



A Study On The Correlation Between Judiciary And Social Justice For Women In India

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ABSTRACT

Justice symbolizes a civilized world. India always has faced a complex society. It has always faced injustice towards women. It upholds the principle of social justice. It is a fact that social justice is a very comprehensive concept. Attaining social justice to society is one of the mottos the judiciary carries, and it has made strong laws to bring a strong transformation in society. If we have a strong judiciary, it transforms society by removing the ill myths and certain rules as made in the name of their personal law, which causes trouble to a particular group of society. We have a famous saying, "Law Changes Society". Society has a diversified culture; we do not have a single culture to uphold only those thoughts. It was British rule that came to an end, and India rejected to follow their rules and wanted to bring a new law. From that era till today, there are few changes we can see which has helped to bring justice to women in every field. As the constitution was framed, it did set a separate judiciary to be independent. Therefore the vibrant judicial system and innovative jurisprudence actively put both historical and contemporary wrongs to the right. Legal justice has paved the way for social justice. We have come across many tools that bring changes and try a transformation in our society, but nothing stands better than a perfect and independent judiciary. This paper attempts to bring the legal justice that made way for social justice through a dynamic judicial process.

Keywords: Justice, society, Social, Transformation, Judiciary, Women.

STATEMENT OF PROBLEM

The rules and policies set for women regarding their conduct and behavior itself has created havoc. The society that they share with that of men never treats women as equal to men. The social justice given to women is also adequate either it may be the distribution of opportunities and privileges within society, or it may be the status. Life of women is not easy thing to get them the needed justice. Even the judiciary has its roots in removing the social injustice as faced by women at every point of life.

OBJECTIVE AND AIM

1. To implement women's education on the basis of priority to get equal status for women.
2. To bring social justice to women through a proper channel.
3. To promote equality for women by the interference of the judiciary.
4. To fight injustice and discrimination against women and establish the rule of law.

HYPOTHESIS

The research is purely based on the concepts. Through the research, the researcher would find a good way to fight injustice against women and the correlation the Judiciary has created with that of justice for women.

RESEARCH QUESTION

1. Whether the judiciary has succeeded in bringing justice to women?
2. Whether it is possible to remove the gender inequality?

LIMITATIONS OF RESEARCH

The research is based on secondary data and thus lacks originality. Certain facts and theories in the research can be contradictory.

I INTRODUCTION

"The wheels of Justice are known to grind very slowly. But turn they do, although in many cases, the wait may involve years if not decades."

Social justice¹ is an array which has important principles like equality, peace, safety and freedom. Society always needs to uphold social justice; it has to value the rights of all individuals, and these days, the world isn't quite here. Millions of women face injustice as they face denial of education, are forced to get married at an early age, or are made victims based on gender. As there are present, it hinders women or a girl from losing their potential. It implies the legislative and administrative measures to give the right to women no inheritance ownership to credit and to natural resources and technology. It is a necessity that a women's participation in employment would even ensure the economy when she helps in social protection, remove unemployment, control and take care of the ill health of a person; she bears a child and takes the pain.

Justice is the virtue that our constitution seeks to secure for the citizens of India. As mentioned, Article 38 (1)² of the Constitution of India requires that the state strive to secure and protect a social order in which justice, social, economic and political shall inform all the institutions of the national life. It is seen that Indian ladies are considered an inferior position in India, and this is the main issue. Their condition is different and is totally unsatisfactory.

Social justice is the right of every individual. It is the state which should make policies for the protection of people from facing injustice.

¹ justice in terms of the distribution of wealth, opportunities, and privileges within a society.

² Directive Principle of State Policy

GENDER BIAS³ A PROBLEM TO BE DISCUSSED UPON

Gender inequality has always been there. When we speak about equality, we find inequalities in economic, religious, regional and national class or creed in our nation. Social justice are futile if gender inequality persists, social justice is futile if gender inequality persists.

Gender equality is often defended by men on the basis of its nature. It is a pressing issue in Indian society. We have Constitution guaranteeing equal rights for both men and women; still, the deeply rooted discrimination takes a brutal toll on women's life. We can see rapid economic growth, yet the disparities remain very familiar.

Causes for Gender Inequality

Gender Inequality is a pervasive issue it impacts Indian women and girls in many ways. There are many cause and shall include:

a. Poverty:

Though we find development and the recent rise in prominence, we forget that India is considered as the poorest country in the world, and this leads to inequality. We find educational institutions even at rural areas, but families from rural areas prefer sending their son to school rather than a girl child, which is the biggest disadvantage.

b. Patriarchal Society:

We have come across the fact that India has followed a patriarchal society since time unknown. This contributed to the fundamental inequality between men and women. As women were considered as a household belonging to their father or husband, they never had a chance to say anything about their own development or that of a community.

c. Lack of Education:

The disparity between men's and women's literacy rates in India is also an issue. It is not a lack of education among women, but the problem is a lack of awareness about their rights. Education makes women know their rights, and that helps them fight for themselves when any other person violates their rights.

d. Lack of Awareness among women:

As there is a lack of awareness among women about their own rights, and they not have much ability to achieve equality. This is due to social norms or culture, which made women be subservient to men. It is high time to break down the barrier and help women become more aware of their rights and fight for the same, and can demand equality.

³ often a form of unconscious or implicit bias.

e. Social customs, Beliefs and Practices:

This plays an important role in keeping women at lower places in society, refusing them with that the opportunities provided to men.

Women are considered to be second-class citizens in India, and the situation is getting worse. According to a report by World Economic Forum, India is ranked 134th as in connection with 145 Countries. This should be considered a wake-up call for all of us. This is a discrimination crisis, and we should create awareness among Indian women about their legal rights. There are organizations that work towards creating awareness about women's rights and equality, just like Care India. We need to change the mindset of people, especially men, who still believe that women are inferior to them. There has to be empowerment in everybody's minds. There has to be a result-oriented process of enhancing and promoting women's social, economic and political status. If we concentrate on achieving the below-mentioned objectives, then we might find an improvement in bringing justice to women:

1. Easy access to education for women just like men(not only in urban areas but even in rural areas).
2. Opportunities for women to be in power and achieve economic success.
3. To stop sexual assault against women and stop the violence.
4. To end girl-child marriages.
5. Create awareness about women's rights.

We can bring equality between men and women in our society by implementing and working to achieve the above-mentioned goals. It is neither impossible nor difficult but needs unity. We even saw an era where the sex of a child would be determined as the enactment from the Parliament Pre-conception and Pre-natal Diagnostic Techniques (Prohibition on sex selection)Act 1994⁴ as a measure of preventing female foeticides, but people started misusing it. The Supreme Court even saw a lack of effective implementation.

WHETHER JUDICIARY IS PLAYING A SIGNIFICANT ROLE IN BRINGING JUSTICE TO WOMEN?

The framer of the Constitution of India envisaged the Judiciary as being central to the project related to achieving social justice. The articulation of norms which enables access to human needs has to be understood as that a first step in the justice project. Rights and entitlements not only help secure basic needs but can also signal to society as a whole what is acceptable behaviour and what behaviour is subject to legitimate criticism. The method of judicial review gives all clauses of the Constitution and all legislation passed by the legislature their true sense and significance. The courts have heard the Constitutional mandate and several laws barring discrimination against women in all aspects of their mental, physical, and political lives. Multiple instruments such as judicial arbitration, judicial lobbying, social action lawsuits, and the duty of regulation of fundamental rights have been used by Indian Superior

⁴Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (PNDT), was amended in 2003 to The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition Of Sex Selection) Act (PCPNDT Act) to improve the regulation of the technology used in sex selection. <https://byjus.com/free-ias-prep/pre-conception-and-pre-natal-diagnostic-techniques-prohibition-of-sex-selection-act-1994/> accessed on 20 Nov 2022.

Courts to add meaning and life to the statutory system of safe discrimination in favour of women. A brief analysis of the judicial strategy in different cases where the Courts have successfully issued their decision to reinforce the status of women can be found below:

1. In the case of *Air India Etc. v. NergeshMeerza*⁵ :

There were laws enacted that violated Article 14 of the Constitution of India. The clause mentioned that “the air hostess was not allowed to marry within the first four years of their employment and if they conceive, then they will lose their jobs, no such conditions or similar things were not there for any men apart from this they had to resign at the age of 35 unless the Managing Director extends their contract at his own discretion” and this is considered to be the major injustice for women.

2. The Court ruled in the case of the *Dharwad District PWD Employees Association*.⁶

It was decided that “workers should not be discriminated against depending on their gender and should be paid fairly for their jobs. This they cited under Article 39(d) of the Constitution of India, which clearly states that men and women should be paid equally for the equivalent work of any comparable nature. and Article 16 of the Indian Constitution, which states “all people should have equal opportunity in terms of employment”.

3. The Supreme Court of India in the case of *Shah Bano Case*⁷,

Ordered the parliament “to draft a uniform civil code governing a Muslim husband’s obligation to provide maintenance to his divorced wife who is unable to support herself after the Iddat age, holding that S. 125⁸ of the CRPC, 1973 will apply to all husbands, regardless of religion, and the husband will be obligated to support his divorced wife”.

4. The Supreme Court, in the case of *Vishakha v. State of Rajasthan*⁹

held that “gender equality can only be established by fundamental rights guaranteed under Articles 14¹⁰, 19, and 21¹¹ of the Indian Constitution, and that sexual harassment at work is a direct violation of these fundamental rights, thereby violating the principle of gender equality, and that in the absence of any domestic law to address the evil of sexual harassment, assistance can be sought from the international community.”¹² Employers were even given guidelines to provide an equitable, clean, and relaxed working atmosphere for workers, including women.

Was that the end of sexual harassment? This did not bring in any change, but it served the expressive function of denormalising and delegitimising sexual harassment and helped women by providing them with a powerful vocabulary to understand and challenge the status quo in public discourse.

⁵ MANU/SC/0688/1981.

⁶ MANU/SC/0164/1990.

⁷ MANU/SC/0194/1985.

⁸ Order for maintenance of wives, children and parents. <https://indiankanoon.org/doc/1056396/> visited on 11 Dec 2022.

⁹ MANU/SC/0786/1997.

¹⁰ Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. <https://indiankanoon.org/doc/367586/> visited on 2 Dec 2022.

¹¹ Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law. <https://indiankanoon.org/doc/1199182/> visited on 8 Dec 2022.

¹² Rai, D., 2020. Role of judiciary in maintaining a gender-just world, Access to justice for women in India, By Harshul Bangia, <https://articles.manupatra.com/article-details/Access-to-Justice-for-Women-in-India> visited on 1 Dec 2022.

It enabled women who face sexual harassment to call upon the state to recognize such behaviour as wrong and remedy it.

5. In *P Geetha v. Kerala Livestock Development Board Ltd*¹³,

The appellant, who became a mother by surrogacy, was denied maternity leave by the Respondents because the infant was born outside of usual circumstances. The High Court ruled that women should not be discriminated against regarding maternity leave because the baby was born by surrogacy. The usual or unusual, but that is a natural birth for that of the mother and so that they denied this again shows the discrimination, but our

6. In the case of *Budhadev Karmaskar v. State of West Bengal*¹⁴,

The court held that “while our culture sees prostitutes as people of poor character, we fail to see their plight from their point of view. The bench in this case should be commended not only for respecting their right under Article 21 and directing the state and federal governments to behave in their best interests but also for empathizing with their plight. Not just that, but the bench took action and directed the Central and State governments to develop schemes to provide technical/vocational training to sex workers and sexually exploited women in all Indian cities.”¹⁵

INDIAN LEGAL SYSTEM APPROACH TO WOMEN'S ACCESS TO JUSTICE

Rights of women under the constitution –

In the Indian Constitution's Preamble, Fundamental Rights and Duties, and Directive Principles of State Policy, the ideal of gender equality is enshrined. The Constitution guarantees women's freedom and empowers the government to take constructive discrimination action in their favour. Our legislation, development agendas, plans, and programs have all sought to advance women in various fields within the context of a democratic polity. India has already signed several international treaties and human rights instruments that contribute to ensuring women's equality.

1. Article 14¹⁶ - Article 14¹⁷ of the constitution guarantees equality before the law or equal treatment under the law. This is one of the crucial clauses that give women the same legal rights as men when it comes to women-related crimes. This article further paves the way for the passing of numerous laws and taking actions in India to ensure the preservation and compliance of women's human rights.

¹³ MANU/KE/0006/2015.

¹⁴ MANU/SC/0971/2011.

¹⁵ Access to justice for women, Harshul Bangia <https://articles.manupatra.com/article-details/Access-to-Justice-for-Women-in-India> visited on 2 dec 2022.

¹⁶ Article 14 of the Constitution of India, 1950 was not a standalone provision in the Draft Constitution, 1948. It was initially included in Draft Article 15 (Article 21) which read:

'Protection of life and liberty and equality before law - No person shall be deprived of his life or liberty except according to procedure established by law, nor shall any person be denied equality before the law or the equal protection of the law within the territory of India.' https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2014 visited on 28 Nov 2022

¹⁷ *Indra Sawhney v UOI*, AIR 1993 SC 477

2. Article 15¹⁸ - Article 15 of India's constitution states that "no discrimination should be made solely based on religion, ethnicity, caste, sex, or place of birth, or any combination of these factors, within India's borders." we came across much sexism against women in India at the time of independence, that was eventually eliminated with the addition of article 15. The state has the power to make all such special provisions for women and children under Article 15(3) of the constitution.
3. Article 16¹⁹ - Every resident of India is guaranteed equal employment opportunities under Article 16 of the Indian constitution. According to article 16, "there should be no discrimination in-state job opportunities based on religion, ethnicity, caste, sex, descent, or place of birth, residency or any combination of these factors." These days, women can be seen performing excellent jobs in politics and the private sector. In fact, they have occupied responsibility in the government or government-run agencies. Ex: Nirmala Sitaraman, Chanda Kochchar, no business world or government sector is seen without a women director²⁰. We can see that constitution and our judiciary are helping in providing the necessary rights for women and encouraging them for their work.
4. Article 39²¹ - The benefit of the directive principles of state policy is guaranteed to women under Article 39 of India's constitution. The term "directive principles of state policy" refers to the principles

¹⁸ Interdiction of discrimination

- Article 15(1): State prohibit from discriminating any of the citizen basis of the following categories
- Caste: Discrimination in the name of name of caste is prohibited. This averts the crimes against less fortunate
- Race: Person's origin shouldn't be on the basis of discrimination.
- Religion: Person shouldn't be discriminated on the basis of religion in order to enter any public place etc
- Place of Birth: No person place of birth can't be taken into consideration and discriminate them.
- Sex: Gender of any particular individual can't be a basis so as to discriminate. Right to Equality by Vishesh Sharma <https://www.legalserviceindia.com/legal/article-7203-article-15-right-to-equality.html> visited on 27 Nov 2022.

¹⁹ Equality of opportunity in matters of public employment

- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State
- (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State
- (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment
- (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State
- (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination

²⁰ The second provision of Section 149(1) of the Act provides that a certain class of companies (as specified in the Rules) should at least have one woman director on its board. Women Director and Independent Director under Company Law regime, <https://cleartax.in/s/woman-director-and-independent-director-company-law-regime> accessed on 20 Nov 2022.

- ²¹ Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing
- (a) that the citizens, men and women equally, have the right to an adequate means to livelihood;
 - (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
 - (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
 - (d) that there is equal pay for equal work for both men and women;
 - (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
 - (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment
- <https://indiankanon.org/doc/555882/>

that the state government uses to draft legislation. Article 39(a) of the directive standards of state policy guarantees and directs a state to enforce policies to ensure that men and women have an equal right to an adequate standard of living, and article 39(c) ensures equal pay for equal work for both men and women.

5. Article 42 - Article 42 of India's constitution "imposes an obligation on any company to provide just and humane working conditions as well as maternity leave." Women's status and care in corporate offices are appalling, and their superiors and managers often abuse them. In this situation, the clauses of Article 42 are critical, as it is now the employer's responsibility to give fair working conditions to its workers.
6. Article 243 - Women are guaranteed seats in gram panchayats under Article 243 of the Indian constitution. Women's social conditions in village communities have changed as a result of this right to participate in district-level arbitration.

BARRIERS IN ACCESSING JUSTICE

1. Any introduction of or following discriminatory legislation shall limit women's right to make decisions and prevent them from accessing various resources. For example, unequal inheritance privileges, unequal rights and obligations in marriages, education, choosing their career after marriage and rules requiring women to seek their husbands' permission before travelling or working, adjusting their working place according to the family's requirements.
2. We do not have legislation that shall fix gender differences. For example, women are often subject to abuse it could be either verbal, physical or sexual at the workplace, though there are policies to curb sexual harassment.
3. Women are curtailed from getting proper education or knowing the rights they can access whenever any person violates the rights. They lack knowledge about their rights and entitlements. They even have no access to obtain legal recourse. They are even kept out while a family matter is discussed or even during the deals done at a company.
4. Financial burdens that are associated with court litigation, such as court fines and transportation costs, trigger delays or inability to obtain judicial action.
5. Due to dependence, guilt, or terror, even women who are conscious of their rights cannot achieve justice as they fear they may lose as this is a patriarchal society and getting complete justice is too far. Women are more protective of their marriages than men and cannot sue a partner or family member.
6. Inadequate judges and legal systems are available to fix societal gender inequality. The reduced ability of judges and legal systems exacerbates it.

7. The justice system may be discriminatory against women or lack gender awareness. People in judicial systems, for example, believe that marriage-related affairs are private and outside of the institution's jurisdiction.

A STEP TO IMPROVISE JUSTICE FOR WOMEN

"Nothing rankles more in the human heart than a brooding sense of injustice. The illness we can put up with. But, injustice makes us want to pull things down. When, only the rich can enjoy the law, as a doubtful luxury, and the poor, who needed most, cannot have it, because, its expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but very real, because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness"- Justice Brennan of the US Supreme Court²²

Based on the previous judgements and the cases we see every day there are few initiatives that has been taken by the Government for the protection of women. Few are mentioned below:

1. National Commission for Women: this was established by the government which acts as a legislative body. This was established in the year 1992. This had an obligation to research and regulate all the matters related to constitutional matters and provide legal protection given to women, review the existing legislation and recommend changes if any so required.
2. Reservation for women in Local-Self Government: the 73rd amendment of Constitutional acts as passed by the Parliament in the year 1992 guarantees women a one-third seats in all the public offices in municipal bodies whether that was rural or urban.
3. The National Plan of Action for the Girl Child (1991-2000): The Action Plan aims to ensure the girl child's survival, protection, and growth, with the overall goal of creating a better future for her. The Government of India enacted the National Policy for Children 2013 on April 26, 2013. The 2016 National Plan of Action for Children is currently in draft form.
4. National Policy for the Empowerment of Women 2001: The Ministry of Human Resource Development of Women & Child Development in the year 2001 drafted "National Policy for the Empowerment of Women". The policy aims to promote women's growth, progress and empowerment. The 2016 National Policy for Women's Empowerment is also in draft form.
5. Some other steps as the government plan to provide justice to women are:

²² Access to Justice for Women in India by Harshul Bangia, <https://articles.manupatra.com/article-details/Access-to-Justice-for-Women-in-India> accessed on 21 Nov 2022.

- a. The discriminatory and gender-biased clauses must be addressed in the statute. Legal assessments, special initiatives, interim relief, outreach projects and the addition of women to judicial institutions will help accomplish the goals.
- b. Women need to be motivated both personally and collectively to be able to assert their rights. The decision-makers in the judiciary system should be a woman and must be recruited; places for women wherein they can speak out or negotiate should be in more number that needs to be opened up, and the organization for women must be increased to allow women to participate in social activities and solve the causes of gender discrimination.
- c. The Judiciary system needs to be improved and needs to be adapted so that it can help women overcome the obstacles that hinder them from getting social justice. Women's complaints have to be properly handled and never delayed. Gender policies and programs to encourage safety for women must be encouraged. The legal aid should be improvised. There has to be an encouragement for gender awareness training and skill-building activities for those working in judicial agencies.
- d. The legal language in-laws should be explicit and precise.
- e. Gender-specific provisions have to be enacted to close the disparities that we see during the enforcement of law. As gender-neutral wording may be often cause the same issue as an unambiguous rule. Gender-specific legislation establishes guidelines that provide conceptual clarity for enactment.
- f. While hiring judges, the judiciary must demonstrate that there will not be any discriminatory norms for hiring women. Women judges will have a greater view of women's issues, which will contribute to gender equality.

CONCLUSION

Both men and women expect social justice. We are in a patriarchal society, and women's problems must be viewed from a broader point of view. There are steps made to achieve it, but it is not satisfactory in nature. Justice is related to healthcare, employment, housing and more. Discrimination and social justice are not compatible. Social justice is itself a critical problem in Indian Society. People should be mindful of the terms used by the disadvantaged and marginalised. The idea of social justice is misplaced in the sense as it does not benefit the poor, but it serves the interest of the rich. It does not uphold the interest of women. There is a strong need to bring about institutional, social and behavioral change among India's populace by sensitising and emphasising inclusivity. The need for the hour is to change the patriarchal mindset and make them accept the empowerment of women and stop suppressing them to show the power of a man still. There cannot be any justice if the women are not empowered, and the day they move safely around night, we can say that the domination from the society has changed. It is high time that the court system changes by adding women judges and justice to its system and realise that even women's justice for the court is necessary. The government has to join its hand with that the judiciary and get social justice for

women to remove all the superstitions and myths against women, which is a legacy followed. Our judiciary has been trying to remove such discrimination at its best. May it be triple talaq or may that be sexual harassment towards women or it may be related to equal opportunity, the judiciary has always worked towards protecting women from getting discriminated.

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