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The Concept Of Gender Justice In India: A Constitutional Perspective

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Abstract: *This article assesses the constitutional advancements that guarantee gender justice in India. The notion of 'gender justice' denotes a holistic objective and framework aimed at safeguarding the 'subordinated gender' from exploitation and deprivations imposed by the dominant gender. Specifically, it signifies that women must engage fully in the decision-making processes across all domains and collaborate with men to identify fair and pragmatic solutions to familial and societal concerns. Despite the constitutional provisions advocating for equality, women remain in a disadvantaged position even in the 21st century. Notwithstanding the framework established by the constitution, the interpretations of its provisions have reflected the patriarchal and conservative characteristics of Indian culture. The interpretation of various laws based on the premise that women are inferior and dissimilar to males engenders societal imbalance. Women are relegated to an inferior role in relation to males, being categorized as the weaker sex. The constitution designates women as the weaker sex, perhaps in consideration of the injustices they have endured. The constitution does not say that women are inherently weaker than males. The Preamble to the Constitution of India guarantees all people social, economic, and political justice, as well as equality of opportunity and status. The Preamble of the Constitution has been meticulously crafted to reflect the elevated intentions and virtuous goals of its framers. Consequently, 'gender justice' has been enshrined in the Constitution from its inception.*

Key Words: Gender justice, Constitution, Preamble, Equality, Women, constitutional advancements, holistic.

Women occupy a distinctive status in every community and nation globally. Despite their contributions across all domains, they endure in silence, constituting a class that is disadvantaged due to numerous restrictions and obstructions.

Historically, women have endured significant discrimination across all aspects of life. They were denied access to essential aspects of life, such as education, work, property, and the chance to engage in social and political life on an equal basis with men. This "dismissal picture" persists in some domains. Their role is mostly confined to housekeeping, child-rearing, and the maintenance of the family's spirit and ethos. Nevertheless, their biological traits, crucial for the continuation of humanity, often contribute to male violence.

The notion of gender justice denotes a holistic objective and framework aimed at safeguarding this marginalized gender from the exploitations and denials perpetrated by the dominant gender. The principle of gender justice is based on the assertion that female are not inferior to male; moreover, they are equally human. Women has the right to enjoy economic, social, cultural, and political rights without discrimination, on an equal basis with males. The standard of orientation equity revered in the Constitution and its prelude means to guarantee social, monetary, and political equity for all residents, including ladies; it maintains freedoms of thought, confidence, and love; advances fairness of status and opportunity; also, encourages society to ensure individual nobility. The makers of the Constitution of India put crucial privileges for ladies to change dynamic standards into substantial measures, working with the height of ladies' status in an overwhelmingly male-ruled society.

Despite specific Constitutional protections and other special laws, crimes against women have not diminished. An examination of the impediments and limitations imposed on women by socio-cultural institutions reveals that most women remain significantly distant from realizing the rights and opportunities promised by the Constitution.



GENDER-RELATED ISSUES IN INDIA- Unlike sex, which is a biological characteristic rooted in nature, the concept of gender beyond the simple differentiation between women and men, including socio-economic, cultural, and psychological variables that contribute to the dominance of one class over another. Gender refers to the qualities of men and women that are socially constructed rather than biologically inherent. It establishes the social position, access to opportunities, and rights to resources for these two groups, while also creating cultural meanings based on them. In reality, it engenders prejudices favouring males and disadvantaging women concerning employment, distribution of benefits, enjoyment of human rights, and adherence to tradition.

The involvement of men and women in the development process has garnered significant attention in the 21st century. Issues pertaining to the participation or exclusion of women in the development process have been increasingly scrutinized.

The 20th century has perhaps faced the greatest challenges in delineating the roles of individuals as male or female. Early Women's Studies scholars saw the distinctions between men and women as inherent and unchangeable. The idea posits that an individual's function was defined under a patriarchal framework, whereby the breadth of gender (masculine or feminine) was constrained by a biological interpretation of sex (male and female).

India accounts for 15 percent of the global female population. The significant proportion of women means that any change in their status impacts a considerable segment of the global female population. India's extensive geographical diversity encompasses a multitude of cultures that influence the varying status of women across the nation. Nevertheless, social inequality and economic hardship based on gender are prevalent across all demographics, regardless of religion, caste, community, or state.

India's cultural heritage, political viewpoints, constitutional commitments, and historical milestones all form the nation's foundational principle of social justice, characterized by an egalitarian emphasis and a participatory approach. In this environment, our legislators, courts, and governments must be assessed based on a basic examination of their performance, disregarding the propagandized development initiatives and social justice lawsuits as deceptive distractions.

New adversaries of Social Justice have emerged. Communalism and religious fanaticism undermine social justice, particularly gender justice, since our deities are mostly male, as interpreted by fundamentalists across all faiths. Donning the sacred countenances of Manu, Muhammad, Jesus, and Zoroaster, these predatory entities use the theology of human rights. The largest minority in India is its female population, which has endured generations of gender inequality. The current scenario remains unsatisfactory.

Gender deprivation and discrimination are pervasive in modern development and discussions concerning women in India, akin to the concept of empowerment; however, many of these discussions confine themselves to systematically delineating gender inequalities regarding access to both productive and reproductive resources.

WOMEN'S EMPOWERMENT IN SOCIAL, ECONOMIC AND POLITICAL FIELD FOR ENSURING GENDER JUSTICE- The empowerment process may be categorized into three interrelated dimensions: economic, social, and political. The economic dimension encompasses enhancing women's access to and control over both real and intangible resources, including money, property, employment, expertise, and information. The social part involves altering the prevailing discriminatory ideologies and cultural norms that shape the environment for women's existence. The political process must enhance women's representation and influence inside the power structure. The political capacity to effectuate changes in women's legal status, allocate resources to women, and secure access to positions of power is of paramount significance. Each element fortifies the others.

Political Empowerment of Women- Although women engaged equally in the independence movement and possess equal rights under the Constitution and legislation, allowing them to engage effectively in the country's administration, their representation in politics remains minimal. The interrelation of women and politics has garnered significant attention from students and professors across the Social Sciences. As women and their organizations



globally advocate for their rightful societal position, scholars across various disciplines are appropriately concentrating on issues pertaining to women's status in diverse fields; for instance, their representation in the Lok Sabha significantly falls short of anticipated figures. This has resulted "in passing the law by Parliament for 33% of seats for women in the Lok Sabha and Vidhan Sabha".

The political strengthening of ladies has been worked with by the Constitution (73rd Amendment) Act, 1992, and the (74th Amendment) Act, 1992, which distribute held seats for ladies in Gram Panchayats (Art. 243D). and metropolitan bodies (Art. 243T). Nevertheless, factors such as illiteracy, insufficient political awareness, physical violence, and economic dependence hinder women's participation in the nation's political processes.

Economic Empowerment of Women- Empowerment is a new objective to be attained with a much greater scope and viewpoint. Empowerment encompasses economic independence, social reform, and political authorization, which may be ongoing processes or culminate in definitive outcomes. Given that women represent fifty percent of the global population, these traits are essential for maintaining an ideal social order. A series of laws has been enacted to "provide equal rights to women and men. These legislations have been informed by the stipulations of the Fundamental Rights and the Directive Principles of State Policy. Once again, there exists a complete absence of understanding about economic rights among women. Legislation has been established to enhance their position in the society regarding earnings, maternity benefits, equal compensation, and property or succession, so ensuring essential protection in these domains".

Social Justice and Women Empowerment- Social justice is a fundamental concept for harmonious coexistence. It is essential that all individuals possess equitable access to wealth, justice, health, well-being, and opportunity. India is one of the nations that regards the possibility of civil rights. To attain social justice, the Indian populace must confront several issues arising from caste, gender, religion, culture, tradition, and other factors. Prior to commencing its objective of drafting a Constitution for India, the Constituent Assembly proclaimed in its resolution that the attainment of social justice is a fundamental goal. The goal of the Indian populace and the commitment of the Constitution, as articulated in its preamble and some enacting provisions, is to provide social justice for all residents. "The Supreme Court determined that the comprehensive development of women's personalities and basic freedoms, together with their equal involvement in political, social, economic, and cultural spheres, are essential for national development, social and familial stability, and cultural, social, and economic advancement. All types of gender-based discrimination violate basic freedoms and human rights".

THE CONSTITUTION OF INDIA AND GENDER JUSTICE- The preamble is the essential substance of the Constitution and fulfills the desires and goals of the general population. The preface verbalizes the goal of equivalent status and a chance for all individuals. The Constitution's creators were dissatisfied with geographical unity and integrity on their own. On the off chance that solidarity is to be accomplished, it should be established on standards of social, financial, and political decency, as expressed by the maker of the Constitution.

"The policy of protection to women is evident in various parts of the Constitution. The growth of 'case law' has added to its strength in recent times. Some constitutional amendments have introduced new provisions for women's welfare and better public participation. The Preamble's reference to social justice and dignity of the individual as value goals of the policy has inspired judiciary to elaborate women's right to include the concept of dignified life. In fact, gender justice enables the flourish of right to be human on the part of woman. As Justice Dr.A.S. Anand has observed, the process of gender justice, broadly speaking, covers the rights of women against exploitation and victimization. Unless we recognise her rights as her basic human rights gender justice would only be 'lip service' with no tangible result." Justice V.R.Krishna Iyer "has put it emphatically, the fight is not for woman's status but for human worth. The claim is not for woman's status but for human worth. The claim is not to end inequality of women but to restore universal justice".

Right to equality- "Article 14 of the Indian Constitution enshrines the fundamental right to equality. Article



14 of the Constitution stipulates that the State must not deny any individual equality before the law and equal protection of the laws within the territory of India". Article 14 articulates the premise that individuals in comparable circumstances must be treated equally. The law does not have to be uniformly applied to all individuals. The legislation must address many issues stemming from a multitude of human interactions. Consequently, it must possess the authority to enact laws to achieve certain objectives and, for this reason, to differentiate, choose, and categorize individuals and entities upon whom its laws would apply.

Art. 15(1) and (2) restrict the State from establishing any regulation that segregates exclusively based on orientation. The Constitution is in this way characterized by orientation equity. The Constitution orders equity of status and rejects orientation bias. Art. 15(3) fills in as a special case for Art. 15(1) and 15(2). Art. 15(3) acknowledges that women in India have been socially and economically disadvantaged for generations, preventing them from participating fully and fairly in the nation's socioeconomic activities. The purpose of Art. 15(3) is to make it possible for women to achieve substantive equality with men and to end the socioeconomic disadvantage they face. Art. 15(3) grants the State to lay out unambiguous principles for ladies and kids. This requires the execution of the meaningful correspondence system for their government assistance. The express aim of this provision is to eradicate substantial inequality faced by the disadvantaged group in society by affirmative measures. In the interpretation of Art 15(3), it is understood that the special measures may only serve to facilitate, protect, and correct for women, without being discriminatory against them.

The "operation of Article.15(3) can be illustrated by the judiciary in a few cases. Under section 497 of the Indian Pnal Code, the offence of adultery can be committed only by a male and not by a female who cannot even be punished as an abettor. As this provision makes a special provision for women, it is saved by Article.15(3). The apex Court has observed that sex is a sound classification and although there can be no discrimination in general on that ground the Constitution itself provides for special provisions in the case of women and children by clause(3) of Article.15. Article 14 and 15 thus read together validate the last sentence of section 497 of I.P.C., which prohibits women from being punished as an abettor of the offence of adultery. Upholding section 497, the Bombay High Court had said in an earlier case that the discrimination made by section 497 is based not on the fact that of men, but women in this country were so situated that special legislation was required in order to protect them".

The "constitutionality of section 497 of the Indian Penal Code 1860, which penalizes solely the male participant in adultery while exempting the female, was contested as infringing against Articles 14 and 15(1) of the Constitution. The petitioner argued that while the woman may share equal culpability as an abettor, only the male faced punishment, so infringing against the right to equality based on sex. The Supreme Court affirmed the legitimacy of the clause, saying that the categorization was not solely based on sex. The Court clearly relied on the directive of Article 15(3) to support this provision".

In the Sowmithri Vishnu case, "the Supreme Court once more debated whether section 497 of the Indian Penal Code is constitutional. The petitioner argued that the provision punished the man who had shady relationships with another man's wife but did not punish the woman. The arrangement allowed the spouse to seek after legitimate activity against his better half's lover, in spite of the fact that it blocked him from arraigning the lady participated in a double-crossing issue with his significant other, so negating Article 15(2) of the Constitution, which denies separation in view of sex. The court dismissed the contentions, taking note of that it is generally recognized that the male is the enticer, not the lady. Ladies were not expose to discipline for infidelity because of their lower penchant to participate in it. The High Court declined to intercede and certified the lawfulness of the arrangement expressing that the spouse is a casualty instead of the culprit of the wrongdoing".

In Dattatreya, "the Bombay High Court acknowledged the social, historical, and economic disparities faced by women and affirmed the reserving of seats for women in municipalities as a particular measure to elevate the status of women to that of men. The remedial strategy for gender to address subordination and historical denials is well



articulated here". The "Andhra Pradesh State Service Rules, which mandated a minimum preference of 30 percent of posts in each reservation category, were upheld by the Supreme Court on the basis that special provisions for women regarding employment or positions under the State are an essential component of Article 15(3), which cannot be diminished by Art.-16". "The court regarded that creating job opportunities for women was an important limb of gender equality. The Court looked to the interrelations between Articles 15 and 16 and viewed that Art.15 is more general provisions and the latter, a more specific one. Since Art.16 does not touch upon any special provision for women, it cannot in any manner derogate from the power conferred upon the State in this connection under Art. 15(3). The judgement makes a progressive development in the sphere of gender justice". Art. 21 is the cordinal fundamental right that grant the right to life and personal liberty. This particular article has been interpreted to various extents and held that life means all spheres of life including to live with human dignity and free from exploitation.

DIRECTIVE PRINCIPLE OF STATE POLICY AND GENDER JUSTICE- The protection of women's rights may have been affected by the transformation of the Directive Principles in constitutional law from a relatively insignificant collection of essential principles to a significant collection over the past few decades. Certain provisions regarding women's interests may be examined to understand the Constitutional issue. The Directive Principles of State Policy reinforce the aims outlined in the preamble. The Constitution (Forty Fourth Amendment) Act, 1978 emphasized the need of reducing financial disparities and striving to eradicate inequalities in status, facilities, and opportunities, suggesting that the welfare promotion outlined in article 38(1) was insufficient. The State is required by Article 39(a) to provide men and women with equal access to appropriate means of livelihood. The court has approved Article 39(d), which mandates equal pay for equal work for both genders. The State is obligated under Article 39(e) to protect male and female workers' health and vitality by ensuring that individuals are not forced into jobs that are inappropriate for their age or physical capacity due to economic necessity. The State is obligated under Article 42 to provide maternity benefits and fair and humane working conditions..

Fundamental Duties and Gender Justice

The method of establishing a peaceful and prosperous society via the enforcement of basic obligations in citizens' behavior is implemented under Article 51.A, based on the conviction that the universal fulfillment of duties towards all individuals enhances the protection of rights. Article 51 requires an obligation to disavow actions that are insulting to the dignity of women. The need to uphold and adhere to the lofty principles that motivated our national quest for independence in Article 51A(b) also implies the necessity of treating women as equal participants in all aspects of life. It is unequivocal that independence warriors considered women's emancipation a primary priority. There exists an obligation to pursue excellence in all domains of personal and communal action, ensuring that the country perpetually ascends to elevated standards of effort and accomplishment (Art. 51A (f)). Given that women comprise about half of the nation's population, achieving greatness in both individual and communal endeavors necessitates a concerted effort to maintain women's standing. In the absence of such, the country cannot achieve greater levels of accomplishment.

JUDICIAL RESPONSE TOWARDS GENDER JUSTICE- Gender equality becomes elusive in the absence of the right to live with dignity. In the light of the proposition in *Maneka Gandhi v. Union of India* "that 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 the constitutionality of law and procedure on both substantive and procedural grounds. This gave a sound footing for developing feminist perspective like dignity of womanhood and preciousness of right to privacy of woman as the essential components of 'due process culture'. The Supreme Court recognised that privacy was an important aspect of personal liberty. The Apex Court was shocked to learn that an Life Insurance Corporation questionnaire sought information about the date of menstrual periods and past pregnancies, and the petitioner was terminated for not providing correct information to the LIC. The Supreme Court held that the questionnaire amounted to invasion of privacy and that, therefore, such a probe could not be made".



In "Zahida Begum v. Mushtaque Ahamed", a suit was filed by the wife for dissolution of marriage on the ground of impotency of the husband, who was unable to perform marital obligations. On the contrary the respondent husband requested the court that his wife be directed to undergo medical check up so as to ascertain her virginity. The High Court of Karnataka held that the direction of the trial court to the wife to undergo medical virginity test was improper and invaded privacy of the plaintiff wife, which was violative of Article 21 of the Constitution".

The Apex Court ruled that "rape was not only an offence under the Indian Penal Code, but was violation of a woman's right to live with dignity and personal freedom. It is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21. Many feminists emphasized that rape is less sexual offence than an act of aggression aimed at degrading and humiliating women. The Supreme Court further said with reference to rape that unchastity of women does not make her open to any and every person to violate her person as and when he wishes. Even a prostitute has a right to privacy under Article 21, and no person can rape her just because she is a woman of easy virtue".

The judicial approach about "right to maintenance is influenced by its consideration of 'dignified life'. As held in Salapa Devi case, the law of maintenance is aimed at prevention of vagrancy, and securing of the right to food, clothing and shelter to the deserted wife and children. According to Krishna Iyer J. it contains a social purpose that the ill-used wives and desperate divorces shall not be driven to moral and material dereliction to seek sanctuary in the streets. In various cases the Supreme Court applied Section. 125 of the Criminal Procedure Code irrespective of the claims of the Muslim personal law that the Muslim husband's obligation to pay maintenance to his divorced wife is confined to iddat period. A statute enacted to override section.125 and to uphold personal law was interpreted in Danial Latifi as not defeating the obligation of the Muslim husband to pay maintenance even beyond the iddat period".

Concerning protection of "physical privacy of women vis-a-vis investigative agency, it is laid down in the Nandini Satpathi case that the arrest of a woman shall be done as far as possible by a woman police officer and investigation of woman detainee shall be done only in the presence of her lawyer without using third degree methods. In another case for redressing the grievances of custodial violence against women in police lock-ups, the Supreme Court directed for establishment of the exclusively female lock-up, separation of female arrestees from the male arrestees, investigation by female police constable and surprise visit to police lockups by Session Judge for inspection".

CONCLUDING REMARKS- The Constitution of India explicitly delineates the policy for women and children, taking into account the prevailing socio-economic and political factors of the time. Gender justice is a transformative idea characterized by a multifaceted method and effect. The system of justice is firmly rooted in human rights and welfare programs. The architects of the Indian Constitution seamlessly integrated fundamental rights with the "Directive Principles of State Policy to safeguard the rights and dignity of women" across all strata of society. Various articles of the Constitution aim to achieve these aims. The Constitution established a discernible trend for women's advancement among the disheartening societal realities of gender inequities. The oversight and regulation of the judicial system are well calibrated. Legislation also advances the objective of gender justice via either specific legislation or broad provisions. Acting role of judiciary further enhances the constitutional goals for the gender justice.

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