



Gender Justice under Constitutional Framework

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ABSTRACT

Gender fundamental to the way law works, to its meaning, to its impact and that for a very obvious reason which is that law is socially embedded and gender is you know pervasive and shapes legal relations power within the legal context just in the way that it shapes power and institutions but the way in which gender and sex affect law. For instance, many aspects of gender and will be investigated the engaging with the foundation of the core theme. Through this engagement, an effort is made to elaborate the gendered understanding law . The lack of knowledge about law accelerate the vulnerabilities of women and marginal categories gender and law are intelinked in a social space where women and other gender are merely treated as commodity. The basic understanding of legal system and Its relationship to gender. The various law and current elaborate about laws related with women and gender. Gender and the law represent a critical area of gender, legal social political discourse ,addressing the way in which legal system respond to gender based inequality , discriminative exclusion women are entitled to enjoy several right guaranteed to all from their conception ,the universal declaration of human right states. Human rights are the basic rights which everyone. Intent from the moment they are conceived in the mother's womb. The study analysed constitutional provisions, statutory laws and judicial interpretations that aim to ensure gender equality and prohibit discrimination on the basis of sex and gender.



Introduction

Gender justice under the constitutional framework represents a foundational commitment to equality, dignity, and substantive justice in a democratic society. The Constitution of India does not merely proclaim formal equality between genders; it envisions a transformative social order where historical discrimination, structural inequalities, and deeply rooted patriarchal norms are actively dismantled through law, policy, and constitutional morality. By guaranteeing fundamental rights such as equality before law, prohibition of discrimination, and equal opportunity, along with directive principles that urge the State to promote social and economic justice, the Constitution positions gender justice as both a legal mandate and a moral responsibility. In this sense, gender justice is not an isolated ideal but an ongoing constitutional message—calling upon institutions, courts, and society at large to translate normative promises into lived realities, ensuring that freedom, rights, and justice are meaningfully accessible to all genders. Gender justice and law has been subjected of discussion at national and institutional level and the concept of gender injustice is a common phenomenon in the modern world. In exposes discrimination operations, subordination, domination, the bias in the treatment men, women, transgender, dignity workplace role in the family society religion etc. So gender inequality occurs when the people treated differently based on their gender status women have always been considered the weaker sex to the physical mental and the economical restraint so in a society dominated by men women have historically been view as a second class citizen and face many operations although the progress has been made in the recent decade and the fight for gender equality and gender justice remains a significant challenges. Women in the through the indian society years so the people generally and equal right , marriage, divorce , domestic violence etc. But gender is much more them that.

HISTORY PRIOR TO THE CONSTITUTION AND AFTER THE CONSTITUTION

IS both this era gave rise to the significant legislation and also judiciary played a very- very important role pertaining to gender. SO when the britishers they came over to india for the purpose of trade so there was no law so the britishers they were they were not interested in interfering with their custom but they want to have a law and they also felt that the condition of the women is not as good as good as in England

CONSTITUTIONAL FRAMEWORK

Codification of law: The British introduced codification of law , include The Indian panel code [IPC] so therefore they try to codify the law and Macaulay was sent to india for the codification of the law so



therefore so the law which was pertaining to the criminal code. Which addressed issue like pronography (section 292), outraging the modesty of women (section 354 A) and restriction of voluntary miscarriage (section 302)*Female Infanticide* :The British also discovered and declared female infanticide illegal through regulation in 1795 and 1804.*OTHER LAWS* :Provision related to the abandonment of children and adultery recently decriminalized by the supreme court

Reform Movement

The 19 th century social reform movement and 2p th century Nationalist movement brought attention to issue like sati ill treatment of widows , child marriage and lack of property right for women , leading to new rule promoting women welfare. *Marriage Laws* Prior to the Hindu Marriage Act of 1955,polygamy was common among Hindu and Muslims, with Christians and parsi adhering *Constitution* to monogamy

Women in Legal profession

The legal practitioner (women) act of 1923 for the first time allowed women to enroll and practice as legal practitioner's *Indian constitution assembly: Despite comprising only 15 women's (5 % of total members) from diverse backgrounds*, these women actively contributed to the constitution gender forward measures. *Indian obligation under international convention*

United nation and Equality

The united nation declaration emphasizes equality and prohibit discrimination based on sex race or religion CEDAW: The International convention on the elimination of all form of discrimination against women (CEDAW), also known as the international Bills of rights, explicitly addresses violence against women and provide a framework of action. Case Law Example: The case of Apparel Export promotion council vs A k Chopra (1999) used CEDAW provision to define sexual harassment in the workplace, highlighting the duties of domestic courts to conform to international standards in the absence of specific legislation. *Female Equality in the Indian constitution* Fundamental Rights : The constitution embodies gender equality through directive principle , fundamental rights and the preamble

Some important articles

Article 14-18 (Right to equality): Ensures equality before the laws and prohibit discrimination based on gender. Article 15(3) specifically allow for special law allow for women and children. Article 16: prohobit discrimination in public employment based on sex. Article 21 A : Right to education mandate compulsory and free education for children age 16-14, which is gender positive Article 23 (Prohibition of



Human Trafficking and Forced Labour): Bans practices like human trafficking and forced labour, including 'Devadasi' Article 24 (Prohibition of Child Labour): Prohibits employment of children under 14 in hazardous occupations, a gender-positive discrimination

Directive Principles:

Article 39A (Right to Livelihood): Ensures adequate means of livelihood for all citizens irrespective of gender, leading to various government schemes Article 39D (Equal Pay for Equal Work): Guarantees equal pay for equal work for men and women, though a significant gender pay gap persists in reality Article 42 (Just Working Conditions and Maternity Relief): Emphasizes fair wages, reasonable hours, and safe environments, and provides maternity relief, with paternity leave also being introduced

POLITICAL EMPOWERMENT AND GENDER JUSTICE

Political participation is a key indicator of gender justice. The constitution promote this through 73rd and 74th Constitutional Amendments, which reserve one-third of seats for women in Panchayat Raj Institutions and Urban Local Bodies. The Nari Shakti Vandan Adhiniyam, 2023, providing for 33% reservation for women in the Lok Sabha and State Legislative Assemblies, marks a historic step toward political gender justice.

Role of the Judiciary

The Indian judiciary has played a proactive role in interpreting constitutional provisions to advance gender justice. Landmark judgments include *Shah Bano v. Union of India* (1985), affirming maintenance rights of divorced Muslim women. *Joseph Shine v. Union of India* (2018), decriminalizing adultery and recognizing women's agency. *Navtej Singh Johar v. Union of India* (2018), decriminalizing consensual same-sex relations and extending constitutional protection to LGBTQ+ individuals. *Justice K.S. Puttaswamy v. Union of India* (2017), recognizing privacy as a fundamental right with implications for bodily autonomy and reproductive choices. These challenges highlight the gap between constitutional ideals and social reality. **Hindu Adoption and Maintenance Act** : This act initially discriminated against married women in adoption, but amendments in 2010 removed this disparity, allowing married women to adopt with their husband's consent, establishing gender parity. **Minority and Guardianship Act** : Section 6 of this act primarily considers the father as the natural guardian. However, the landmark *Gita Hariharan v. Reserve Bank of India* case (1999) reinterpreted the word "after" to mean "in the absence of" rather than "after the death of" the father, broadening the mother's role as a guardian in cases of the father's functional absence. **Family Courts Act**: Established to provide specialized courts for family problems,



these courts offer a less tedious and expensive procedure compared to civil or criminal courts. Their aim is to protect individual rights while also guiding and counseling families to restore harmony, especially benefiting women who are reluctant to go to traditional courts.

Section 498A of IPC and Domestic Violence Act : Section 498A deals with mental cruelty by husbands or their relatives. The Protection of Women from Domestic Violence Act, 2005 was passed to make justice more accessible to women, even if they don't want criminal proceedings. This act broadened the definition of domestic violence to include economic and emotional abuse, extended its application beyond married women to live-in relationships, and provided for immediate relief like shelter and protection pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994 : This law bans prenatal diagnostic procedures for sex selection to combat sex-selective abortions and female feticide, which are prevalent in India due to societal preference for male children and dowry expenses. Despite challenges, it remains a significant legal instrument. Immoral Traffic (Prevention) Act, 1956 : This is the primary legislation addressing trafficking, penalizing the trafficking of women and children for commercial sexual exploitation. Other laws like the Indian Penal Code, Bonded Labour System Act, and POCSO Act also indirectly deal with human trafficking. The Criminal Law Amendment Act, 2013, substituted Section 317 of IPC with Section 370 , providing comprehensive measures against human trafficking. Maternity Benefit Act : Introduced in 1961 and amended in 2017, this act provides benefits to employed women before and after childbirth. The *Air India v. Nareesh Mah* case affirmed that maternity leave should not be treated as a break in service, upholding women's right to the same pay and benefits during this period. Equal Remuneration Act : This act aims to ensure gender equality in wages and remuneration, preventing discrimination against women in the workplace and securing equal pay for equal work. Recent Developments and Challenges: The Nari Shakti Vandan Adhiniyam (2023) , ensuring one-third of seats for women in Parliament and state legislatures. Despite progress, India's female labour force participation remains low , with challenges like poor working conditions, the gender wage gap, and the burden of unpaid work. The Companies Act, 2013, made it mandatory for prescribed companies to include at least one woman director on their board to address the "glass ceiling" for women in higher decision-making positions. Sexual Harassment Act (: The *Vaisakha and others v. State of Rajasthan* case (1997) was a landmark judgment that recognized the need for a legal framework to address sexual harassment in the workplace, establishing the Vaisakha guidelines as an interim measure until a proper law was enacted.

Conclusion



Gender justice under the constitutional framework is not a static concept but a dynamic and evolving process. The Indian Constitution provides a strong legal and moral foundation for achieving gender equality through fundamental rights, directive principles, affirmative action, and judicial activism. However, true gender justice requires not only constitutional safeguards but also effective implementation, social transformation, and sustained political will. Bridging the gap between constitutional promises and lived realities remains the foremost task in the pursuit of a just and inclusive society. Despite various laws and judgements, gender disparity persists in India. If we want gender equality we need good policy and enhanced collaboration and a change in societal attitudes to achieve true gender equality and empower women.

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