

GENDER JUSTICE IN INDIA: NEED FOR WOMEN EMPOWERMENT IN INDIA WITH REFERENCE TO GENDER INEQUALITY AND GLOBAL GENDER GAP REPORTS

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ABSTRACT

“You can tell the condition of a nation by looking at the status of its women”¹

- PT. Jawahar Lal Nehru

In modern times, when the society is progressing very fast, the evolution, expansion and advancement of any country is largely dependent on the status and position of women of that particular country. Today, it is unfeasible to live without and afar one's gender because it is entirely conglomerated with one's sex. But it is a grim reality and sad truth that women have always been mistreated, manhandled and abused in every sphere of society for number of years and India is no exception to it.

The acerbity lies in the fact that in our country, women are praised, adored and venerated as goddess but as per the global gender gap index report² published every year by world economic forum, India stands at 112th Rank out of 153 countries which shows that India is still unable to take measures to reduce gender based gaps in economic participation, health and safety, political opportunities, literacy and religious freedom etc. Ignorance, illiterateness, unawareness, financial vulnerability, defenselessness, caste limitations, religious debarment, dearth of authoritative quality, unresponsive and unconcerned frame of mind of males of Indian society are some of the many problems faced by the women of our country. Today the problem of gender justice is visible in every corner of the world. Hence, there is a need to empower the women of our society so that they can raise their status and ultimately contribute in the advancement of their country. This paper therefore examines and scrutinizes the situation of the women by looking into the Gender inequality index and global gender gap index of United Nations.

Researcher concludes the paper with the idea that appreciation and acknowledgement must be given to the women of India and society should also take care of the fact that there must be equality in the status of men and women in almost every sphere of life.

“Empowerment of women leads to development of a good family, good society and ultimately a good nation.”

- Dr. A.P.J. Abdul Kalam

Keywords: Empowerment, Gender inequality, Protective discrimination, judiciary, Social status.

¹ *Women's Situation in India*, (Dec.4, 2020, 8:42 P.M.) http://www.saarthakindia.org/womens_situation_India.html.

² *World Economic Forum's Report on Global Gender Gap*, (Dec 4, 2020, 9:00P.M.) <https://www.weforum.org/reports/gender-gap-2020-report-100-years-pay-equality>

I. INTRODUCTION

As per the, orthodox and traditional reasoning of the male dominating Indian society, present situation lies in the fact that men are considered as the master and supervisor of the family. His task is to shield and safeguard the family members and fulfill their basic necessities by earning money. A woman on the other hand, is expected to stay under the dome of her husband's house so that she will pay attention to the family members by doing domestic duties.

Before the time, when British annexed India, women were not even permitted to go outside the house and earn for their livelihood. They were not even considered as 'persons', but always considered as a commodity whose function is devote her entire life for the welfare of her family members. In *Re Regina Guha vs. Unknown*³ decided on 29th August 1916, Calcutta High court discarded the plea of a woman applicant who wanted to enroll herself under the legal practitioner act. Another case is *RE Sudhanshu Bala*⁴ where Patna high court stated that women do not come under the term person. But after the arrival of British rule in India, there was a continuous growth in the status of Indian women and now they were allowed to take education and to participate in every sphere of society be it religious freedom or economical participation.

Gender equality depicts that there men and women both should avail equal access to all the resources and opportunities without taking the fact of their sexuality. During the last three decades there has been a great transformation in the notion of women empowerment. Today empowerment is seen as to authorize women to take efforts for lifting up the reputation and footing of women in Indian society. This noble idea can be achieved through education, awareness, literacy, outfitting and allowing women to take life regulating decisions on different problems and issues come in their way.

The theme of gender justice has been incorporated by the founding fathers of constitution, itself under part III and part IV of Indian constitution⁵. Part III guarantees 'equality' to all men and women and part IV entitles the states to take steps to protect women by providing them with fair shake and reverse discrimination in the form of quota system. The irony is that numerous laws have been already framed by the Indian legislations for the protection of women from

³ 35 CAS 925 (India).

⁴ 64 CAS 636 (India).

⁵ INDIA.CONST. art. 14, 15 ,cl.3.,art 39.

domestic violence and abuse but the execution and enforcement of those laws is still remains a big issue. Today women of our country look forward to the courts for the protection of their rights and judiciary always has always been playing a very pivotal role for building up the status of women by interpreting various national and international instruments in favor of women of Indian Society.

Empowerment of women includes all those actions which encourage women to take the decisions for their own lives and implantation of the potential so that in future, they are able to secure a rightful position for themselves in society. As per the guidelines issued by (UNFPA)⁶, the United Nations Population Fund originally called as the United Nations Fund for the Population Activities whose main function is securing and improving the reproductive and maternal health of women all around the world. Empowerment of the women mainly consists of five essential constituents:

- Women's sense of self worth
- Women's right to have and to determine their own choices
- Women's right to have access to all the resources of all kinds
- Women's right to regulate their own lives outside or inside the home
- Women's ability to contribute for more just, social and economic order

Thus women empowerment is the process of recognizing and acknowledging the women of our country so that every person of the society can contribute to create an atmosphere where women will get a fair chance to compete with men and develop themselves irrespective of the gender biasness.

II. INTERNATIONAL TREATIES AND CONVENTION FOR WOMEN EMPOWERMENT

⁶*United Nation Population Fund Report on Women Empowerment*, (Dec.2,2020, 12;P.M.)
<https://www.unfpa.org/icpd/women-empowerment>.

Empowerment of women and gender equality was one the third major objectives out of the 8 welcoming millennium goals framed by the Millennium summit⁷ of united nations for the year 2015. It focused on improving the maternal health all around the world.

UDHR (1948) – Article 2 of Universal Declaration of Human Rights says that “All human beings are born free and equal in dignity and rights. Everyone is entitled to all rights and freedoms set forth in this instrument without discrimination on the ground of color, sex, race, religion, political opinion, social origin, property, birth or any other status⁸.”

Convention on Political Rights of Women (1952)⁹ – This convention sets forward the political rights of women and ensured that women shall be enfranchise to vote in the national elections on the same terms with men. Women shall also be eligible to get elected in the public offices and institutions established by the laws of their country.

CEDAW (1967)¹⁰ – Convention on elimination of all forms of Discrimination against women is a notable enactment which advocated for the rights of the women both publicly and politically. It directs that women should avail to resources to all kinds on the equal terms with men. For the first time this statute put forward the reproductive rights of women. Women’s right to nationality and nationality of their children is also approved by this statute.

Declaration of Elimination of Violence Against Women (1993)¹¹ – This declaration was adopted by the general assembly of united nations with the purpose of securing women from physical, sexual and psychological violence. This is the most widely accepted definition of violence against women till date. Declaration classifies violence into three categories:-

- Violence caused by the state such as custodial rape etc.
- Violence caused by the community such as rape, sexual harassment at workplace, trafficking in women.etc.

⁷ *Millennium Development Goals and Beyond 2015*, United Nations, (Dec. 1, 2020, 5:30P.M.) <https://www.un.org/millenniumgoals/>.

⁸ *Universal Declaration of Human Rights*, Article 2, (Dec. 1 2020, 2;P.M.) <https://www.un.org/en/universal-declaration-human-rights/>.

⁹ *Convention on Political Rights of Women*, Newyork , March 1953, (Dec. 4, 2020,10:P.M.) http://www.un.org.ua/images/Convention_on_the_Political_Rights_of_Women_eng1.pdf.

¹⁰ *Convention on the Elimination of All Forms of Discrimination on Women*, ratified by General Assembly, United Nation on 18th Sep. 1969, (Dec.2, 2020, 8:P.M.) <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf>.

¹¹ *Declaration on Elimination of Violence Against Women*, adopted by United Nations on 20th Dec. 1993, (1Dec. 2020, 9:A.M.) <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ViolenceAgainstWomen.aspx>.

- Violence within the family such as abortions , dowry death etc.

Vienna Declaration 1993¹²- The conference on human rights took place in 1993 in Vienna where it was projected that “the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights”.¹³ Thus all sorts of violence and exploitation faced by women in the world in day to day life should come to an end was the main agenda of this worldwide conference. It also focused on the eradication of any kind of incongruity which may stand up in the way of development of women’s status.

III. NATIONAL LEGISLATIONS FRAMED FOR WOMEN EMPOWERMENT

The Constitution of India¹⁴ - The founding fathers of our constitution were well aware of the condition of women of Indian society so while drafting the constitution they were very committed to the notion of gender equality and this is visible in the following provisions of Indian constitution

Article 14 – Guarantees equality to both men and women.

Article 15- Interdicts any kind of discrimination only on the ground of sex.

Article 15(3) – Considering women as a vulnerable class of society, this provision specifically empowers the state to make any affirmative decisions in the favor of women in the form of protective discrimination.

Article 16 – This article guarantees equality in matters of employment or appointment to any public office in India.

Article 39(a) – This article specifically focuses on securing adequate means of livelihood equally for men and women,

Article 39(d) – Men and women should get equal pay for the equal amount of work performed by them.

¹² *Vienna Declaration on Human Rights*, adopted by World Conference on Human Rights on 25th June 1993, (Dec.4, 2020, 6:30P.M.) <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>.

¹³ Ibid

¹⁴ INDIA.CONST.1950.

Article 42- Provides provision for maternity relief for the women at the time of their delivery and after that too.

Article 51A (e) – This was added in constitution through 42nd amendment and specifically forbids all those practices which are derogatory to the dignity and integrity of women.

73rd and 74th Amendment – This notable provision was a great step by the government to empower women politically by providing 33.33% reservations to them in local self government institutions governed by the respective states such as Panchayats, Municipalities.

Indian Penal Code 1960 - Section 292 and 293 of Indian Penal Code, prohibits the publication of obscene materials and obscene acts of men in public place are punishable under section 294. 304(b) provides for the punishment for the husband and family members for committing the dowry death of his wife within seven years of marriage. Section 312-316 punishes the act of causing miscarriage of women. Section 366 punishes the act of kidnapping the women against her will with the intention of marrying her. Section 366A provides provision for the punishment for the act of purchasing a minor girl for the purpose of prostitution. Section 376 penalizes the act of rape committed against the women. Section 494 punishes bigamy. Cruelty done on wife by the husband and relatives of the husband is punishable under section 498A. Section 509 penalizes uttering of words and gestures which are performed to insult the modesty of a woman.

Justice Verma Committee¹⁵ – After the heinous rape case, committed in the December of 2012 ‘The Nirbhaya case’, a three members committee was appointed under the head of Justice J.S. Verma with the purpose of finding out the reasons of increasing number of sexual crimes against women in India. Committee came on the concluding note that dead duck attitude of government and police is the main cause of increasing sexual crimes in our country.

Committee recommended the following changes :

1) Punishment for rape should be a rigorous one and act of rape causing death or ‘persistent vegetative state’ should be penalized with rigorous imprisonment of 20 years which may also increase to life also. i.e. rest of the convict’s remaining life.

¹⁵ The Indian Penal Code 1960, Criminal Law (Amendment) Act, 2013: Sexual Offences.

2) Section 354(A-D) were put forward by the committee. These sections penalizes the other acts causing sexual discomfort to women which includes sexual harassment, voyeurism, disrobing women and stalking respectively.

3) Committee suggests that any act of police officer not registering the complaint of rape victim should be made punishable. Better facilities for the medical examination of rape victims should be arranged by the government.

4) Registration of marriages in India should be made a mandatory provision so that in any criminal proceeding between spouses it can be proved that marriage was performed without any demand of dowry by the husband and with the free consent of both husband and wife.

5) Committee suggested various police reforms so that public can secure confidence upon them and to ensure this all the appointments must be reviewed by the government. Police must show the outstanding ability and vigilance specially in matters connected with crimes against women.

Code of Criminal Procedure Code 1973 – Section 125 of the code enables married women living separately from her husband to apply for the demand of maintenance.

Indian Evidence Act 1872 – 113(a) of the code provides for the presumption against the husband and his family members with respect to the abetment of suicide committed by woman within 7 years of her marriage. Similar presumption is provided under section 113(b) which deals with the dowry death of a woman. Presumption regarding absence of consent of women in rape cases is given under section 114(a) of this code.

Hindu Adoption Maintenance Act 1956 – Section 18A provides for the duty of the husband to maintain his wife and section 18(2) deals with right of wife to live separately from husband.

Hindu Succession Act 1956 – Section 14 of this code provides that the property obtained by female Hindu will be treated as her absolute property.

Hindu Marriages Act 1955- Right of a woman to get divorce from her husband is recognized under section 13 (2) of this code. Provision for mutual divorce is also given under section 13(b) of the same code. Aid and assistance from husband in the form of interim relief can be obtained

by his wife under section 24.provision for permanent alimony is supported by section 25 of the said code.

Dowry Prohibition Act 1961- Demand of dowry from bride's parents before, during and after marriage is a punishable offence.

The Muslim Women (Protection of Right on Divorce) Act, 1986 –This act entitles Muslim women to get maintenance from their husband after iddat period as well.

The Maternity Benefit Act , 1961 – Act was again amended in the year 1995 and the maternity relief period of after the birth of the child has been increased to 26weeks from 12 weeks. Act also provides other benefits also to secure the health and safety of women during the period of their pregnancy.

Medical Termination Of Pregnancy Act 1971 – Abortion if a child is illegal in India and it is punishable under IPC 1960. Under this act, certain grounds are mentioned when termination of a child is allowed until 20 weeks for the benefit of mother's health and safety. In exceptional cases, the termination can be performed by registered doctors after 24 weeks under court's supervision.

The Sexual Harassment At Workplace Act (Prevention, Prohibition And Redressal Act) 2013- Popularly known as 'Vishaka guidelines¹⁶', act deals with the provisions for the protection of women from sexual harassment at workplace and also for establishing a redressal cell in every company.

Protection Of Women From Domestic Violence Act 2005- This notable legislation was framed by Indian government on 26th October 2006 to protect women from domestic violence which includes physical, sexual verbal and all sorts of other violence.

IV. DATA PUBLISHED BY VARIOUS AGENCIES ON WOMEN IN INDIA

- **Gender inequality Index¹⁷** report 2020 published by UNDP says that out of total numbers of 189 countries India stands at 122nd position with the score of 0.501 (2018).

¹⁶ Vishaka and Others v. State of Rajasthan, A.I.R. 1997 S.C. 3011

¹⁷ *Gender Inequality Index Report*, United Nation Development Programme,(Dec.3, 2020:00P.M.)
<http://hdr.undp.org/en/composite/GII>.

As per the view given by UN, it will take around 257 more years to minimize this gender gap exists between men and women specifically in the field of economic participation

- **Global gender gap Index report**¹⁸2020 published by World Economic Forum says that out of the total number of 153 countries, India stands at 112nd position with the score of 0.962.
- As per the report published by **World Bank Data**¹⁹ in the year 2018, more than hundreds of countries in this world up to the present time also preclude women from earning by stopping them from working in certain jobs.
- MMR maternal mortality ratio as published by the office of **General Sample Registration System**²⁰, mortality rate in India has decreased to 113 in 2018. Earlier the ratio was 122 in 2016 and 130 in 2014 respectively.
- In India, Women acquire only ten percent allocation in ministerial positions and eleven percent allocation in parliament respectively.²¹
- Out of the total number of women in India, 74.8 percent are largely involved in the agricultural field but only 9.3% women have their own lands.²²
- As per the report published by **NCRB**²³ in the year 2020, a total of 4,05,861 cases of crime against women were registered during 2019, showing an increase of 7.3% over 2018 (3,78,236 cases). Majority of cases under crime against women under IPC were registered under 'Cruelty by Husband or His Relatives' (30.9%) followed by 'Assault on Women with Intent to Outrage her Modesty' (21.8%), 'Kidnapping & Abduction of Women' (17.9%) and 'Rape' (7.9%). The crime rate registered per lakh women population is 62.4 in 2019 in comparison with 58.8 in 2018.

V. EFFICIENT ROLE PLAYED BY JUDICIARY FOR WOMEN POWERMENT

¹⁸ Supra note 2.

¹⁹ *World Bank Data Report on Mortality Rate*, Sample Registration System, (Dec.5,2020, 3:00P.M.) <https://data.worldbank.org/country/india>.

²⁰ *Maternal Mortality Ratio 2020*, Niti Ayog, (Dec.4, 2020, 4:19P.M.), <https://niti.gov.in/content/maternal-mortality-ratio-mmr-100000-live-births>.

²¹ *Facts and Figures on Women in South Asia*, United Nation, (Dec3, 2020, 1:11P.M.) <https://asiapacific.unwomen.org/en/countries/india/data-on-women>.

²² *Agriculture Surveys*, Ministry of Statistics and Programme Implementation, (Dec1, 2020, 7:12P.M.), <http://mospi.nic.in/agriculture-surveys>.

²³ *National Crime Record Bureau Report 2020*, on Crimes Against Women, (De.3, 2020, 9:10 P.M.).<https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf>.

Indian judiciary plays a very indispensable role for the empowerment of the women of our country by participating actively and giving widest interpretation of Indian legislations and international statutes and documents in favor of women. There are some of the judicial pronouncements of Indian court where the court notably passed the judgments to enhance the status of women in different spheres of society.

Air India v. Nargesh Meerza²⁴ this was the landmark case where supreme court advanced the notion of gender equality by struck down a provision of retirement of airhostess on attaining a particular age or on getting married within 4 years of employment.

Vishaka v. State of Rajasthan²⁵, in this case, after considering all elements and aspects of women safety at work place, court gave several guidelines to prevent the exploitation of women at workplace.

Sarla Mudgal v. UOI²⁶, is another case where court upheld the dignity of women and recommends the state for the enforcement of uniform civil court in our country to prevent the exploitation of women from the orthodox rules of personal laws.

Ahmed Khan v. Shah Bano²⁷ in this case, irrespective of personal laws of Muslim, court upheld the right of a muslim women to get maintenance from her husband under section 125 of CRPC 1973.

Mackinnon Mackenzie v. Audrey D'costa²⁸, this was a first case under equal remuneration act where a female lady was paid less than the male employee for the same job. Case highlighted the article 39(d) which guarantees equal pay for equal work for both men and women.

Apparel Export Promotion Council v. A.K. Chopra²⁹ in this case court held that in all the cases involving sexual harassment or molestation at workplace, court should examine the case with a broader perspective and it should not get away with its responsibilities small and restricted incongruity.

²⁴(1982) 1 S.C.R. 438(India).

²⁵ A.I.R. 1997 S.C. 3011

²⁶ A.I.R 1995 S.C. 1531 (India).

²⁷ A.I.R 1985 S.C. 945 (India).

²⁸ (1987) 2 S.C.R. 659 (India).

²⁹ (1997) 42 D.R.J.526 (India).

In **Railway Board vs. Chandrima Das**³⁰ case involved the rape of a Bangladeshi women by the employees of Indian railways, court stated that fact that state should be vicariously liable and held responsible for the wrong done by its servant. Supreme court granted the compensation of 10lakhs to the victim despite of the fact that she was not a citizen of India.

Madhukar Narayan Mardikar v. State of Maharashtra³¹, court held that even a woman of easy virtue posses the right to live with dignity and she is always permitted to be in her own privacy and not to get disrupted by men.

Gaurav jain v. UOI³², court highlighted the fact that children of prostitutes have right to come in the mainstream of the society and society should come forward for their reconstruction.

CEHAT v. UOI and Others³³, court stated that female feticide is the most disgraceful act and it is kind of violence upon women. Court also asked the states for the enforcement of Medical Termination of Pregnancy Act 1971.

Lata Singh v. State of U.P³⁴, court in this case upheld that right to marriage comes under the ambit of article 21 of Indian Constitution and every woman is allowed to go for the life partner of her own choice without any pressure.

Surjit Singh Thind v. Kanwalji Kaur³⁵, in this particular case, court upheld that two finger test done to a woman for the purpose of medical examination of her virginity clearly violates her right of privacy under article 21 of constitution.

State of **Madhya Pradesh v. Madan Lal**³⁶, court clarified that rape being one of the most heinous crime against women can never be compromised or mediated.

Dhannula v. Ganesh Lal³⁷ and others, court validated the concept of live in relationships in the favor of women by stating that a woman living together with a men for a long period will be treated as a wedded wife but not as a mistress.

³⁰ A.I.R.2000S.C.98 (India).

³¹ A.I.R. 1991 S.C. 207(India).

³² A.I.R. 1990 S.C. 292 (India).

³³ (2003) 8 S.C.C. 412 (India).

³⁴ (2006) 5 S.C.C. 545 (India).

³⁵ AIR 2003 P. H. 353 (India).

³⁶ (2015) 7 S.C.C. 681 (India).

Laxmi v.UOI³⁸ in this case, court gave directions to home ministries to restrict the sale of acids throughout the country due to increase I the number of acid attacks against women in India.

Indian Young Lawyers Association v. The State of Kerala³⁹ supreme court recently in this case upheld that banning women between age group 10-50 from entering the Sabrimala Temple is a clear violation of their fundamental right to equality under article 14 and 15 of Indian constitution.

VI. SUGGESTIONS

- The National Commission for women established in the year 1992 for addressing the problems of abuse and exploitation against women in India need to get more active for reconstructing the status of women in Indian society.
- Judiciary is doing magnificent job by interpreting laws in favor of women but public in India also need to appreciate and enforce these judgments for the judicial activism to be fruitful and productive.
- Punishment must be more severe for the offenders committing heinous crimes against women.
- Most of the women in our society are illiterate and ignorant of their legal rights, so government should impart knowledge to such women by organizing education camps etc.
- There is dire need for the change in the mindset of male dominating society and women should be allowed to participate in every sphere of life so that the existing gender gap between men and women in India can be minimized.

VII. CONCLUSION

In the concluding note, researcher wants to say that a strong and independent woman not only defends herself but also safeguards other people around her. Women always play a crucial role in the nation building. It is proved to a larger extent that there are plenty of legislations and numerous guidelines are issued by court almost every year in different cases concerning women's health and safety but still a very little justice is done to them due to the non

³⁷ A.I.R. 2015 S.C. 238 (India).

³⁸ (2014) 4 S.C.C. 427 (India).

³⁹ (2019) 1 S.C.C.11 (India).

implementation of those laws, lack of awareness and unconcerned attitude of male dominating Indian society. So it is the time for the women to break the silence and raise their voice for their own betterment and to ensure that they can participate in every sphere of life on an equal footing to men. Strengthening women socially, politically and economically is not a puny and easy task but it requires back breaking strength as it is always said that revolution comes in a day but reforms take their own time to become victorious. The task of empowering women it is never unworkable and one should start this journey of reform from one's family itself.

“There is no tool for development more effective than the empowerment of women”

- *Kofi Anand*



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