

# Policy Perspective on Gender Justice in India



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## Abstract

It is a reality that women have been ill-treated in every society for ages and India is no exception. The constitution of India which is supreme law of land is a women friendly statute. The principle of gender equality is enshrined in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. It also empowers the State to adopt measures of positive discrimination in favour of women. Beside this, India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Indian judiciary has also not been lagging behind in the protection of women. But the fact is that, in our country where woman is worshipped, the atrocities are committed against her in all sections of life. She is being looked down as commodity or as a slave, and also faces ill-treatment and other atrocities within the four walls of her house. They are considered as an object of male sexual enjoyment and reproduction of children. In this paper an attempt has been made to highlight the Constitutional safeguard and judicial interpretation which encourage the gender justice gender injustice in India.

**Keywords:** Constitution, Discrimination, Gender Justice, Judicial Activism, Woman.

## Introduction

*“Just as a bird could not fly with one wing only, a nation would not march forward if the Women are left behind.”*

..... **Swami Vivekananda**

Human beings are divided into two genders by Nature and both are given responsibilities and rights which suit them. Such rights are the freedom and entitlement of women of human rights without discrimination or violation. However, it is a harsh reality that the women have been ill treated in every society for ages and India is no exception. They are deprived of economic resources and are dependent on men for their living. Their works are often confined to domestic spheres, she had to do all house hold works, which are not recognized and unpaid.<sup>1</sup> The most painful devaluation of women is the physical and psychological violence that stalks them cradle to grave.<sup>2</sup>

The term 'gender justice' implies a concept of justice pertaining to the social and juridical relations that prevail between the sexes. Gender equality concerns each and every member of the society and forms the very basis of a just society. Being conscious of the need of the time, the framers and founding fathers of our Constitution incorporated certain sacrosanct ideals in the form of comprehensive rights for women so as to metamorphose the abstract ideals into a concrete form, which would enable the upliftment of the status of women in the male-dominated society. Despite these special constitutional guarantees and other legislations, crimes against women in the form of child marriages, rape, dowry, practice of Sati, trafficking of the girl child, prostitution, domestic violence and sexual harassment are on the increase. Majority of women in India are still very far from enjoying the rights and opportunities guaranteed to them by the Constitution. Justice K. Ramaswamy has also stated, “Indian women have suffered and are suffering discrimination in silence. Self sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination.”<sup>3</sup>

Indian judiciary while playing pro-active role by their positive interpretation of the various Constitutional and statutory provisions for women uphold, the validity of various legislations and laying down exhaustive guidelines to realize the concept of “gender justice” and gender equality. The Apex Court of our country has observed that democracy, development and respect for human rights and fundamental freedoms are inter-dependent and have mutual reinforcement. The human rights for women, including the girl child, are therefore, an inalienable, integral and

indivisible part of universal human rights. All forms of discrimination on the grounds of gender are violative of fundamental freedoms or human rights.<sup>4</sup>

However, it is indeed ironical that when Indian mythology places women on a very high pedestal and they are worshipped and honored as "Saraswati"<sup>5</sup>, "Laxmi"<sup>6</sup>, "Parvati"<sup>7</sup> and "Durga"<sup>8</sup> we show no concern for her honor and her dignity.

#### **International Concern**

Gender Justice, which refers to equality between the sexes, is a correlation of social, economic, political, environmental, cultural and educational factors. Globally, it has gained in strength over the years, as it has been realized that no state can truly progress if half of its population is held back. The United Nations has established a strong mandate for gender justice. The focus on gender equality and gender justice has been there since the inception of the UN. In 1946, a separate body was formed to work on the "advancement of women". The Commission on the Status of Women worked from its inception to collect and compile data on women's situation around the world, to promote women's human rights and raise awareness of, and support for, their contribution to development. In 1995, the Beijing Declaration and Platform for Action had been framed for guiding work at national level. The human rights treaty on gender equality, The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has been ratified by 185 states and the optional protocol by 90 states. Since 1995 and the adoption of gender mainstreaming as a critical strategy for achieving gender equality, intergovernmental bodies; such as the General Assembly, the ECOSOC and the Commission on the Status of Women have worked to mainstream gender perspectives as an integral part of all policy areas. At the 2005 World Summit, world leaders reiterated that "progress for women is progress for all".

#### **Constitutional Safeguard**

The Constitution of India recognizes equality of the sexes and prohibits discrimination on the basis of sex. It also provides legislation to be made to confer more rights on women by making special provisions. The Preamble of the Constitution is "a key to open the mind of the makers of the constitution which may show the general purposes for which they made the Constitution."<sup>9</sup> It declares the rights and freedoms which the people of India intended to secure to all citizens.<sup>10</sup> The Preamble begins with the words "We, the People of India....." which includes men and women of all castes, religions, etc. It wishes to render "Equality of status and of opportunity" to every man and woman. The Preamble again assures "dignity of individuals" which includes the dignity of women. On the basis of the Preamble, several important enactments have been brought into operation, pertaining to every walk of life family, succession, guardianship and employment which aim at providing and protecting the status, rights and dignity of women.

Part III of the Constitution, relating to Fundamental Rights, is considered as the "heart" of the Constitution. The fundamental rights are regarded as fundamental because they are most essential for the attainment by the individual of his full intellectual,

moral and spiritual status. As per Justice P. N. Bhagwati : "These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent."<sup>11</sup> Article 14 guarantees to every person the right to equality before the law or the equal protection of the laws within the territory of India. The first expression "equality before law" is a declaration of equality of all persons with in the territory of India, implying thereby the absence of any special privilege in favour of any individual. The second expression, "the equal protection of the law" is the essence and core of the right to equality under which the State is under an obligation to take necessary steps so that every individual, man and woman alike, is given equal respect which he or she is entitled to as a human being.

Beside this the Constitution of India gives special protection to women's under Article 15 which guarantees the right against discrimination. Article 15 (3) talks about the special protection for women. Article 16 provides the right to equal opportunity in terms of public employment irrespective of the sex of the person. This provision aids women to start participating in elections and the decision making process. Article 19 guarantees freedom of speech and expression, to assemble peaceably and without arms, to form associations and unions, to move freely throughout the territory of India, to reside and settle in any part of the territory of India; to practice any Profession, or to carry on any occupation, trade or business. This fosters the right to equality, by providing the necessary freedoms needed to live in society. Without the right to equality, the purpose of gender justice cannot be achieved. Article 39 talks about the certain principles of policy that need to be followed by the state which are securing adequate means of livelihood equally for men and women, equal pay for equal work among men and women, and the health and strength of workers, men and women are not abused. Article 42 requires the state to make provision for securing humane conditions of work and maternity relief.

#### **Judicial Approach**

In Indian set up of Government judiciary plays a significant role in the administration of justice. Normally the function of judiciary is to interpret the laws enacted by the legislatures, but in actual practice it came various times in rescue of aggrieved and laid down guidelines for policy matters. Our Judiciary which is perhaps the world most independent judiciary has also played its rule in making the liberal interpretation of constitutional and other legal frame works for the welfare of women. For instance defining the scope of reasonable classification within the ambit of right to equality the Supreme Court observed "Though Article 14 permits reasonable classification, yet classification based on sex is not permissible."<sup>12</sup> In the case of *Air India v. Nergesh Meerza*<sup>13</sup>, the Apex Court, while dealing with the fixation of different ages of retirement for male and female employees and the provision preventing the female employees from having child, expressed the view to the effect that the retirement of air hostesses in the event of marriage

taking place within four years of service does not suffer from any irregularity or arbitrariness but retirement of air hostesses on first pregnancy is unconstitutional being violative of Articles 14 and 16 of the Constitution. Payment of equal pay for equal work has also been justified under Article 14. Unequal pay for materially equal work cannot be justified on the basis of an artificial classification between the two kinds of work and employment.<sup>14</sup> In the case of *Mackinnon Mackenzie and Co. Ltd. v. Andrey D' Costa*,<sup>15</sup> the question involved was getting of equal pay for equal work. Their Lordships ruled that when lady stenographers and male stenographers were not getting equal remuneration, that was discriminatory and any settlement in that regard did not save the situation. Their Lordships also expressed the view that discrimination between male stenographers and lady stenographers was only on the ground of sex and that being not permissible, the employer was bound to pay the same remuneration to both of them when they were doing practically the same kind of work. In *Madhu Kishwar v. State of Bihar*,<sup>16</sup> the Chotanagpur Tenancy Act, 1908 was challenged on the ground that the Act denied the right to succession to scheduled tribe women to the tenancy lands and hence, it violates Articles 14, 15 and 21 of the Constitution. The Supreme Court, by admitting the petition, quashed the discriminative provisions of the Act and paved a way for tribal women to entitle their rights to tenancy lands along with men. In *Pratibha Ranu v. Suraj Kumar*<sup>17</sup>, the Supreme Court held that the stridhan property of a married woman has to be placed in her custody, and she enjoys complete control over it, The mere fact she is living with her husband and using the dowry items jointly does not make any difference and affect her right of absolute ownership over them. Another landmark judgment in the case of *Gita Hariharan v. Reserve Bank of India*,<sup>18</sup> was given by the Apex Court in which the Court interpreted section 6 of the Hindu Minority and Guardianship Act 1956 and held that the mother could act as the natural guardian of the minor during the father's lifetime if the father was not in charge of the affairs of the minor.

In *Vishaka and others v. State of Rajasthan*<sup>19</sup>, the Supreme Court held that sexual harassment of working women at her place of an employment amounts to violation of rights of gender equality and right to life and liberty which is clear violation of Article 14, 15 and 21 of the Indian Constitution. The Court further observed that the meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facts of gender equality including prevention of sexual harassment or abuse. Further Supreme Court in this case said that, as there is no law relating to sexual harassment in India, therefore the provisions of International Conventions and norms are to be taken into consideration, and charted certain guidelines to be observed at all work places or other institutions, until a legislation is enacted for the purpose.

In *Apparel Export Promotion Council v. A.K. Chopra*<sup>20</sup>, again Supreme Court reiterated Vishka ruling and said that attempts of sexual harassment of female results in violation of fundamental rights to gender equality enshrined under Article 14 and 21 of

the Constitution. The Court further stated that international instrument such as the convention on the Elimination of All Forms of Discrimination against Women and the Beijing Declaration casts obligations on the state to take appropriate measures to prevent gender inequalities and protect the honour and dignity of women.

In *C.B.Muthamma v. Union of India*<sup>21</sup> 1979 AIR 1868, the validity of the Indian Foreign Service (Conduct and discipline) Rules of 1961 was challenged which provided that a female employee to obtain a written permission of the Government in writing before her marriage is solemnized and at any time after a marriage a women member of the service may be required to resign from service. The Supreme Court held that such provision is discriminatory against women and hence unconstitutional. The Supreme Court made it clear that, we do not mean to universalize or dogmatise that men and women are equal in all occupation and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrated, the rule of equality must govern.

There are many other cases in which the Apex Court had given the judgments, helping to give a dignified status to the women, for example, *Gaurav Jain v. Union of India*<sup>22</sup>, *Delhi Domestic working Womens Forum v. Union of India*<sup>23</sup>, *Bodhisathwa Gautam v. Subhra Chakraborty*<sup>24</sup> *Vijay Lakshmi v. Punjab University*,<sup>25</sup> *State of Maharashtra v. Madhukar Narayan Mandikar*.<sup>26</sup>

### Conclusion

Complete gender justice is complex to achieve typically in a country like India. The diversity of cultures, subcultures, is vast and there is a lot of rigidity in traditions and beliefs. Lack of education, lack of development, poverty, improper enforcement of the laws, lack of awareness among women, deep rooted patriarchy, economic dependence of women, all lead to the subversive condition of women in our society. That is why the constitutional safeguard and the active judicial support towards the cause of women, changes in social attitudes and institutions cannot be brought about very rapidly. However, it is necessary to accelerate this process of change by deliberate and planned efforts so that the pernicious social evil of gender inequality is buried deep in its grave. Laws written in black and white are not enough to combat the evil. The role of Courts and judges assume greater importance and it is expected that the Courts would deal with cases relating to woman in a more realistic manner. Awakening of the collective consciousness is the need of the day. A problem as multifaceted as women's self -actualization is too important to be left to a single section of the society. This responsibility has to be shared by the State, community organizations, legislators who frame the laws and the judiciary which interprets the Constitution and other laws in order to give a fillip to the legal reform in the field of gender justice and to usher in the new dawn of freedom, dignity and opportunity for both the sexes equally. Therefore, it is the need of time to empower the women with the help

of laws, education and employment which will make the society to accept the women as an equal gender like male. Female also has all the potential and empowering women will help to use her full capability and mitigate the economic dependency of women. Due to prolonged suppression, Indian women, an especially uneducated and unemployed woman hasn't had the self-confidence. Women need self confidence to fight against all the atrocities against her and to live self esteemed life. Hence, boosting the morale and self confidence of the women, would be a step forward towards the slogan of gender justice

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