



GENDER EQUALITY: ROLE OF INDIAN CONSTITUTION

DR.NIKHIL GANGAPPA MANTUR

PRINCIPAL

BLDE ASSOCIATIONS LAW COLLEGE

ABSTRACT ¹

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 centuriesold gender prejudices and established new benchmarks in gender justice.

¹ <https://ijirl.com/wp-content/uploads/2022/06/GENDER-EQUALITY-ROLE-OF-INDIAN-CONSTITUTION-AND-JUDICIARY.pdf>

MEANING OF GENDER EQUALITY²

Gender equality is a fundamental human right ensuring everyone has equal rights, opportunities, and responsibilities, regardless of gender. It is important because it leads to stronger, healthier, and more prosperous societies by reducing poverty, improving economies, enhancing public health, and creating safer communities. Gender equality fosters social progress by empowering all individuals to reach their full potential and participate fully in all aspects of life.

What gender equality is:

- **Equal rights and opportunities:** Everyone has the same rights, responsibilities, and access to opportunities in all areas of life, from education and work to healthcare and legal services.
- **Fair treatment:** It involves ensuring that access to resources and compensation is not determined by gender.
- **Eliminating discrimination:** It seeks to remove barriers and biases that limit individuals' potential based on gender, including societal expectations and stereotypes.
- **Shared power and responsibility:** It means men and women share equally in decision-making, leadership, and responsibilities, such as those at home and in the community.

Why gender equality is important:

- **Economic growth:** Societies that achieve gender equality see stronger and more sustainable economies, as women's full participation boosts productivity and innovation.
- **Improved health and education:** Equal access to healthcare and education for girls and women leads to better health outcomes for everyone and helps in eradicating poverty.
- **Safer communities:** Gender equality is crucial for reducing violence, including gender-based violence, and creating safer, more inclusive societies for all.
- **Stronger democracies:** When women and men share power in leadership and governance, decisions are more representative and legitimate, benefiting the entire community.
- **Realizing human potential:** It allows all individuals, regardless of gender, to pursue their own ambitions, interests, and talents, leading to a more just and equitable society.

GENDER EQUALITY AND INDIAN CONSTITUTION

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. 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 exploited³.

Preamble

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles of State Policy. The Constitution not only guarantees equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. Preamble Affirms justice, liberty, equality, and fraternity for all citizens.

Article 14⁴

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.

CASE LAWS:

Vishakha vs. State of Rajasthan⁵

The Supreme Court of India held 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.

"The judgment sought to enforce the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India. Sexual Harassment violates the fundamental right of the women of gender equality which is codified under Article 14 of Indian Constitution and also the fundamental right to life and to live a dignified life. The Court held that even though there is no express provision for sexual harassment at workplace under Indian Constitution, it is implicit through these fundamental rights.

In **Joseph Shine vs. Union of India⁶**, the Supreme Court overturned its own decision in the case of **Sowmithri Vishnu vs. Union of India & Anr⁷**, decriminalizing adultery and striking it from the Indian Penal Code, holding that the law was based on gender stereo types 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.

Shayara Bano v UOI⁸, 2017

"the 5 Judge Bench of the Supreme Court pronounced its decision in the Triple Talaq Case, declaring that the practice of instantaneous triple talaq [Talaq-ul-biddat] was unconstitutional. The Bench observed that the fundamental right to equality guaranteed under Article 14 of the Constitution, manifested within its fold, equality of status. Gender equality, gender equity and gender justice are values intrinsically entwined in the guarantee of equality, under Article 14."

³ 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-genderequality.html> (Visited on May 27, 2022).

⁴ <https://ijirl.com/wp-content/uploads/2022/06/GENDER-EQUALITY-ROLE-OF-INDIAN-CONSTITUTION-AND-JUDICIARY.pdf>

⁵ AIR 1997 SC 3011.

⁶ AIR 2018 SC 4898.

⁷ (1985) SCC 137

⁸ AIR 2017 SC 4609

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**⁹. 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**¹⁰, 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 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.

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 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.

CASE LAWS:

Balaji v. State of Mysore, AIR 1963,

The government of Mysore set up a reservation of 68% of the total seats in Engineering and Medical colleges. These seats were reserved in the favor of SEBCs, STs and SCs. The court held that this legislation breached the limit of reservation which should not be more than 50% of the total seats. The court also stated that the backwardness must be both Social and Economical. It can't be either social or economical alone.

Kathi Raning Rawat v. State of Saurashtra¹¹,

The state of Saurashtra set up special courts under Saurashtra State Public Safety Measures Ordinance 1949, to adjudicate on the matters of section 302, section 307 and section 392 read with section 34 of the Indian Penal Code, 1860. The contention brought before the court was that these provisions are discriminatory for the residents depending upon the territory. The court stated that all kinds of legislative differentiation are not discriminatory. The legislation did not refer to certain individual cases but to offenses of certain kinds committed in certain areas and hence it is not discrimination.

Revathi v. Union of India, AIR 1998

In case, the court held that the word 'for' which is given under this clause means that states can give special preference to Women and Children in legislation. Clause 4 discusses Special Provisions for Backward Classes. This is the second exception of clause 1 and 2 of Article 15. This clause was not part of the original Constitution and was included through the 1st Constitutional Amendment. This clause makes special provision

⁹ AIR 1981 SC 1829

¹⁰ 1985 SCR (3) 844.

¹¹ AIR 1952 SC 123

for the advancement of any socially and educationally backward classes of citizens (SEBCs), Schedule Caste (SC) and Schedule Tribes (STs).

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 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 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).

Special Initiatives for women¹²:

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 EQUALITY¹³:

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.

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. 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.

¹² <https://ijirl.com/wp-content/uploads/2022/06/GENDER-EQUALITY-ROLE-OF-INDIAN-CONSTITUTION-AND-JUDICIARY.pdf>

¹³ Saswata Tewari, Role of judiciary in maintaining a gender-just world, available at: <https://blog.ipleaders.in/role-of-judiciary-in-maintaining-a-gender-justworld/#:~:text=The%20Indian%20Judiciary%20through%20his,laid%20down%20in%20the%20constitution.>