

---

# **GENDER EQUALITY: ROLE OF INDIAN CONSTITUTION AND JUDICIARY**

---

Sunanda Rai, Research Scholar, CT University, Ludhiana, Punjab & Dr. (Prof.) Simranjeet Kaur Gill, Principal,  
School of Law, CT University, Ludhiana, Punjab

## **ABSTRACT**

Women are usually treated as a second sex in Indian society, which is patriarchal in nature. Women enjoyed some social prestige throughout the Vedic era by participating in Sabhas and Samiti's, but their situation deteriorated in the Later Vedic period. During British rule, common women were treated as servants, albeit only a few participated actively in the nation's freedom effort. As a result, the founding fathers of the Indian Constitution and the democratically elected government have taken steps to achieve gender parity in Indian society on a regular basis. Apart from being the keeper of the Constitution and the protector of the people's rights, the judiciary has played a proactive role in fostering gender equality. Because of the changing form and structure of Indian society, the legislative and judicial branches have become more involved in policymaking in order to better meet this variety. Though, in many cases, inefficient policy execution and delays in justice delivery make it impossible to provide justice in a timely manner. As a result, this paper will present an examination of the government's and judiciary's delivery of justice in India.

**KEY WORDS:** Gender Equality, Women, Exploitation, Disparity, Judicial Activism.

## **INTRODUCTION**

Law has an important role in ensuring gender equality in society, and it must address how disparities in women's and men's social, economic, and legal capacities effect how they perceive law and justice in their lives, and how their everyday lifestyle significantly shapes patterns of their life.

Individuals benefit from the rule of law because it gives them the right to live their lives lawfully and as free and autonomous members of society. The Supreme Court of India has evolved its gender jurisprudence over the years, displaying an optimistic, progressive, and activist attitude toward gender-specific issues and thus taking a bold step toward ensuring gender justice.

The right to privacy, bodily integrity, faith, choice, equality of status and equal chances, dignity, and the right against exploitation have all been freely affirmed by the Honorable Court. The Supreme Court's recent decisions on adultery and temple entry have shattered centuries-old gender prejudices and established new benchmarks in gender justice.

## **METHODOLOGY**

The qualitative explanation methodology was utilized to prepare this work. For data and information acquisition, secondary resources such as books, magazines, newspapers, research papers, internet resources, archives, and so on are utilized.

## **THE ROLE OF INDIAN STATE IN ENSURING GENDER EQUALITY**

The principle of gender justice is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties as well as Directive principles of State Policy (DPSP). The constitution guided the State to adopt measures like positive discrimination in favor of women so to confirm gender justice. Though women comprised of approx. 48% of the total population of India, but their representation in the workforce, be it formal or informal sector, political representation, property inheritance, rate of enrollment into education are not at all satisfactory till date. The laws, developmental policies, plans and programs of the Five Year Plans, especially Fifth Five year plan onwards, commissions, civil society groups and

self-help groups all contributes towards the achievement of gender justice.<sup>1</sup> The following is a breakdown of the Indian Legislature's policies, acts, and initiatives:

- **Constitutional safeguards for gender equality**

The Indian Constitution enshrines the proposition of gender parity in its Directive Principles, Fundamental Duties, the Preamble, and Fundamental Rights. Not just does the Indian Constitution guarantee women equal rights, but it also authorizes the Centre to take effective inequity actions in support of women. Our laws, growth approach, schemes and initiatives have been aimed at benefitting women in various areas within the context of an egalitarian polity.<sup>2</sup>

The Central Government has also endorsed plentiful international treaties and agreements on human rights, dedicated to ensuring equal protection for women. But very few people are aware of these provisions. It is very necessary for everyone to know their rights and remedies in case of violation of the same, especially for those who are exploited.<sup>3</sup>

#### **Article 14**

It instructs the government not to deny any individual equal protection under the law or impartial enforcement of the laws of India. The "equality before the law" method seeks out a place in all written texts that guarantees universal rights to all persons, regardless of their birth, ethnicity, gender, or race. Equal protection of the law refers to the uniform application of the law to every individual in India's region.

#### **Article 15(1)**

It forbids the state from discriminating against anyone based solely on their gender, ethnicity, race, nationality, caste, or any combination of these factors.

#### **Article 15(3)**

It requires the government to make particular arrangements for children and women. As a result, it says that, while the state would not segregate anyone, they might establish special

---

<sup>1</sup> Pritam Jyoti Pegu & Arkida Yasmin, "Role of the Indian State and Judiciary in ensuring Gender Justice: A Paradigm shift in the nature of Policy Making and Pro- active role of the Judiciary" Vol. 18 *Palarch's Journal Of Archaeology Of Egypt/Egyptology* 3677 (2020).

<sup>2</sup> Wasif Shaikh, Role of Indian Judiciary in Neutralizing Gender Equality, available at: <https://www.legalserviceindia.com/legal/article-6663-role-of-indian-judiciary-in-neutralizing-gender-equality.html> (Visited on May 27, 2022).

<sup>3</sup> *Ibid.*

measures for children and women to protect their interests. Article 15(3), on the other hand, encourages debate of laws aimed at encouraging women and children, such as the Children's Sexual Harassment Act, the Domestic Violence Act, the Workplace Harassment Law, Sexual Abuse Legislation (Nirbhaya Act), the Hindu Succession Act Amendment, and so on. This also addresses restrictions on the wife's allowance, marital rape, and the Food Protection Bill.

### **Article 16**

It demands that all people have an equal chance in events involving education or appointment to any post within the State. Article 16(1) and (2) establish principles for fair employment opportunities in the public sector. Nonetheless, Article 16, Clause 3 specifies that the said article shall not bar Parliament from introducing legislation requiring anyone assigned to any office within that State to reside within that State or territory of the Union prior to recruitment or allotment to any office within that State. Article 16(4) of the Indian Constitution mandates that facilities be set aside for the benefit of the state's poorest citizens.

### **Article 39(a)**

It requires the government to take steps to ensure that men and women have equal access to a fair standard of living.

### **Article 39(d)**

It requires the government to ensure that men and women are paid equally for equal work. The notion of "fair pay for fair work" is not explicitly recognised as a civil right in our Constitution, but it is unquestionably a constitutional goal. According to it, the Directive's provision stating "equal pay for equal work" entails equal compensation for both genders for equal effort for each and no discrimination between the sexes.

### **Article 39A**

Promoting justice on an equal footing and providing free legal assistance through good legislation or schemes, or in some other means, to ensure that no one is denied access to justice because of financial or other constraints.

### **Article 42**

It requires the government to set up fair and appropriate working conditions as well as maternity benefits.

**Article 46**

It requires the government to advertise the scholastic and financial problems that Scheduled Castes, Scheduled Tribes, and other backwards classes face. It also directs the state to make a concerted effort to promote the academic and financial problems of the population's backwards classes, particularly the Scheduled Tribes and Scheduled Castes, and to protect them from societal abuse and all forms of oppression.

**Article 47**

The government will work to enhance people's living conditions and nutrition. It establishes the government's primary obligations, which is the most important factor in achieving social change. It relates to health care, the elderly, improving employment standards, and ensuring justice, and it expands the government's responsibilities.

**Article 51(A)(e)**

Promoting solidarity and the spirit of mutual friendliness among all citizens of the country, as well as condemning activities that defame women's dignity.

**Article 243 D (3)**

More than or equal to one-third of the maximum number of seats to be held by open voting in each Panchayat to be reserved for women (including those reserved for women from Scheduled Tribes and Scheduled Castes) and to be allocated such seats by succession to separate constituencies within a Panchayat.

**Article 243 D (4)**

For each tier of the Panchayats, more than or equal to one-third of the total number of positions must be reserved for women.

**Article 243 T (3)**

More than or equal to one-third of the maximum number of seats to be held by open voting in each municipality to be reserved for women and allocated in succession to separate

constituencies in a municipality for these seats (inclusive of the proportion of seats reserved for women who belong to the Scheduled Tribes and Scheduled Castes).

#### **Article 243 T (4)**

The allocation of administrator posts in municipalities for Scheduled Tribes, Women, and Scheduled Castes in a method that a State House can provide by statute.

- **Statutory provisions**

To carry out the Constitution's mission, the state has passed a number of laws aimed at ensuring equal rights, combating social discrimination and other forms of violence and atrocities, and providing support services, particularly to working women. Despite the fact that women can be victims of any crime, such as 'murder,' 'robbery,' or 'cheating,' crimes intended especially at women are referred to as 'crime against women.'

These can be roughly divided into two categories:

#### **1) The Indian Penal Code Identifies the Crimes:**

- a) Rape (Sec. 376 IPC)
- b) Kidnapping & Abduction for different purposes (Sec. 363-373)
- c) Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
- d) Torture, both mental and physical (Sec. 498-A IPC)
- e) Molestation (Sec. 354 IPC)
- f) Sexual Harassment (Sec. 509 IPC)
- g) Importation of girls (up to 21 years of age)

#### **2) Under the Special Laws, the following crimes have been identified:**

Although not all laws are gender specific, those that have a substantial impact on women have been examined and amended on a regular basis to keep up with changing needs.

#### **3) The following acts include special measures to protect women and their interests:**

- a) Commission of Sati (Prevention) Act, 1987
- b) Dowry Prohibition Act, 1961
- c) Immoral Traffic (Prevention) Act, 1956
- d) Indecent Representation of Women (Prohibition) Act, 1986
- e) The Contract Labour (Regulation and Abolition) Act, 1976

- f) The Criminal Law (Amendment) Act, 1983
- g) The Employees State Insurance Act, 1948
- h) The Equal Remuneration Act, 1976
- i) The Factories (Amendment) Act, 1986
- j) The Family Courts Act, 1954
- k) The Hindu Marriage Act, 1955
- l) The Hindu Succession Act, 1956 with amendment in 2005
- m) The Maternity Benefit Act, 1961 (Amended in 1995)
- n) The Medical Termination of Pregnancy Act, 1971
- o) The Plantation Labour Act, 1951
- p) The Prohibition of Child Marriage Act, 2006
- q) The Protection of Women from Domestic Violence Act, 2005
- r) The Special Marriage Act, 1954

#### **4) Special Initiatives for women:**

- a) National Commission for Women: The Government established the National Commission for Women in January 1992 with a specific mandate to research and monitor all things relevant to the constitutional and legal guarantees given for women, review current legislation and make revisions where appropriate, and so on.
- b) Reservation for Women in Local Self -Government: The 73rd Constitutional Amendment Acts, passed by Parliament in 1992, guarantee women one-third of total seats in all elected roles in local authorities, whether rural or urban.
- c) The National Plan of Action for the Girl Child (1991-2000): The goal of the Action Plan is to assure the female child's survival, protection, and growth, with the ultimate goal of constructing a brighter future for her.
- d) National Policy for the Empowerment of Women, 2001: In the year 2001, the Ministry of Human Resource Development's Department of Women & Child Development drafted a National Policy for Women's Empowerment. The policy's purpose is to promote women's advancement, development, and empowerment.

### **THE JUDICIARY AS A FORCE FOR GENDER EQUALITY**

The judiciary can bring important changes in society when the judiciary operates without

gender bias and supports gender equality. The decisions given by the judiciary becomes a norm for all the people in the society through established mediums of state-citizen engagement and the influence of the court goes beyond those who come in direct contact with them. However, it is not always that the judiciary is effective in upholding gender equality as a majority of people may not be influenced by the judicial decisions for instance customary laws might govern a lot of people.<sup>4</sup>

### Case Laws

The Indian judiciary's judgments' have had a significant impact on and brought about a number of significant changes in society's norms.

The Court held in the *Dharwad District PWD Employees Association vs. State of Karnataka & Ors.*<sup>5</sup> that there should be no gender discrimination among workers and that they should be paid fairly according to their work, and that Article 39(d) of the Indian Constitution provides for payment of equal consideration to both men and women workers for equal work or work of a similar nature, and that Article 16 provides for equal opportunity for all citizens in matters of employment.

Indian airlines had laid down various rules that were found to be in violation of Article 14 of the Indian Constitution in the case of *Air India Etc. vs. Nergesh Meerza*<sup>6</sup>. The rule specified that air hostesses are not allowed to marry for the first four years of their employment, that they will lose their positions if they become pregnant, and that they will retire at the age of 35 unless the managing director extends their contract at his discretion. The Supreme Court ruled that terminating employment due to a first pregnancy violates Article 14, and that the managing director's extension of employment also violates the principle of equality established by Article 14, because this provision places unrestricted power in the hands of one person.

In the case of *Mohd. Ahmed Khan vs. Shah Bano Begum And Ors*<sup>7</sup>, the Supreme Court of India ordered the parliament to draught a uniform civil code governing a Muslim husband's obligation to provide maintenance to his divorced wife who is unable to support herself after

---

<sup>4</sup> Saswata Tewari, Role of judiciary in maintaining a gender-just world, available at:

<https://blog.ipleaders.in/role-of-judiciary-in-maintaining-a-gender-just-world/#:~:text=The%20Indian%20Judiciary%20through%20his,laid%20down%20in%20the%20constitution.>  
(Visited on May 29, 2022).

<sup>5</sup> 1990 AIR 883, 1990 SCR(1) 544.

<sup>6</sup> AIR 1981 SC 1829.

<sup>7</sup> 1985 SCR (3) 844.



the iddat period, holding that section 125 of the Code of Criminal Procedure, 1973 will apply to all husbands, regardless of religion, and the husband will be required to support his divorced wife.

The Supreme Court of India held in *Vishakha vs. State of Rajasthan*<sup>8</sup> that gender equality can be established through fundamental rights guaranteed under Article 14, Article 19, and Article 21 of the Indian Constitution, and that sexual harassment at work is a clear-cut violation of these fundamental rights, which in turn violates the principle of gender equality, and that in the absence of any domestic law to address the evil of sexual harassment, international assistance can be sought. Employers were given guidelines to follow in order to provide a fair, safe, and comfortable working environment for employees, particularly women.

In the case of *Joseph Shine vs. Union of India*<sup>9</sup>, the Supreme Court overturned its own decision in the case of *Sowmithri Vishnu vs. Union of India & Anr*<sup>10</sup>, decriminalizing adultery and striking it from the Indian Penal Code, holding that the law was based on gender stereotypes and thus violated Articles 14 and 15 of the Constitution because the law only considered the husband of the adulteress who was aggrieved, while the wife of the adulterer had no interests.

The Court went even farther, ruling that adultery cannot be considered a crime since putting interpersonal ties through the rigours of criminal law would be an unjustified invasion of one's right to private.

## CONCLUSION

Gender equality in India placed 112th out of 153 countries in the World Economic Forum's Global Gender Gap Report 2020, as it underperformed in areas such as women's economic engagement, education, health, and political empowerment. Spending on gender-specific programmes has also decreased over time. As a result, there is a need to invest more in improving the performance of these factors, as well as the effective and timely implementation of government programmes and programmes, and proper justice delivery by the courts in a long-term manner. Only then will society's true faith in gender fairness be built.

---

<sup>8</sup> AIR 1997 SC 3011.

<sup>9</sup> AIR 2018 SC 4898.

<sup>10</sup> (1985) SCC 137.

A nation's judiciary must stand forwards and interpret the laws in such a way that the ideal of equality is upheld. Constitutional efforts must be made to empower women in our society and alter all existing laws that prevent women from making choices and taking use of all life's opportunities. Governments must implement programmes, schemes, funding, and welfare policies aimed at empowering women on social, economic, and educational levels. Initiatives must be done to affect a shift in society's thinking.