

# Legal Analysis of Gender Justice

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## Abstract

Gender justice in legal parlance means equal participation of men and women in every sphere of life like economic, social, political, cultural etc., in the gender-based society. So present paper deals with how we root out gender discrimination in India while passing so many legislations and their implementation under various judicial pronouncements. The paper further comprises importance of women in light of legislation and statutory pronouncements, so this doctrinal research-based study comprises in five parts with remarkable conclusion and suggestions, inter-alia.

**Keywords:** Gender, Justice, Legislation, judicial, UN, UNDP, CEDAW, ECOSOC.

## Introduction

Gender is a common term whereas gender discrimination is meant only for women, because females are the only victims of gender discrimination. It is a harsh reality that women have been ill-treated in every society for ages and India is no exception. Women are deprived of economic resources and are dependent on men for their living. Women works are often confined to domestic sphere, she had to do all house hold works, which are not recognized and unpaid. In modern times many women are coming out to work but has to shoulder the double responsibility; Firstly, we can say that whether female working and non-working, she has to work at both fronts.

Secondly, at their work place and at home even working women status is not equal to her male counterparts. In our society, she always be last and not first, despite many times more skilled and earn more than males. She always faces discriminations. Her general status in the family and in the society has been low and unrecognized. In number females are nearly 50 percent of the total population but their representation in public life is very low. Thus, recognizing women's right and believing their ability are essential for women's empowerment and development.

Gender, in general parlance means equality among both the sexes in each and every spheres of life like economic, social, cultural, and educational etc. Globally gender justice we can conclude equally freedom of all opportunities among sexes in every walk of life. Any nation can't progress until and unless there should be equal participation as well as recognition of their work in progressive society<sup>1</sup>, if we neglect half of its population. Any country will not progress fully; it's under domain of developing country not fully developed. The present paper deals with gender discrimination in India, its definition of various forms and its causes. Further in this paper importance of women in development, legislation for women and solution for gender discrimination are also highlighted.

## Global Scenario on Gender Justice

In order to achieve gender justice equal participation by women and men in both economic and social development, and women and men benefiting equally from societies' resources is crucial. Globally Speaking, 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 complete 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. Several International agencies work for the progress of women's



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empowerment financially as well as economically, as enshrined in UNDP, CEDAW, and UNIFEM etc. passed in several years. UNICEF passed in 1976, this convention eliminate all forms of discrimination worldwide. Similarly, all women conferences councils and protocols widely talks about gender justice for both the sexes. All developed countries must protect and implement the interest of women.<sup>2</sup>

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.

In World Summit, 2005<sup>3</sup>, all the world leader emphases on “progress for women in progress for all”, there should not be phrase only but in verbatim our in reality it should achieved in practice too. United Nations in 2010, more specific about women’s progress and promote gender justice by all member states. Other important bodies that work for gender equality was economic and social council<sup>4</sup>.

The UNDP has developed the two most well known gender justice indexes – Gender Related Development Index and the Gender Empowerment Measure to compare and rank member states with regard to gender justice performance.<sup>5</sup> India is ranked 136th in the Gender Related Development Index, while USA is 2nd and UK is 26th.

### **Women and Development of Nation**

In our society, from the womb to tomb, females are under the control of various atrocious acts, within the family and in the work place. One cannot stop numerous kinds of evils in our society, such as illiteracy, social rituals, religious practices, caste and creed discriminations etc.

In male dominated society, the progress of half population will not possible without the support of male counterparts. Tools like education, equality, economic independence, freedom needs more force in real sense of gender justice.

The recognition of women’s rights and believing their ability are essential for women’s empowerment and development. Females should realize their own capabilities and potentials which will strengthen their self image and foster them with confidence to take action in life. Political empowerment does not imply just a right to role silently but to discuss, share and empower politics by knowing its pros and cons and thereby to influence policies and decision

making. The empowerment of women is the basic to the basics of human rights where she wants neither to beg for power nor search for power hierarchy to exercise power against others. On the contrary she demands to be accepted as human first of all. She as a person in command of herself and for that necessarily all the resources physical, social, economical, political, cultural and spiritual to be equally accessible to her, are prerequisites for considering the whole question of empowerment.<sup>6</sup>

Indian society is inherited with male dominance but its high time realizes and accept women’s participation too.

### **Gender Justice and Statutory Framework Gender Justice and Constitution of India**

The Constitutional framers started their work much before independence when they first met in the Constituent Assembly on 9<sup>th</sup> December, 1946.<sup>7</sup> The Framers of the Constitution took almost three years (2 years, 11 months, 17 days) to frame the Constitution. The cabinet mission recommended that the members are to be chosen through indirect election by the members of provincial legislative assembly and thereafter 292 members were elected; 93 members provinces. Among the framers of the Constitution the prominent names were Dr Ambedkar, Pandit Nehru, Dr Rajendra Prasad, Sardar Patel, Maulana Azad, Acharya Kriplani and

Pandit Govind Pant. On Dec 13, 1946, Pandit Nehru moved the objectives of the Constitution through which India evolved as sovereign, independent and republic state and the future governance of the country was vested upon the Constitution. Another objective of the draft constitution was that all the people of India should be guaranteed and secured with justice<sup>8</sup> (social, economic and political), equality of status and opportunity, equality before law, freedom of thought, faith, worship, vocation, association, action, expression and belief. However, these were subjected to Law and public morality. As mentioned above, Dr Ambedkar was one of the prominent persons in the drafting committee of the Constitution. Not only that, he was the chairman of the drafting committee. As a member of the legislative council, Dr Ambedkar raised provisions relating to equality of women in the Indian Constitution. Even before drafting the constitution, Dr Ambedkar through his works expressed<sup>9</sup> his great concern towards the women mass in India and advocated equality. He always measured the progress of a community in the lights of the progress of women.

### **Ambedkar through his paper<sup>2</sup>**

Mechanism, he drew an inference that caste was merely created by the Brahmins of ancient India. These Brahmins enslaved the minds of women and found means of controlling and subjugating them. Dr. Rajendra Prasad in his book<sup>10</sup> education should be given to girls,

including those of backward classes and they should be encouraged to earn a living both through skilled and unskilled labor. He also said that women should be included in village council, education councils, local bodies and legislatures in the country and they must be encouraged to fill up political posts. When the Constitution was being drafted, Pandit Nehru talked about the liberty of thought, expression, belief, religion and worship of all citizens of India. He said that women have the right to equality and equity. According to him, the Indian customs and practices very intelligently allotted an inferior status to women and in such a social condition; women were unable to realize their full potential. These eminent personalities thus made an effort to ensure that the Rights of women under Indian Constitution are at par with that of men and accordingly they framed the Constitution.<sup>11</sup>

In India, member of legislation has been passed and amendments on its for the total reforms in the gender bound society. Indian society is inherited with male dominance but its high time realizes and accept women's participation too.

Indian Constitution is the largest and lengthiest and socialist constitution of the World and highlights more about gender growth. From very words of the preamble to constitution proceeded towards fundamental rights, directive principles and fundamental duties all talks about equality among masses better see its implementation in light of articles 15, 15(3), 16, 19, 21 as fundamental rights.<sup>12</sup> Further article 39 talks about certain principles of policies for men and women, equal wages for both the sexes, securing equal and adequate means of livelihood. Article 42 under directive principles of state policies gives wider connotation to just of human condition at work and maturity benefits for women.<sup>13</sup>

#### **Gender Justice and Legislative Frameworks**

In India, member of legislation has been passed and amendments on its for the total reforms in the gender bound society. In our society girls are socialized from their tender age to be dependent on males. Her existence is always subject to men. In her childhood she is under the protection of her father, after marriage under the protection of her husband and in old age at the mercy of her sons. The patriarchal system in India made women to live at the mercy of men, who exercise unlimited power over them. In order to ameliorate the condition of women in India, legislature enacted the large volume of enactments and many of these legislations were enacted in colonial period which are as follows:

1829: Abolition of Sati

1856: Widow Remarriage made legal 1870: Female infanticide banned

1872: Inter caste, intercommunity marriages made legal 1891: Age of consent raised to 12 years for girls

1921: Women get rights to vote in Madras province 1929: Child Marriage Restraint Act was passed 1937: Women get special rights to property

1954: Special Marriage Act was passed 1955: Hindu Marriage Act was passed

1956: Suppression of Immoral Traffic in Women and Girls Act was passed 1961: Dowry Prohibition Act was passed

1981: Criminal Law Amendment Act was passed 1986: The Indecent Representation of Women (Prohibition) Act was passed 1987: Commission of Sati (Prevention) Act was passed

2005: Domestic Violence Act passed.<sup>14</sup>

Besides all above connected laws and many labour legislation give impetus to the conceptual analysis of socio-legal, gender economical phenomenon of gender justice. In addition to this, the Constitution of India which is regarded as the supreme law of the land too gives special protection to women. Further, Indian Penal Code, Criminal Procedure Code and Indian Evidence Act too have some provisions which provide protection and a sense of security to women. Recently the Government's piecemeal approach to protect women has taken a step forward enacting a law providing protecting women from domestic violence. With the establishment of National and State Human Right Commissions and National Commission for Women, gender issues are receiving greater attention.

#### **Gender Justice and Judicial Pronouncement**

The Indian Judicial System has independently and effectively intervened on the issue of women emancipation. For instance, in *C. B. Muthamma v. Union of India*,<sup>15</sup> 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.

In *Air India v. Nargesh Mirza*,<sup>16</sup> 1981, the Supreme Court struck down the provision of rules which stipulated termination of service of an air hostess on her first pregnancy as it arbitrary and abhorrent to the notions of a civilized society. In *Pratibha Ranu v. Suraj Kumar*<sup>17</sup> 1985, the Supreme Court held that the

stridhan property of a married women 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 judgement was given by the Apex Court in the case of *Gita Hariharan v. Reserve Bank of India*,<sup>18</sup> this case 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 the case of Suchita Srivastava and another vs Chandigarh administration (2009,SLPICJ), to make reproductive choice is a part of personal liberty conferred under Article-21 and that may include procreation as well as abstaining from procreation. The court further stated that a woman has the right to refuse to participate in sexual activity.

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 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 the case of P.B. Vijaykumar and another vs Govt of Andhra Pradesh, the petitioner challenged Rule-22A(2) of Andhra Pradesh State And Subordinate Service Rules as violative of Articles-14 and 16(4) of the Indian Constitution. Sub Rule 2 of rule matter of direct recruitment to posts for which women and men are equally suited, other things being equal, preference shall be given to women and they

shall be selected to an extent of at argued that the State cannot make any reservation in favour of women in relation to appointments or posts under the State because this would lead to discrimination on the ground of sex in public employment or appointment to posts under the State and would be violate Art- 16(2). The court here held that while dealing with employment under the State both articles-15 and 16 has to be kept in mind. The court also stated that the power conferred by Article-15(3) is wide enough to cover the entire range of state activity including employment under state. The court clearly stated that Rule-22A(2) provides for preference being given to women to the extent of 30% of the posts, other things being equal and thus it is not reservation for women in the normal sense of the term. The court held that this rule is within the ambit of Art-15(3) and hence constitutional.

Apart from these cases 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 *Madhu Kishwar v. State of Bihar*,<sup>21</sup> *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>

The sensational Kathua gangrape and murder case of an eight-year-old girl from Jammu, which shocked the nation and drew international attention, saw the judiciary -- the Supreme Court and Delhi High Court -- initiating proceedings on their own relating to obstructions created by lawyers and revelation of the victim's identity by media. While the apex court transferred the trial in Kathua case to Pathankot in Punjab, the high court came down heavily on several media houses and directed them to deposit Rs 10 lakh in the Jammu and Kashmir Victim Compensation Fund after they apologised for revealing the details of the victim.<sup>25</sup>

The top court asserted its stance on the issue by ruling in another matter that identity of victims of rape and sexual assaults, including those who have died, cannot be disclosed "even in a remote manner". It had also said that National Legal Services Authority (NALSA) scheme for compensating the victims of sexual assault and acid attacks should be used as guidelines by special courts in awarding compensation to minor victims of sexual abuse till the Centre finalised the rules. As per NALSA's scheme, a victim of gangrape in any part of the country would get a minimum compensation of Rs 5 lakh and up to a maximum of Rs 10 lakh. The scheme also says that the victims of acid attacks, in case of disfigurement of the face, would get a minimum compensation of Rs 7 lakh, while the upper limit would be Rs 8 lakh.

In its much-awaited verdict, the top court dismissed the review petitions of three of the four death row convicts in the sensational December 16, 2012 gangrape-and-murder of a 23-year-old woman in Delhi. The apathy of the government in disbursing funds to victims of rape came into fore when the apex

court expressed its shock when it came to know that the Madhya Pradesh government was disbursing Rs 6,000-6,500 only to each rape victim. "You value a rape at Rs 6,500," was how an anguished top court had said.<sup>26</sup>

In spite of having so many enactments dealing with women and judgments of the Supreme Court protecting women the downtrodden and poor conditions of women has not been improved and she still faces all types of atrocities and legislature and judiciary somewhat fails to provide respect to women in society.

#### **Measurement and Solution for Gender Discrimination**

Various movements, programs are being carried out by the Government, voluntary organizations and by lot of social activities for women's development and against the gender discrimination. To solve the gender discrimination problem the following factor would be very useful.

Education develops the skills, imparts knowledge, changes the attitude and improves the self confidence.<sup>27</sup> It provides employment opportunity and increases income. Hence educating women is the prime factor to combat gender discriminate and for the upliftment of women. Not only the female, the society must be educated to give equal right for female. In thus regards various movements, programs are being carried out by the Government, voluntary organizations and by lot of social activities for women's development and against the gender discrimination. To solve the gender discrimination problem the factor would be very useful.

Employment gives the income and improves the economic position of the women. Employed women are given importance by the family members. Employment gives the economic independence for the women.

In India, mostly, women in the young age – depends her father, in the middle age- she depends on her husband and in the older age – depends on her son. Woman always depends on somebody for her livelihoods hence, independent in economical aspects are imperative for women's development. Economic independence will free the women from the slavery position and boost the self confidence. Economic independence of women also helps in the national economic development.

Empowering women with the help of laws, education and employment 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, is the key to eliminate the inferior complex of her.

#### **Objective of Study**

Role of women for the development of nation while defining gender justice see the impact globally through judicial scrutiny.

#### **Conclusion and Summation**

Gender equality is now universally accepted as being a prerequisite for sustainable human development. In India, although some progress in women's development has been made, women continue to lag behind men. The adverse sex ratio, poor educational and nutritional status, inequality in wages and the prevalence of violence against women are all pointers to the fact of glaring gender inequalities in key areas of social, economic and political participation and decision-making. As a consequence, the potentials, perspectives and contributions of one half of the population remain largely invisible and unacknowledged. Gender equality cannot come about only through changes in the conditions of women's lives - it requires transformation of the patriarchal structures and systems that lie at the root of women's subordination and gender inequality. These structures cannot be transformed by external interventions alone - women must themselves become active agents of change. Gender equality, therefore, demands women's empowerment.

Gender equity emphasizes that all human beings be it men or women are free to develop their personal abilities and make choices without the limitations set by stereotypes, rigid gender roles, political and other prejudices. Their different aspirations should be valued equally and they would be treated fairly according to their respective needs. But the law alone cannot do much. All sections of society have to work for this transformation and this is where NGOs, the media and the people's representatives have to play a major role. Gender justice is an essential equality among human beings where neither men are superior nor are women inferior. A nation or society, without the participation of women cannot achieve development. If we eliminate gender discrimination, women will deliver all the potentials, skills, knowledge to achieve holistic development. Most importantly, in order to reach global developmental goals, eradicating gender based discrimination is a must for any developing nation, such as ours.

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