

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 4

2023

© 2023 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Engendering Gender Justice in India: The Role of Humanities and Social Sciences in the Law Schools in India

SHIVANGI VASHISHTA¹

ABSTRACT

Legal education is an empowering tool as it adds to the intellectual faculty of an individual by imparting the knowledge of law which encompasses the domains of morality, ethics, justice, equality and so on. As a matter of fact, law does not function in isolation, it is drafted and executed to regulate and bring order to the society. Therefore, law must function in context of the socio-economic conditions existing during the time of its execution in order to be effective. It is when humanities and social sciences in law schools become highly relevant. Women form almost of the population in India and thus, understanding the nature and efficacy of their rights and entitlements, become an area of significance in the light of the principle of sustainable development. Justice, especially, Gender Justice requires the knowledge of cultural and socio-economic conditions prevailing in the society that lead to all-round marginalization of women, in order to take gender-transformative measures which target such conditions. Any law or policy in this regard, must inform the socio-economic conditions prevalent in the concerned area to which it applies. The paper seeks to analyze the importance of humanities and social sciences in law schools for effective law and policy which aims at advancing and achieving for gender justice, while highlighting the fact that lawyers, besides forming a part of legal fraternity, remain active participants of social life in various capacities ranging from civil servants, political leaders to academicians.

Keywords: *Gender Equality, Transformative Approach, Legal Education, Environmental Law, Sustainable Development Goals.*

I. INTRODUCTION

Sir. Austin postulated in the late 18th century that law is the command of the sovereign.² From that interpretation of law by the positive school of jurisprudence³, law has evolved to be drafted in majority of the jurisdictions, by popularly chosen representatives of the public, who in contemporary times is the sovereign. The public whose command, define the law of the

¹ Author is an Advocate, India.

² Austin, J., 1832. The province of jurisprudence determined. J. Murray.

³ Ibid.

land, varies in composition across different regions. This also explains the historical diversity in legal structure and framework across the globe, ranging from country-to-country to village-to-village. In India too, such diversity persisted before the advent of the British.⁴ Britishers not only united India, physically, but also administratively. The country was then governed by single legal framework. However, it was not an ideal situation, which led to its ultimate demise. The independent India gave itself a federal structure with two levels of governance, i.e., union and the state, which was altered by the 73rd and 74th Amendment in 1992.⁵ The amendments added a third tier of governance, i.e., the local self-government, formally acknowledging the age-old micro-level informal governance set-up.⁶ The amendment also included a provision to provide reservation for women in not only the local bodies but also for the position of the head of these bodies. The fact of such a reservation is privy of the fact of under-representation of women in these bodies, and the interest of the public in having such a representation has been reflected by this amendment.⁷ This is the perfect example of how law not only reflects but adjusts to fit the social realities, as it is the very function of law to govern the social societies. It is in this context; this paper discusses the role and relevance of social sciences in law schools with respect to engendering the legal framework in India. As the concerns regarding sustainability of the current economic development model exists. It is important that not only the present laws but also the future law and policy governing environment and climate change in India, considers the gendered practices existing in the society, that restrict the agency and substantive freedoms of women, which in turn contribute to their marginalized status.⁸ Therefore, the paper seeks to draw intersections between relevance of gender education in law schools for gender responsiveness law and policies, especially related to sustainability. Gender responsiveness is the measure to assess the extent to which the law and policy, takes into account gender considerations whereas gender blindness is defined as failure to acknowledge and incorporate the fact that societal roles and responsibilities of women/girls as well as men/boys are imposed upon, them in particular socio-cultural, economic, and political contexts. These are the two parameters against which the following legal framework of India is evaluated to illustrate the gap in the legal conscience of the law makers, as well as implementers.

⁴ Bayly, S., 2001. Caste, society and politics in India from the eighteenth century to the modern age (Vol. 3). Cambridge University Press.

⁵ Singh, H., 1994. Constitutional base for Panchayati Raj in India: the 73rd amendment act. *Asian Survey*, 34(9), pp.818-827.

⁶ Dayal, R., 1970. Panchayati raj in India. *Panchayati raj in India*.

⁷ Chattopadhyay, R. and Duflo, E., 2004. Impact of reservation in Panchayati Raj: Evidence from a nationwide randomised experiment. *Economic and political Weekly*, pp.979-986.

⁸ Claassen, R. and Düwell, M., 2013. The foundations of capability theory: comparing Nussbaum and Gewirth. *Ethical theory and moral practice*, 16, pp.493-510.

II. LEGAL FRAMEWORK IN INDIA: GENDER BLIND OR RESPONSIVE?

The legal framework in India gets its force from the Constitution of India. The Constitution postulates the guarantee of equality for all under Article 14, however, it inculcates the norm of differential treatment for women under Article 15. Also, the directive principles of state policy (DPSP) cater to the aspects of equitable distribution of resources, as well as equal wages to men and women. However, fundamental rights are mandatory in nature, while the nature of compliance required for DPSP is predominantly non-mandatory.⁹ Therefore, ethos of equality can be diluted to cater to serve special requirements for special groups making a case of such discrimination. Reservation for women have been made in the local governance bodies like Panchayats and Municipalities, however, such reservations have been avoided in places of extreme importance like the Parliament of India, wherein the representation of women remains below par.¹⁰ Women constitute one of the most vulnerable groups around the globe as they have not only historically remained at margins of decision-making roles¹¹ but also been kept away from securing basic education, in case they survived the attempts of female feticide.¹² The nature of roles assigned based on gender have led to a proliferation of practices that not only makes it beneficial to have a male child but also makes it a matter of social superiority to have a male child.¹³ These practices like gendered household roles, exploitation of women, as well as exclusion of women from public life, have enhanced women's vulnerabilities over and above their physical vulnerabilities.

Besides, the Constitutional mandate to deliver justice to all¹⁴, the laws in India have not inculcated the aspect of gender equality, in its true sense. Gender equality and justice are similar ideals but attract different connotations. Gender justice acknowledges the difference in substantive freedoms and agencies of men and women¹⁵; however, gender equality assumes them to be same.¹⁶ As already established earlier, men and women differ in their capabilities, over and above physical differences.

Due to the limitations of time and resources, the instant paper has evaluated the legal

⁹ Pandey, K., 2011. Fundamental Rights V. Directive Principles: Minerva Mills Revisited. *Directive Principles: Minerva Mills Revisited (August 26, 2011)*.

¹⁰ Rai, S.M. and Sharma, K., 2000. Democratising the Indian parliament: The 'reservation for women' debate. *International Perspectives on Gender and Democratisation*, pp.149-165.

¹¹ Kohli, A., 2017. Female Education: Changes and Continuation of Gender Roles in Urban India. *Economic and Political Weekly*, 52(8), pp.61-66.

¹² Demetriades, J. and Esplen, E., 2010. The gender dimensions of poverty and climate change adaptation. *Social dimensions of climate change: Equity and vulnerability in a warming world*, pp.133-143.

¹³ Ahmad, N., 2010. Female feticide in India. *Issues L. & Med.*, 26, p.13.

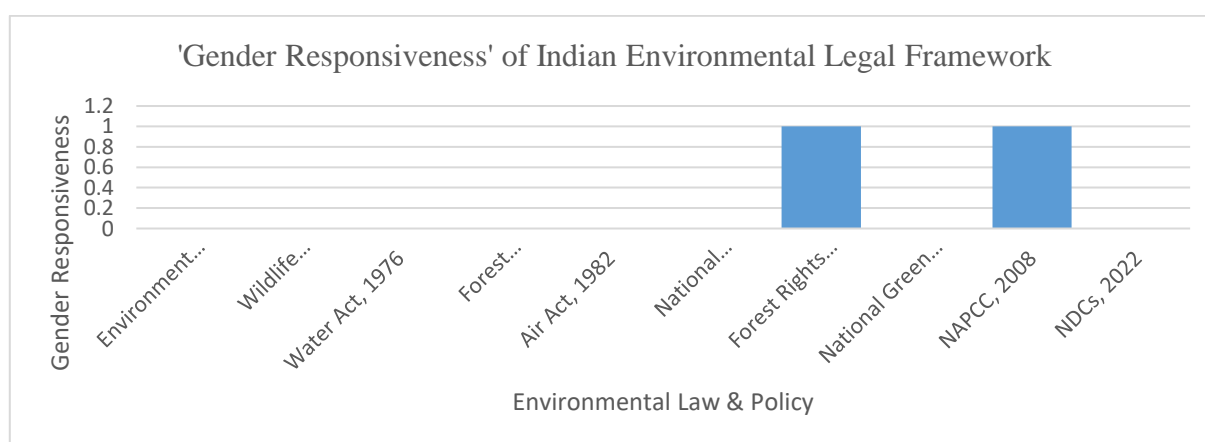
¹⁴ Preamble to the Constitution of India.

¹⁵ Brighouse, H. and Robeyns, I. eds., 2010. *Measuring justice: Primary goods and capabilities*. Cambridge University Press.

¹⁶ Ibid.

framework governing environment and climate change in India for being gender blind or responsive, in order to illustrate the role played by socio-legal education in framing and implementing law and policy. As a matter of fact, climate change is a threat multiplier and women, per se, are at the frontline of facing these changes as they unfold across all landscapes.¹⁷ The women are on the frontlines of climate change as they predominantly remain in close contact with environment, as they are responsible for collecting fuelwood, water and cater to food requirements of the family, as whole, while recusing themselves to be the last ones to utilize these resources.

The environmental laws and policies that have been considered are Environment Protection Act, 1986, Wildlife Protection Act, 1972, Water Act, 1976, Forest Conservation Act, 1980, Air Act, 1982, National Biodiversity Act, 2002, Forest Rights Act, 2006, National Green Tribunal Act, 2010, National Action Plan on Climate Change, 2008 (NAPCC) and the updated Nationally Determined Contributions, 2022 (NDCs). Besides, Forest Rights Act and NAPCC, all laws and policies related to environment and climate change remain gender blind, i.e., does not inculcate gender as a factor. Forest Rights Act, reserves the right of women to have representation in the local body responsible for decision making, whereas, NAPCC acknowledges the need to factor in gender while chalking out adaptation strategies.¹⁸ It is pertinent to note that NAPCC is a policy document which cannot be invoked in court to substantiate a right. Therefore, the major legal document in context of environment remains Environment Protection Act, 1986, which does not factor in gender at all. The adjudicatory powers in context of environmental matters are with the NGT, which acknowledges the principle of sustainable development under Section 20 of the NGT Act. However, this has not been interpreted to serve the ends of gender justice in terms of environmental harms in India, as yet.



¹⁷ Pandipati, S. and Abel, D.E., 2023. Anticipated impacts of climate change on women's health: A background primer. *International Journal of Gynecology & Obstetrics*, 160(2), pp.394-399.

¹⁸ Singh, A., 2020. Introspecting Gender Concerns in National Action Plan for Climate Change of India. *Indian Journal of Public Administration*, 66(2), pp.179-190.

Source: Original Analysis of environmental laws and policy

Besides laws, the roles of the following actors are also analyzed, to establish the linkages between these capacity building of these actors and the quality of the law and policy:

Firstly, an evaluation of the administrative and institutional setup of the government of India, depicts the lack of interlinkages between women and environment, as the ministry of women and child development, has remained predominantly focused on marital subjugation or physical subjugation of women, while largely ignoring the aspects of providing meaningful empowerment by capacity building of women, men and authorities, per se. The capacity building of authorities is crucial as they remain largely responsible for implementing law and policies on ground. Similarly, the other relevant institutional body is the Ministry of Environment, Forest and Climate Change (MoEFCC). This ministry has some connotations of being gender-responsive, however, in comparison to the global practice of having Gender Action Plan¹⁹ to combat impacts of climate change, the measures of the ministry can be termed as cursory. In terms of economic empowerment, there is a mandate for compulsory representation by one woman on corporate boards, however, the reports show that even one representation of women on corporate boards has remained cursory in India, though the studies prove that having three women on board of the corporation contributes positively to corporate governance in the entity.

Secondly, the arm of the government, which is responsible for upholding the law and policy, is the judiciary. This is the body of government; wherein legal education has direct impact. A socially aware judicial officer has a better chance of upholding gender justice than one whose education has been purely legal. The Judiciary has also not considered a single case with respect of gender equality in environmental law and policy in India.

Lastly, the legal fraternity, per se, has the most potent mode to inflict changes in the legal framework of India, by way of Public Interest Litigation (PIL). A socially aware legal professional can give impetus to social change by way of PIL, while a socially aware judiciary can interpret or struck down, the gender-discriminatory law and policy, to deliver gender justice.

III. RELEVANCE OF SOCIAL SCIENCES IN LAW SCHOOLS FOR GENDER JUSTICE

The gaps in the legal framework, is the witness to the fact that there is a lack of understanding about the nature of gender injustices that are meted out on account of lack of laws and policies

¹⁹ O'Connell, H., 2013. Implementing the European Union gender action plan 2010-2015: challenges and opportunities. *London: Overseas Development Institute.*

that consider interests and needs of women. It is in this context, that socio-legal education becomes relevant, as legal professionals not only act in their professional capacities as representatives of legally aggrieved individuals on commercial terms, but also as representative of such genuine individuals on pro-bono basis, besides performing other roles as executive authority legislative representative, judicial servant, judicial authority, law commission members or merely a citizen.²⁰ Therefore, the social sciences provide the knowledge of the norms, practices and behaviors persisting in the society, which the law seeks to regulate. In case of law-making or implementing in silos, i.e., in isolation of the social realities of the society for which its being made, the law can not only perpetuate the present injustices but also lead to newer forms of injustices.²¹ For example, in context of environmental law and policy, any law or policy that impacts the rights of a community vis-à-vis a natural resource, the

1. Capacity-Building of Legal Professionals: As the programs centered around gender-transformative techniques of achieving gender justice require, the capacity building of not only the law makers but also of all members of the society in context of gendered alienation of rights and substantive freedoms. The legal professionals usually engage with public in professional capacities, not only on commercial terms but also on pro bono basis, which gives impetus to large scale community capacity building, thus contributing to achieving the ends of gender justice.²²

2. Undoing the Historical Injustices Against Women: Since there is a global recognition of the fact of gender justice, it also gives recognition to the fact of historical injustices faced by women.²³ The socio-legal education has the potential to undo the injustices faced by women in all walks of life²⁴, by inculcating the realities, experiences, and perspectives of women into the process of law making, which involves the gaining of knowledge on these aspects. The fact of the recent environmental laws being gender blind, further adds to fact of dearth of societal considerations in law making and the need to inculcate social sciences in legal education.

3. Enhancing the Legitimacy of Law and Legal Processes: Social sciences in law

²⁰ Sossin, L., 2008. The public interest, professionalism, and pro bono Publico. *Osgoode Hall LJ*, 46, p.131.

²¹ Monahan, J. and Walker, L., 1985. Teaching Social Science in Law: An Alternative to Law and Society. *J. Legal Educ.*, 35, p.478.

²² Hager, L.M., 2010. DEVELOPMENT LAW CAPACITY BUILDING: TRAINING LEGAL PROFESSIONALS FOR DEVELOPMENT. *International Sustainable Development Law-Volume II*, p.258.

²³ Nuti, A., 2019. *Injustice and the reproduction of history: Structural inequalities, gender and redress*. Cambridge University Press.

²⁴ Ibid.

schools can positively contribute to the overall legitimacy of the law, law making process, and the justice delivery mechanisms, as it will lead to the laws and policies that are in tuned with the social realities of the citizens.²⁵ The legal professionals can then be able to relate to the issues arising amongst the citizens and will be able to assert their rights in more nuanced manner than being exposed to only purely legal education, which is primarily inspired from the legal setups in different parts of the world, far remote from India. Besides, this, India is a party to several international platforms of global governance. The international law has been interpreted to be applicable to India by way of Article 51(c) and Article 253 of the Constitution of India, which requires the Government of India to respect international treaties and incorporate them in the national laws.

4. For Achieving the Commitments under Legally Binding Conventions: Several international conventions and treaty require India to ensure gender equality in India. One of the major international conventions is the Convention for Elimination of All Forms of Discrimination Against Women (the CEDAW)²⁶, which was adopted in 1979, however, its ripple effects have not reached India.²⁷ As per the convention, the India government is obliged to ensure gender equality is achieved in all walks of life, public as well as private. This also supports the gender-transformative approach as it acknowledges the need to ensure gender justice is achieved in private life of the citizens as well.²⁸ Capacity building of citizens would involve the capacity building of the legal professionals in order to ensure the compliance of the legal framework in India with the international conventions like CEDAW. Other non-legally binding documents are the Agenda 2030, and the United Nations Sustainable Development Goals (SDGs)²⁹, which have been committed to be achieved by India.

5. Achieving Sustainable Development Goals: The SDGs are the goals that the international community gave to itself as a plan to chart new inclusive, equitable and environmentally friendly course to achieve economic development, which is popularly called, sustainable development. India has committed to ensure achievement of these 17 goals by the end of 2030, wherein gender equality forms SDG 5³⁰. SDG 5 has also interconnections with other SDGs, which makes a case for its achievement which can aid fulfilment of others, as

²⁵ Luhmann, N., 2004. *Law as a social system*. Oxford socio-legal studies.

²⁶ Assembly, U.G., 1979. Convention on the elimination of all forms of discrimination against women. Retrieved April, 20, p.2006.

²⁷ Saksena, A., 2007. CEDAW: Mandate for substantive equality. *Indian Journal of Gender Studies*, 14(3), pp.481-498.

²⁸ Ibid.

²⁹ Sdg, U., 2019. Sustainable development goals. *The energy progress report. Tracking SDG*, 7.

³⁰ Agarwal, B., 2018. Gender equality, food security and the sustainable development goals. *Current opinion in environmental sustainability*, 34, pp.26-32.

well. India has performed moderately in this regard; however, the underlying causes of gender inequality and subjugation still persist, which has a tendency of having a multiplier effect. The lack of substantive freedoms and agency of women contribute to their lack of empowerment³¹, any meaningful enhancement in this regard, should entail a positive contribution to their substantive freedoms which can only come from a transformative change in the society.³² The effective disbursement of socio-legal education in law schools in India, has a potential of delivering that, which will contribute towards achieving SDGs in India.

Therefore, today, social sciences and humanities in law schools are not only required but also key to pursue the above-mentioned newly found objectives of legal machinery in India.

IV. CONCLUSION: WAY FORWARD

In order to chalk out a relevant strategy for future of legal education, it is important to consider the basic fact of context-based law-making and the increasing popularity of rights-based approach to law. Having considered the apathetical condition of legal framework in terms of inculcating the perspective and interests of almost half of the population of India, it is important to delineate a role for gendered legal education in India in furtherance of above-mentioned objectives. The same can be overcome by inculcating social sciences in legal curriculum, so that the law graduates are aware about the social realities and their historical context, which can give impetus to good practices in law-making, like testing for gender-responsiveness of the law and policy, ensuring gender-diversity in law-making, so that perspectives and needs of women are better addressed by the legal framework, which is especially crucial considering the increased vulnerabilities of women to the impacts of climate change. Therefore, social sciences and humanities education is not only sacrosanct for being adept administrators but also for legal professionals who serve several roles in the legal and administrative setups in India, having great ramifications for rights of the ordinary citizens, especially those belonging to marginalized sections of the society.

³¹ Sen, A., 2000. Population and Gender Equity. *Nation*, 271(4), pp.16-18.

³² Walker, M. and Unterhalter, E., 2007. *Amartya Sen's capability approach and social justice in education*. Springer.