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ENSAYO

Salvaguardar los derechos de la mujer: el viaje jurídico poscolonial de la india hacia la justicia de género

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Resumen. Haciendo hincapié en la evolución poscolonial, este ensayo examina cómo las reformas jurídicas han hecho avanzar la justicia de género en la India. A través del análisis de importantes medidas legislativas, cláusulas constitucionales y sentencias judiciales, el estudio trata de comprender cómo el sistema jurídico indio ha abordado los llamamientos en favor de la igualdad de género. La metodología del artículo adopta un enfoque doctrinal, examinando bibliografía secundaria sobre justicia de género, además de fuentes primarias, como leyes, jurisprudencia y artículos constitucionales. Esto incluye legislación histórica como la Ley de Protección de las Mujeres contra la Violencia Doméstica de 2005 y la Ley de Acoso Sexual de las Mujeres en el Lugar de Trabajo (Prevención, Prohibición y Reparación) de 2013, junto con importantes reformas legislativas como la Ley de Matrimonio Hindú de 1955 y la Ley de Sucesión Hindú de 1956 y sus enmiendas. Se amplía además que, aunque la sociedad india ha progresado bastante en la demolición de las estructuras patriarcales, queda mucho por hacer debido a mecanismos sociales y culturales profundamente arraigados. El estudio deduce la importancia del activismo judicial y de la acción afirmativa para la justicia de género a la hora de defender nuevas reformas legales y su aplicación práctica para alcanzar la realidad definitiva de la igualdad de género.

Palabras clave: género, igualdad, justicia de género, derechos, India.

Safeguarding women's rights: india's post-colonial legal journey towards gender justice

Abstract. With an emphasis on post-colonial developments, this essay examines how legal reforms have advanced gender justice in India. By looking at significant legislative actions, constitutional clauses, and court rulings, the study seeks to understand how the Indian legal system has addressed calls for gender equality. The article's methodology takes a doctrinal approach, examining secondary literature on gender justice in addition to primary sources including legislations, case law, and constitutional articles. This includes historic legislation like the Protection of Women from Domestic Violence Act, 2005, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act of 2013, along with major legislative reforms including the Hindu Marriage Act of 1955 and Hindu Succession Act of 1956 and their amendments. It is further amplified that, although the Indian society has progressed quite a lot in demolishing patriarchal structures, much is left due to deep-rooted social and cultural mechanisms. The study derives the significance of judicial activism and affirmative action for gender justice in arguing for further legal reforms and their practical implementation for reaching the ultimate reality of gender equality.

Keywords: gender, equality, gender justice, rights, India.

INTRODUCTION

Gender justice is fundamental to building a fair and inclusive society where everyone has equal access to rights, resources, and opportunities, regardless of gender. In a country like India, rich in various socio-religious practices, the battle for gender equality is very much tied up with the practices of culture and with legal reform. This research aims to analyze how India's legal architecture has been responding toward gender justice since the country gained its independence, considered as a philosophical attempt to bridge together the rich heritage of the country with the concept of challenging oppressive patriarchal systems. The Indian Constitution's sound equality provision forms any way of discussion on gender justice. The whole idea of articles 14, 15, and 16 is that everybody must be treated equally before the law. Accordingly, these provisions do not permit any gender-based discrimination. However, even with all these constitutional safeguards, gender justice is something which remains under the immense constraint of strong social practices, religious beliefs, and economic differences. The Indian Legislature has, over the years, tried to fix several differences in laws many times since Independence. The two most relevant acts of this sort are the Hindu Marriage Act of 1955 and the Hindu Succession Act of 1956 can be regarded as important toward ending male-centered legal systems.

The country has been called upon to ratify laws and courts since it is a signatory to other human rights instruments, including UDHR 1948 and CEDAW 1979. These treaties state that men and women must be provided equal opportunities at work, studies, and personal lives—an objective India has been striving for nationally for its citizens. However, this is very difficult in ascertaining equal equality between men and women in the vast legal apparatus. This would call for an involvement of all the three arms of the government and society at large together to work towards finding the many problems in the given task.

For that matter, it requires bold legislative action and judicial intervention for the strengthening of the rights and ensuring gender justice. However, the journey undertaken in this regard for substantive gender equality is far from its completion. Although India's legal system has managed to produce much change toward combating gender injustice, the barrier problems remain to this day in the form of cultural, economic, and social disparities. This paper aims to discuss the interface of old and new as to how India's post-colonial legal system has been subjected to changing gender justice demands.

OBJECTIVES

The article basically deals with the concept and the framework of gender justice in the Indian legal and socio-economic-cultural-political context. The agenda is to analyze the manner in which the post-colonial Indian legal system has approached the evolving demands of gender justice and equality through the means of legal reform, legislative enactments, and interpretation of constitutional provisions and activist role of judiciary. It further looks at the role of protective discrimination and affirmative action in advancing substantive gender equality and redressing structural inequalities. It addresses India's international commitments to gender justice through various treaties and how the state's obligations have informed its domestic laws of gender justice. The article therefore examines various constitutional provisions and legislative enactments as well as reviews landmark cases and notable developments of the law. It highlights stories of success and challenges arising in the process of advocacy for gender justice in India, in particular areas like employment, marriage, reproductive rights, and personal laws.

MATERIALS AND METHODS

This article uses a comprehensive exposition of the historical reforms and legislative enactments in India relating to gender justice. It also discusses some of the landmark judicial decisions which have influenced and guided the interpretation of gender justice in India. The article primarily employs a doctrinal method of research based on primary and secondary data. The primary data includes constitutional provisions, legislative enactments, international treaties, case-laws; and secondary data includes the academic literature on gender justice. Attention revolves around specific provisions of the Constitution, such as Articles 14, 15, and 16, which underpin gender justice. The legislative developments that contributed to the dismantling of certain patriarchal structures have also been assessed, such as the Hindu Marriage Act (1955), Hindu Succession Act (1956), and most recently the 2005 amendments to the Hindu Succession Act of 1956. The interpretation of the constitutional provisions and legislations by the Indian Judiciary in landmark cases such as Vishaka (1997) and Shah Bano Begum (1985), etc. have been discussed. The article also takes into consideration India's commitments under international treaties, such as the Universal Declaration of Human Rights (1948) and the Convention on the Elimination of All Forms of Discrimination Against Women (1982), to understand how the obligations reaffirmed in these international agreements, have contributed to socio-legal transformation in India. Through the legislative enactments and judicial decisions on issues such as equal pay for women, prevention of sexual harassment, and promotion of inheritance rights for women, the study emphasises on the legal developments highlighting a movement towards gender justice.

RESULTS AND DISCUSSIONS

Gender Justice: Concept and Meaning

Gender justice means that, 'no one be denied justice or discriminated only because of one's gender (sex)' (Singh, 2001). The term gender justice refers to a concept of justice which pertains to the social and juridical relations that prevail between the sexes (Molyneux, 2007). The concept of gender justice has various kinds of meaning. In the area of liberal philosophy, it is focused on thinking about subjective agency, rights and capacities; whereas in political science it is concerned with the constitution, processes of democracy and citizenship. In the area of law, the concept of gender justice can mean formal equal rights between men and women (Kapoor, 2007). It comprises of various components of justice, which ranges from simple equality to concepts of differentiated equality and protective discrimination.

Gender justice can be defined as 'the protection and promotion of civil, political, economic and social rights on the basis of gender equality. It is necessary for taking a gender perspective on the rights themselves, as well as the assessment of access and obstacles to the enjoyment of these rights for both women, men, girls and boys and adopting gender-sensitive strategies for protecting and promoting them' (Spees, 2004). The term gender justice is often used with reference to activities that advance women's rights through legal change or promote women's interests in social and economic policy. However, the term is only rarely given a precise definition and is often used interchangeably with notions of gender equality, gender equity, women's empowerment and women's rights (Goetz, 2007).

Gender Justice dreams of a society that is free of gender barriers, that is, a society where the individuals are not held back by implicit bias, stereotypes, or prejudice and can reach their full potential, whether at school, in the workplace, or in the community (Neeraja, 2013). Thus, it is a process which lays down the hope that it would eradicate the socially constructed differences between men and women. It means elimination of all forms of discrimination, exclusion, oppression and exploitation of women (Nawaz, 2013). These injustices against women are related to the unequal power equation in gender relations and stereotyped roles for men and women in the society (Chakrabarti & Chakrabarty, 2006). It is also deeply rooted in all philosophies including religion and culture. Thus, any attempt to wash away the inequalities and to uphold gender justice can be successful only if the social and cultural reasons for such injustice are addressed adequately. Various legislations have been adopted by the Indian Legislature so as to protect the interests of woman and promote gender justice in the country.

Gender Justice and the Obligations of Government in Independent India

Gender justice calls for ensuring the fair and equitable treatment, equality in opportunity, equality in access to resources to all individuals, and socio-economic and cultural empowerment irrespective of their gender. The elimination of oppressive regimes and patriarchal structures created by socio-religious-cultural traditions in the country is the key to achieving gender justice. The legal duty to take different measures for the promotion of gender justice in our country stems from the aspirations and ideals of the Constitution of India as well as from the provisions of various international human rights and other instruments.

The Constitutional Commitments

The Constitution of India expressly declares in its preamble that ‘we the people of India solemnly resolve to constitute India to secure the equality of status and opportunity to all its citizens. Therefore, one of the fundamental goals of the founding document of independent India is the upholding of gender justice. The preamble is an unenforceable part of the Constitutions; however, it is acting as an aid for the interpretation of various provisions of the Constitution and the judiciary has given due to recognition to the objectives emphasised in the preamble (Orgad, 2010). The operative and binding provisions of the Constitution gives due regard to the issue of gender injustice practised in the pre-colonial era and included specific provisions for ensuring right to equality among both men and women as well as to prevent discrimination on the ground of sex.

Part III of the Indian Constitution guarantees various fundamental rights and the State is under an obligation to protect these fundamental rights. Article 14 is the core provision which guarantees right to equality and equal protection of law to all individuals. It confers a duty on the state to give equal treatment to all. In this context, this essentially means that no privilege or favour should be given to anyone based on their gender. Article 14 also imposes an obligation to guarantee equal protection to all irrespective of their gender. Hence, in the context of gender justice, Article 14 incorporates both negative and positive contents (Fredman, 2016). Further, this Article also emphasises anti-arbitrariness; arbitrariness is one of the enemies of gender justice, and hence, it is specifically placed as an important virtue under this Article (*S.G. Jaisinghani v. Union of India*, 1967). Bhagwati, J emphasised that ‘Equality is a dynamic concept with many aspects and dimensions, and it cannot be imprisoned within traditional and doctrinaire limits. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment’ (*Maneka Gandhi v. Union of India*, 1978). Though apparently, Article 14 prohibits all types of classifications based on gender, the right to equality and equal protection of law guaranteed in it accommodates ‘reasonable classification’ (Saraswati, 2002). This is based on the principle ‘equals to be treated equally and unequal to be treated unequally’ (Seervai, 1995).

The Hon’ble Supreme Court of India in *Western U.P. Electric Power and Supply Co. Ltd. v. State of U.P. and Anr.* (1969) observed that ‘Article 14 of the Constitution ensures equality among equals; its aim is to protect persons similarly placed against discriminatory treatment. It does not however operate against rational classification’. Further, the Court states that, ‘the guarantee of equality does not imply that the same rules should be made applicable to all persons in spite of differences in their circumstances and conditions’ (*Chiranjit Lal Chowdhuri v. The Union of India & Ors.*, 1969). However, a classification is considered as valid if it satisfies twin requirements such as: there shall be an intelligible differentia, i.e. there has to be some reasonable criteria to distinguish between two classes; and such classification must have rational nexus with the purpose sought to be achieved by such classification (*Prabodh Verma and Others, etc. v. State of Uttar Pradesh and Others, Etc.*, 1984).

Non-discrimination is considered as one of the important facets of right to equality. According to Article 1 of the ILO’s Discrimination (Employment and Occupation) Convention, 1958, discrimination means, ‘Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in the employment or occupation’. Therefore, right against discrimination presupposes equal treatment to all persons equally before law irrespective of gender also.

The right against non-discrimination is guaranteed under Article 15 of the Constitution of India. It states that, 'The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them'. The Article also prohibit denial of access on the ground of sex, to any 'shops, public restaurants, hotels and places of public entertainment; or to use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public'. This prohibition ensures protection of social rights and prohibition on the ground of gender. In matters of public employment also, the Constitution of India guarantees fundamental right to equal access to opportunity for all citizens and it specifically prohibits any discrimination on the ground of sex (Article 16). Thus, the Constitution imposes a positive obligation on the state to ensure equality and a negative obligation to prohibit discrimination in matters of recruitment, promotion, working conditions and related matters of public employment (Motiwal, 1969).

The Constitutional imperative of gender justice is outlined in Articles 14, 15, and 16. Article 14 is put into effect by Articles 15 and 16, which are instances of guarantees of equality. These articles were effectively used by the Indian judiciary in several cases to uphold gender justice. The Court has dealt with several situations based on the equality and right against discrimination in relation to the discriminatory provisions in connection with holding of immovable property (*Sri Sri Mahadev Jiew v. Dr. B.B. Sen*, 1951); refusal to give admission in educational institution (*Anjali Roy v. State of West Bengal*, 1952); women's estate (*Rani Raj Rajeshwari Devi v. State of Uttar Pradesh*, 1954); status of marriage (*Radha Charan Patnaik v. State of Orissa*, 1969); classification of male and female officers (*Uma Sinha v. State of Bihar*, 1975); restriction to hold agricultural land (*Ambika Prasad Mishra v. State of Uttar Pradesh*, 1980); the different scale of pay (*Uttarakhand Mahila Kalyan Parishad v. State of Uttar Pradesh*, 1993); promotion to lady staff (*Hindustan Latex Ltd. v. Maniamma*, 1994); exclusion of women from employment as shed clerks in ports (*A.M. Shaila v. Chairman, Cochin Port Trust*, 1995); night shift (*R. Vasantha v. Union of India*, 2001); sex-based recruitment (*G.K. Pushpa v. State of Karnataka*, 2013); etc. The discriminatory service conditions on the basis of gender was dealt by the Hon'ble Supreme Court in the cases of *C. B. Muthamma v. Union of India* (1979) as well as *Air India v. Nergesh Meerza* (1981). The Court held that such provisions constitute violation of right against discrimination and hence are unconstitutional. In the case of *Anuj Garg & Ors v. Hotel Association of India & Ors* (2008), a prohibition to employment on the basis of sexual preference was held unconstitutional. The prohibition of entry into Sabarimala Temple on the ground of age of females were held unconstitutional in the case of *Indian Young Lawyers Association v. State of Kerala* (2019). The issue of gender discrimination in relation to the Permanent Commissions to women officers in the Army and Navy was also held unconstitutional in the cases of *Secretary, Ministry of Defence v. Babita Punya* (2020) and *Union of India v. Lt. Cdr. Annie Nagaraja* (2020). However, it is to be noted that, the Court has emphasised that sex can be ground for reasonable classification if the nature of the job so requires. It was so held in the case of *R.S. Singh v. State of Punjab & Haryana* (1972), wherein the Court has dealt with the issue of ineligibility in promotion to the post of Jail Superintendent on the basis of sex.

The equal treatment of both men and woman in all circumstance may appear fair at first, but it can occasionally result in gender injustice. Because such treatments may overlook the biological, social, and historical distinctions between the sexes as well as the specific challenges the women have endured as a result of centuries-old patriarchal traditions, economic inequality, and societal duties.

The Hon'ble Supreme Court points out that, 'the Articles 14 and 16 of the Constitution which is intended to advance justice by avoiding discrimination is attracted only when equals are treated as unequal's or where unequal's are treated as equals (Md. Usman & Ors. v. State of Andhra Pradesh, 1977). The Article 15(3) assumes great importance in this context as it allows the State to make special provisions in favour of women. This clause serves as an exception to the general rule of right against discrimination and equal treatment to both genders. This clause recognizes that, even in the face of equality as a basic principle, women and children may need extra assistance to overcome structural injustices and historical obstacles. Article 15(3) permits affirmative action, which in turn permits the State to carry out programs and policies including welfare, education, and job reservations, as well as legal protections that tackle gender-specific concerns and advance substantive equality. This exemption helps close the gaps left by long-standing social and economic inequalities, guaranteeing that gender equality is a genuine, substantive reality in everyday life rather than only a theoretical concept. Any provision which is manifestly discriminatory to men, and favouring to women for their empowerment is covered under Article 15(3), and such discrimination is termed as protective discrimination.

Protective discrimination means the policy of granting special privileges to the downtrodden and the underprivileged sections of society, in order to bring them at par with the mainstream society. The objective is to remove the inequality caused such sections of the society since ancient times. It is to be noted that due to their inherent vulnerability, the women need to be given special favorable treatment so as to make them equal with men in the society (Challa, 2014). The Hon'ble Supreme Court in the case of R. S. Singh v. State (1972) held that, 'the Constitution of India forbids any discrimination on the ground of sex alone. However, discrimination is permissible on ground of sex when there are a variety of other factors involved and there is a reasonable nexus with the object of classification'.

The judiciary has upheld several provisions including the provisions relating to the maintenance to wife (*Thamsi Goundan v. Kanni Ammal*, 1952); women reservations (*Dattatraya Motiram More v. State of Bombay*, 1953); outraging the modesty of women (*Girdhar Gopal v. State*, 1953), bail for women accused (*Chokhi v. The State*, 1957); service of summons to adult female (*M.I. Shabdad v. Mohd. Abdullah Mir*, 1967); special pay to female employees (*Shamsher Singh v. Punjab State*, 1970); property rights of Hindu female (*Partap Singh v. Union of India*, 1985); reservation in appointment of principal in women college (*Vijay Lakshmi v. Punjab University*, 2003); preferential treatment to women based on an action plan (*Air India Cabin Crew Association v. Yeshaswinee Merchant*, 2004); nomination of women members in Municipal Board (*Om Narain Agrawal v. Nagar Palika, Shahjahanpur*, 1993); special provisions for women in respect of employment or posts under the State (*Government of Andhra Pradesh v. P.B. Vijay Kumar and Another*, 1995); etc.

In *Yousuf Abdul Aziz v. State of Bombay* (1954), the Supreme Court upheld the validity of Section 497 of IPC which punishes only male participants in the offence of adultery and exempts the women from the punishments. The Apex Court relied upon the mandate of Article 15 (3) to uphold this provision. In a similar case of *Sowmithri Vishnu v. Union of India* (1985), the Court observed that it is commonly accepted that it is the man who is the seducer and not the woman. Women were not punishable for adultery because they were less likely to indulge in it. The court upheld the validity of section 497 IPC by stating that, 'the wife is a victim and not the author of crime' (Challa, 2012). In the landmark case of *Joseph Shine v. Union of India* (2018), the Hon'ble Supreme Court declared Section 497 as unconstitutional as it violates Articles 14, 15 and 21 of the Constitution of India.

Further, Article 39 (a) in Part IV of the Constitution of India mandates that, State shall ensure 'Equal right of men and women to an adequate means of livelihood' and Article 39(d) emphasises on 'Equal pay for equal work for both men and women, thus, addressing wage disparities based on gender'. Therefore, Articles 39(a) and 39(d), emphasize the state's commitment to gender equality in the workplace and economy. According to Article 39(a), the State must guarantee that men and women have equal access to a sufficient standard of living, thereby fostering equity in the distribution of economic resources and opportunities. The objective of this provision is to eradicate gender-based differences in income and employment, guaranteeing financial self-sufficiency for both men and women. This is also supported by Article 39(d), which addresses salary inequities that frequently affect women by requiring equal compensation for equal effort. This clause aims to address gender-based wage disparities and promote equitable compensation practices by requiring that those doing the same job, regardless of gender, receive the same compensation. Collectively, these Articles embody a constitutional pledge to eliminate economic disparities and guarantee women's equal access to financial security and just compensation, so advancing a more equitable community. Since, these obligations are placed under the Part IV, i.e. it is a directive principle of state policy and hence they are non-justiciable obligations (Article 37). However, these obligations were considered as fundamental to achieve the goal of gender justice in the country.

Further, the Articles 243D and 243T imposes an obligation to state to reserve one third of total seats in Panchayat and Municipalities. Women's active participation in grass-roots governance and decision-making processes is ensured by this obligatory reservation. These provisions seek to rectify the historical under-representation of women in public life and political institutions by requiring at least one-third of local bodies to be represented. By enabling women to participate in local public policy and community development, affirmative action promotes gender equality. The presence of women in these positions has been crucial in fostering inclusive growth, offering fresh viewpoints in governance, and efficiently addressing concerns pertaining to women. The aforementioned articles represent a significant advancement in the political empowerment and leadership of women in India. Thus, it can be seen that, the Indian Constitution provides a strong basis for guaranteeing gender justice in the country's post-colonial judicial system through Articles 14, 15, 16, 39, and 243D & 243T. Together, these provisions impose a duty on the state to eliminate patriarchal systems, enact legislation and introduce reforms to advance substantive gender justice within India's legal and social frameworks.

International Obligations

India is a signatory to several international human rights and other instruments. Most of the human rights treaties guarantee right to equality and right against discrimination as a fundamental human right. The Universal Declaration of Human Rights, 1948 in its Article 2 prohibits discrimination on the ground of gender; Article 7 guarantees right to equality to both men and women; and Article 16 recognises equal rights in marriage. The International Convention on Civil and Political Rights, 1966 in Article 3 imposes an obligation to ensure equal rights to men and women; and Article 26 guarantees right against discrimination and equality before the law. Further, the International Covenant on Economic, Social, and Cultural Rights, 1966, in its Article 2 guarantees right against discrimination; Article 3 confers equals rights to men and women; and Article 7 guarantees equal pay for equal work. Most importantly, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW), imposes several obligations on the

states to ensure gender equality at the municipal level. Article 2 states that, 'States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national level; (b) To adopt appropriate legislative and other measures; (c) To establish equal legal protection of the rights of women; (d) To refrain from engaging in any act or practice of discrimination against women; (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise; (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; (g) To repeal all national penal provisions which constitute discrimination against women'.

Article 5 of CEDAW also imposes an obligation to eliminate social and cultural practices which are against the gender equality. It provides that, 'States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases'.

Further, the Article 11 obliges the State parties to take measures to ensure equality in employment, equal pay and job security

Other international instruments such as Convention on the Elimination of All Forms of Racial Discrimination (Articles 1, 2, 4 & 5); Convention on the Rights of the Child (Article 2); Convention on the Rights of Persons with Disabilities (Articles 3-5); ILO Equal Remuneration Convention, 1951; ILO Discrimination (Employment and Occupation) Convention, 1958; Beijing Declaration and Platform for Action (1995); and Sustainable Development Goals, 2015 (Goal 5), etc. also obliges the state parties to ensure gender justice in their municipal legal systems. Both India's international commitments and its Constitutional obligations influence the country's role in advancing gender justice.

Gender Justice and Legislative Reforms

The efforts to improve the conditions and status of women in India were started during the British colonial era. The social reformers such as Mahatma Jyotiba Phule; Iswar Chandra Vidya-sagar; Raja Ram Mohan Roy; Shahu Chhatrapati; and Swami Dayanand Saraswathi; etc. played a significant role in bringing about awareness regarding the need for removing the social evils and discriminatory practices against women prevailing in the society. During the colonial rule various laws were enacted by the government for abolishing certain evil practices against women. The effort was made in 1829 by enacting a law for abolition of Sati. In 1856, widow remarriage was made legal in the country. In 1870 female infanticide was banned. Further in 1872, inter caste, inter community marriage were made legal and in 1891, the age of consent was raised to 12 years of marriage. In 1921, the Act of granting voting rights to the women was passed in Madras Province and in 1929 the Child Marriage Restraint Act was passed (Saikia, 2012). Though various such legislative initiatives were taken by British government, the position of women was still vulnerable and they

were subjected to many atrocities and discriminations. After Independence the Indian government introduced numerous provisions to improve the social condition of women and to equip them with adequate means to utilize their potential for their betterment and contribute positively towards the growth of the country.

The notion of gender justice in India is closely interrelated with the changes in social and cultural fabric of Indian society. India has made great strides in gender justice, primarily due to critical legal changes meant to upend patriarchal systems and guarantee women's equality. These changes, which were put into effect by the Indian Parliament, are an attempt to bring the legal system up to date to comply with international responsibilities and the Constitution's values of gender equality. The most significant legislation that was introduced after post-colonial times in India, perhaps, was the enactment of legislations like the Hindu Marriage Act, 1955; Hindu Succession Act, 1956; Hindu Minority and Guardianship Act, 1956; and the Hindu Adoptions and Maintenance Act, 1956. They attempted to gain equality and eliminate varying unreasonable social provisions that continue to increase gender inequality. In addition, the Hindu Succession Act, 1956, was amended in the year 2005 to give equal rights of inheritance regarding the ancestral property by the son and daughter. Another legislative reform brought for gender justice by the Central government is the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The Muslim Women (Protection of Rights on Marriage) Act, 2019 is otherwise known as the Triple Talaq Act. It is yet another important law that safeguards the rights of Muslim women and provides a solution to the problem of a husband giving divorce unilaterally.

Recently, the Indian government has quickly acted expediently in implementing many laws that have enhanced women's rights and protected them. These laws include many themes affecting women's rights and security in society. Its highest priorities have been the elimination of gender-based violence, work and economic equality, and fighting for women's rights in public as well as private domains. This wave of legislative reform speaks of a nation's commitment to gender justice and is consonant with both international obligations and constitutional ideals. Under the head of legislative endeavours, the Indian government has enacted several other laws that ensure gender justice. These laws can be divided into two: The first category comprises those specific legislations framed and enacted for the protection of women that include: Maternity Benefit Act, 1961; the Dowry Prohibition Act, 1961; Equal Remuneration Act, 1976; Sati (Prevention) Act, 1987, and Protection of Women from Domestic Violence Act, 2005; the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013; etc. The other one falls under those general laws that are applicable to all but also include provisions for women protection. This category includes Factories Act, 1948; Plantation Labour Act, 1951; Mines Act, 1952; Minimum Wages Act, 1948; and Inter-State Migrant Workers Act, 1979, etc. One of the major enactments for women protection is Protection of Women from Domestic Violence Act, 2005. The law offers civil remedy to the women subjected to any sort of physical, emotional, verbal, or financial domestic abuse. The Act is in complete contrast to the earlier law-it offers a holistic approach; immediately, the victim receives protection orders, residency orders, and financial compensation instead of criminalizing domestic abuse as done by the earlier laws. It also is comparatively easy to get counselling, medical assistance, and shelter houses. Importantly, the statute acknowledges the shift in contemporary family structures through its protection of women within cohabiting relationships. It symbolizes how the state views domestic violence as a serious problem that calls for penal measures and also provides support to the victims while they step into resuming their lives.

The most recently enacted legislation is the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. An Act was enacted to provide that a safe and secure working environment is available for women both in the organized and the unorganized sectors. It provides that every organization must form internal complaint committee. It has a clear process for procedures to be followed in case a complaint of sexual harassment is made. It also provides penalties for violating its provisions. The Act was made as the rules to tackle the prevailing evil of sexual harassment at workplace were enunciated in the judgments of the case of *Vishaka v. State of Rajasthan*, in 1997, and was enacted when people were more conscious about this subject. It played a key role in laying the grounds for establishing the legal framework under which women, without fear of reprisal, could confront and disclose those abuses for greater safety and equity in the workplace.

The Maternity Benefit Act, 2017 was an important amendment that dealt with the rights of women at work. The Amendment India can now boast of having one of the longest maternity leave policies in the world. Paid maternity leaves for women working in both public and private employment are to be extended from 12 weeks to 26 weeks. Working from home shall also be possible subject to the woman's advance permission and if possible. Companies employing 50 or more employees are bound to provide crèche facilities. The variety of changes illustrates an effort by the administration to get more women in the workforce. This is to mean that maternity leave does not affect the growth of jobs or job safety.

It is also very commonly known as the Muslim Women (Protection of Rights on Marriage) Act, 2019. It is a big victory for Muslim women. According to this act, a man can divorce his wife by simply saying the word 'talaq' three times. This is said to be the third kind of talaq called 'talaq-e-biddat' or triple talaq, which, under this new law, is no longer legal for Muslim men to pronounce. Under the new law, this unfair practice will put Muslim women at risk of either homelessness, hard times financially, or mental anguish. The law deems 'triple talaq' as a serious crime for which the husband may face up to three years of imprisonment. This safeguarding of rights on behalf of the woman would also grant her a support allowance and the right to look after any minor children. The law has greatly aided gender equality among the Muslim population as justice is being dispensed for the women, such that they do not get to be sent off for a quick divorce without their rights being in place. The Protection of Children from Sexual Offences (POCSO) Act, 2012 has ensured the defense of little girls from sexual assault albeit the Act is so named as it is not just meant for children. Some of the graver punishments added to the Act with the latest amendments for sexual offenses against children are death for aggravated sexual assault. In a sense, the Act gives a gender-neutral framework, but it is especially important in helping young girls who are vulnerable and are dealing with the effects of sexual abuse.

More recent law that affects women's rights, especially with regard to reproductive autonomy, is the Surrogacy (Regulation) Act, 2021. By outlawing commercial surrogacy and permitting only altruistic surrogacy in certain circumstances, such infertility, the Act aims to control surrogacy. Although the law's goal is to stop surrogate mother exploitation, it has sparked discussion about how it affects women's autonomy and reproductive rights. While the Act protects surrogates from exploitation, it also limits surrogacy for unmarried women and LGBTQ+ individuals, underscoring the continuous debate over how to strike a balance between protection and autonomy. The Labour Ministry recently announced plans to begin enforcing the four rules on occupational health, safety, and working conditions, wages, social security, and industrial relations on April 1, 2021. The useless labor laws have been repealed by the government. There are currently four labor

codes that codify 29 labor legislation. The Code on Wages, 2019 and the Occupational Safety, Health and Working circumstances Code, 2020 are two codes that have special measures aimed at improving the working circumstances of women. The Code on Wages forbids wage discrimination based on gender and promotes the idea of equal compensation for equal effort. Closing the gender wage gap, which has long been a major obstacle to women's economic emancipation, requires this action (Chigateri, 2021).

The Occupational Safety, Health, and Working Conditions Code gives women employees the right to work in all kinds of workplaces, including night shifts, as long as proper safety and security measures are in place. It also requires yearly health examinations for women employees. The labor laws aim to establish more inclusive and fair working conditions for women in both the official and informal sectors by addressing concerns linked to workplace health and safety. Therefore, eliminating discrimination and empowering workers—including women employed in both organized and unorganized sectors—as well as their families are the goals of the new labor rules. Security, respect, health, and other welfare measures are therefore guaranteed. The enactment of laws by Parliament that uphold women's rights and eliminate discrimination based on gender has been essential in the advancement of gender justice (Rao, 2022) & (Kaur, 2024). Through the enactment of various legislations and amendments, the Parliament seeks to eliminate the historical injustices suffered by women in the name of gender (NHRC, 2021). Through a variety of legislative initiatives, India has addressed gender inequity, violence against women, and discrimination and achieved great strides toward ensuring gender justice. In line with international human rights standards and constitutional protections, these reforms have aimed to enhance women's social, economic, and political rights.

CONCLUSION

The Indian experience towards gender justice is a complex one because it tries to find a balance in the perpetuation of cultural and religious traditions, but also an occasion for heralding a promulgation of legal reforms which deconstruct patriarchal structures. Even though the legislation on Articles 14, 15, and 16 within the Indian Constitution theoretically sounds effective towards gender equality, it has been resisted deep through socio-cultural-religious norms. During legislative reforms such as the Hindu Succession Act and the Muslim Women (Protection of Rights on Marriage) Act, gender equality has been integrated through some much-needed forward movement, yet there are still further steps necessary for full gender justice. Yet it is still to this day and even going ahead with time in making a journey toward achieving true gender equality in India. These values of deep-rooted patriarchy, economic inequalities, and imbalances between education and job sectors still continue to impede the ways toward genuine gender justice. Going forward, collaboration between the state and society needs to be viewed in terms of taking up these challenges and effective implementation of the current legal frameworks.

Thus, in India there are many laws for promoting gender fairness; still, much improvement is required in the way these laws and rules are enforced. Changes in laws must be supported with strong ways to put them into action so that women's rights can be applied everywhere. Education is another field that requires reformation as it is very vital to break down the patriarchal norms. Curriculums which are gender sensitive must be introduced in schools and universities so as to promote equality, make a change to the existing stereotypes and empower both the genders so that they view themselves as equal contributors to the society. It has also become the need of the hour to make

a priority for the policies that focus on the economic empowerment of women, such as equal pay for equal work and access to entrepreneurial opportunities. Providing financial independence and opportunities for women will contribute significantly to reducing gender disparities. Last but not the least, it is necessary to conduct public awareness campaigns so as to address the biases existing in the society and it also helps in promoting gender equality. Community engagement can help in fostering a culture which has respect and equality for everyone and it would definitely help in eliminating long-standing discriminatory cultural practices and thus contribute towards a strong society with equality, respect, dignity and basic human rights for everyone.

BIBLIOGRAPHIC REFERENCES

- Air India Cabin Crew Association v. Yeshaswinee Merchant, AIR 2004 SC 187.
- Air India v. Nergesh Meerza, AIR 1981 SC 1829.
- Ambika Prasad Mishra v. State of Uttar Pradesh, (1980) 3 SCC 719.
- Anjali Roy v. State of West Bengal, AIR 1952 Cal 825.
- Anuj Garg & Ors v. Hotel Association of India & Ors, AIR 2008 Supreme Court 663.
- Babita Punya v. Secretary, Ministry of Defence, (2020) 7 SCC 469.
- Chakrabarti, N. K., & Chakrabarty, S. (2006). *Gender justice*. Calcutta: R. Cambray & Co. Pvt. Ltd.
- Chakrabarti, K. (2014). Ensuring gender justice through equality of status and protective discrimination: The legislative and judicial role in India. In U. K. Panda (Ed.), *Gender issues and challenges in twenty-first century* (pp. 1–15). New Delhi: Satyam Law International.
- Challa, K. (2012). Promotion of gender justice in India and the role of Indian judiciary. In P. K. Pandey (Ed.), *Human rights and gender justice* (pp. 245–256). New Delhi: APH Publishing Corporation.
- Chigateri, S. (2021). *Labour law reforms and women's work in India*. New Delhi: Institute of Social Studies Trust.
- Chiranjit Lal Chowdhuri v. The Union of India & Ors., [1969] 3 SCR 865.
- Dattatraya Motiram More v. State of Bombay, AIR 1953 Bom 311.
- Fredman, S. (2016). Substantive equality revisited. *International Journal of Constitutional Law*, 14(3), 712–738.
- G.K. Pushpa v. State of Karnataka, (2013) 1 Kant LJ 411.
- Goetz, A. M. (2007). Gender justice, citizenship and entitlements: Core concepts, central debates and new directions for research. In M. Mukhopadhyay & N. Singh (Eds.), *Gender justice, citizenship and development* (pp. 15–57). New Delhi: International Development Research Centre.
- Government of Andhra Pradesh v. P.B. Vijay Kumar and Another, AIR 1995 SC 1648.
- Hindustan Latex Ltd. v. Maniamma, (1994) 2 KLT 111.
- Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1.
- Joseph Shine v. Union of India, AIR 2018 SC 1676.
- Kapoor, R. (2007). Challenging the liberal subject: Law and gender justice in South Asia. In M. Mukhopadhyay & N. Singh (Eds.), *Gender justice, citizenship and development* (pp. 116–170). New Delhi: International Development Research Centre.
- Kaur, K. (2024). Rights of women labourers in the Indian legal system: A critical analysis. *Journal of International Women's Studies*, 26(3), Article 12.

- M.I. Shahdad v. Mohd. Abdullah Mir, AIR 1967 J&K 120.
- Maneka Gandhi v. Union of India, AIR 1978 SC 597.
- Molyneux, M. (2007). Refiguring citizenship: Research perspectives on gender justice in the Latin American and Caribbean region. In M. Mukhopadhyay & N. Singh (Eds.), *Gender justice, citizenship and development* (pp. 58–115). New Delhi: International Development Research Centre.
- Motiwal, O. P. (1969). Right of equal opportunity of civil servants. *Journal of the Indian Law Institute*, 11(3), 328–343. <http://www.jstor.org/stable/43950032>.
- Nawaz, F. (2013). Global gender justice in the 21st century: Lessons and the way forward. *The Social Sciences*, 8(4), 290–294.
- Neeraja, P. (2013). Sex segregated data: A means to measure gender gap. *Radix International Journal of Research in Social Science*, 2(12), 1–7.
- Orgad, L. (2010). The preamble in constitutional interpretation. *I•CON*, 8(4), 714–738.
- Partap Singh v. Union of India, (1985) 4 SCC 197.
- Prabodh Verma and Others, Etc. v. State of Uttar Pradesh and Others, Etc., AIR 1985 SC 167.
- Radha Charan Patnaik v. State of Orissa, AIR 1969 Ori 237.
- Rani Raj Rajeshwari Devi v. State of Uttar Pradesh, AIR 1954 All 608.
- Rao, K. V. (2022). *Labour reforms and labour codes in India*. New Delhi: Niruta Publications.
- R.S. Singh v. State of Punjab & Haryana AIR 1972 P&H 117.
- Saraswati, S. N. (2002). *Right to equality in the Indian Constitution: A Gandhian perspective*. Concept Publishing Company.
- Seervai, H. M. (1995). *Constitutional law of India: A critical commentary* (Vol. 1). Tripathi.
- Shamsher Singh v. Punjab State, AIR 1970 P&H 372.
- Sowmithri Vishnu v. Union of India AIR 1985 SC 1618.
- Spees, P. (2004). Gender justice and accountability in peace support operations. Retrieved from http://www.international-alert.org/pdfs/gender_justice_accountability_peace_operations.pdf
- Sri Sri Mahadev Jiew v. Dr. B.B. Sen, AIR 1951 Cal 563.
- State of U.P. v. Deoman Upadhyaya, AIR 1960 SC 112.
- Thamsi Goundan v. Kanni Ammal, AIR 1952 Mad 529.
- Union of India v. Lt. Cdr. Annie Nagaraja (2020) 13 SCC 1.
- Uttarakhand Mahila Kalyan Parishad v. State of Uttar Pradesh, (1993) Supp (1) SCC 480.
- Vishaka v. State of Rajasthan, AIR 1997 SC 3011.
- Vijay Lakshmi v. Punjab University, (2003) 8 SCC 440.
- Yousuf Abdul Aziz v. State of Bombay AIR 1954 SC 321.