
GENDER JUSTICE:A MILESTONE TO ACHIEVE WOMENT EMPOWERMENT

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Abstract: The key issue of gender justice implies protection of class of subordinate gender from the exploitation by the dominant gender. In other words, it portrays that women should participate in decision making process in all walks of life, share opportunities equally with men and also find a practical solution to issues in the family and the society at large. History depicts that, women have always witnessed the unfortunate fate of bearing the pain of discrimination in all spheres of life. However, gender justice is a challenge that the world is currently facing, and inspite of numerous response to the situation, gender justice is still a milestone to be achieved. A distinction can be drawn between the two genders in terms of their physical as well as biological factors that surpass the two from each other. Apart from this, it represents socio-economic, cultural and psychological factors, which make one class strong over the other. Being fundamental law of the land, constitutional law has explicit measures for attaining gender justice and this can be verified from a number of judicial decisions from time and again. In those decisions, judiciary has consistently responded positively in spite of gender injustice prevailing in India. This paper aims to analyse the response of judiciary towards gender injustice in India. It also recommends that there is a need for pro-women mindset among the people so as to adhere to the legal regime pertaining to the goals of gender justice.

Keywords: Right, Gender Injustice, Judiciary, Justice.

Introduction: Laws competence, efficacy and difficulty to interact with society for ensuring and escalating freedom, welfare and gender justice to people can be well understood by looking at the social milieu and patriotism upon which it operates. The internal structure of hierarchic society or operation of patriarchy can hardly be ignored when there exists, such privileges and unusual disabilities of the two sects at the social plain. Iris Marion Young conceptualizes gender justice as an imperative facet of social justice, which essentially means “elimination of institutionalized domination and oppression”[1].

It has been 65 years since India won its independence from the British[2]. A lot has changed in these years, from the silent films to the musical blockbusters, from the patriotism to the capitalism, from joint families to nuclear families, India has grown and changed. But with the growing population of the motherland, the problems have also augmented. On one hand, Incredible India promises economic affluence, greater opportunities, better infrastructure etc. but on the other hand, our regime and populace constantly fight battles against poverty, illiteracy, gender bias and many other social evils[3].

India, the cradle of civilization, is now overwhelmed with a number of social evils[4]. They are, so numerous that, one shudders to think of them. There have been social reformers like Raja Ram Mohan Ray, Maharishi Dayanand and Swami Shradhanand, who have fought against social evils, but these evils are so deep-rooted that after struggling to such an extent, some of them still persist to this day.

Whether gender justice is the grand finale of women empowerment?

In the preceding five years, the development community has focused on the increasing attention on legal empowerment; a concept originating in the specialized field of law, adopting a broader development parlance.

Despite this increased attention, there is insufficient consistency, precision, and clarity about what it means, even among non-government organization providers of legal empowerment services. While these descriptive features offer a rough sketch for understanding the concept of legal empowerment, they do not amount to a concrete definition.

The phrase, “I know it when I see it,” famously penned by Justice Potter Stewart of the Supreme Court of the United States when considering whether something was obscene language[5], may aptly describe the process of finding an appropriate definition for legal empowerment. The 2001 ADB legal empowerment study defined legal empowerment as “the use of law to increase the control that disadvantaged populations exercise over their lives.”[6]

“Women Empowerment” has been more of an adage in recent years and a display in craze to be flaunted, deviating from the actual cause of social equality. People rather men, to be specific, still view Venus species in more of amazement than appreciation when they embark upon uncharted sphere, such as one who gawks at the sight of female rider, female bus conductor or female bureaucrat, which may still sound a myth.

Forms of Gender Injustice:

Gender injustice is a multi-headed hydra that enters into all areas of human bustle as it forever disfavours women[7]. Iris Marion Young unearthed that gender injustice is primarily located in domination and oppression[8]. Domination is an institutional condition that prevents people from participation in determining their actions, whereas oppression obstructs communicative and learning abilities. She identifies five faces of oppression: exploitation, marginalization, powerlessness, cultural imperialism and violence[9].

1.Exploitation: Iris Marion Young observes, “Bringing about justice where there is exploitation requires reorganization of institutions and practices of decision-

making, alteration of the division of labour, and similar measures of institutional, structural, and cultural change.”[10]

2. Marginalization: Marginalization expels people from useful participation in social life[11]. Dependency arising out of such situation tends to defer their basic right to privacy, respect and individual choice and corners them to sagacity of uselessness, boredom and lack of self-respect of equal citizenship. I.M.Young suggests for restructuring of productive activity to address a right of participation outside the wage system[12].

3. Powerlessness: Powerlessness indicates lack of authority, status and sense of self involving distortions in division of labour and lack of opportunity to develop and exercise skills. Lack of dynamism and self-confidence leads to disrespectful treatment in addition to, personal inhibition in developing one's own skill. Young considers the oppression of powerlessness as basic to industrial societies, and suggests structural changes for amelioration.

4. Cultural imperialism: The culturally dominated groups are marked out by stereotypes and at the same time rendered invisible. While the oppressed group's interpretation of social life finds little space for expression, the dominant culture imposes its experience and view upon dominated. The experience and culture of the dominant group is followed as norm because of projection of their experience as representative of humanity as such.

5. Violence: From the cradle to grave, females are under the clutches of numerous evils acts as discriminations, oppressions, violence, within the family, at the work places and in the society[13]. It is a harsh reality that women have been ill-treated in every society for ages an India is no exception. Deep seated disrespect against women, sense of superiority on the part of males and helplessness of women because of the totality of these factors of oppression. Viewing incidents of violence against women as symptoms of social injustice, remedy lies in structural reforms by requiring redistribution of resources and positions, reform of criminal law, and alteration of cultural images by abandoning stereotypes and aversions of everyday life. Otherwise, the legal system has been responsible for repeated acts of violence against women instead of providing solution, itself may constitute the problem[14].

Judicial Response towards Gender Justice in India

Equality before Law: The state shall not deny to any person equality before law or equal protections of the law within the territory of India[15]. Under Article 15(1) and 16(2), sex is a prohibited ground of discrimination against any citizen in general matters or in respect of employment or office under the State. In **Bombay Labour Union v. International Franchises (P) Ltd.**[16] the Supreme Court quashed an employment rule, which required the unmarried women to give up her position when she married, as violate of Article 14. Similar stand was taken by the Court in *Air India v. NargeshMeerza*[17], in the following words, “It seems

to us that the termination of the services of an air hostess under such circumstances is not only a callous cruel act but an open insult to Indian womanhood- the most sacrosanct and cherished institution.....Apart from being grossly unethical, it smacks of a deep rooted sense of utter selfishness at the cost of all human values.”[18]

The Indian Judicial System has independently and effectively intervened on the issue of women emancipation. For instance, in **C.B.Muthamma V. Union of India** [19] the validity of the Indian Foreign Service (Conduct and discipline) Rules of 1961 was challenged which provided that a female employee to obtain a written permission of the Government in writing before her marriage is solemnized and at any time after a marriage a women member of the service may be required to resign from service. The Supreme Court held that, such provision is discriminatory against women and hence unconstitutional. The Supreme Court made it clear that, we do not mean to universalize or dogmatize that men and women are equal in all occupation and all situations and do not exclude the need to pragmatism where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrated, the rule of equality must govern[20].

However, in *Air India II*[21], the differential treatment of male and female employees in relation to their retirement age was allowed. The Court ruled that the unequal treatment was not entirely based on sex, but was traceable to collective bargaining.

Article 15(3) allows states to make special provisions for women and children. This calls for operation of the substantive equality mechanism for their well-being. It aims at eliminating inequality of the disadvantaged group in the society by positive measures. The madras High Court in *Shantabai*[22] ruled that since Article 29(2) did not prohibit discrimination on account of sex in matters relating to admission to educational institutions which were getting grant in aid from government such discrimination were not unconstitutional. It is submitted, this is problematic in view of the concerted application of equality provisions and Article 29(2). In *Dattatraya*[23], The Bombay High Court looked to the social, historic and economic inequality of women, and upheld the reservation of seats for women in municipalities as special provisions “to raise the position of women to that of men.”

Thus, the impact of Article 15(3)[24] upon the interpretation of Article 16(4) is significant in widening the policy of substantive equality.

In *IndraSawhney Case*[25] the Supreme Court had favoured the approach of keeping certain quota of jobs for women in each respective category of reservation. P.B. Sawant, J., observed “women are a vulnerable section of the society, whatever strata to which they belong. They are more disadvantage than men in their own social class. Hence reservation for them on that

ground would be fully justified, if they are kept in the quota of the respective class, as for other categories of persons.”[26]

The thought of protection of women and gender justice is spread throughout the Constitution of India. Judicial precedents and amendments have supported the same over a span of time. In the internal aid of the Constitution, social justice and dignity of individuals holds a special reference. The seriousness with which the policy is handled by the mainstream judicial activism to percolate into some areas of the legal system can legitimately earn the name of constitutional feminism[27].

Right to life and personal liberty: The procedure established by law applied for deprivation of right to life or personal liberty shall be just, fair and reasonable, the judiciary began to probe into constitutionality of law and procedure on both on both substantive and procedural grounds[28]. It is really important to note that, though the Constitution of India is working since more than fifty-seven years – the raising of the status of women to one of equality, freedom and dignity[29]. is still a question mark. The need of the hour is to bring a pro-woman approach in family matters[30].

Right to maintenance: According to V.R. Krishna Iyer, J. it contains a social purpose that the ill-used wives and desperate divorcees shall not be driven to moral and material declaration to seek sanctuary in the streets. The Supreme Court applied, Section 125 of the Criminal Procedure Code irrespective of the claims of Muslim personal law on Muslim husband’s obligation to pay maintenance to his divorced wife in confirmation to iddat period[31]. A statute has been enacted to override

section 125 and uphold the personal law as interpreted in Denial Latifi[32], whereit was stated that the obligation on Muslim husband does not discharge them of their liability to pay maintenance even beyond the iddat period. Applying the rule of equality, the court held that an interpretation of act that would leave Muslim Women in a less advantageous position then Hindu, Buddhist, Jain, Parsi, Christian women would violate the constitutional guarantee of right to equality.

Women’s protection: In Re,Balwant Singh[33] case Supreme Court demonstrated the role of habeas corpus in attaining gender justice. In addition, to the role of writ of habeas corpus in rendering gender justice, the commendable role of feminist organization is illustrated in this case. The protection of women vice-a-verse investigating agency was laid down in NandiniSatpathy P. L. Dani[34] which ensures that arrest of a woman shall be done by a woman police officer. An investigation of woman detenue shall be done only in the presence of her lawyer, without using third degree methods.

Conclusion: Gender justice is a revolutionary concept which has accelerated women’s development. The Indian Constitution and judiciary have contributed immensely towards ensuring gender justice. “So long as society remains riddled with power disparities between men and women and so long as patriarchy remains deeply embedded to the culture, formal equality theory will fail to achieve gender justice.”[35] There is a need for pro-women mindset among the people so as to adhere to the legal regime pertaining to the goals of gender justice.

References:

1. Iris Marion Young, Justice and the politics of Difference (1990) at 15, MDA Freeman (Ed).Lloyd’s Introduction to Jurisprudence (7thEdn.)
2. James Stuart Olson, Robert Shadle, Historical Dictionary of the British Empire: A-J, Greenwood Publishing Group, 1996,
3. Nicholas Davidson, The failure of feminism, Prometheus Books, 1988
4. John Douglas Cook, Philip Harwood, Frank Harris, Walter Herries Pollock, Harold Hodge, The Saturday Review of Politics, Literature, Science and Art, Volume 25, J. W. Parker and Son, 1868
5. Jacobellis v. Ohio, 378 U.S. 184 (1964). This case, decided in 1964, held that “national” standards for obscenity determined “community” standards. A Cleveland Heights, Ohio theater had shown a foreign film with an explicit sex scene.
6. ADB,Legal Empowerment: Advancing Good Governance and Poverty Reduction in Law and Policy Reform at ADB, 2001,pp. 7-164.
7. P. IshwaraBhat, Law & Transformation first Edition, 2009 Eastern Book Company
8. Iris Marion Young, Justice and the politics of Difference (1990). Extracted in MDA Freeman, supra, n. 3 at pp. 614-29
9. Irish Young.Five of Oppression.Oppression, Privilege, &Resitance, McGraw-Hill, 2004. Pg. 37-63
10. *Supra* note 8
11. *Supra* note 32
12. Irwin cheema, Gender Justice and Indian Labour, July 28, 2011,
13. A.S.Anand, Justice for Women, Universal, New Delhi, 2002 at p. 8
14. *INDIA CONST. art. 14*
15. AIR 1966 SC 942
16. (1981) 4 SCC 335
17. *Id.* Para 80
18. (1979) 4 SCC 260
19. Air India Cabin Crew Assn. v. Yeshaswinee Merchant, (2003) 6 SCC 277
20. University of Madras v. ShanthaBai, AIR 1954 Mad 67
21. DattatrayaMotiram More v. State of Bombay, AIR 1953 Bom 311
22. Government of A.P. v. P.B. Vijayakumar
23. IndraSawhney v. Union of India, 1992 Supp(3) SCC

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24. Government of A.P. v. P.B. Vijayakumar
 25. P. IshwaraBhat, "Constitutional Feminism and overview" (2001) 2SCC (Jour) 1.
 26. INDIA CONST. art 21
 27. Maneka Gandhi v. Union of India. (1978) 1 SCC 248: AIR SC 597
 28. T.sarita v. T. Venktasubbiah, AIR 1983 AP 356; saroj Rani v. Sudarshan Kumar Chandha, (1984) 4 SCC 90:
 29. BaiTahira v. Ali hussainFidaallichothia, (1979) 2 SCC 316: AIR 1972 SC 362,
 30. Fuzlunbi v. KhaderVali, (1980) 4 SCC (Cri) 916 : AIR 1980 SC 1730.,
 31. Mohd. Ahemed Khan v. Shah bano Begum, (1985) 22 SCC 556: 1985 SCC (Cri) 245: AIR 1985 SC 945
 32. Daniel latifi v. Union of India (2001) 7 SCC 740
 33. Re Balwant Singh (1996) 3 SCJ 592
 34. NandiniSatpathy P. L. Dani(1978) 2 SCC 424
 35. Eileen Kaufman, "Women and Law: A Comparative Analysis of the Unitted States and Indian Supreme Court's Equality Jurisprudence" (2006) 34 GA. J. Int'l & Comp. L., 557 at p. 618.

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