

## GENDER JUSTICE: A CRITICAL APPRAISAL

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### INTRODUCTION

*“A woman feels keenly, thinks as clearly as man. She in her sphere does work as useful as man does in his. She has as much right to her freedom to develop her personality to the full as a man. When she marries, she does not become the husband’s servant but his equal partner. If his work is more important in life of the community, hers is more important in the life of the family. Neither can do without the other. Neither is above or under the other. They are equals.”*

**-Lord Denning<sup>i</sup>**

The practise of equality was supposed to be applicable on all humans. But in practise, the world is not even close to it. In the present era of scientific advancement and modern civilisation, denial of rights to one half of the human populace is a sad reality. Violation of right to equality takes place in the form of denial of equal opportunities in education as well as employment, negligible representation in politics, resorting to force to intimidate women, deprivation of reproductive rights. Gender based discrimination is representative of the ugly face of society which has always viewed women as subordinate to men. In calculation, members of the fairer sex constitute 50 per cent of the global population putting in 2/3rd of world’s working hours but earning merely 1/3rd of the total world income. These statistic figures show the subservient position of women and are a sheer mockery of all canons of social justice and equity. That is why movements like #metoo are considered big boons for feminism. This movement gained momentum by encouraging women to take on influential people who harassed them sexually at some point.

India has a continuing tradition of subjugation of women. The truth, however, is that the hiatus betwixt men and women cannot be minimised by formulating laws without any public support. It must be favoured by the will of the people from whom it is enacted. An archaic practise like that cannot be eliminated overnight. When the laws enacted are not backed by the will of the people, it faces opposition and defiance from the society that works on orthodox principles.

They are nothing more than dead laws which fail to bring about the required changes. The last two centuries have witnessed a considerable expansion of economic and political rights in India. Gradually women are overcoming this man-made system that has been unjust to them. Now we see women multitask, balance all household chores, family and their career in a professional and organised manner. Our Constitution, in unequivocal terms, declared that men and women shall be protected equally. Such holistic principles, however, remained only on paper.

India has been in the limelight for its innovation and dynamism on all fronts, even as a third world country. Still it remains in shackles of age-old norms and conventions. The Indian Supreme Court actively engaged in the enforcement of human rights, which are reflected in its decisions. After the easing of locus standi doctrine and with the expansion of Public Interest Litigation (PIL) culture, the scenario changed. Judiciary has managed to address several human rights issues, including sexual exploitation suffered by women. The plethora of judgements manifest the humanitarian and forward-thinking approach of the SC, which has never ceased to work towards giving effect to the intention of our Constitution makers. The male chauvinist mind set is slowly diminishing as a result of the rights granted to women under the Constitution and the dynamic judicial approach towards it. Today, women are developing as pioneers in developing scope of fields.

## **GENDER JUSTICE**

The terminology “gender justice” remains largely undefined. It sometimes is interpreted to mean the equal treatment of men and women and at other times, ‘justice to the fairer sex’. However, gender justice must be treated as the latter for the purpose of this work. No society can progress by denying gender equality which is practically the essence of a civilised society. Mahatma Gandhi, the Father of our Nation, rightly pointed out- “*Women are the companion of men, gifted with equal mental capacity. Ignoring them will be a big mess for the civilization.*”<sup>ii</sup>

In various ancient societies, men were thought of as physically and intellectually superior to women. Women enjoyed very limited rights across ancient Greek and Roman civilisations. They were not bestowed with any property right, were not entitled to any sort of education/

training and could not even freely choose their partners. Procreating children was the only practical purpose of a woman's existence.

The *yin* and *yang* philosophy of ancient China strengthened the notion of women's inferiority.<sup>iii</sup> China devised the inhibitory custom of foot binding for women across the nation. This evil custom rendered the woman uncomfortably dependable on family and servants.<sup>iv</sup>

The early Vedic period has been marked as the golden era for the womankind as women were treated at par with men. Women's education held considerable significance; the Vedas too cited women sages. This condition deteriorated considerably afterwards. According to *Manusmriti*, a compilation of the Hindu Laws of Manu, women were subservient to men in all aspects of life. The atrocious practise of Sati was sanctioned by law and widow remarriage was denied. Other historical practises of Jauhar, Purdah system, Devadasis and child marriage manifest the gender imbalance in our society. These practises are inoperative to a large extent now due to the legal reforms in force. But in reality, the dysfunctional gender equity rampant today's times is also in essence of that. Sexual harassment at workplace, domestic violence, trafficking in children and women, dowry deaths, female infanticide and objectification on the basis of sex are reflective of that fact. Bangles have often been used as a metaphor for shackles in the Indian context as they are synonymous to women.

In England, the Common Law hardly offered any rights to a married woman. She did not even have rights to property after marriage. Women and children were held to be dominated and possessed by a man the early United States. As conventional patriarchal customary laws became more and more ingrained over the centuries, lives of women also became more restricted and oppressed. In both Europe and USA, females struggled to secure right to vote which took the shape of a movement for woman's suffrage highlighting the blatant gender intolerance. Women, as a result of the movement, were finally given suffrage rights in these places. In April 2020, Sudan declared the practise of female genital mutilation as a crime.<sup>v</sup> This was a welcome change in the present era for women rights.

Gender Justice in workplace as well as family tops the list of 'unfinished businesses'. This condition has been prevalent in all cultures despite their differences. Male chauvinism is so well

dissipated as a state of mind that sexism and gender stereotypes exist both in urban and rural subcultures, more overtly in the latter. Simple dichotomies have mainly influenced the gender dynamics and practises associated therewith. The physiological differences between the men and women have resulted in the arrangement of division of labour. It eventually resulted in the establishment of gender hierarchies and resting of power with men. This was prevalent across tribal, agricultural, industrial societies and also organised states. We have witnessed a history of discrimination, subjugation and suppression.

There are some key elements of gender justice that are similar all around the globe and need rectifications<sup>vi</sup>:

1. Men and women must be treated alike. Substantive outcomes must be the basis of evaluation of fairness rather than a notion of formal equality which imply the standard of 'sameness'. Differential treatment may be what is required for a just outcome as may mean in certain cases.
2. Fairness should be at an interpersonal and institutional level; they must offer mediation as well as redress for wrongs
3. Acknowledging that gender justice necessarily signifies the realignment of scales in the favour of females; the same scale which placed her low in the history of gender hierarchy much to her disadvantage.
4. Arbitrariness which characterises the social construction of gender must be questioned.

The Third Gender: In archaic use, the word 'gender' means to include only men and women. But in light of the recent societal developments, the world has come to acknowledge one more gender known as transgender. They are also commonly known and referred to as the 'third gender'. All humans, irrespective of their gender, must be treated with equality, fairness, justice and compassion so that they are all able to contribute to the development of society, as is indicated by gender justice. No partiality of any sort shall be done on the basis of gender howsoever.

## **GLOBAL VIEW ON GENDER JUSTICE**

In layman's language, gender justice means *equality between men and women*, to achieve which certain preconditions must be satisfied. Gender Equality is a correlation of the following factors,

namely, social, economic, political, environmental, cultural and educational. Over the years it has gained in strength globally because of the realisation that humankind cannot truly progress if the woman population is held back. NGOs, feminists, human rights activists and the government have been collectively struggling for freedom, justice and equal rights. The world has made considerable progress in this regard but women have still not attained emancipation. Adding to the other elementary issues, globalisation gave rise to other complex problems. Cultural heterogeneousness, for example, has led to objectification of women on a wide scale. The condition of women in Africa and the Middle East is deplorable where they do not even have right over themselves or their children.

The United Nations Organisation, however, has been successful in establishing a strong mandate for gender justice ever since its inception in 1945. In 1946, it formed a separate body which would work for the special cause of '*advancement of women*. The sole aim of it was to further equal participation of individuals in economic and social development so that they become equal beneficiaries of societies' resources. Gender mainstreaming as a policy has proved to be a beneficial for securing gender justice and was adopted by organs of UNO and Commission on Status of Women. Several leaders at the 2005 World Summit went on to reiterate that "*progress for women is progress for all*".<sup>vii</sup>

Ever since its initiation, the Commission on the Status of Women has compiled data on the situation of women, promoted compliance of human rights, raised awareness and contributed to development. It is global policymaking body of the ECOSOC. The Decade for Women (1976-1985) has contributed notably to raising awareness about the issue of gender inequality. The World Conferences on Women worked in the same direction and took place between the years 1975-1995. The United Nations Development Fund for Women (UNIFEM) fosters empowerment of women and was created in 1976. It provides scientific and monetary help to the innovative projects and strategies. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>viii</sup> or the 'universal women rights bill' is a human rights instrument on gender equality. It was ratified and adopted by the UNGA in 1979.

The UNDP or United Nations Development Program came up with two indexes - *Gender Related Development Index* and the *Gender Empowerment Measure* which signify the standard

of living of member nations with respect to gender justice, and has been developed by the UN. It is an acceptable manifestation of inequality between men and women taking into account health, longevity of life, awareness and a decent standard of living. Member states are ranked according to their performance in field of gender justice enforcement. India, USA and UK have been ranked 153<sup>rd</sup>, 17<sup>th</sup> and 74<sup>th</sup>, respectively, as per the 2018 listings.

UN Women is the UN entity for women empowerment and gender equality. It was formed by UNGA in the year 2010. For this, the member nations took a historic step by intensifying their fight for gender justice and listing it as a goal to be achieved by all nations.

The European Union too has been equipped by treaty to facilitate equivalent treatment of both men and women. It can help in effectively combatting the problem of gender inequality in all spheres of life. Article 21 of the EU Fundamental Rights Charter promotes gender equality by barring discrimination against women. The Treaty of Amsterdam of 1999 reiterated the existing provisions which voiced against the pay related disparity between the sexes<sup>ix</sup>. It has always been a step ahead in ensuring the elimination of all sorts of discrimination.

### **GENDER JUSTICE SCENARIO: UNITED KINGDOM**

Gender inequity is not as widely prevalent in the UK as in developing countries like India. In USA and UK, the instances of human rights violation in the aspect of gender justice are not as abominable as dynamics in Africa, South East Asia or Middle East. However, dichotomies are existent in case of employment and work. The gender justice laws in United Kingdom are based on European Union norms.

The UK Parliament granted suffrage rights to women, aged 30 or more, in 1918 as a result of their struggle for liberation. However, it was only in 1928 that voting rights were extended to women over 21 years of age. With that only they became political equal with men. Soon, the legendary Margaret Thatcher was elected the first woman PM of United Kingdom and second across the world, in 1979. Abortion was legalised in the UK in 1967

The Employment Protection Act, 1975 promises 14-week maternity leave to all working women. The Equal Pay Act was enacted to address the issue of inequality in respect of pay. Consequently, workers were allowed to claim equal pay for equal work. The Domestic Violence Crimes and Victims Act, 2004 counters the problem of domestic violence across the UK. The Sexual Offences Act, 2003 recognises ‘rape’ and ‘marital rape’ as statutory offences. It is one of the first countries where compensation was enabled for sexual assault victims. Another tremendous step towards the achievement of gender justice has been the identification of the word ‘prostitute’ as gender neutral term. The Sexual Offences Act, 2003 encompasses not only women but people of all other genders. Lastly, the Female Genital Mutilation Act of 2003 made the atrocious traditional ritual of genital mutilation of females as illegal. As far as the third gender is concerned, the UK Parliament enacted the Gender Recognition Act 2004 through which the transgender people were granted legal recognition.

### **GENDER JUSTICE SCENARIO: UNITED STATES OF AMERICA**

The origin of American movement, in the direction of securing gender justice, can be traced back to 1848 when the Convention on Women’s Rights was organised in New York. A Campaign was also launched, which demanded the same voting rights for both men and women. The US Congress, in 1920, finally succumbed to the demands and extended voting rights to men and women alike. The Civil Rights Act, 1964 bars discrimination of any sort between men and women. Equal Pay Act, 1963 also serves the same purpose of facilitating equal opportunities of employment to them. Title Seven of Civil Rights Act, 1964 prohibits unfair treatment of people on the basis of sex. The Family and Medical Leave Act, 1993 deals with maternity leave or child care. It promises to all people, up to 12 weeks of unpaid leave, in case they are expecting a child.

The landmark judgement by the US Supreme Court in *Roe v. Wade*<sup>x</sup> finally laid the controversial issue of ‘abortion’ to rest, observing that every female has the right to self-determination. It was ruled that abortion falls within the ambit of Right to Privacy and is now legal in all states. Sexual harassment was also held to be a form of discrimination against women.

Another statute, called the Violence against Women Act, 1994 was enacted to facilitate the attainment of gender justice. It recognised domestic violence as a federal crime and enabled women to sue the violators for damage in case any of their civil rights were violated. The U.S. Senate laid down the Employment Non-Discrimination Act (ENDA) which would prohibit discrimination on grounds of sexuality. However, no federal law has been enacted which designates the transgender people as a protected class or demands equal rights for them.

## **GENDER JUSTICE SCENARIO: INDIA**

Around early 1900s, women's groups started to emerge in the Indian region. Their focus was primarily on social reforms and freedom struggle. Later, they indulged in vigorous campaigning to attain social and political equality with men, and emerged victorious too. In 1950, both men and women were offered the right to vote in case they were over the age of 21. India, being a patriarchal society shielded a culture of violence against women of which the governmental policies towards women are also reflective. Violence is in the form of dowry, female infanticide, acid attacks, sexual abuse, domestic violence and so on. Despite the deep-rooted patriarchy prevalent across the nation, Indian public were among the first to have elected a woman Prime Minister.

To effectively combat the imbalance in gender hierarchy and facilitate the empowerment of women, various legislations have been brought into effect in India. The Indian Constitution bestows on women, a number of rights in this regard. Part III of the Constitution contains Fundamental Rights which universally apply to all people in India. It is the most powerful tool in the hands of Indian citizens which furthers the intention of constitution makers as mentioned in the Preamble. Several provisions in Part IV or Directive Principles of State Policy were introduced by the Constitution makers, solely with the objective of prohibiting discrimination on the basis of sex. The Preamble which is the 'preface' or 'concept note' to the constitution assures 'equality' and 'dignified living' to every individual which automatically involves the dignity of women. On the basis of this, various enactments, which aim at the protection of status and rights of women, have been brought into operation.



The Dowry Prohibition Act of 1961 which was laid down to do away with the practise of dowry exchange. Deaths due to failure of paying dowry were rampant in those times and still continue to thrive. It is an ancient custom which has led to the harassment of women. The I.P.C was amended to add Section 304B dealing with the crime of dowry death. The problem of domestic violence has been addressed by Section 498A of I.P.C. which punishes the violators with up to three years imprisonment along with fine.<sup>xi</sup> The 1983 amendment added this section to the Indian Penal Code. This amendment also added Section 113A to the Indian Evidence Act which raises a presumption regarding abetment of suicide by a married woman.<sup>xii</sup> The infamous Nirbhaya gang rape incident spurred the introduction of the Criminal (Amendment) Act in 2013.<sup>xiii</sup> More stringent punishments were introduced to prevent the onslaught of sexual crimes. Sex crimes have reached an all-time high in spite of this.

The menaces of sexual objectification of women and trafficking in women have been addressed by the Indecent Representation of Women (Prohibition) Act, 1986 and Section 294 of I.P.C. respectively. Immoral Traffic (Prevention) Act, 1986 forbids illegal trafficking of women and children. Even though Sati was abolished way back in 1829, the Commission of Sati (Prevention) Act was passed in 1987. In 1994, the Indian legislature passed an Act called the Pre-natal Diagnostic Techniques (Regulation and Prevention) Act to control the rising incidents of female foeticide. Despite all these attempts also, female foeticide continues to be widespread. In 2005 the legislature passed the Protection of Women from Domestic Violence Act in which the meaning of term 'domestic violence' was broadened to include all sorts of physical, mental, sexual, verbal and economic abuse. By this Act, anybody other than the aggrieved party can also lodge the complaint.

The Hindu Marriage Act, 1955 fixed the age of marriageable women as 18 and offered her several other rights. The Hindu Remarriage Act of 1956 legalised widow remarriage in India. However, the most remarkable statute which gave a different dimension to feminist movements across the nation is the Hindu Succession Act, 1956. It was amended in 2005 to extend coparcenary rights to women in familial property. These enactments have enhanced social justice for women. Other legislations which serve the needs of working women are the Factories Act, 1948, Maternity Benefit Act, 1961 and Equal Remuneration Act, 1961. The implementation of all these provisions have been challenging, that is why women still continue to deal with the same complexities.

Indian law only recognised two genders but the Apex Court in *N.A.L.S.A. vs. U.O.I*<sup>xiv</sup> declared transsexuals as a ‘third gender’. This made them entitled to the right of self-identification. The Fundamental Rights granted by the Constitution were also extended to them.

The declining women to men sex ratio in India are indicative of the appalling state of women in the country. The retired Chief Justice of India, P.Sathasivam, aptly remarked that exploitation of women is a “reality” in India and gender justice a “fragile myth”.<sup>xv</sup> A combination of subjugation, male chauvinism, patriarchy, evil practises, and lack of enforcement has altogether led to suppression of women today.

## **GENDER JUSTICE AND INDIAN CONSTITUTION**

Indian Constitution took roughly three years to be framed. Dr.Ambedkar was a prominent personality and also the Chairman of Drafting Committee. He was greatly concerned about the welfare of women and often raised his voice to give shape to provisions which encourage gender equality. Dr.Ambedkar was one of those who measured the progress of society in light of progress of women.<sup>xvi</sup> Dr.Rajendra Prasad and Pt.Jawaharlal Nehru also advocated for a Constitution which treats men and women just the same. They were conscious of the need of time and hence, ended up incorporating certain sacrosanct ideals in the form of women rights. Indian society is male dominated and the inclusion of such rights translated the abstract ideals into a concrete form. The grundnorm is gender sensitive and facilitates the enforcement of special statutes which confer additional rights on women, to bring men and women at par with each other. Human rights remain an inaccessible realm until women are brought at an equal stratum with men. The Constitution has been engrafted to perceive the outlook required for the achievement of that goal.

The Preamble ensures that all citizens are treated equally in terms of opportunity and status. Rights offered must be enjoyed by all the people and not just a particular section of society. Otherwise such rights will be rendered futile and meaningless. Preamble is often referred to as the ‘Window to the minds of Constitution makers’. The first words of our Preamble are- “WE, THE PEOPLE OF INDIA...” where the word “WE” is an inclusive term.<sup>xvii</sup> It includes men and women, irrespective of their castes and religions, and further talks about economic, political

and social justice for all. Economic justice means each person is entitled to receive just dues for his labour. By political justice it is meant that there should be no discrimination among individuals in matters of polity, universal adult suffrage for example. Social justice stands for prevention of inequality in title, status, caste, wealth etc. With the Preamble as foundation, several legislations have been brought into operation. The Constitution can be said to be nothing but a manifestation of the features highlighted by the Preamble.

Part III or the Fundamental Rights are often described as the “Heart of the Constitution”. It is contained in Articles 12 to 35 which represent the basic values cherished by Indians. These provisions pave a path for the people to attain full moral, intellectual and spiritual status, as has been claimed by Justice P.N. Bhagwati. However, reasonable restrictions have been imposed on each provision which restrict its ambit.

Article 14 provides that there shall be equality before law and equal protection of laws; subject to reasonable restrictions.<sup>xviii</sup> The expression “equality before law” declares that there shall be no special privileges in favour of any individual. On the other hand, “equal protection of laws” imposes an obligation on the state to take necessary steps so that men and women are treated alike. Discrimination or favouritism is not permissible unlike reasonable gender-based classification, which is considered fair. Article 14 has been invoked to promote causes like ‘equal pay for equal work’ and to prohibit sexual harassment of working women.

Article 15 embodies a specific application of Article 14 which is a safeguard against right to discrimination. In a way, it enlarges the scope of Right to Equality by prohibiting unjust treatment by state on grounds of religion, race, sex, caste and place of birth.<sup>xix</sup> The principle of equality implies that there must be equality of treatment in similar circumstances and not that same law should be applied to everyone. For the same, positive discrimination has been allowed in certain cases by Article 15(3). This article permits the legislators to enact special provisions for the upliftment of classes which have undergone subjugation and persecution. The women have always been perceived as inferior to men. This is another reason because of which such ‘protective discrimination’ has been introduced. Maternity benefits to women are a result of this only.

Article 16 states that individuals must have equality of opportunity with respect to public employment.<sup>xx</sup> This means that there shall be equal access to work and humane work conditions for everyone. This article specifically talks of employment to any office under State and any other matters connected with such employment. In essence it contains equal evaluation of performance by both men and women.

Article 19(1)(g) deals with freedom of profession and trade.<sup>xxi</sup> It guarantees to every individual, the right to practise any trade, business or occupation of one's choice. It is meant to be exercised with human dignity and that is why sexual harassment at workplace was held to be violative of the same.

The foundation stone of Part III is Article 21 which guarantees right to life and personal liberty to all people.<sup>xxii</sup> Indian judiciary has conferred a whole new dimension by its positive interpretation. Right to lead a dignified life is covered in the ambit of this provision and rape is a blatant violation of it.

Article 23 is a prohibitory provision which prevents traffic in women and children specifically.<sup>xxiii</sup> The Immoral Traffic (Prevention) Act, 1956 has been passed to give effect to this Act. This statute aims at the elimination of prostitution and trafficking in humans. The government of Andhra Pradesh, in 1988, passed the Devadasis (Prohibition of Dedication) Act which restricted the evil practise of dedicating women as devadasis to temples and deities.

Part IV (or D.P.S.P.) incorporates guidelines for the State which must be borne in mind by the legislators while formulation and administration of laws. These are the "fundamentals of governance" contained in Articles 36 to 51.<sup>xxiv</sup> The D.P.S.P. shall help in reinstating all forms of justice- social, economic and political. Both Central and State governments are expected to base their laws on the aforementioned ideals of a 'welfare state'. These provisions are specifically relevant to the issue of gender justice.

Article 39 is known as the 'social and economic charter' which draws support from Article 14 and 16. The objective of it is to build an egalitarian social order in the Union of India. Article 39(a) leads the legislators to ensure the right to adequate means of livelihood for all men and

women alike. Article 39(d) proposes 'equal pay for equal work' for both men and women. The Equal Remuneration Act of 1976 has been formulated as a result of the same provision. Article 39(e) aims at preventing abuse by safeguarding the health and well-being of the working class.

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The Maternity Benefit Act, 1961 was brought into operation to promote the objective of Article 42 which obliges the State to secure fair and humane conditions of employment for everyone.<sup>xxvi</sup> It also instructs the State to provide maternity benefits to women.

There are various religious denominations because of diversity of faith and religion in India and all are governed by their own personal laws. Article 44 directs the State to endeavour to secure a Uniform Civil Code for all citizens throughout the territory of India. This is an act of unification as envisioned by Dr. B.R. Ambedkar who was in favour of reformation of personal laws. In most of these personal laws, women have been placed below men; this trend can only be broken down by a UCC. Implementation of a uniform code shall curb the evil customary practises and facilitate equal personal rights to men and women. Article 47 promotes better public health and standard of living for all people.

Article 51-A was added by the Forty-Second Amendment and falls under Part IV-A of the Constitution. Clause (e) of this Article imposes the fundamental duty on every citizen to give up practises which are detrimental and derogatory to the dignity of women.<sup>xxvii</sup> Thus, it mandates everyone to respect and treat women at par with men.

The 73<sup>rd</sup> and 74<sup>th</sup> Amendment led to the insertion of Article 243 D and 243 T under Part IX & IX-A of the Constitution. The objective behind it was to reserve not less than 1/3<sup>rd</sup> seats for women of Scheduled Castes and Scheduled Tribes in election to Panchayats and Municipalities all across India. Articles 243 D(3) and 243 D(4) mandate the aforementioned provisions with respect to Panchayats, whereas Articles 243 T(3) and 243 T(4) contains similar provisions for Municipality elections. As an extension of this, another Bill was laid down in the Parliament way back in 1996 which proposed the reservation of 1/3<sup>rd</sup> seats for women, in Lok Sabha and State Assemblies. But due to political reasons, this proposed provision has not been incorporated in the Constitution as yet.

## ENSURING GENDER JUSTICE: JUDICIAL TRENDS & PRACTICAL REALITY

Constitution lays down exhaustive guidelines to make gender equality a reality in India. A country shall never be successful in its march towards progress if women are left behind. No wing other than judiciary could assist in making this de jure equality, a de facto one. Thus, throwing light on the practical judicial outlook towards women becomes important at this juncture. A few judgements which illustrate the approach of Indian judiciary towards the realisation of women's rights have been discussed as follows:

→ *Vishaka v. State of Rajasthan*<sup>xxviii</sup>

As a part of her job, Bhanwari Devi attempted to terminate the marriage of an infant and to fight the male ego prevalent in rural Rajasthan. However, she failed and the marriage was successful. She was gang-raped by the five men who sought vengeance upon her courage to protest against them and the concept of child marriage. Police and doctors subjected her to inhuman treatment by not assisting her properly. She was helpless but still determined and hopeful. A writ petition was filed by an organisation named 'Vishaka'. The PIL action sought guidelines for elimination of sexual abuse at workplace.

By a broad interpretation of the Constitution, it was held that sexual harassment was a clear violation of rights provided under Articles 14, 19 and 21. Relying on CEDAW, an international instrument to which India is a signatory, the court laid down the historic *Vishaka Guidelines*. These directions were made binding on all of India as law and courts had to mandatorily follow them. These guidelines were later converted verbatim into *The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013* which is the most gifted piece of law acting as saviour of working women. This case is a remarkable example of judicial activism where the honourable court took appropriate measures for a healthy work environment.

→ *Air India v. Nargesh Meerza*<sup>xxix</sup>

In this gender bending judgement by the Supreme Court, an inclusive reading of Article 14 was done and it was decided that employment cannot be denied to any person on the grounds of sex. For inflight services, stress was laid on high youth, appearance and glamour quotient of the

employees. A State-owned Aviation Company named 'Air India', by a service regulation, mandated the airhostesses to retire if they reach the age of 35, conceive a child or on marriage, whichever occurs earlier. Such conditions were derogating the natural course of a woman's life. These offending provisions were challenged and later struck down on grounds of arbitrariness and abhorrence in a civilised society.

→ ***C.B. Muthamma v. U.O.I.***<sup>xxx</sup>

Supreme Court was called out to test the validity of the regulations which enumerated the conditions of service of IFS officers, *the Indian Foreign Service (Conduct and Discipline) Rules, 1961*. Every female employee was bound by it to obtain permission from the public authorities and tender her resignation if her marriage was to be solemnized. The government, which is the final deciding authority, shall determine if the future family commitments of employee shall handicap her work efficiency or not. It was violative of the equality provisions vide Articles 15 and 16 of the Constitution. The rule was reversed in totality by SC as it clearly dominated the weaker sex. It sent out a clear message against gender discriminatory conditions of work.

→ ***C. Rajakumari v. Comm. of Police, Hyderabad***

The issue-at-hand in this case pertained to the fact whether obscene projection of women in beauty pageants is a violation of Fundamental Rights or not. The AP High Court was of view that depriving a woman of her right to dignity and representing her in a light which degrades her, is against public morality. Such representation intrudes Article 14, 21 and 51A.

→ ***Gaurav Jain v. U.O.I.***<sup>xxxi</sup>

A PIL was filed before the Apex Court to provide clarity on provisions for the upliftment of prostitutes. The two-judge bench of SC quoted the Fundamental Rights and deliberated that education and training be given to the fallen women and their children so that they may also lead a dignified life which they are worthy of. It was realised that they needed to be rescued; and ordered to set up rehabilitative home for them. The society was called out to make amends and curb trafficking in women.

→ *Leela v. State of Kerala*<sup>xxvii</sup>

It was held in this case that any statute which makes special provisions for women to endorse social welfare, cannot be violative of rights enshrined in Part III. Court recognised the familial commitments of a woman by ordering that lady constables and waitresses not be allotted duties for night shift. Government should work towards the creation of strong public opinion by advocacy, awareness and seminars to give women the spot they deserve.

→ *State of T.N. v. Suhas Katti*<sup>xxviii</sup>

This was the first case which involved conviction for posting of denigratory messages under IT Act, 2000. The issue was that a divorcee woman snubbed a family friend who tried hard to woo her. After several attempts also, the woman was nowhere near to being convinced at which the man felt humiliated. This triggered him to the extent that he posted her number with obscene messages on public platforms, leading to her harassment. The victim filed a complaint on the basis of evidence. The victim was convicted under Section 67 of the IT Act and other relevant sections of I.P.C. The accused was held guilty and punished accordingly. A benchmark was set and people were persuaded that judiciary shall protect their rights if instances like this occur.

→ *Randhir Singh v. U.O.I.*<sup>xxxiv</sup>

Through this decision, the court not only broadened the ambit of its powers by enforcing a provision which falls in the category of D.P.S.P. (which are not enforceable), but also constitutionalised the right to 'equal pay for equal work' (mentioned under Article 39-d). It was held to be applicable on both men and women. The act of fixation of pay scale was declared void because of being based on unreasonable classification. This judgement was a turning point in the history of Indian judiciary

→ *Suchita Srivastava v. Chandigarh Administration*<sup>xxv</sup>

The Supreme Court noted that every woman has a right to make reproductive choices, i.e. to decide whether to carry pregnancy in full term or to abort the foetus. She is free to participate in sexual activity or even refuse it. This decision added a new dimension of 'bodily integrity' to Article 21 of the Constitution.



→ *State v. Ram Singh and others (Nirbhaya Rape Case)*<sup>xxxvi</sup>

The barbaric and gruesome Nirbhaya incident sparked hue and cry for the need of establishment of stricter rape laws in the country. The social outrage was ignited by the sexual violation and genital mutilation of an innocent girl. The Court was clear in stating that the crime committed by the accused was not deserving of any sympathy as it shook the conscience of the society.

The SC bench of three judges unanimously upheld death penalty of all the accused who exploited the victim's identity and dignity. The crime touched the 'rarest of rare' threshold and is by far the worst our nation has ever seen. The judges went on to observe the following on the issue of women's rights- "*Public at large, in particular men, are to be sensitized on gender justice. The battle for gender justice can be won only with strict implementation of legislative provisions, sensitization of public, taking other pro-active steps at all levels for combating violence against women and ensuring widespread attitudinal changes and comprehensive change in the existing mind set. We hope that this incident will pave the way for the same.*"<sup>xxxvii</sup>

→ *Laxmi v. U.O.I.*<sup>xxxviii</sup>

In light of increasing acid attacks and easy availability of acid, the Supreme Court was called out to issue directives for the prevention of such incidents by imposing restrictions on sale of acids. The Court instructed the governments, at both levels, to chalk out a plan and prohibit the unauthorised sale of acids across the nation. It also went ahead to declare that all victims shall be provided compensation and rehabilitation by the respective governments. This decision paved way for the legislature to introspect and enforce harsher punishments for offenders committing such horrendous crimes.

→ *Shayara Bano v. U.O.I.*<sup>xxxix</sup>

The inhuman Islamic practise of *Talaq-e-biddat*, wherein men could irrevocably divorce their wives by uttering the word '*talaq*' thrice, was adjudged unconstitutional by a 5-judge bench of Supreme Court. This practise was derogatory to the dignity and equality of women as it violated Article 14, 12, 21 and 25 of our Constitution. CJI Khehar was of view that no practise can be validated merely on the basis of the fact that it has been in existence for the longest time and that a proper legislation against it must be put into place with immediate effect. This celebrated

judgment emboldened the movement towards gender equality by its subtle indication of the religious dogma prevalent across several religions.

→ *Indian Young Lawyers Association v. State of Kerala*<sup>xl</sup>

A Constitutional bench of SC, headed by CJI Dipak Misra, lifted the age-old ban on entry of women between the ages of 10-50, inside the Sabrimala temple where Lord Ayyappa is worshipped. The long-awaited judgement was pronounced amid protests in the state of Kerala. Devotion and faith must not be subjected to gender discrimination, as analysed by the honourable judges. Stereotyping menstruating women in the present times would permit the religious patriarchy to flourish. The restriction on entry was a violation of the right to worship of woman, as assured by Article 14 and 25 of the Constitution. This decision advanced gender justice and equality in the most significant manner.

→ *Joseph Shine v. U.O.I.*<sup>xli</sup>

The constitutional validity of Section 497 of I.P.C. was challenged in this PIL filed under Art.32. The section was argued to be gender discriminatory as it only criminalised adultery committed by men and not women. The concept of 'gender neutral' laws was found to be absent in the aforementioned provision. The Apex Court went ahead to decriminalise it as it was destroying the dignity of women. It was observed by the judges that such provisions which place a woman subordinate to a man, in marriage or otherwise, must be done away with in order to advance equality.

## CONCLUSION

The recent 'Bois Locker Room' fiasco sheds light on the rape culture that is prevalent in India. It is so pervasive that even young boys have no qualms in uttering trash about women's bodies. It is an endlessly repetitive pattern which shows that patriarchy has not only given rise by excusing terrible behaviour of young boys ('boys will be boys'), but has actively encouraged it. Achieving absolute gender justice in India is complicated because of the rigid traditions and diverse cultures. Poor enforcement of laws, deep seated patriarchy, lack of financial dependence and awareness among women is to be accounted for the deplorable state of females in our society. Several NGOs, Human Rights advocates, UN and other governmental agencies have

raised their voices against gender intolerance. Quite simply, equal treatment of all genders is a prerequisite for any welfare state.

The Indian judiciary, however, shapes the discourse of and keeps revising the gender justice theory based on norms accepted worldwide. The Courts have addressed all human rights violations and directed the government to act against it. The only recourse for them is to stay loyal to the Constitution and avoid judicial over activism. The Constitution encompasses the legal basis for establishing gender justice norms. The flexible PIL system has exhibited positive results. Indian women have aced everything under the sun even after constantly being reminded that they are second to men.

As illustrated earlier, legal reforms which pointed at bringing men and women to an equal position have failed to yield success. Raising the number of women Parliamentarians shall ensure reduced patriarchal approach and more women-centric laws. Having gender neutral laws and promoting gender neutrality in institutions will prove constructive in getting rid of gendered role created by the society. Despite the fact that there has been progress in concretization of gender equity, there is still a long way to go.

## **BIBLIOGRAPHY**

### *Articles/ Journals*

- Jaising, I. (2004). Gender justice and the Supreme Court. In B. N. Kirpal, A.H. Desai, G.Subramaniam, R. Dhavan, & R. Ramachandran (Eds.), *Supreme but not infallible: Essays in the honour of the Supreme court of India*. Oxford University Press: India.
- Maitrayee Mukhopadhyay, ‘*Gender Justice, Citizenship and Development: An Introduction*’, ‘*Gender Justice, Citizenship and Development*’, published by Zubaan, New Delhi.
- Dr. (Ms.) Rekha Singh (2004) “*Status of Women in Indian society*” Trustees of Boston University.
- Arpita Banerjee (2013) “*Status of Women and gender discrimination in India*” International journal of development research Vol 3 Issue 2.
- Neetu Rathore (2017) “*A study on women empowerment in India*” International journal of engineering technology science and research Volume 4 issue 11.

- Ann Stewart (1995) “*Debating Gender Justice in India*” Volume: 4 issue: 2.
- N.Carvalho on ‘*A law for tomorrow’s Indian women*’ available at: <http://www.asianews.it/newsen/A-law-for-tomorrow%E2%80%99s-Indian-women-17846.html> (Accessed on 26-02-2020)
- Shampa Dev on ‘*Gender Justice in India: A Feminist Jurisprudential Perspective*’ available at: <http://journals.christuniversity.in/index.php/tattva/article/view/1786/1524> (Accessed on 23-04-2020)
- Ankita Chakraborty “GENDER JUSTICE UNDER INDIAN CONSTITUTION” available at <http://thelawbrigade.com/wp-content/uploads/2019/05/ankita.pdf>
- B. Sivaramayya (2015) *GENDER JUSTICE*, available at <http://14.139.60.114:8080/jspui/bitstream/123456789/713/13/Gender%20Justice.pdf>
- P.Abishek on ‘*A Critical Analysis of Status of Women in India*’ available at: <https://acadpubl.eu/hub/2018-120-5/4/395.pdf> (Accessed on 28-04-2020)
- Archana Mishra on ‘*Towards Women’s Equal Right to Property - Recent Judicial Developments in India*’ available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2672561](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2672561) (Accessed on 02-05-2020)
- Majlis Legal Centre on ‘*A Comprehensive Guide to Women’s Legal Rights*’ available at: [https://www.iitk.ac.in/wc/data/Majlis\\_Legal-rights-of-women.pdf](https://www.iitk.ac.in/wc/data/Majlis_Legal-rights-of-women.pdf) (Accessed on 03-05-2020)
- Dr. Alok Chantia on ‘Gender Justice: The Constitutional Perspectives And The Judicial Approach’ available at [https://www.academia.edu/4362417/Gender\\_Justice\\_The\\_Constitutional\\_Perspectives\\_And\\_The\\_Judicial\\_Approach](https://www.academia.edu/4362417/Gender_Justice_The_Constitutional_Perspectives_And_The_Judicial_Approach) (Accessed on 05-05-2020)
- Upasana Mukherjee on ‘Comparative Study on Gender Justice’ available at: <https://www.scribd.com/document/67028452/Comparative-Study-on-Gender-Justice> (Accessed on 06-05-2020)
- Furkan Khan on ‘*India’s #MeToo Movement, One Year*’ available at: <https://www.scribd.com/article/420123377/India-s-Me-Too-Movement-One-Year-On> (Accessed on 08-05-2020)
- Devika Sakhadeo on ‘*In India, Class and Gender Inequities Impede Justice for Sexual Harassment Victims*’ available at: <https://www.scribd.com/article/364444143/In-India-Class-And-Gender-Inequities-Impede-Justice-For-Sexual-Harassment-Victims> (Accessed on 09-05-2020)

- Goutham Shri on ‘*Woman Empowerment*’ available at-  
<https://www.scribd.com/doc/98432535/Women-Empowerment-Project> (Accessed on 11-05-2020)
- Catharine A. MacKinnon on “*Sex equality under the Constitution of India: Problems, prospects, and “personal laws”*” available at-  
<https://academic.oup.com/icon/article/4/2/181/722101> (Accessed on 11-05-2020)

### ***Reports/ Statutes/ Treaties***

- Towards Equality, Report of the Committee on the status of women in India, Ministry of Education and Social Welfare, Government of India, New Delhi December 1974, available at <http://pldindia.org/wp-content/uploads/2013/04/Towards-Equality-1974-Part-1.pdf>
- IPC - Indian Penal Code (Section 299-311 /351-354/ 494-500) available at <https://indiacode.nic.in/bitstream/123456789/4219/1/THE-INDIAN-PENAL-CODE-1860.pdf>
- Dowry Prohibition Act, 1961, The Immoral Traffic Prevention Act, 1956, The Indecent representation of Women Prohibition Act, 1986 and Protection of Women from Domestic Violence Act, 2005 are some of the statutes enacted that extends protection to women.
- CEDAW (1980), Convention on the Elimination of All forms of Discriminations against Women, available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.html>

### ***Textbook***

- P.M. BAKSHI, THE CONSTITUTION OF INDIA, (Universal Law Publication, New Delhi, India, 14<sup>TH</sup> Edition, 2017)

### ***Websites***

- [https://shodhganga.inflibnet.ac.in/bitstream/10603/111052/1/11\\_11\\_chapter%204.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/111052/1/11_11_chapter%204.pdf)
- <https://www.smilefoundationindia.org/blog/women-empowerment-and-gender-justice-in-india/>
- <https://economictimes.indiatimes.com/blogs/et-commentary/gender-justice-literally-in-justice/>
- <https://thewire.in/women/is-the-indian-judiciary-going-back-on-gender-justice>
- <http://www.fundamatics.net/gender-justice-and-constitutional-law/>
- <https://sheroes.com/articles/women-rights-india/NzExNg>

- <https://trickleup.org/wp-content/uploads/2016/01/We-Walk-Together-Trickle-Up-Gender-Justice-Manual.pdf>
- <https://unu.edu/publications/articles/achieving-gender-equality-in-india-what-works-and-what-doesnt.html>
- <https://www.mondaq.com/india/human-rights/795312/women-centric-changes-in-indian-law>
- <https://www.thehindubusinessline.com/news/national/judiciary-took-tough-stand-in-fight-for-gender-justice-in-2018/article25865493.ece>
- <https://www.oxfamindia.org/blog/five-moments-2018-emboldened-fight-gender-justice>
- <https://www.theguardian.com/world/2015/sep/10/un-womens-rights-feminism-equality>
- <https://www.bbc.com/news/world-africa-52502489>

## REFERENCES

- 
- <sup>i</sup> The Due Process of Law, pp 199-200 (Butterworths, London) 1981
  - <sup>ii</sup> <https://www.mkgandhi.org/articles/womenempowerment.htm>
  - <sup>iii</sup> David Kirp and Marlene Franks Strong, 'Gender Justice', University of Chicago Press, (1986), Chicago, p. 23
  - <sup>iv</sup> Ibid, p.24.
  - <sup>v</sup> <https://www.bbc.com/news/world-africa-52502489>
  - <sup>vi</sup> Nath, Himangshu, Gender Justice in India (August 30, 2015), Journal of Juridical and Social Science, Vol 5, No 3, 2015. Available at SSRN: <https://ssrn.com/abstract=2734685>
  - <sup>vii</sup> <https://www.un.org/press/en/2006/sgsm10370.doc.htm>
  - <sup>viii</sup> <https://www.un.org/womenwatch/daw/cedaw/>
  - <sup>ix</sup> (Articles 2 ,3 and 141 of the EUROPEAN COMMUNITY TREATIES, 1957)
  - <sup>x</sup> 410 U.S. 113 (1973)
  - <sup>xi</sup> 1983 Amendment to Indian Penal Code, 1860
  - <sup>xii</sup> Indian Evidence Act, 1872
  - <sup>xiii</sup> Criminal Law Amendment Act, 2013
  - <sup>xiv</sup> WP (Civil) No 400 of 2012
  - <sup>xv</sup> Times of India, November 11, 2011, New Delhi, p. 1
  - <sup>xvi</sup> Dr B.R. Ambedkar, Dr. BR Ambedkar Castes in India Their Mechanism
  - <sup>xvii</sup> Preamble of Indian Constitution
  - <sup>xviii</sup> Article 14 of the Constitution of India
  - <sup>xix</sup> Article 15 of the Constitution of India
  - <sup>xx</sup> Article 16 of the Constitution of India
  - <sup>xxi</sup> Article 19(1)(g) of the Constitution of India
  - <sup>xxii</sup> Article 21 of the Constitution of India
  - <sup>xxiii</sup> Article 23 of the Constitution of India
  - <sup>xxiv</sup> Kesavananda Bharti v. State of Kerala AIR 1973 SC 1406
  - <sup>xxv</sup> Article 39 of the Constitution of India
  - <sup>xxvi</sup> Article 42 of the Constitution of India
  - <sup>xxvii</sup> Article 51-A(e) of the Constitution of India
  - <sup>xxviii</sup> AIR 1997 SUPREME COURT 3011
  - <sup>xxix</sup> 1981 AIR 1829
  - <sup>xxx</sup> AIR 1868
  - <sup>xxxi</sup> AIR 1997 SC 3021
  - <sup>xxxii</sup> 2004 (102) FLR 207

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xxxiii C.C.NO.4680/2004

xxxiv 1982 AIR 879

xxxv (2009) 14 SCR 989

xxxvi SC No. 114/2013

xxxvii [https://main.sci.gov.in/supremecourt/2020/5529/5529\\_2020\\_5\\_301\\_20686\\_Judgement\\_14-Feb-2020.pdf](https://main.sci.gov.in/supremecourt/2020/5529/5529_2020_5_301_20686_Judgement_14-Feb-2020.pdf)

xxxviii (2014) 4 SCC 427

xxxix AIR 1985 SC 945

xl 2018 SCC OnLine SC 1690

xli 2018 SC 1676

