inclusion Fund (GIF) to promote their access. NEP provisions call for gender-balanced admissions, gender-sensitive curricula, teacher sensitization and strict anti-harassment rules in educational institutions. These measures align with constitutional guarantees of equality (Articles 14–15, 21A) and affirmative action for women (Art.15(3)). For example, NEP's GIF reflects Article 15(3), which explicitly permits special provisions for women and children. However, NEP-2020 is policy (not law) and its alignment with constitutional duties is debated. Critics note gaps: NEP is silent on extending the Right to Education (RtE) Act (Article 21A) beyond age 14, potentially undermining the free-education mandate. School rationalization ("mergers") may close small rural schools, disproportionately affecting girls' access. Moreover, NEP's grouping of all vulnerable categories as "SEDGs" (over 80% of population) risks obscuring separate constitutional categories (SC/ST, women, etc.).

This report critically examines NEP-2020's gender provisions against constitutional guarantees. It reviews relevant articles like Art. 14, Art. 15(1) , Art 15(3), Art. 21, Art. 21A, and Art. 51A, directive principles, and landmark Supreme Court judgments (*Vishakha* 1997, *NALSA* 2014, *Shayara Bano* 2017, *Navtej Singh Johar* 2018) on gender justice. The study will try to find out whether NEP 2020 contains laudable gender-inclusive language (e.g. GIF, anti-harassment rules), its implementation framework may fall short of constitutional ideals unless backed by legislation, adequate funding and accountability. The report concludes with policy recommendations (e.g. formalizing NEP gender measures into law, strengthening community engagement, monitoring mechanisms) and an implementation roadmap.

INTRODUCTION

NEP-2020 repeatedly frames education as "equitable and inclusive" and names gender equity a cross-cutting priority. Its preamble to equity stresses that "no child should be left behind" due to socio-cultural identity. In the foundational curriculum, NEP mandates teaching core human values including "gender equality" from early years. Section 6.7 explicitly acknowledges "the special and critical role that women play in society," and thus recommends that programs for socio-economically disadvantaged groups "should be especially targeted towards girls". NEP thus foregrounds girls as a priority subgroup within SEDGs.

A landmark NEP initiative is the Gender-Inclusion Fund (GIF). The policy states that the Government will constitute a "Gender-Inclusion Fund… to build the nation's capacity to provide equitable quality education for all girls as well as transgender students". This Fund will support states in overcoming local barriers to girls' and transgender students' participation (e.g. sanitation, bicycles, stipends). Importantly, NEP explicitly names *transgender* children alongside girls, reflecting recognition of gender identity issues. The Fund's goal is "to eliminate any remaining disparity in access to education… for children from any gender or other socioeconomically disadvantaged group".

NEP also calls for infrastructural and safety enhancements for girls. It urges building free boarding facilities (JNV-standard hostels) in remote areas "with suitable arrangements for the safety of all children, especially girls". Existing Kasturba Gandhi Balika Vidyalayas (residential schools for disadvantaged girls) are to be strengthened and expanded. These measures aim to raise girls' attendance and retention. In higher education, NEP includes explicit targets: governments should "enhance gender balance in admissions to HEIs". All universities and colleges are to "ensure sensitization of faculty, counsellor, and students on gender-identity issues" and strictly enforce "no-discrimination and anti-harassment rules". NEP thus envisions gender sensitization training and zero-tolerance of harassment in campuses.

Government commentary underscores these commitments. A Ministry of Education press release (July 2023) explains that NEP-2020 "focuses on Equitable and Inclusive Education" and treats gender as a cross-cutting priority. It details ongoing girl-education schemes under *Samagra Shiksha 2.0*: free uniforms/textbooks for girls up to grade VIII, women teachers and additional teachers in remote schools, stipends to girls with disabilities, separate girls' toilets, teacher sensitization programs, gender-sensitive textbooks, etc. The MOE notes NEP's Gender Inclusion Fund and *KGBV* upgrades as key steps toward girls' education.

In sum, the official NEP text and commentary repeatedly emphasize gender equity. Quotes from NEP 2020 (our citations) include:

- *"Education to girls is the best way to increase the education levels for… future generations"*, with inclusion policies "especially targeted towards girls".
- Establishment of a *Gender-Inclusion Fund* "especially for girls and transgender students" to support girls' access (toilets, transport, incentives).
- An aim "to eliminate any remaining disparity in access to education for children from any gender".
- Safe boarding facilities and strengthened girl-only schools (KGBVs) for disadvantaged girls.
- Mandates in HEIs for gender balance in admissions, gender-identity sensitization training, and strict anti-harassment enforcement.

These provisions are substantial. The NEP even instructs curricula to teach "respect for all persons, empathy, tolerance, human rights, gender equality". Overall, NEP-2020 casts education as a tool for "gender equality in education". The critical question is how these policies line up with India's constitutional guarantees and jurisprudence on gender justice.

Constitutional and Legal Guarantees on Gender Equality

The Indian Constitution enshrines equality and non-discrimination based on sex. Article 15(1) states that *"The State shall not discriminate… on grounds only of… sex"*. Article 15(3) qualifies that nothing prevents the State "from making any special provision for women and children". Thus, affirmative measures like scholarships or quotas for girls are constitutionally sanctioned. Article 14 guarantees equality before law, and Article 16 similarly provides equal opportunity (important for future education/job access). Article 21 grants every person the right to life and liberty – interpreted broadly by the courts to include dignity, privacy, and substantive equality (*Puttaswamy v. Union of India*, 2017). Article 21A (86th Amendment, 2002) explicitly establishes the *right to free and compulsory education* for children 6–14 years, reflecting the Directive Principle to provide education.

Directive Principles also support education and gender. Article 39(e)–(f) and Article 46 urge the State to promote welfare of children and weaker sections. Article 51A(g) (Fundamental Duty) enjoins citizens to "renounce practices derogatory to the dignity of women." Thus, constitutional vision strongly favors gender justice.

Key **statutes** reflect these mandates: the Right to Education Act, 2009 implements Art. 21A for 6–14 year-olds. The *Protection of Women from Domestic Violence Act* (2005), *Maternity Benefit Act* (2017, amended), the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act*, 2013 (POSH Act) and various reservation laws (e.g. Panchayat Raj reservation for women) operationalize gender equality. India also ratified CEDAW in 1993, bringing international obligations (although not self-executing, courts reference it).

Supreme Court jurisprudence has progressively enforced gender rights as fundamental rights. Notable rulings include:

- Vishakha v. State of Rajasthan (1997) – In the absence of anti-harassment law, the Court issued binding guidelines against sexual harassment at work. It explicitly held that sexual harassment violates Articles 14, 15, 19(1)(g) and 21. The Court declared that "gender equality includes protection from sexual harassment and the right to work with dignity, which is a… basic human right". These *Vishakha* guidelines remain embedded in law (POSH Act 2013 codified them). Thus, constitutional equality demands proactive measures to ensure safe environments for women at educational or workplace institutions.

- Shayara Bano v. Union of India (2017) – Struck down Muslim women's unilateral *triple-talaq* divorce. The Court held the practice violative of Article 14 (equality) and Article 21 (dignity). It affirmed that women's rights are *"not symbolic assurances, but enforceable constitutional entitlements"*. (This case illustrates that personal laws must conform to equality guarantees.)

- NALSA v. Union of India (2014) – Landmark for gender identity. The five-judge Court recognized *transgender persons* as the "third gender" under Articles 14, 15, and 21. Citing equality and dignity, it affirmed individuals' right to self-identify (male, female or third gender) and directed legal recognition/protections. NALSA underscores that gender rights include transgender inclusion in public life (education, jobs, identity documents) in line with constitutional non-discrimination.

- Navtej Singh Johar v. Union of India (2018) – Decriminalized consensual same-sex relations. The Court grounded its decision in Articles 14, 15, 21 and the right to privacy and dignity. Justice K. S. Puttaswamy (2017) had earlier held privacy (and by extension sexual autonomy) as intrinsic to Article 21. Though *377* dealt with sexual orientation, Johar reaffirmed the broad principle that the state cannot discriminate on identity or sexual status.

- Justice K.S. Puttaswamy v. Union of India (2017) – Held that privacy is a fundamental right under Article 21. Though not a gender case per se, Puttaswamy's recognition of dignity and autonomy under Art. 21 underpins gender issues (e.g. bodily autonomy, gender identity, personal choice in marriage).

- More recent cases**:** In 2022, the Supreme Court ruled that unmarried women have the same right as married women to abortion under the MTP Act, upholding equality and autonomy. In April 2026, *Dr. Jaya Thakur v. Government of India* held that providing menstrual hygiene facilities and education in schools is part of Article 21 and 21A rights – noting that denying sanitary facilities denied girls equal educational opportunity. These judgments reinforce that equality, education rights and dignity require substantive measures (e.g. toilets for girls, access to health) to remove gender-specific barriers.

In summary, the Constitution (Articles 14–16, 21A) and rulings (Vishakha, NALSA, Johar, etc.) form a robust **gender-justice framework**. They demand non-discrimination, special measures for women/transgender (Art.15(3)), safe/accessible schooling, and respect for bodily autonomy. NEP-2020's gender provisions can be evaluated against this backdrop. The table below juxtaposes key NEP clauses with constitutional provisions:

NEP-2020 Provision	Constitutional Guarantee	Analysis (Alignment/Conflict)
Gender-Inclusion Fund (for girls/trans)	Art.15(3) (special provision for women/children); Art.21A (education right)	**Alignment:** Art.15(3) explicitly allows positive measures for women/children. A fund to assist girls/trans students directly enacts this. Supports Article 21A's free education by removing gender-based barriers (sanitation, fees).
Targeted girls' scholarships, safe schools, KGBV expansion	Art.21A (free education); DPSPs 39(e,f) (child education); Art.15(3)	**Alignment:** Ensures girls receive free uniforms/texts and safe facilities, as mandated by Art.21A. Expanding KGBVs (girls' residential schools) advances Article 15(3) and DPSPs (promote welfare of women/children). No conflict.
Gender-balanced HEI admissions	Art.14 (equality), Art.21 (dignity)	**Alignment:** Promotes equal opportunities in education, echoing Art.14/21. Not a constitutional requirement per se, but consistent with the goal of equal educational access.
Gender-identity sensitization & anti-harassment rules	Art.14, Art.21; Vishakha guidelines	**Alignment:** Reinforces the Vishakha principle that institutions must safeguard dignity/equality. Anti-harassment rules protect fundamental rights. Sensitization on gender identity follows NALSA's directive for trans inclusion.
Curriculum on gender equality/human values	Art.15(1), DPSP 39(f) (equal pay/education)	**Alignment:** Teaching gender equality and tolerance in schools upholds constitutional ideals. Fulfills the Constitution's directive (Art.39(f)) to provide education for children in a healthy manner with dignity.
Silence on extending RTE beyond age 14 (no new mandate)	Art.21A (free education 6–14)	**Potential conflict:** The policy does not incorporate the former draft's promise to extend free education to 18. Since RTE is a law, NEP's silence may signal retreat from universal elementary education. Critics argue NEP "breaks the link" with Art.21A (universalisation).
Lumping all SEDGs into one category (80% pop.)	Art.15(3), Art.46 (SC/ST/OBC, education)	**Tension:** Constitution identifies SC/ST/OBC (and via 15(3) women/children) as separate classes. NEP's unified "SEDG" category may dilute constitutional focus. As Batra notes, this could obscure constitutionally-mandated group identity and accountability.

Alignment and Conflicts: NEP vs. Constitutional Guarantees

Positive Alignments. NEP 2020 advances many constitutional goals. Its gender-inclusion initiatives exemplify Article 15(3)'s permissive affirmation, and the ideals of Articles 14 and 21A. For instance, the Gender-Inclusion Fund (GIF) for girls/trans is a direct application of Article 15(3)'s positive discrimination exception. The policy's emphasis on free uniforms, stipends, girls' hostels and separate toilets works toward the Article 21A objective of "free and compulsory education" by removing costs/barriers specifically faced by girls.

NEP aims to ensure inclusiveness in the right to education for girls by requiring a friendly environment and safety for working mothers.NEP aims at ensuring the constitutional right to education for girls in the true sense of the word by introducing friendly environment and safety measures for working mothers.

NEP's curricula reforms also conform to constitutional principles – teaching "gender equality" and "respect for all persons". The Supreme Court in Vishakha (1997) had already saw that "gender equality includes" protection from sexual harassment and the right to work with dignity and dignity is also incorporated in NEP in education. Similarly, the guidelines issued by NEP to universities to implement anti-harassment guidelines and sensitize about gender identity are aligned with judicial guidelines. Vishakha's anti-harassment rules are based on equality/dignity (Art.14/21) and NALSA's affirmation of rights of transgender is based on Art.14/21. NEP's actions (gender identity training, no harassment policies) materialize these judgments.

NEP's positive discrimination towards girls is also constitutional. Article 15(3) has been introduced specifically in order to provide special provisions for women and children. This is realised through NEP's rollout of Kasturba Gandhi Balika Vidyalayas (girls' residential schools for disadvantaged communities) and scholarships for girls. In fact, according to official commentary, 5639 KGBVs enroll ~6.9 lakh girls (2023 data) – a significant investment in the education of girls. These moves are in line with the Directive Principles (Art.39(f), Art.46) which call for education of women.

Furthermore, the reference to transgender students in NEP represents constitutional progress with regard to gender identity law. The mandate to remove identity barriers as per NEP judgment, is already being followed by inclusion of transgender in the policies (GIF, SEDG definition). This is for the purpose of promoting equality and non-discrimination as contained in Article 14/21 of the Universal Declaration of Human Rights. The policy, therefore, supports the Supreme Court's acknowledgment that gender identity is an integral aspect of personal liberty.

Areas of Tension. Some features of NEP are of concern, even in the face of these alignments. NEP's failure to make a strong statement on strengthening the Right to Education Act has been particularly criticized. The final NEP doesn't mention the extension of free education till 18 as had been proposed in the 2019 draft. Poonam Batra (2020) has written that the RTE Act has been ignored by the NEP, and that it hasn't been linked to the universal education clause of Article 21A. Article 21A is a fundamental right and there is a possibility that if there is a perception that implementation of RTE falls behind the pace of NEP, then it can be in conflict with the constitutional duty (free education clause).

Another issue is NEP's plan to rationalize small schools. NEP proposes combining "economically sub-optimal" small rural schools so as to boost efficiency. This "legitimises…school mergers" that "has led to limiting access for girls, a serious setback for gender justice", warns Batra. In remote areas, small local schools are the only alternative for girl children (who do not have mobility options). Closing them might require girls to cover greater distances (which is a known drop-out risk) and thus violate the access target of Article 21A. What NEP considers 'efficiency', therefore, may end up limiting girls' education opportunities, thus running counter to the constitutional right to education for all.

Another constitutional issue is the presence of the disadvantaged groups in "SEDGs" (socio economically disadvantaged groups) that has been done by NEP. The policy is broad-bred and covers caste (SC/ST), religious minorities, transgenders, disabled and economically depressed (including women). This "mutes" constitutionally separate categories, which can lead to an "undermining of the foundational principles of social justice," as Batra has pointed out. Article 15(4)–(5) and Article 46 specifically protect SC/ST, while Article 15(3) protects women/children; these are separate obligations and combining them into a single category may weaken these obligations. In fact, the NEP seems to imply a single programme of a backlog whereas the Constitution stipulates that each class is to be served by specific measures. This may come in conflict with other provisions such as the 50% cap on caste based reservations and the particular quota to Scheduled Tribes/Economically Weaker Sections (Art.15(6)), which may result in a confusion of identities as enshrined in the constitution.

Finally, **implementation gaps** are a concern. NEP's gender goals are largely policy directives, not legal rights. Without statutory backing or allocated budgets, NEP language by itself may not ensure compliance. For instance, training teachers on gender identity or enforcing anti-harassment depends on education institutions' will and capacity. If states or schools neglect these guidelines, the constitutional rights (to equality and dignity) might be breached in practice even though NEP emphasizes them. Critics like Lodhi & Verma (2025) emphasize that NEP's "progressive framework" needs "strong policy execution" and community efforts to become reality. In short, the gap between policy (NEP) and law (e.g. RTE, POSH) needs bridging to avoid conflicts.

Policy Recommendations and Implementation Roadmap:
Several steps are recommended to meet the demand of NEP and the constitutional mandate:
Legislate Gender Measures: Institutionalize important items of the NEP. For instance, include provisions for providing menstrual facilities in schools (as was done in Dr. Thakur v. GoI), introduce gender audits in institutions and introduce the proposed Gender Inclusion Fund with dedicated budget lines. This converts policy promises into rights that are enforceable.

2. Budget and Oversight: Ensure the provision of ring-fenced funding for gender-related programmes (toilets, bursaries, transport) and ensure Parliament/State assemblies to monitor the progress. Conduct continuous monitoring of schools/colleges on safety and inclusion parameters by the formation of a national 'Gender in Education' monitoring body or NCERT/NCW and provide public reports.

3. Improve the enforcement of Anti Harassment policies: Make policies of the POSH Act applicable to all educational institutions. Provide training to school officials regarding Vishakha guidelines and redressal of student grievances. There may be oversight by a "Rashtriya Shiksha Neeti" officer (or nodal appointees) in each state.

4. Community engagement and sensitisation: Carry out, at national level, gender sensitisation campaigns in villages and schools, including parents and community leaders. Collaborate with NGOs to break down stereotypes (such as devaluing girls' education). Embed values in teacher training (as per NEP) in practice, such as equality, menstrual health etc.

(5) Data & Research: Persist with collection of disaggregated data (by Gender, caste, region) through UDISE+ and Household Surveys. Monitor achievements (not enrolment), gender gap in learning. Evaluate policies based on evidence (e.g. female dropout hotspots).

6. Legal Aid/Awareness: Education Rights under the Constitution/RtE Act – inform girls and parents. Offer free legal assistance where ever case of gender discrimination is encountered in school (with the help of NALSA functions).

CONCLUSION

The provisions on gender in NEP 2020 mostly mirror the aspirations of India's Constitution, which seek to address equality (Art.14), non-discrimination (Art.15), and education rights (Art.21A) for girls and gender minorities. Programs such as Gender Inclusion Fund, safe schooling for girls, inclusion of transgender students strike a chord with the relevance of Art.15(3) and landmark judgments such as Vishakha and NALSA which call for protective and pro active measures for women and gender minorities. The empirical data reveals that the enrolment and retention of girls have improved in the past few years, which is a positive trend that NEP aims to strengthen.

However, our analysis uncovers gaps and tensions. NEP 2020 is not self-executing and if not accompanied by strong legislature or sufficient resources, it can just stay "aspirational". The policy does not include any explicit legal guarantees (e.g. not a reinforcement of RtE Act, or a legal mandate for gender) which could result in the failure of constitutional rights to be enforced. A few proposals in NEP might lead to results that do not strengthen equality objectives, such as school mergers or large-scale "SEDG" labels. The principles of NEP have to be translated into a specific legislation, budget and accountability systems, if the idea is to be integrated into the Constitution.

NEP 2020, in essence, provides an important policy blueprint for education transformation for gender justice, which, for its vision to be realized, requires persistence. The equality guarantee in the Constitution (written and by the courts) is a strong mandate. Making NEP more effective by enacting it into law, implementing it with an eye to detail and mobilizing communities to ensure that every girl and gender nonconforming child is able to receive education without discrimination, both in school and in life, as guaranteed by the Constitution of India, is possible.

REFERENCES

1. Batra, P. (2020). *NEP 2020: Undermining the Constitutional Education Agenda? Social Change*, 50(4), 594–598.
2. ICJ (International Commission of Jurists). (2016). *India: Government must implement NALSA judgment and protect transgender people.* (Analysis brief).
3. Indian Kanoon. (n.d.). *Constitution of India, Article 15.* (as accessed).
4. Lok Sabha Secretariat. (2023, July 31). *National Education Policy, 2020 provides for setting up a Gender Inclusion Fund…* Press Information Bureau.
5. Lodhi, K., & Verma, P. (2025). *Bridging the Gender Gap in Education: The Role of NEP 2020 in Women Empowerment. Excellence International Journal of Education & Research*, 18(3), 93–100.
6. Mehta, A. C. (2026). *Girl Child Education in India: Progress and Persistent Gaps – A Longitudinal UDISE+ Analysis (2018–2025).* Education for All in India (NIEPA).
7. Ministry of Education, Government of India. (2020). *National Education Policy 2020 (English; final draft).*
8. Poonam Batra (2020). *NEP 2020: Undermining the Constitutional Education Agenda? Social Change*, 50(4), 594–598. (Also available via Sage)
9. Supreme Court of India. *Vishaka & Ors. v. State of Rajasthan & Ors.*, [1997] 6 SCC 241.
10. Supreme Court of India. *NALSA v. Union of India*, AIR 2014 SC 1863.
11. Supreme Court of India. *Shayara Bano v. Union of India*, (2017) 9 SCC 1.
12. Supreme Court of India. *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.
13. Supreme Court of India. *Dr. Jaya Thakur v. Government of India*, WP (C) No. 564/2024 (decided Jan 2026).

14. SCObserver (Supreme Court Observer). (2022, Dec 30). *2022 Supreme Court Review: Gender Equality*.
15. UNESCO. (2020). *A new generation: 25 years of efforts for gender equality in education* (Global Education Monitoring Report).
16. UNICEF. (2022). *Girls' Education*. United Nations Children's Fund. *(See related data in press release content)*.