



ROLE OF UNIFORM CIVIL CODE TO ENSURE GENDER JUSTICE

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ABSTRACT

The highest quality in a society is generally seen as being a person's dignity. Every human being who is entitled to such dignity strives to uphold it. In India, the measures to defend citizen's dignity are also mentioned in Constitution of India itself. Gender equality is crucial for the expansion of human rights, and women's status in the globe is the cornerstone of societal progress besides being a crucial component of human growth. Although changes have been made in recent years as issues relating to women's rights have been highlighted, yet it is still a sobering reality that women have experienced atrocities for exceedingly long period, and the crimes still are committed today in a developing nation like India. At temples, a woman is worshipped as Durga Maa, but in reality, it is women who suffers the most and are still treated poorly by society. They cannot fully exercise their rights and become subjected to sexual harassment and other forms of discrimination at work by their coworkers. Non implementation of the Uniform Civil Code for equal entitlement of the civil rights is one of the main reasons why many women still face issues and suffer with their rights in contrast to the men who have access to all of the chances. Despite globalization, gender inequality still exists today in a developing country like India. Women must grovel in order to have their needs met. The Indian Judiciary is also playing a proactive role in eradication of gender biased laws, and implementation of gender neutral laws for example, the Sati system, female infanticide, dowry system, customary practice of triple talaq and so on got abolished and women were given equal share of proprietary rights along with men.

Keywords: Gender Equality, globalization, Judiciary, Uniform Civil Code, civil rights.

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INTRODUCTION

The main problem continues to be achieving gender fairness, a contentious issue that has persisted for a very long period. Despite being a crucial human right, gender equality has still not been fully attained in modern societies. People in India, a multi-religious and multicultural nation, adhere to their own customs and social mores. Because of the deeply ingrained cultural institutions, the patriarchal culture and worldview have not yet transformed. Every citizen of India has access to Fundamental Rights guaranteed under Part-III of Indian Constitution, which get applicable to everyone without distinction of any form. State is also directed to make special provisions for both children and women as per the Indian Constitution.² Additionally, in accordance with Article 13, any discrimination based on such a basis shall be deemed invalid. Everyone is treated equally in front of the law as per rule of law, which guarantees equality.³ Through their rulings, Indian courts have also shown a commitment to attaining gender justice. Yet, the general public's perspective on gender equality remains distinct. They still view them as being inferior. The State has been given the authority to make provisions for the advancement of women and children residing in society, and the government has periodically amended various laws that have negatively impacted women in regards to matters relating to crimes like rape, sexual harassment at work, prostitution, obscenity, family and marital issues such as maintenance rights, domestic violence, marriage, demand for dowry, etc. The Supreme Court of India has ruled on these issues. In order to improve women's living conditions and provide them greater access to resources, both material and social, the government has also implemented a number of welfare programs. Various measures have been taken by the government and non-governmental organizations working specifically for the welfare of women in order to eliminate any disparities, societal and legal restrictions, etc., so that they are able to properly utilize the rights and opportunities that are made available to them but are overridden because of the social customs and traditions that have been prevalent for a long time in the society and which do not coexist. This is the cause of the unequal allocation of resources, which slows down the speed of development towards gender equality in society.⁴

GENDER JUSTICE: GLOBAL PERSPECTIVE

The simple meaning of Gender Justice is the equality between the sexes, i.e. male and female. In order to achieve gender justice, social, cultural, political, environmental as well as educational factors, such preconditions need to be satisfied. It is believed that no nation can achieve progress in true sense in case half of the population is still repressed. And this is a big reason why at the global level, over the years, gender justice has gained in strength as a cause. The human rights activists, NGO'S, feminists and Government have been actively playing their role fighting for the equal rights, justice as well as freedom. Even after considerable efforts have been made, still women are lagging behind. No big change has been witnessed with regard to their freedom and justice and they still face the

² The Constitution of India, arts. 15, 16.

³ The Constitution of India, art. 14.

⁴ S.P. Sathe and Sathya Narayan, *Selected Works of S.P. Sathe*, First edition (Oxford University Press, new Delhi, India, 2015).

backlash by the society they live in. There are various complex issues which are being faced by women in today's time. Many cultures still exist which are responsible for making the condition of the women deplorable. Women have not been given any right over their bodies or their children. The position is especially unfortunate in the Middle East countries and Africa. Gender Justice aims in harmonizing and balancing the rights of the women and to take care of their needs in the society by ending violence and unequal treatment faced by them. A strong mandate has been established by the United Nations with regard to gender justice and a separate body was formed in the year 1946 in order to work for the advancement of the women. Gender justice as well as gender equality has been a concern since the origin of the United Nations. The collection and compilation of the data with regard to the situation of the women at the global level is being done by the Commission on the Status of Women has been working since its formation for the purpose of fostering the human rights of women also for elevating the realization with respect to their rights as well as keeping up with their contribution towards development.⁵

A note worthy contribution for elevating the awareness and dedication for gender equality as well as gender justice has been done by both The Decade for Women (1976-1985) and four world conferences on women (between 1975 and 1995) respectively.

At the national level, in year 1995, the Beijing Declaration and a Platform for Action was framed. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which was adopted in the year 1979 by the United Nations General Assembly ensures that the women have an equal opportunity to have an access in political as well as social life. They should have a right to vote, education, avail health care services, employment etc. Special measures are being implemented by the member nations in their respective countries for giving the right to women to enjoy their reproductive, human as well as fundamental rights.

The intergovernmental bodies since the year 1995 – such as the General Assembly and the Commission on the Status of Women are working to give recognition to the gender outlook as an intrinsic part of all policy areas. The United Nations Economic and Social Council (also called ECOSOC) is an intergovernmental body with 54 member nations which is a central forum to discuss on the social as well as economic issues at the international level. It also formulates the policies as well as recommendations with regard to such issues.

At the World Summit that happened in 2005, the leaders of the world have summarized that for all the nations, the upliftment of women is deemed as a real progress. The UN Development Fund for Women (UNIFEM) which is the United Nation's agency, supplies technical as well as financial assistance as a fund for development to the women keeping in mind the idea of achieving gender equality. It works through implementing various innovative schemes

⁵ György Andrassy, "Article 27 of the International Covenant on Civil and Political Rights: The Wording and Its Implications," 4 *Hungarian Yearbook of International Law and European Law* 263–91 (2016).

as well as programmes. The Gender Development Index (GDI) is provided by the United Nations Development Programme (UNDP) which specifies the standard of living of people of a nation which is developed by the United Nations. It targets and shows the inequities between women and men, healthy and a long life, education and the fair living standard.

GENDER JUSTICE IN INDIA: STATUTORY FRAMEWORK

Before independence of India, women did not have the right to vote. While in the United States as well as United Kingdom, women were given the right to vote in the year 1929 and 1918 respectively. In November 1949, the drafting of the Constitution of India was finally completed by the Constituent Assembly after a three long years of hard work and was finally enacted in January, 1950. The Constitution of India is a written document which furnishes the basis and guidance in order to have proper administration of democracy. As a developing nation, the Constitution of India has always shown its stand against the inequality. The concept of gender equality has been very well listed in the Preamble, Fundamental Rights, Fundamental Duties and the Directive Principles of State Policy of the Constitution of India. Even though we still lag behind in achieving gender equality completely, but the provisions in the Constitution of India has helped in paving the way for the enactment of legislations favoring the gender equality and ultimately the gender justice since 1950. The articles under Part III of the Constitution of India which mention about the Fundamental Rights provide for the gender justice.⁶

The Right to Equality is a Fundamental Right guaranteed by the Constitution of India which debar discrimination to the core.⁷ According to it, State has no power to deny equal enjoyment of rights to any individual and cannot deny the protection of laws of the individuals residing in India. The notion “equality before law” substantiates that every person is equal in front of the Constitution of India and no one is above it. While the “equal protection of law” marks the mandatory duty on the state to give equal treatment without distinguishing them on the basis of caste, creed, color gender, race, place of birth etc. Gender equality is thus not merely equality in social, political or economical spheres but also in the rights and opportunities. It does not only mean to treat all the genders equally but to equally appraise the needs and objectives of all the genders. This is how Gender Justice can be attained in real sense by overcoming every barrier and giving justice to every individual. The non-discriminatory provision of the Constitution of India ensures that there is no place for discrimination of any citizen of the country on the basis of religion, caste, race, gender, place of birth, descent etc. There shall be no limitation on such mentioned ground to any citizen to access public as well as private services like in restaurants, shops, hospitals, hotels, entertainment places, community parks, wells, bathing ghats, roads, public transport etc.⁸ Protective discrimination has also been ensured wherein the state is empowered to generate special amenities to protect the interest of both the women as

⁶ The Constitution of India, arts. 14, 15, 16, 39, 42.

⁷ The Constitution of India, art. 14.

⁸ The Constitution of India, arts. 15(1), (2).

well as children.⁹ Equal opportunity to all the citizens in the matters relating to public employment or appointment to any office is a fundamental right to every citizen of the nation without discrimination.¹⁰ Part III of the Constitution of India disallows ineligibility or discrimination to any citizen on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them in respect of any employment or office under the State.¹¹

State is also directed and recommended to implement policies keeping in mind the welfare of the society as a whole. These directives and recommendations are provided under Part IV of the Constitution of India as “Directive Principles of State Policy”. One of the directives marks out the area where the interest of every individual is to be taken into consideration and the state is directed to create such policies for its advancement.¹² Thus, the article is considered to be the colonizer of the policy establishment. Directions are given to the state for making policies to secure to every citizen irrespective of their gender an adequate means for living, equal remuneration for equal work which is a big necessity for the independence of women as well as to remove the stereotype that women earn less as compared to men, then is the resource distribution, and at last to ensure the safety of the citizens including children and their development in a healthy environment.¹³ Providing just and humane conditions at the place of work and provision of maternity relief is another one of the directives issued to the state.¹⁴ This is a very important provision especially for the women. Various provisions have been incorporated under this head such as Maternity Benefit Act, Beedi and Cigar Workers (conditions of employment) Act, Factories Act etc. wherein conditions of the work (both men and women) is just and proper so that the workers can peacefully work while taking care of their health.¹⁵

There are other Articles also in the Constitution of India which mention about the provisions which are made for the purpose of benefitting both men and women equally, special regard has been given for the empowerment of women. For instance, one-third seats are reserved for the women in Panchayat elections, protecting the citizens from social injustice and exploitation, raising the nutrition level and their living standard etc.

As far as crimes are concerned, the Indian Penal Code of 1860 has provided the penalties for committing any crime against any individual whether man or a woman. There exist few crimes described in the IPC, 1860 which are committed particularly against women such as rape, sexual harassment, dowry death, molestation etc. defined under different sections. Some provisions have also been made while some are amended by the legislature with a view to safeguard the interests of women. Such provisions are Immoral Traffic (Prevention) Act, Dowry Prohibition Act, Maternity Relief Act, Protection of women from domestic violence Act, Indecent representation of women

⁹ The Constitution of India, art. 15(3).

¹⁰ The Constitution of India, art. 16.

¹¹ The Constitution of India, art. 16(2).

¹² The Constitution of India, art. 39.

¹³ The Constitution of India, art. 39.

¹⁴ The Constitution of India, art. 42.

¹⁵ Hans Kelsen, Carl Schmitt and Lars Vinx (eds.), *The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law* (Cambridge University Press, United Kingdom, 2015).

(prohibition) Act, Commission of Sati (prevention) Act, Criminal Law (Amendment) Act, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, Transgender Person's (Protection of Rights) Act etc.

TRANSGENDERS AND THEIR SOCIETAL RECOGNITION

India is a home to diverse communities with ethnic and racial distinctions among people living in the society. Sometimes, the inner sense of a person does not match with the identity he/she was born with. Such type people are called the transgenders, also referred as non-heterosexual people. With regard to gender, transgender is regarded to constitute a third category¹⁶ and such people do not identify themselves completely as either male or female. They differ from their biological sex and choose to convert to the gender of their choice. They include trans-man and trans-woman being given the socio cultural identities such as hijra, aravani, kinner etc. Their recognition is a human right issue rather than a mere medical or physical issue. They constitute a minority group and face atrocities in many kinds because of the society with a stereotype mindset. Even their families do not fully support them as they feel ashamed to introduce them to anyone. They are bullied by their co workers, and people do not like to give them a company and often neglect them. They undergo psychological issues and start isolating themselves. They indulge in drugs, alcohol and sometimes they even commit suicide.¹⁷

A landmark judgment came in which the Supreme Court had given the guidelines with respect to the transgender. Like others, they too have a right to live a life with respect and dignity and also the right to have privacy. They are free to decide the sex of their choice. The Apex Court also directed to include them as "third gender" in the official forms or documents and to give them recognition. They are considered as the Other Backward Classes and have been provided quota and Odisha was the first state to provide the social welfare benefits to the transgender people.

In a relevant section of the Indian Penal Code, 1860 consensual sexual acts between the homosexual couples was lawfully forbidden.¹⁸ The section was later held by the Apex Court to be discriminatory, unreasonable and unjust as it was against the constitutional philosophy and got finally scrapped out.¹⁹ Therefore, the consensual sexual acts between the homosexual couples became valid.

The judicial decisions have served as a guiding light for doing justice for the transgender people with respect to their rights. They have paved way for them to escalate their voice opposing the infringement of their rights and have come a long way to win their recognition in the society. But still, the mindset of the society is not easy to change as they consider them to be against the law of nature and feel embarrassed to be with them. India has witnessed the stories of Ardhnareshwar, Arjun in Mahabharat playing a role of transgender and so on, but the oldorthodoxies prevails which will take time to be removed completely. In law they have been given recognition and schemes are

¹⁶ *National Legal Service Authority v. Union Of India*, AIR 2014 SC 1863

¹⁷ Aniruddha Dutta and Raina Roy, "Decolonizing Transgender in India," 1 *TSQ: Transgender Studies Quarterly* 320-37 (2014).

¹⁸ The Indian Penal Code, 1860 (Act 45 of 1860), ss. 30, 377.

¹⁹ *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321

working for their welfare but at ground level, they are still not given company by the people and have to live their life alone. It poses a big impact on gender justice as even now, after a lot of effort by the government, they have to face issues with regard to the justice of their rights. Awareness as well as education to the youth is very important to make them realize about these people and how they feel when they are neglected. They are not the aliens but the people from the society itself of which the men and women people are the part and should know and acknowledge the rights of the transgender people and consider them as equals. Only then, we can hope to have gender equality in real sense.

ROLE OF INDIAN JUDICIARY IN SECURING GENDER JUSTICE

There is an existence of the gender based stereotype in a male dominated society in India since many centuries which has influenced the legal system of the nation. Injustice has also been seen in the judicial decisions too since an elongated period of time. Because of the change which is happening in the society and the agitations by the society against injustice, the Indian Judiciary has started identifying them and has indicated for the amendments or repeal of the unjust laws in the decisions.

Following are the various judgments passed by the Indian judiciary leading to the implementation of gender neutral laws and repealing the ones which were discriminatory and arbitrary by playing a proactive role.

- In a relevant case, the Indian Civil Services rules were held to be discriminatory with regard to an equal treatment thereby violating the fundamental rights of the women employees. Therefore, it was struck down by the Apex Court.²⁰
- In another case, there were regulations from Air India with respect to retirement and the bar on pregnancy which was held to be against the constitutional principles and was then struck down by the Apex Court.²¹
- In another landmark decision of the Apex Court, it was held that a mother has a right to act as a natural guardian of her child even when the father is alive.²²
- In another judgment, the right to have privacy was recognized by the Court with regard to the information in the questionnaire pertaining to the dates of menstrual cycle as well as past pregnancies and held that such sort of questions cannot be made.²³
- In another relevant decision, the concept of protective discrimination has been favored by the Apex Court and held that it can be made under Article 15(3) of the Constitution of India.²⁴

²⁰ *C.B.Muthamma v. Union of India*, AIR 1868 1980 SCR (1).

²¹ *Nargesh Meerza v. Union Of India*, AIR 1982 SCR (1) 438

²² *Githa Hariharan v. RBI*, AIR 1999 SCC 228)

²³ *Neera Mathur v. L.I.C*, AIR 1992 SC 392

- In a case related to women's workplace, a PIL was filed before the Apex Court and the Court had put a stress upon the implementation of legislation in order to curb the sexual harassment of women employees at the place of their work.²⁵
- With respect to equal pay for equal work, the Apex Court upheld the Equal Remuneration Act and held that, discrimination on the ground of sex against the women in terms of payment of remuneration should not be allowed as both the male as well as female workers are equal and in no way the women workers are inferior to them.²⁶
- In another case, with regard to the reservation of posts of the female candidates in primary schools, it was stated by the Apex Court that it was justified and permissible taking view of Article 15 clause (3) of the Constitution of India for the purpose of creating special provisions for both women and children regardless of the fact that there is a prohibition under Article 15 clause (1).²⁷
- In a recent judgment, the Apex Court declared that the ban on women to enter the Sabarimala Temple was arbitrary as well as discriminatory and women should be given an equal right to enter and worship in this temple.²⁸
- There was another case wherein, the long time evil customary practice was declared as discriminatory for violating the fundamental rights of the Muslim women by the Apex Court and inclination towards the application of the uniform civil code was also indicated by the Court.²⁹
- Hon'ble Supreme Court had scrapped out Section 377 of the IPC by decriminalizing the homosexuality to ensure gender justice in its judgment, highlighting the importance of gender equality.³⁰

Hence, the legislature has been enacting laws keeping in mind the welfare of the people and is working to scrap out or amend such laws which are not in consonance with the cardinal principles of the Constitution of India and hinder with the effective functioning of the society. The concept of substantive equality is being followed in which special provisions are made for the people who are downtrodden, in order to uplift them and bring them at the same platform with the others. Women were seen as the victims and therefore, non-discriminatory provision was introduced in the Constitution of India and the state is directed to take all the actions against the violence of the

²⁴ *Union of India v. K .P. Prabhakaran*, AIR 1996

²⁵ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011

²⁶ *Associate Banks Officers' Association v. State Bank of India*, AIR 1996 SCC (4).

²⁷ *Rajesh Kumar Gupta v. State of Uttar Pradesh* AIR 2004 SC 1290.

²⁸ *Indian Young Lawyers Association v. Union of India* (2019) 11 SCC 1.

²⁹ *Shayra Bano v. Union of India*, (2017) 9 SCC 1 (SC).

³⁰ *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321.

women rights and to create such schemes for their welfare in order to uplift them and include them in education, politics as well as employment.³¹

CONCLUSION

The dichotomy of glorifying women as goddesses and imposing harsh sanctions on them, not treating them equally and considering them as lower in the society has become a habit of the society which needs to be abandoned. Such treatment on women has led to their degradation and loss of their dignity. Many women are not even aware of their rights while some who are aware, they are clutched in the barriers of the society that they can do nothing but go through pain and hurdles. They are not provided opportunity to work outside and this is the reason why they have to depend on their spouses for financial needs. Improvement has been seen since past years when the judiciary has inclined towards gender justice by seeking for the removal of unjust laws in their judgments. Legislature has been implementing new laws and amending the existing laws in accordance with the needs of the society keeping in mind the constitutional philosophy. It is the need of the hour for the society also to change itself from the patriarchal notions to a notion of equality and progress and in no way considering the women inferior to men. The transgender people too, on the other hand are facing issues with regard to their rights. They are existing in the Indian society since a long period of time and though they have been given legal recognition and have been given reservation in jobs for being the marginalized section of the society, still they have to face a lot many issues. They are mocked at by their co-workers, are not given company by their friends and are even neglected by their families. They have been and still are fighting for their rights. The credit goes to the Indian Judiciary for playing an active role and recognizing the age long unjust practices of the society on the women and asserting that the removal of discrimination is a big necessity in order to achieve equality in a true sense. And judiciary, by becoming prompt and playing an active role with regard to such issues has proved to become a champion for achieving the women rights. If any adverse discriminatory actions have been found in the state actions or in the existing laws, the same have been immediately struck out. Judiciary has been acting as a social reformer by realizing the unjust laws that exist and striking them out or directing the Legislature for their amendment. Such promptness as shown by the Indian Courts has inspired the people who are downtrodden because of the societal stereotype, especially women and transgender. They have become self motivated to raise themselves and fight for their rights without paying any heed to what the society considers them. In a globalised world, one cannot imagine to have gender justice when a male, female and the third gender are not treated equally. There is still a long period of wait in a developing India to witness gender justice in a true sense, and it is believed that it will definitely be achieved because people are becoming aware and the three organs of the government are prompt as well as active in their roles to work for the welfare of the society, keeping in view the idea of attaining gender justice.

³¹ The Constitution of India, art. 15 (3).