



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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ISSN

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AN ANALYSIS OF GENDER JUSTICE FOR WOMEN IN INDIA: TRACING THE DEVELOPMENTS FROM PAST

AUTHORED BY: SHWETA SINGH

College: Chanakya National Law University, Patna (Bihar)

Designation: LL.M

Abstract

The empowerment of women is fundamental to be delved into in the background of the sorrowful state of affairs that they face. We have had manifold instances where women have become the bore of the brunt with regard to the orthodox thinking in society. Since the beginning of civilization, law has been utilized as a tool for achieving a “just society”; a society where “each is given what is due to them”. Gender injustice is said to be caused when a person’s choice is restricted owing to their sex.

The early Vedic Era is said to be the golden age for women's rights, whereby in “Taittiriya Samhita,” men and women are depicted as two wheels of a cart, exhibiting equality between both in society. During ancient times, unlike other cultures, there was no restriction on women’s education in India. There are numerous accounts of learned women in ancient texts.

In the present paper, the researcher shall examine the status of gender justice in India with reference to women. Much like other societies across the world, Indian society was and is still plagued by the menace of patriarchy. However, this has not always been so.

The findings highlight the necessity for a holistic approach to gender justice, encompassing legal reforms, social interventions, and cultural transformations. The study aims to analyse the historical trajectory of gender justice in the nation, seeking guidance for policy initiatives and advocacy efforts that promote gender equality and women's empowerment in India.

Keywords: Gender Justice, Empowerment, Evolution, Patriarchy, Equality.

INTRODUCTION

Law and justice are two words that run interchangeably with each other. From the very beginning, law has been used as a tool to achieve a “*just society*”; a society where “*each is given what is due to them*”.¹ With the passage of time the notion of justice developed and one such facet of justice is Gender Justice.

Anne Marie Goetz defines gender justice as “*the ending of and if necessary, the provision of redress for inequalities between women and men that result in subordination of women to men. These inequalities may be in distribution of resources and opportunities that enable individuals to build human, social, economic and political capital. Or, they may be in conceptions of human dignity, personal dignity and rights that deny women physical integrity and capacity to make choices about how to live their lives*”.² Where Gender Justice is concerned with having choices independent of the sex to which the person belongs, Gender injustice would mean when that person’s choice isn’t independent and is restricted because of sex. So, Gender Justice would mean having a free will and a right to choose hence, the core idea is right of self-determination.³

As we can see in the previous paragraph Gender Justice runs parallel to feminism and hence, is more often confused with gender equality. Gender equality might be a tool for achieving gender justice but it can’t be said to be gender justice in itself as for a society to be just society it has to be a gender equal society. Yet society can sanction a male for making feminine choices and opting for feminine role.

The term should also not be confused with empowerment as these norms of the society not only causes injustice to women but also to men. For instance, the pressure put on male to earn livelihood for their family puts pressure on the male child to earn which leads them to drop out of school and go out and work at an early age. Therefore, when we talk about empowerment it wouldn’t just mean women empowerment but all genders alike for the society to be a just society. In the present paper progress will be traced across four parameters with regard to women. They are-

¹ David Miller, ‘Justice’ (*The Stanford Encyclopaedia of Philosophy*, 26 June 2017), <[Justice \(Stanford Encyclopaedia of Philosophy\)](#)> accessed on 3 March 2024.

² Anne Marie Goetz, ‘Gender Justice Citizenship and Entitlements’ in Maitrayee Mukhopadhyay and Navsharan Singh (eds), *Gender Justice, Citizenship and Development* (Zubaan, an imprint of Kali for Women 2007).

³ Neal Devins ‘Gender Justice and Its Critics’ (1988) 76CLR1377 <[Gender Justice and Its Critics \(jstor.org\)](#)> accessed on 3 March 2024.

- i. Equality in Education
- ii. Equality in Inheritance
- iii. Equality in Representation and Participation of women in workforce
- iv. Gender based violence.

GENDER JUSTICE IN INDIA

Indian society is still plagued by the menace of patriarchy but in Vedic era men and women were depicted as two wheels of the same cart showing equality between both.⁴ However Manu dictated that a woman shouldn't be allowed to be independent. Her dependency is earlier on her father, then her husband and after he passes away on her son.⁵ Therefore, gender inequality between men and women lies central to issue of gender justice in India.

i. Equality in education

During ancient time there was no restriction on women's education instead Panini mentions numerous accounts where female used to study Vedas and there were female teachers too. However, the privilege was limited to women belonging to well to do families. Where men were allowed to continue their education after marriage women were not allowed to do so. So, there existed some disparity in access to education for women in ancient India.

Gender inequality in literacy rate can still be seen in 21st century. NSO survey mentions that female literacy is 70.3 percent in comparison to male literacy which is 84.7 percent. Government has taken steps to level the gap by providing reservation to female in educational institutions alongside they have launched various schemes. Some of the important schemes such as CBSE Udaan scheme⁶ was launched by CBSE in which they provided free course material to girls and online resources for 11th and 12th in collaboration with Ministry of Human Resource Development and Government of India. Other important schemes related to education are Balika Samridhhi Yojana, Mazi Kanya Bhagyashree scheme etc.⁷

⁴ Sonal Malik, 'Status of Women in Vedic Period' (2022) 6 Journal of Positive School Psychology 5693.

⁵ George Buhler (tr), 'The Law of Manu- The Sacred Books of the East' (25edn Oxford: Clarendon Press 1886).

⁶ 'UDAAN-CBSE SCHOLARSHIP PROGRAM' (*Transforming India*) <[UDAAN-CBSE Scholarship Program - Transforming India \(mygov.in\)](#)> accessed on 4 March 2024.

⁷ 'Balika Samridhhi Yojana' (*Social Welfare Department Government of Meghalaya*) <[Balika Samridhhi Yojana: Social Welfare Department, Government of Meghalaya \(megsocialwelfare.gov.in\)](#)> accessed on 4 March 2024.

ii. Equality in Devolution of Property

Evidence can be seen that women acquired property in ancient India in form of Gargivachaknavi competing for cows or the wives acquiring husbands' property by partition in Yajnavalakya.⁸ If the husband dies without a son, then widow would get the property and there were also evidence of joint ownership of property and maintenance. Women only had right on Stridhana but was not considered a coparcener in joint family property in early Vedic period. Then came two schools of law that dictated the devolution of joint family property which were Dayabhaga school and Mitakshara school. Where the Dayabhaga school allowed women to be coparcener Mitakshara school did not allow women to be a coparcener or a karta in HUF.⁹

Later daughters started having equal right in self-acquired property of their parents after the commencement of constitution but still did not get equal coparcenary right in Hindu Succession Act, 1955.¹⁰ After the 2005 amendment women were given equal coparcenary right and she was also allowed to be a karta in HUF.¹¹ In *Vineeta Sharma v. Rakesh Sharma* court further cleared the ambiguities and said that amendment will have retroactive operation to the effect that even if the father died before the amendment women will be coparceners.¹²

iii. Equality in Representation and Participation of Women in Workforce

First female Prime Minister of India was elected in 1966¹³ and first president in 2007¹⁴ still India ranks 127th in global ranking of women. Female representative currently accounts for less than fifteen percent in both the houses of parliament. The government for the first time introduced Women Representation Bill in 1996 which sought to reserve 33 percent of seats for women in Lok Sabha and state Legislative Assemblies. However, the Lok Sabha was dissolved and the bill lapsed subsequent to which the effort was made again in 2008 however the bill lapsed again owing to the dissolution. Via, the 128th Amendment Bill, 2023, the Women Reservation Bill, 2023 has been successfully passed from the both houses of the Parliament of India. Nearly, one-

⁸ Priya Darshini, 'Proprietary Rights of Women in Ancient India (600 B.C.-100 A.D.) (2012)73 Proceedings of the Indian History Congress 132 < [PROPRIETARY RIGHTS OF WOMEN IN ANCIENT INDIA \(600 B.C. – 100 A.D.\) on JSTOR](#)> accessed on 4 March 2024.

⁹ Jatar and Paranjape (n 9) 100.

¹⁰ D Halder and K Jaishankar, "Property Rights of Hindu Women: A feminist Review of Succession Laws of Ancient, Medieval and Modern India" (2008) 24 Journal of Law and Religion 663.

¹¹ The Hindu Succession (Amendment) Act, 2005 (Act No. 39 of 2005), s 3 (2005 Amendment).

¹² *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1.

¹³ 'Former Prime Ministers of India' (*PMINDIA*) < [Prime Ministers of India \(archivepmo.nic.in\)](#)> accessed on 4 March 2024.

¹⁴ (*Smt. Pratibha Devi Singh Patil*) < [Smt. Pratibha Devi Singh Patil \(pratibhapatil.nic.in\)](#)> accessed on 4 March 2024.

third of all seats has been reserved for women in Lok Sabha, State Legislative Assemblies and the Legislative Assembly of the National Capital Territory of Delhi. Additionally, this reservation will also extend to the seats reserved for SCs and STs in Lok Sabha and State Legislative Assemblies. Article 243D of the Constitution mandates that not less than one-third of the seats reserved for SCs and STs should be reserved for women.¹⁵

The participation of female labour force went down from 31.59 percent to 25.1 percent in 2022.¹⁶ This can be attributed to the disparity in education and lack of job catering to the requirement of the women. To do away with the situation and for increasing the participation of female workforce Government of India amended the laws to provide better condition for women according to their needs. One such instance is Maternity Benefit Amendment Act, 2017 which provides that every institution having 50¹⁷ or more female employees to have a creche facility in addition to providing paid maternity leaves for women of 26 weeks.¹⁸ Government has provided better security facilities to female employees working in night shift under the Factories Act, 1948. For the first time, female oriented bill has been sanctioned i.e. Digital Personal Data Protection Bill, 2023 where the word “she” instead of “he”, for the first time it acknowledges women in Parliamentary law-making. This indeed is a positive approach taken by legislation showing equal representation of women providing law making power to them.¹⁹ This is a optimistic approach taken in political landscape where the women has given platform to voice their concerns and advocate for policies that address women’s issues. It is an essential component of women’s socio-economic and political empowerment.

However, this passage of the bill requires strongly political will and bipartisan support. This has historically faced resistance from some political parties, which also raises its timely implementation by the parameters set by the present Bill passed by Parliament of India.²⁰ The bill needs to more collaborative effort, reflecting the commitment of all parties to gender equality in politics.

¹⁵ <https://www.iaseexam.com/way-forward-with-the-women-reservation-bill-2023-a-critical-analysis/>

¹⁶ Ministry of Statistics & Programme Implementation, ‘Periodic Labour Force Survey (PLFS) – Annual Report (July, 2020- June, 2021)’ (14 June 2022 <<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1833855>> accessed on 4 March 2024.

¹⁷ Maternity Benefit Act, 1961 (Act No. 53 of 1961), s 11A.

¹⁸ Ibid, s5(3)(A)(i).

¹⁹ “Digital Personal Data Protection Bill, 2023” <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1947264>

²⁰ <https://www.iaseexam.com/way-forward-with-the-women-reservation-bill-2023-a-critical-analysis/>

iv. Gender Based Violence

“Gender based violence refers to any type of harm that is perpetrated against a person or group of people because of their factual or perceived sex, gender, sexual orientation or gender identity.”²¹ It means a person becomes more prone to danger just because of belonging to a particular gender which they would not have been had they belonged to a different gender. Crime against women in India increased by 15 percent in 2021. Most of the crime are registered under the head ‘rape’, ‘kidnapping’ ‘abduction’ ‘assault on women to outrage her modesty’ and ‘cruelty by husband or his relatives’. Government has tried to make the policies more women friendly so that legal system is more accessible to them. The fear of women even within the four walls of her household shows the state of affairs. Due to friendlier policies of the government justice has become accessible for women. One such instance is section 113B of Indian Evidence Act where the burden of proof shifts upon the accused to prove that it was not a dowry death.²² Crime rate has yet not decreased owing to the poor enforcement of statutes.

CHALLENGES TO ATTAINING A GENDER JUST LEGAL SYSTEM

Our constitution guarantees equality before law and equal protection of law to all persons.²³ The equality that is mentioned in constitution is not mere ‘diceyan’ equality but equality with equity whereby the state has been given power to take affirmative action for the benefit of women and children. Therefore, Article 14 and Article 15 are the foundation upon which a gender just society can be built. The effort of government has yielded result which is clear from the results where from not having any share in ancestral property to having been made karta of the family. From 9 percent literacy to 70.3 percent literacy, we can see the position of women have improved. In spite of the commendable achievement India still lags behind in achieving a gender just society. Few of the challenges are:

- a) Lack of awareness among masses

No law can ever be effective till the society recognises it as unjust and sanctions it. Most of the people are not aware of the general encroachment and violence that amounts to injustice.

A large amount of population including women are not aware about their own rights. And

²¹ ‘What is Gender-based violence?’ (Council of Europe)<[What is gender-based violence? \(coe.int\)](https://www.coe.int/en/web/gender-based-violence)> accessed on 5 March 2024.

²² Indian Evidence Act 1872 (Act No. 1 of 1872), s 113B.

²³ Constitution Article 14.

hence, most of the women are not able to raise their voice against the injustice that is happening to them and even are not able to take the benefit of scheme that has been enacted for them by the government. Lack of awareness is thereby one of the challenges in achieving a gender just society.

b) Poor enforcement of statutes

Whereby the biggest tool in hand of a person to do away with injustice is law, the entire process is defeated if it becomes tiresome and long for the person. When statutes are not enforced effectively it creates loopholes for individuals ultimately weakening the fabric of the society therefore, robust enforcement is important for upholding justice. The victim is firstly the victim of assailant and secondly it is the victim of legal system. Therefore, most of the women do not even report the crime.

In 2021, government introduced a bill seeking to raise the legal age of marriage of women which was reviewed by a committee of 30 male members and one female member²⁴ in spite of its being so closely related to women interest just one woman was involved in the whole process.

c) High rate of gender-based violence

There can be many reasons for gender-based violence but in India it can be attributed to patriarchal and sexist view which leads to psychological trauma, perpetuating gender inequality, impeding socioeconomic development. The sexist views legitimise the infliction of violence on women. Factors such as long and delayed court process makes it easy for women to endure it rather than fight against it. Comments such as rape happens because of women's clothing²⁵ contributes further to justification for such violence where victim is blamed for her own situation.

d) Lack of POSH Complaint Committees in Parliament

There was serious lack of women in legislative houses of the country which makes their voice go unheard and unnoticed. Sexual harassment of women at workplace is a huge concern which leads women to not join the workforce. This issue was noticed by the Supreme Court

²⁴ 'Parliamentary panel on marriage age has only one woman MP' *The Hindu* (New Delhi, 22 January 2022) <[Parliamentary panel on marriage age has only one woman MP - The Hindu](#)> accessed on 6 March 2024.

²⁵ Nagarjun Dwarkanath, 'Rape increasing because of women's clothes: BJP MLA on Priyanka's 'Right to wear bikini' remark' *India Today* (9 February, 2022) <[Rapes increasing because of women's clothes: BJP MLA on Priyanka's 'right to wear bikini' remark - India Today](#)> accessed on 6 March 2024.

in 1996 itself whereby to curb the menace the court issued direction to the government to enact statute to prevent the sexual harassment at workplace.²⁶ Despite the direction of the Supreme Court government did not enact any law for sexual harassment for a decade. In 2013, when the statute Sexual Harassment of Women at workplace (Prevention, Prohibition and redressal) was passed the government did not give any heed to check the efficacy of the statute. This is the position of government when the country is witnessing a continuous dip in female participation in labour force for several years.²⁷

CONCLUSION

Gender justice stands for a just and equitable society for everyone and it prohibits all sorts of discrimination that takes place on the grounds of gender. Historically, women have faced all sorts of discrimination on the grounds of gender. Earlier, they were not allowed to have a share in ancestral property and were not even allowed to continue with her education after marriage. Manu even went on to say that women were inferior to men and they must always be kept in state of dependence on man for all her life. The commencement of constitution paved a way for the women to have equality along with equity as a right guaranteed to her by the constitution. In this light the present paper analysed achievement of state towards the goal of gender just society for women across 4 parameters –

- I. Education
- II. Right of Inheritance in Ancestral Property
- III. Representation in State Legislative Assemblies and Participation in workforce
- IV. Gender based violence

Remarkable to note that the state has made significant effort in providing equitable and just society for the women by launching welfare policies and enacting laws relating to welfare of the women in all the above fields. One big instance of the effort can be seen in field of education where the literacy rate has increased remarkably from 15 to 70.3 percent. In the field of personal law women now have equal right over the ancestral property as that of men. Government has also made effort towards making the justice delivery system more friendly for women so that the crime does not go unreported. Various laws such as Dowry Prohibition Act, 1961 along with its

²⁶ *Vishakha and others v State of Rajasthan*, (1997) 6 SCC 241).

²⁷ Ministry of Statistics & Programme Implementation (n 34).

corresponding amendment in section 304B of Indian Penal Code, 1860 and section 113B of Indian Evidence Act, 1872, Sexual Harassment of Women at Workplace (Prohibition, Prevention and Redressal) Act, 2013, Criminal Law Amendment Act, 2013, etc were passed to make justice more within the reach of women.

These achievement presents a bright picture of a just society still there are few challenges that have prevented the state from the realisation of goal of a just society for women in India. Women's representation in parliament and legislative assemblies was not up to the mark till now which led patriarchal society to adjudge the interest of women without understanding their problems. Recently, this has been changed via bringing the reservation bill for the women giving them tool to voice their concern and take part in nation building. A big drawback was lack of representation is the voices of the women go unnoticed as can be seen in the case of sexual harassment. The government of India did not recognise it as a serious concern till 2013 despite the continuous dip in women participation in labour force and even in current scenario have turned a blind eye to the issue. The government still is not checking the efficacy of these statutes and does not maintain any record on the problem.

Since 1990s the participation of women in workforce has also seen a dip to a big extent. The insufficiency to a certain level can be blamed on increase in gender violence along the same time frame. Further the matter suffers from poor enforcement of these laws even if they are enacted the increased crime raises a question on the effectiveness of these laws.

In conclusion it can be said that India has made significant progress in few areas for giving a just society for the women and at the same time it still lags behind on certain aspects and has a long way to go in other areas. One way of improving the women workforce would be opting for a hybrid model whereby women are allowed to work from home and their presence is not essential and they will not be within the reach of the perpetrator which will help women not to drop out of the job after marriage and building a sense of security among them. Hence adopting creative measure along with strict enforcement of laws would help India finally attain a just and equitable society for women.

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