



A Critical Analysis of Indian Social Justice and Women's Empowerment

Mr. Rishi Yadav¹¹

Advocate, Dist. Bar Asosiation Jind, Haryana, 126102,

Abstract

Dr. Ambedkar. B.R. was the principal architect of our Constitution of India. He was a brilliant philosopher, prolific writer, social critic, lawyer, editor, and sensible political figure in the country. He was also a tremendous freedom fighter. Dr. Ambedkar was a fervent advocate for women's political and economic rights. He always advocated for women's full development in a range of areas, including political, economic, sociocultural, and educational. The Indian Constitution recognizes women's equality rights under Articles 14, 15, 15(3), 39, 42, 46, and 51(e), protecting them from all forms of discrimination in order to bring total social justice to Indian women. Dr. Ambedkar was not just the elite class's brilliant visionary but also the champion of the downtrodden. The Hindu Code Bill was Dr. Ambedkar's main social reform proposal, but it was defeated during his legal government due to resistance from the Hindu orthodoxy. Nonetheless, the measure eventually attempted to codify certain Hindu rules, including "Hindu marriage," "Succession," "Minority and Guardianship," and "Maintenance," which were previously in various forms. Dr. Ambedkar's goal was to use the Directive Principles, Fundamental Duties, Fundamental Rights, and Preamble of the Indian Constitution to address inequality, poverty, ignorance, and powerlessness.

Keywords: Women Empowerment, Social Justice, Constitution, Gender Justice.

Introduction:

“There is no chance the welfare of the world unless the condition of women is improved. It is not possible for a bird to fly on one wing”. - **Sawami Vivekanand**

In situations where scarcity, justice is primarily concerned with the distribution of benefits, goods, and services, as well as burdens, among the members of society. Consequently, social justice refers to a reorganization of social life in which the material and moral rewards of social work do not accrue to an elite class, but rather to the people, in order to assure the uplift of the lower, weaker, and downtrodden portion of society.² This is a logical combination of freedom, equality, and brotherhood. In a modern society, social justice entails that every person

¹ Mr. Rishi Yadav, Advocate, Dist. Bar Asosiation Jind, Haryana, 126102, Mob. No. : 9899781018, yadavrishi0321@gmail.com

² Mritunjay Srivastava, “Judiciary and Social Justice, Yojana”, April 2011 p no. 46.

has the chance to fulfil their full perspective, and therefore this opportunity is extended to the greatest number of people possible.³

Freedom is central to my conception of justice. Conservative civilizations that restrict individuals their freedom also undermine social fairness. In genuine democracies or open societies, social justice thrives because men and women are treated equally and have the freedom to develop their personalities.¹ The comments of the father of the Constitution of India (Dr. Ambedkar), regarding the empowerment of women remain pertinent in the contemporary period. The best religion in the world, according to his description, is one that promotes liberty, equality, and brotherhood. About women in India, all of the above statements are undeniably accurate in the current context and in all sectors.⁴

Being a "weaker sex," women around the world have not only been denied complete economic, political, and social justice, but they have also been abused, used, abandoned, and exploited, to lead homeless, immoral, and wretched lives until their demise. Even if they make up over half of the inhabitants, they have been denied their rightful share in numerous spheres of society and subjected to horrible conditions from birth to their last breath. In Indian culture, burning a woman on her husband's funeral pyre was considered socially unacceptable.⁵ But today, women have broken free from their social constraints and are prepared to face today's issues head-on, without help or hesitation. As a result, 8th March is formally recognized and observed in many countries, including India, as a reminder of the progress made in recent years to give women equal access to rights, status, and dignity as well as opportunities for social, economic, and cultural advancement.⁶

Due to gender bias, women are frequently given unfavorable jobs. Women have historically been mistreated and exploited by male-dominated communities all around the world. Women have been exploited economically, socially, physically, sexually, and physiologically from the dawn of time in our tradition-bound culture, sometimes in the name of religion, sometimes under the guise of writings and the scriptures, and sometimes as a result of societal penalties.⁷

Constitutional Safeguards

The Constitution's preamble serves as "a key to access the thinking of the framers and may reveal the general goals for why they established the constitution."⁸ It expresses the liberties & rights that the people of India wanted to guarantee to every citizen.⁹ The Indian Constitution's preamble declares that "We, the people of India," are determined to guarantee its inhabitants liberty, and justice on all fronts—economic, political, and social—as well as equality in position and opportunity.¹⁰ Article 14 states that no one shall be denied "equality before the law or equal protection of the laws".¹¹ According to Article 15, the government is prohibited from discriminating against any person on the basis of their sexual orientation.¹² Article 15 (3) contains a special clause that permits

³ Shiram yerankar, "Social Justice in the Indian Context", Yojana, April 2011 p. 36.

⁴ Ibid.

⁵ Girija Vyas, "Evaluating the status of women rights in India," Yojna April 2011, p. 14.

⁶ Awasthi, S.K., & Kataria, R.P.; "Law Relating to Protection of Human Rights" (Orient Publishing Company New Delhi) 2001, p.2.

⁷ Banshi Dhar Singh, "An Analytical study of human Rights of Women: National and International Perspective" Shodh Prerak, Oct,2011 Vol. 1 Issue 4, p.238

⁸ Ibid.

⁹ Berubari Union and Exchange of Enclave, Re, AIR 1960 SC 845, 856.

¹⁰ Sir Alladi Krishanaswami, "Constitutional Assembly. Debates," vol.10, p.41.

¹¹ Preamble of the Constitution of India.

¹² Article 14 of the Constitution of India.

the state to use affirmative action discriminating in favor of women. Nonetheless, the state legislature can enact unique laws in support of women's emancipation.¹³ Article 16 stipulates that no citizen will face sex-based discrimination in issues of public employment.¹⁴ Equal resources, means of subsistence, and recompense for equal labour are all mentioned in Article 39.¹⁵ Article 42 offers the state instructions on how to ensure reasonable and humane working conditions and maternity leave.¹⁶ Article 46 states that the State authority must take special care to advance the economic and educational interests of the society's poorer members and to shield them from all forms of exploitation.¹⁷ The Panchayati raj system's seat distribution is outlined in Articles 243D (3), 243 T (3), and 243 R (4).¹⁸ The constitution was changed in 1992 to reserve 33% of the seats in municipalities and panchayats in their favour.¹⁹ Notwithstanding this, Articles 51(A) to (E) of the constitution impose fundamental obligations on every citizen, including the renunciation of practices that are disrespectful to women's dignity.²⁰ The Constitution provides adequate protection for women against all forms of discrimination. Article 39A was added to the constitution in 1976 to serve as a reminder to the government to make sure that the administration of justice promotes equality of opportunity and offers free legal aid.²¹ Dr. Ambedkar worked hard to ensure that women's rights were fully reflected in India's political framework and constitution.

The Constitution's core should be understood to be its essential rights. To realize one's full spiritual, moral, and intellectual potential, these rights are essential. Justice P.N. Bhagwati stated in his words that fundamental rights are, "represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent."²²

Other Legislative Measures

Several more protective laws exist in India to stop the exploitation of women despite the Indian Constitution. To name a few, "the Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act of 1994, the Dowry Prohibition Act of 1961, the Family Courts Act of 1984, the Protection of Human Rights Act of 1993, the Maternity Benefit Act of 1961, the Immoral Traffic (Prevention) Act of 1956, the Child Marriage Restraint Act of 1929, the Sati Prevention Act of 1987", and so forth. The recently passed DV Act 2005 (Protection of Women from Domestic Violence Act, 2005) offers actual remedies to ladies who are victims of abuse, including prohibiting their eviction from the joint family; nonetheless, this act does not criminalize domestic violence. In cases of forfeitures, a person is only found guilty of an offense if they violate a court order. To eliminate all inequities and discrimination against women, several revolutionary pieces of legislation, like the Equal Pay Act of 1976 and the National Commission for Women Act of 1990, have been passed under the supervision and guidance of our Constitution.

¹³ Article 15, Ibid.

¹⁴ Article 15(3) Ibid.

¹⁵ Article 16 Ibid

¹⁶ Article 39 Ibid.

¹⁷ Article 42 Ibid.

¹⁸ Article 46 Ibid.

¹⁹ The Constitution 73rd amendment Act, 1992

²⁰ The Constitution 74th amendment Act, 1992.

²¹ Article 51(A) to (E) Constitution of India.

²² Article 39A Ibid.

To paraphrase what Dr. Ambedkar B.R. said, "The underlying reasons of gender inequality are connected to social and economic structure... and habits," which is also what the National Plan for the Women Empowerment of 2001 says. The result is that many women, especially those from marginalized groups like (the Minorities Scheduled Tribes/ Castes, and Other Backward Classes,) lack adequate access to educational, health care, and economic opportunities. Hence, they remain economically and socially marginalized.²³ In order for women in India to reach their full potential, the government has enacted a policy that ensures they have equal opportunities to participate in and make decisions about the country's social, political, and economic life, as well as a set of laws that protects them, and a social and economic climate that encourages their growth and development.

Ideology of Dr. Ambedkar's for Women's Empowerment

Dr. Ambedkar B.R., as of the Drafting Committee Chairman, was cognizant of the plight of Indian women and worked to ensure that their rights were sufficiently reflected in India's political lexicon and constitution. He therefore included gender-specific protections while making the rest of the laws equally accessible to both sexes. When doing so, he took into account women's legal and economic parity. For this reason, we have provisions such as Article 15(3), Article 51(A), and others. The Indian Constitution, which he helped draught, is now considered a New Charter of Human Rights. The individual's progress in life should parallel the collective progress of society, and he saw the law as a means to that end. He incorporated ideas of freedom, equality, and brotherhood into India's founding document.

Ambedkar, who served as India's first Law Minister, battled tenaciously for Indian women. On April 11, 1947, in Parliament the Bill for Hindu Code was introduced, but it was defeated because to resistance from the Hindu tenet. The Bill was an attempt to "demolish the entire structure and fabric of Hindu Society," according to their main argument. The essential pillars upon which Hindu civilization is built—not just one pillar, but all of them—have had their foundations disturbed. The main cause of the disagreement was the opposition's opinion that the Bill threatened patriarchy, the foundation of conventional family structure. Hindu polygamy was to be outlawed by the bill. It suggested giving women the ability to own property and to have a divorce. The Hindu Laws, which were in various forms, were attempted to be codified by the Bill. On seven separate issues, he suggested changing the law, including:

- i) When a Hindu dies intestate, his or her property automatically passes to the surviving spouse;
- ii) The distribution of property belonging to a deceased person who passed away intestate among various heirs,
- iii) The maintenance legislation,
- iv) Divorce,
- v) Marriage,
- vi) Minority guardianship, and
- (vii) Adoption.

²³ Maneka Gandhi v. Union of India, AIR 1978 SC 597.

Notwithstanding the fairly adequate nature of the Bill, Dr. Ambedkar. B.R. was unable to pass it because of resistance from numerous Hindus from orthodox castes. Dr. Ambedkar resigned from his position in the cabinet in protest at the rejection of the Bill. Even so, his efforts weren't completely in vain. Once the original Bill was revised and split into four pieces, (The Hindu Succession Act of 1956, The Hindu Marriage Act of 1955, the Hindu Adoption and Maintenance Act of 1956, and the Hindu Minority and Guardianship Act of 1956) were all passed. Ambedkar is the "fountainhead of wisdom and knowledge" in contemporary India, according to Lord Casey.

Dr. B.R. Ambedkar warned against ratifying the Constitution on the grounds that it would not produce a popular government if its election system and constituency did not provide a representation of the people and their opinions. In his speech to the Constituent Assembly on November 25, 1949, he stated that "political democracy cannot continue unless there is social democracy at its core." He uses the term "social democracy" to refer to a style of living that upholds the values of liberty, equality, and fraternity.

Dr. Ambedkar offers other recommendations for overcoming tyranny. He discovered their release in Buddhist ideals, which support education, equality, and fraternity. Ambedkar thinks that unlike Manu, Buddha never attempted to denigrate women and instead treated them with respect and affection. He instructed female students in Buddhist doctrine and spirituality.

Judicial Approach

The Indian courts have deemed a number of laws and regulations to be discriminatory against women and hence unconstitutional on the basis of national and international conventions, conferences, and the provisions of the constitution. Gender justice is provided by a number of clauses in the Indian Constitution and other laws. In *Consumer Education and Research v. Union of India*,²⁴ the Supreme Court ruled that social justice is the fundamental tenet of the constitution that guarantees a meaningful and dignified existence for all people. Social justice is a dynamic tool to lessen the suffering of the weak, disadvantaged, dalit, and tribal groups in society. Achieving a significant level of social, economic, and political equality is the goal of social justice.

The Supreme Court stated in another case, *Air India v. Nergesh Meerza*,²⁵ that flight attendants' retirement upon the first presumption of prematurity is irregular and arbitrary but that flight attendants' retirement upon the occurrence of marriage within four years of employment is not. In accordance with Art. 14 of the Indian Constitution, equal pay for equal effort is permissible. It is not acceptable to defend unequal remuneration for substantially equivalent work on the grounds of a fictitious distinction between the two types of employment and work. Article 14 allows for a legitimate categorization that has a connection to the item, but prohibits classification solely on the basis of gender. That violates the constitution's Article 15 in some way. Article 15(3) prohibits "Protective Discrimination" in light of the precarious position Indian women currently occupy. The state government can now implement unique arrangements solely for the welfare and benefit of women thanks to this

²⁴Govt. of India: The National Policy for the Empowerment of Women 2001, Department of Women and Child Development, Minority, Ministry of Human Resource Development, New Delhi, 2001

²⁵AIR 1995 SC 922, SCC (3) 42.

clause. In *Data Traya v. State of Bombay*,²⁶ here it was ruled that state can exclusively create institutes of higher learning for women. The scope of Article 15(3) includes unique protections for women, such as job reservations. The reach of Article 15(3) is fairly broad, including any special accommodations for women, such as hiring preferences. Such a reserve is not prohibited by Article 16. Harmony between the two articles is necessary. Article 15(3) was created to help the less fortunate members of our society, and it should be used broadly, with the caveat that the limit on the reservation, as established in the matter of *Indira Sahney v. U O I*, of 50%, should be adhered to.²⁷ The court also affirmed a government decree from Orissa granting a 30% quota of 24-hour medical shops to women as a portion of a self-employment programme.²⁸

The constitutionality of sec. 497 I. P. C was contested on Art.14 and 15(1) of the Indian Constitution in the case of *Yusaf Abdul Ajiz v. St. of Bombay*²⁹. In accordance with Sec. 497 of the IPC, only men are subject to penalty for the crime of adultery, whereas women are not subject to punishment even if they aid and abet the crime. The Apex court ruled that this part was legitimate because the classification was not based solely on sex. Invoking the authority of Article 15 (3) of the constitution, the Supreme Court confirmed the validity of Section 497 of the IPC. In the case *Vishakha and others v. St. of Rajasthan*³⁰, The Indian Supreme Court declared that sexual harassment of working women at their place of employment is clearly in violation of Indian Constitutional Articles 14, 15, and 21, which safeguard women's rights to life, gender equality, and personal liberty, respectively. According to the Supreme Court's interpretation of the Vishaka ruling in *A.K. Chopra*³¹ case, any effort to sexually harass women is a breach of Art. 14 and 21 of the Indian Constitution, which protect the rights to gender parity. The Supreme Court declared in *Pratibha Ranu v. Suraj Kumar*³² that a woman's stridhan property is her sole and separate property and that she has full ownership and control over it. *Githa Hariharan v. Reserve Bank of India*³³ Based on the Supreme Court's interpretation of Section 6 of the Hindu Minority and Guardianship Act, 1956, a mother may serve as a minor's natural guardian when the father is still alive if the father is not handling the minor's affairs.

Conclusion

Based on the principles of human rights and equality, the concept of social justice entails a higher level of economic egalitarianism through progressive taxation, income distribution, or even property allocation. The goals of the policies are to establish opportunity equality in all spheres of society. Equal justice is a key component of social justice, which applies to all facets of society, not only the legal system. In every area, including the environment, gender justice, education, minorities, public reforms, elections, and restrictions on the constituent powers of parliament to change the Constitution, Supreme Court rulings have made a substantial contribution to effective governance. So, the judiciary plays a significant role in the advancement of social justice generally, the empowerment of women, and ensuring effective governance. Hence, a radical democratic women's movement against all forms of discrimination in every aspect of life as well as the efficient application of current law with modifications in accordance with changing circumstances are necessary to attain the aim of women's empowerment to achieve equality.

²⁶ AIR 1981 SC 1829.

²⁷ AIR 1952 SC 181: 1952 SCR 612.

²⁸ AIR 1992 SC 477.

²⁹ Gayatri Devi Pansari v. State of Orissa, AIR 2000 SC 1531.

³⁰ AIR 1954 SC 321: 1954 Cri. LJ 886.

³¹ Apparel Export Promotion Council v. A.K. Chopra, AIR 1997 SC 3011.

³² AIR 1999 SC 625.

³³ AIR 1985 SC 628.