

Gender Justice and the Protection of Women's Rights: A Legal Analysis

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Abstract:

The legal position of women is closely linked to their social standing within society. Despite significant progress, persistent social inequalities continue to expose women to various forms of discrimination and injustice. This paper examines the prevalence of gender injustice in India and explores the concept of women's empowerment as an effective means of achieving gender justice. It discusses the legal, institutional, and policy measures adopted to eliminate gender-based inequality and promote women's rights. The study also highlights the role of international organizations, particularly the United Nations, along with the legislative initiatives undertaken by the Indian Parliament to strengthen the protection of women and foster a more equitable society.

INTRODUCTION

International Women's Day is observed across the world every year on 8 March to recognize the achievements and rights of women. The United Nations acknowledged gender equality as a fundamental human right in 1945. Throughout Indian history and mythology, women have been accorded a position of great respect and reverence, symbolized through the worship of goddesses representing knowledge (Saraswati), prosperity (Lakshmi), and strength (Durga). Despite this cultural and spiritual recognition, the reality reflects a stark contradiction. Gender discrimination and social inequality continue to deprive women of their fundamental human rights, resulting in injustice and unequal treatment across various spheres of life.

CONCEPT OF GENDER JUSTICE

Gender justice refers to the principle of ensuring fairness, equality, and dignity for all individuals irrespective of their gender. It seeks to eliminate discrimination, exploitation, and unequal treatment by creating a social and legal framework that guarantees equal rights, opportunities, and access to resources. The concept extends beyond formal equality before the law and aims to address historical and structural disadvantages faced by women and other marginalized genders. It promotes substantive equality by recognizing the need for corrective measures that enable equal participation in social, political, economic, and cultural life.

Gender justice emphasizes that women should enjoy equal opportunities in education, employment, healthcare, property ownership, political representation, and decision-making processes. It encourages the removal of social, economic, and institutional barriers that restrict women's advancement and reinforces

the principle that no individual should be denied rights or opportunities solely on the basis of gender. It also seeks to challenge deeply rooted patriarchal norms, gender stereotypes, and discriminatory practices that continue to perpetuate inequality.

The concept further recognizes women's right to participate actively in governance, economic development, and public affairs on an equal footing with men. Equal access to education, employment, financial resources, and justice enables women to exercise their full potential and contribute meaningfully to national development. Gender justice therefore becomes an essential prerequisite for achieving inclusive growth, social harmony, and sustainable development.

Internationally, gender justice has gained significant recognition through various human rights instruments, including the Universal Declaration of Human Rights (1948), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, the Beijing Declaration and Platform for Action (1995), and the Sustainable Development Goals (SDGs), particularly Goal 5, which seeks to achieve gender equality and empower all women and girls. These instruments require States to adopt legislative, administrative, and policy measures to eliminate discrimination and ensure equal protection of the law.

In India, the Constitution embodies the principles of gender justice through the guarantees of equality, non-discrimination, and equal opportunity under Articles 14, 15, and 16, while the Directive Principles of State Policy encourage the State to promote social and economic justice. Several legislations, such as the Protection of Women from Domestic Violence Act, 2005, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the Dowry Prohibition Act, 1961, and the Prohibition of Child Marriage Act, 2006, further strengthen the legal framework for protecting women's rights and advancing gender equality.

Despite constitutional guarantees and legislative safeguards, gender inequality continues to exist in various forms, including discrimination in education and employment, unequal wages, gender-based violence, limited political participation, and restricted access to resources. Consequently, achieving gender justice requires not only effective legal enforcement but also social awareness, educational reforms, economic empowerment, and a transformation of societal attitudes towards gender equality. True gender justice can be realized only when every individual enjoys equal rights, equal opportunities, and equal respect, free from discrimination and violence.

EMPOWERMENT: TOOL TO ATTAIN GENDER JUSTICE

Gender injustice continues to persist across the world despite significant progress in the recognition of women's rights. Women continue to face discrimination, unequal opportunities, violence, and exclusion in various social, economic, political, and cultural spheres. To address these inequalities, governments and international organizations have increasingly focused on women's empowerment as an essential strategy for achieving gender justice. At both the international and domestic levels, positive state intervention through laws, policies, and welfare programmes seeks to enhance the capabilities of women and create an environment where they can exercise their rights freely and equally.

Empowerment refers to the process of strengthening the capacity, confidence, and decision-making ability of individuals who have historically been marginalized or deprived of opportunities. In the context of gender justice, women's empowerment involves equipping women with the knowledge, skills, resources, and legal protection necessary to overcome discrimination and participate equally in all aspects of society.

It is both a continuous process and a desired outcome, enabling women to challenge patriarchal structures, social stereotypes, and institutional barriers that perpetuate gender inequality.

Women's empowerment encompasses several interrelated dimensions. First, it promotes a strong sense of self-worth and self-confidence, enabling women to recognize their dignity and capabilities. Second, it guarantees their freedom to make independent choices regarding education, employment, marriage, health, and other aspects of life. Third, empowerment ensures equal access to opportunities, resources, education, property, healthcare, financial services, and employment. Fourth, it enables women to exercise control over their personal, social, and economic lives, both within the family and in the public sphere. Finally, empowered women become active participants in shaping policies and influencing social, economic, and political change, thereby contributing to a more just, inclusive, and equitable society at the national as well as international level.

Thus, women's empowerment is not merely a welfare measure but a transformative process that promotes equality, protects human rights, and serves as a powerful instrument for attaining genuine gender justice.

GENDER JUSTICE AT INTERNATIONAL LEVEL

The promotion of gender justice has been a central objective of the international community for several decades. Recognizing that gender inequality is a global concern affecting social, economic, political, and cultural development, various international organizations, particularly the United Nations (UN), have undertaken significant initiatives to promote women's rights and achieve gender equality. Through international conventions, declarations, treaties, and global conferences, the international community has established comprehensive standards that require States to eliminate discrimination against women and ensure their equal participation in all spheres of life. These initiatives have laid the foundation for national legal reforms and policy measures aimed at protecting women's rights and advancing gender justice.

One of the earliest and most influential international instruments is the Universal Declaration of Human Rights (UDHR), 1948, which recognizes that all human beings are born free and equal in dignity and rights. The UDHR, along with the International Covenant on Civil and Political Rights (ICCPR), 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, prohibits discrimination on the basis of sex and guarantees equal enjoyment of human rights and fundamental freedoms. These instruments affirm that women are entitled to equal protection under the law and equal access to civil, political, economic, social, and cultural rights without discrimination.

A landmark development in the advancement of gender justice was the adoption of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, often described as the international bill of rights for women. CEDAW defines discrimination against women as any distinction, exclusion, or restriction based on sex that impairs or nullifies the recognition, enjoyment, or exercise of women's human rights and fundamental freedoms on an equal basis with men, irrespective of their marital status. By ratifying CEDAW, States undertake a legal obligation to eliminate discrimination against women through legislative, administrative, judicial, and policy measures.

The Convention requires States to incorporate the principle of equality between men and women into their constitutional and legal systems, repeal discriminatory laws, and enact legislation prohibiting gender-based discrimination. It also emphasizes the establishment of effective judicial institutions, tribunals, and public authorities to safeguard women's rights and provide remedies against discrimination. Furthermore, States are obligated to prevent discriminatory practices by individuals, private organizations, and

commercial enterprises, thereby extending the responsibility for promoting gender equality beyond governmental institutions.

Another significant international milestone was the adoption of the Declaration on the Elimination of Violence against Women, 1993, which formally recognized violence against women as a violation of fundamental human rights. The Declaration broadened the understanding of gender-based violence by acknowledging that violence may occur in both public and private spheres, including within the family. It called upon governments to exercise due diligence in preventing, investigating, and punishing acts of violence against women and encouraged the adoption of comprehensive legal, social, educational, and institutional measures to address this pervasive problem. The Declaration played a crucial role in shifting the perception of domestic violence from a private family matter to a serious public and human rights concern, thereby providing a strong foundation for subsequent national and international legal reforms.

The Fourth World Conference on Women, held in Beijing in 1995, marked another turning point in the global movement for gender equality. The Conference resulted in the adoption of the Beijing Declaration and Platform for Action, one of the most comprehensive international policy frameworks for women's empowerment. The Platform recognized women not merely as victims of discrimination but as active agents of social, political, and economic development. It identified twelve critical areas requiring urgent attention, including poverty, education, health, violence against women, armed conflict, economic participation, political decision-making, institutional mechanisms, human rights, the media, the environment, and the rights of the girl child. It urged governments to formulate and implement National Action Plans and integrate gender perspectives into all public policies and development programmes.

Collectively, these international instruments and initiatives have significantly strengthened the global framework for gender justice. They have guided States in reforming domestic laws, promoting women's empowerment, eliminating discrimination, and ensuring equal opportunities for women. Although substantial progress has been achieved, effective implementation of these international commitments remains essential for realizing genuine gender equality and ensuring that women can enjoy their rights and freedoms on an equal basis with men.

GENDER JUSTICE AND INDIA

The Constitution of India provides a robust framework for ensuring gender justice by guaranteeing equality and prohibiting discrimination on the basis of sex.

a. Equality

Article 14 guarantees equality before the law and equal protection of the laws to every person within the territory of India. Complementing this provision, Articles 15(1) and 16(2) prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth, particularly in matters relating to public employment and access to public opportunities. At the same time, Article 15(3) empowers the State to make special provisions for women and children. Such affirmative measures are not considered discriminatory but are intended to achieve substantive equality by addressing historical and social disadvantages faced by women.

The judiciary has played a significant role in strengthening these constitutional guarantees through progressive interpretation and judicial activism. In *C.B. Muthamma v. Union of India*¹, the Supreme Court struck down service rules that required women officers in the Indian Foreign Service to obtain government

¹ (1979) 4 SCC 260 : AIR 1979 SC 1868

permission before marriage and allowed termination of their service after marriage. The Court held that such provisions were discriminatory, arbitrary, and violative of the constitutional guarantee of equality. Similarly, in *Air India v. Nergesh Meerza*², the Supreme Court declared unconstitutional a service regulation requiring air hostesses to retire upon their first pregnancy, holding that it was unreasonable, arbitrary, and violative of Article 14. These landmark judgments reaffirm the constitutional commitment to gender equality and demonstrate the judiciary's proactive role in eliminating discriminatory practices against women, thereby advancing the broader objective of gender justice.

b. Right to Dignified Life

The right to live with dignity is an integral component of the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India. It provides that no person shall be deprived of life or personal liberty except according to the procedure established by law. Over the years, the Supreme Court has expansively interpreted Article 21 to include not merely physical existence but the right to live with human dignity, privacy, security, and autonomy. These principles have become particularly significant in protecting the rights of women and advancing gender justice.

Judicial interpretation has recognized that the dignity of women, protection of their privacy, and freedom from violence and exploitation are essential elements of Article 21. The right encompasses access to a life free from discrimination, sexual harassment, domestic violence, and other forms of gender-based abuse. It also includes positive obligations on the State to ensure adequate shelter, healthcare, education, livelihood, and protection, thereby enabling women to lead a life of dignity and self-respect.

c. Right to Maintenance

The right to maintenance is an important legal safeguard that protects women from destitution and ensures their financial security following separation or divorce. In India, the right to maintenance is recognized under various personal laws governing different religious communities as well as under Section 125 of the Code of Criminal Procedure, 1973. The primary objective of these provisions is to prevent vagrancy and provide financial support to wives, children, and parents who are unable to maintain themselves. Maintenance ensures access to essential necessities such as food, clothing, shelter, healthcare, and a dignified standard of living.

Among these provisions, Section 125 of the Code of Criminal Procedure was regarded as one of the most significant because of its secular character. It applied uniformly to all citizens irrespective of religion, caste, or creed and provided a simple, speedy, and inexpensive remedy for obtaining maintenance. Unlike personal laws, which often vary in scope and application, this provision was intended to ensure social justice by protecting economically vulnerable dependants from neglect and abandonment.

Under traditional Muslim personal law, a divorced woman was generally entitled to maintenance only during the iddat period. However, the Supreme Court adopted a progressive interpretation to uphold the principles of equality and social justice. In *Bai Tahira v. Ali Hussain Fissalli Chothia*³, the Court held that the statutory right to maintenance under Section 125 could not be defeated merely by payment of a nominal amount under personal law. Subsequently, in the landmark case of *Mohd. Ahmed Khan v. Shah Bano Begum*⁴, the Supreme Court ruled that a divorced Muslim woman who is unable to maintain herself is entitled to claim maintenance under Section 125, irrespective of the limitations imposed by personal law.

² (1981) 4 SCC 335 : AIR 1981 SC 1829

³ (1979) 2 SCC 316 : AIR 1972 SC 362

⁴ (1985) 2 SCC 556 : AIR 1985 SC 945

These judgments reaffirmed the secular and welfare-oriented nature of the maintenance provisions and significantly strengthened the legal protection available to women, thereby advancing the constitutional objective of gender justice and social equality.

Procedural Due Process

The protection of women from the misuse of authority by law enforcement agencies and other public officials has been a significant concern of the Indian judiciary. Recognizing that women are particularly vulnerable to custodial violence, harassment, and abuse of power, the Supreme Court has consistently emphasized the need for procedural safeguards to preserve their dignity, privacy, and personal liberty. Such protections are an essential component of gender justice and the constitutional guarantee of life and personal liberty under Article 21.

In *Nandini Satpathy v. P.L. Dani*⁵, the Supreme Court laid down important guidelines to safeguard the rights of women during arrest and investigation. The Court observed that, as far as practicable, the arrest of a woman should be carried out by a woman police officer. It further held that the interrogation of a woman in custody should be conducted in the presence of her legal counsel and without the use of coercion, intimidation, or third-degree methods. These safeguards were intended to prevent custodial abuse and ensure that investigations are conducted in a fair, humane, and lawful manner.

Subsequent judicial decisions and statutory reforms have further strengthened these protections by prescribing special procedures for the arrest, search, and interrogation of women, thereby reinforcing their right to dignity, privacy, and fair treatment. Collectively, these measures reflect the judiciary's commitment to preventing abuse of power and ensuring that women are treated with respect throughout the criminal justice process, thereby promoting the broader objective of gender justice.

d. Rehabilitation of Prostitutes and their Children for a Dignified Life

The Constitution of India recognizes the protection of individuals from exploitation as a fundamental human right. Article 23(1) prohibits trafficking in human beings, begar, and other forms of forced labour, and declares any violation of this provision to be a punishable offence. In furtherance of this constitutional mandate, the Immoral Traffic (Prevention) Act, 1956 (ITPA) was enacted to combat human trafficking and curb the commercial sexual exploitation of women and children. The Act penalizes activities such as procuring, trafficking, brothel keeping, and living on the earnings of prostitution, while also providing measures for the rescue, rehabilitation, and reintegration of victims into society.

The objective of the law is not merely to punish offenders but also to restore the dignity and rights of women who have been subjected to exploitation. Rehabilitation initiatives focus on providing shelter, healthcare, education, vocational training, legal assistance, and employment opportunities to enable survivors to lead independent and dignified lives. Special attention is also given to the education, protection, and welfare of the children of sex workers to prevent their exploitation and break the cycle of intergenerational trafficking. Through constitutional safeguards, legislative measures, and judicial intervention, India seeks to uphold the dignity, equality, and human rights of victims of trafficking, thereby advancing the broader objective of gender justice.

e. Legislative Support Against Sati and Dowry Death

The abolition of harmful social practices such as Sati and dowry represents a significant step towards achieving gender justice and protecting the fundamental rights of women in India. Historically, the practice of Sati, in which a widow was compelled or encouraged to immolate herself on her husband's

⁵ (1978) 2 SCC 424

funeral pyre, was regarded as a social and religious custom in certain communities. This practice constituted a gross violation of a woman's right to life and dignity. To eradicate this inhuman practice, Parliament enacted the Commission of Sati (Prevention) Act, 1987 (commonly referred to as the Sati Prohibition Act), which prohibits the commission, abetment, glorification, and promotion of Sati, prescribing stringent punishments for offenders. The legislation reflects the constitutional commitment to safeguarding women's fundamental rights and promoting their empowerment.

Similarly, the practice of dowry has remained one of the most persistent social evils, often resulting in harassment, cruelty, and even the death of married women. To combat this menace, the Dowry Prohibition Act, 1961 was enacted to prohibit the giving, taking, and demanding of dowry. The legal framework was further strengthened through amendments to the Indian Penal Code, 1860, including the insertion of Section 304B, which specifically deals with dowry death and prescribes punishment ranging from a minimum of seven years' imprisonment to life imprisonment. Section 498A also criminalizes cruelty by the husband or his relatives, including physical or mental harassment connected with unlawful dowry demands.

Procedural and evidentiary safeguards further reinforce the protection of women. The Code of Criminal Procedure, 1973 requires a mandatory investigation into the unnatural or suspicious death of a married woman occurring within seven years of marriage, while Section 113A of the Indian Evidence Act, 1872 permits the court to presume abetment of suicide by the husband or his relatives under specified circumstances. These legislative measures collectively aim to eliminate dowry-related violence, protect the dignity and life of married women, and promote a society founded on equality, justice, and respect for women's rights.

f. Female Foeticide and Indian Constitution

The misuse of medical technology for prenatal sex determination has emerged as a serious challenge to gender justice in India. Advances in diagnostic techniques made it possible to determine the sex of the foetus before birth, leading to the widespread practice of female foeticide due to prevailing societal preference for male children. Although the Medical Termination of Pregnancy Act, 1971 permitted termination of pregnancy under specified medical and humanitarian grounds, certain provisions were misused to facilitate sex-selective abortions. This practice not only violated the right to life of the unborn female child but also contributed to a declining child sex ratio and reinforced gender discrimination.

To curb this growing menace, Parliament enacted the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, later amended as the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act). The Act prohibits sex selection before or after conception, regulates the use of prenatal diagnostic techniques, and prescribes stringent penalties for medical practitioners and institutions involved in illegal sex determination.

In *Centre for Inquiry into Health and Allied Themes (CEHAT) v. Union of India*⁶, the Supreme Court directed the Central and State Governments to ensure the effective implementation of the Act, strengthen monitoring mechanisms, and undertake extensive public awareness campaigns against prenatal sex determination and female foeticide. These measures reflect the constitutional commitment to protecting the life, dignity, and equality of the girl child and promoting gender justice in society.

⁶ (2003) 8 SCC 398 : AIR 2003 SC 3309

g. Stringent Policy against Rape

Rape is one of the gravest offences against women, constituting a serious violation of their bodily integrity, dignity, autonomy, and fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India. It inflicts severe physical, psychological, and emotional trauma upon the victim and, therefore, demands stringent legal intervention. Traditionally, the offence of rape was defined under Section 375 of the Indian Penal Code, 1860, which prescribed the circumstances under which sexual intercourse constituted rape and provided severe punishment for offenders. Despite the existence of strict penal provisions, incidents of sexual violence continued to rise, highlighting the need for comprehensive legal reforms.

A significant transformation in India's criminal law followed the Nirbhaya gang rape case (2012), which led to the enactment of the Criminal Law (Amendment) Act, 2013. The amendment substantially broadened the scope of offences relating to violence against women by introducing new crimes such as acid attacks, sexual harassment, stalking, voyeurism, and disrobing, along with enhanced punishments for sexual offences. It also raised the age of consent for sexual intercourse from sixteen to eighteen years, making any sexual act with a person below eighteen years of age an offence irrespective of consent.

The amendments further strengthened procedural safeguards for victims by introducing victim-centric provisions in the Indian Evidence Act, 1872, including a presumption of absence of consent where the victim states before the court that she did not consent to the sexual act. Measures were also introduced to protect the identity, dignity, and privacy of survivors during investigation and trial. Collectively, these legislative reforms represent a significant step towards ensuring gender justice by strengthening the legal framework against sexual violence, enhancing victim protection, and reinforcing the constitutional commitment to safeguarding the dignity and rights of women.

h. Directive Principles of State Policy and Women

The Directive Principles of State Policy (DPSPs) provide the constitutional framework for promoting gender justice and women's welfare in India. Although they are not legally enforceable, they guide the State in formulating policies aimed at achieving social and economic equality. Article 39(a) ensures that both men and women have an equal right to adequate means of livelihood, while Article 39(d) mandates equal pay for equal work irrespective of gender. Article 39(e) directs the State to protect the health and strength of workers and prevent their exploitation. Article 42 requires the State to secure just and humane working conditions and provide maternity relief, recognizing the special needs of women in the workforce. Further, Article 44 encourages the implementation of a Uniform Civil Code to promote equality in personal laws. Together, these constitutional directives have inspired various legislative and welfare measures that advance women's rights, eliminate discrimination, and strengthen the objective of achieving gender justice in India.

i. Fundamental Duties and Gender Justice

The Fundamental Duties enshrined in Article 51A of the Constitution of India play an important role in promoting gender justice by encouraging responsible citizenship. Among these, Article 51A(e) imposes a duty on every citizen to promote harmony and the spirit of common brotherhood and to renounce practices derogatory to the dignity of women. This constitutional obligation seeks to eliminate social customs, traditions, and practices that discriminate against or exploit women. It reinforces the principle that achieving gender justice is not solely the responsibility of the State but also a collective duty of every

citizen. By fostering respect, equality, and dignity for women, the Fundamental Duties contribute to building a just, inclusive, and gender-sensitive society.

CONCLUSION

Gender justice is a comprehensive and transformative concept that seeks to ensure equality, dignity, and equal opportunities for all, irrespective of gender. It is firmly rooted in the principles of human rights, constitutional guarantees, and legislative measures aimed at eliminating discrimination and empowering women. The Constitution of India serves as the cornerstone for achieving gender justice by guaranteeing equality, protecting fundamental rights, and directing the State to adopt policies that promote women's welfare. Over the years, Parliament has enacted several progressive laws to safeguard women from violence, discrimination, exploitation, and social injustice. Equally significant has been the proactive role of the judiciary, which has interpreted constitutional and statutory provisions in a manner that strengthens women's rights and advances substantive equality. However, legal reforms alone cannot ensure gender justice. Achieving this goal requires a change in societal attitudes, effective implementation of laws, and a gender-sensitive approach among individuals, institutions, and authorities responsible for upholding justice and protecting women's rights.

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