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Constitution and Gender Justice

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ABSTRACT

India's Constitution, with its progressive values of justice and equality, is the foundation for gender justice in the nation. By examining the relationship between constitutional provisions, judicial interpretation, legislative reforms, and societal issues, this article seeks to understand India's legal and constitutional framework for gender justice. Although the Constitution protects fundamental rights like equality before the law, sex-based discrimination is prohibited, and women's welfare is specifically addressed, its implementation has been fraught with difficulties. The complete achievement of gender justice is still hampered by sociocultural norms, economic inequality, and patriarchal society systems. This paper assesses the advancements and obstacles in gender equality by examining significant legislative reforms like the Sexual Harassment of Women at Workplace Act of 2013 and the Domestic Violence Act of 2005, as well as seminal court rulings like Vishaka v. State of Rajasthan and Shah Bano v. Union of India.

Keywords: Constitution, gender, justice, legislative, artical.

I. INTRODUCTION

When people are treated fairly regardless of their gender, their rights and opportunities are protected. This is known as gender justice. In India, the Constitution is essential for ensuring gender equality and preventing discrimination against women and other underrepresented genders. Progressive court decisions and legislative changes have interpreted and upheld the Indian Constitution, which lays out a foundation for gender equality. However, ingrained patriarchal attitudes, socioeconomic inequities, and cultural hurdles frequently obstruct the complete realization of gender equality.

This paper aims to investigate the constitutional clauses supporting gender justice in India, the judiciary's interpretation of these clauses, and the legislative changes that have advanced gender equality. It also examines the obstacles that still need to be overcome in the pursuit of gender justice, providing suggestions for future reform.

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II. CONSTITUTIONAL FRAMEWORK FOR GENDER JUSTICE IN INDIA

(A) Constitutional Provisions on Gender Equality

The Indian Constitution, which was ratified in 1950, has various articles aimed at guaranteeing gender justice. The Constitution's founders acknowledged the necessity for special provisions to redress the historical injustices that women in India suffer. These provisions, notably included in Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy), provide the framework for gender equality.

1. Article 14: Equality Before the Law

Equality before the law is guaranteed under Article 14 of the Indian Constitution, which states that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." The judiciary has interpreted this provision to demand both formal and substantive equality, considering historical and structural obstacles encountered by women².

2. Article 15: Prohibition of Discrimination on Grounds of Sex

Article 15(1) outlaws discrimination based on gender, among other considerations, while Article 15(3) allows for special provisions for women and children, allowing the state to create laws that offer protection or preferential treatment to women in order to bridge gender gaps³.

3. Article 39(a) and Article 42: Directives for Gender Justice

Article 39(a) directs the state to ensure that men and women have equal access to opportunities for livelihood, while **Article 42** mandates the state to make provisions for securing just and humane conditions of work and maternity benefits. These provisions have laid the groundwork for a host of legislative measures aimed at improving women's economic and social conditions⁴.

4. Article 51A(e): Fundamental Duties

Article 51A(e) requires citizens to "renounce practices derogatory to the dignity of women." This reinforces the importance of respecting women's dignity in both public and private life, creating a moral obligation for citizens to uphold gender equality.

III. JUDICIAL INTERPRETATIONS OF GENDER JUSTICE

The Indian judiciary has played a pivotal role in interpreting constitutional provisions to ensure the protection of women's rights. Through a series of landmark judgments, the judiciary has

² Constitution of India, Art. 14.

³ Constitution of India, Art. 15(1).

⁴ Constitution of India, Art. 39(a).

expanded the scope of gender justice and recognized the evolving nature of gender rights.

- **Vishaka v. State of Rajasthan (1997)⁵**

In the Vishaka case, the Supreme Court of India recognized the right of women to a safe working environment, despite the absence of specific legislation on sexual harassment in the workplace. The Court laid down guidelines for the prevention of sexual harassment, which later became the basis for the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. This case demonstrated the judiciary's role in filling legal gaps and safeguarding women's rights in workplaces.

- **Shah Bano Case (1985)⁶**

The Shah Bano case was a landmark judgment in which the Supreme Court ruled in favor of a Muslim woman's right to maintenance under Section 125 of the Criminal Procedure Code, irrespective of her religious background. While the judgment was controversial, it highlighted the judiciary's commitment to ensuring women's rights under the Constitution, and prompted legislative reform with the passing of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

- **K.S. Puttaswamy v. Union of India (2017)⁷**

The K.S. Puttaswamy v. Union of India case, which declared the right to privacy as a fundamental right, had significant implications for gender justice. The judgment acknowledged that privacy rights are intrinsic to bodily autonomy, and have direct consequences on women's rights, particularly in areas such as reproductive health and sexual autonomy.

IV. LEGISLATIVE MEASURES FOR GENDER JUSTICE

In addition to constitutional guarantees, legislative measures play a crucial role in promoting gender justice in India. Over the years, various laws have been enacted to address gender-based discrimination and violence.

- **The Domestic Violence Act, 2005**

The Protection of Women from Domestic Violence Act, 2005, was enacted to address domestic violence, a pervasive issue in Indian society. The Act provides legal protection for women from physical, emotional, and economic abuse within the home. It also offers remedies such as protection orders, residence orders, and compensation, ensuring that women are provided with

⁵ Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

⁶ Shah Bano v. Union of India, (1985) 2 SCC 556.

⁷ K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1

legal recourse.⁸

- **The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013**

Enacted in the aftermath of the Vishaka case, the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, mandates that every workplace set up an internal complaints committee to address complaints of sexual harassment. The Act was a significant step forward in recognizing workplace sexual harassment as a violation of women's rights and establishing formal mechanisms for redress⁹.

- **The Criminal Law (Amendment) Act, 2013**

The Criminal Law (Amendment) Act, 2013, commonly referred to as the Nirbhaya Act, was passed in response to the brutal gang rape and murder of a young woman in Delhi in 2012. The Act expanded the definition of rape, increased penalties for sexual crimes, and introduced harsher punishments for offenders. It also included provisions for the speedy trial of rape cases, underscoring the state's commitment to ensuring justice for victims of sexual violence¹⁰.

- **The Maternity Benefit (Amendment) Act, 2017**

The Maternity Benefit (Amendment) Act, 2017, extended maternity leave from 12 to 26 weeks for women working in the organized sector. This law seeks to ensure that women are not economically disadvantaged during pregnancy and childbirth and that their right to health is protected¹¹.

V. CHALLENGES TO ACHIEVING GENDER JUSTICE

1. Patriarchal Norms and Social Inequality

Patriarchal norms continue to dominate Indian society, limiting the ability of women to access their legal rights. Cultural traditions, such as dowry practices, child marriage, and the preference for male children, perpetuate gender-based discrimination. Even where laws exist, enforcement is often weak, and women may face social stigma or ostracism when they seek justice.

2. Economic Disparities and Discrimination

Economic inequality is another major barrier to gender justice in India. Women, particularly from marginalized communities, face discrimination in accessing education, healthcare, and

⁸ Protection of Women from Domestic Violence Act, 2005, No. 43 of 2005.

⁹ Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, No. 14 of 2013.

¹⁰ Criminal Law (Amendment) Act, 2013, No. 13 of 2013.

¹¹ Maternity Benefit (Amendment) Act, 2017, No. 6 of 2017.

employment opportunities. The gender wage gap, lack of access to land and property rights, and limited financial independence continue to restrict women's ability to exercise their constitutional rights.

3. Underreporting of Gender-Based Violence

Gender-based violence, including sexual harassment, domestic violence, and trafficking, remains widespread in India. However, many cases go unreported due to fear of societal backlash, a lack of trust in the justice system, and inadequate law enforcement. Victims of violence often face secondary victimization and stigmatization, which discourages them from seeking legal redress.

VI. CONCLUSION

The Constitution of India provides a robust framework for gender justice, with its provisions for equality and non-discrimination serving as the foundation for legal advancements. Over the years, the judiciary has played an active role in interpreting constitutional principles to advance women's rights, while legislative reforms have introduced specific protections for women against gender-based violence and discrimination.

However, the full realization of gender justice remains an ongoing struggle in India. Deep-seated patriarchal norms, economic inequality, and the underreporting of gender-based violence continue to impede progress. To achieve true gender justice, India must continue to strengthen its legal mechanisms, ensure effective implementation of laws, and address the socio-cultural barriers that perpetuate gender discrimination.
