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**Role of the Indian State and Judiciary in ensuring Gender Justice: A Paradigm shift  
in the nature of Policy Making and Pro- active role of the Judiciary**

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**Abstract:**

The concept of Gender Justice refers to the basic level of human right that seeks to deliver Justice to all irrespective of gender and ensure a dignified life. The Constitution of India tried to deliver gender Justice through a number of constitutional measures like the Preamble, Fundamental Rights, DPSP etc. and these ideals are implemented through various schemes and policies by the Indian legislature. Right from the Abolition of Sati act (1829), Widow Remarriage Act (1856), during British period to Dowry Prohibition Act (1961), the Domestic violence (Prohibition) Act along with measures like Gender Budgeting, 33% reservation of seats for women in Panchayat bodies, schemes like Sukanya Samriddhi Abhiyan, Ujjwala Yojana, Surrogacy Act all seeks to address the issue of gender parity in India. Besides the Indian Judiciary also played a pivotal role in ensuring gender Justice while addressing various cases like Gita Hariharan v. Reserve Bank of India, Vishakha & Others v. State of Rajasthan etc. to recent order regarding Sabarimala issue, Equal Role for Women in Army etc. It can be said that earlier the policies and acts are mostly concerned about the upliftment of the social position of women, but with the changing time and society new issues are gaining momentum like property and economic rights of women, health issue, women and political representation, women and environment along with the latest issue of justice for the LGBTQ community after Supreme Court of India decriminalized section 377 of the Indian Penal Code (IPC). Hence this paper seeks to analyze the 'process of transition in the nature of policy making' by the Indian state along with the process of judicial activism regarding delivering gender justice. It seeks to analyze the new areas and insights that are gaining much attention of the policy makers and the courts of law. Though a number of positive initiatives have been taken from time to time to attain gender parity, a lot is yet to be done as India still lacks behind in Global Gender Gap Index published by World Economic Forum. Hence, through this

paper an attempt will be made to discuss the areas that need to be addressed along with some remedial measures which can secure gender justice to the utmost level in the Indian society.

**Key words:** Gender Justice, Policies, Women, LGBTQ community, Judicial Activism.

### **Introduction:**

Humans throughout civilization are striving for its existence and competence. With this the structure of the society is also kept on changing. Hence with the establishment of the patriarchal nature of the society there is emergence of disparity among people on the basis of gender and thus the issue of 'Gender Justice' got prominence. Gender justice simply refers to provide equal opportunities and treatment to all irrespective of their gender based identity. Over the years, institutions at the global level have taken tremendous incentives to ensure gender justice worldwide. The Article 1 of the United Nations Charter aims at "to achieve international co-operation in promoting and encouraging respect for human rights and for fundamental freedom for all without any distinction as to race, sex, language and religion." Such ideals of gender justice are expressed through Universal Declaration of Human Rights (UDHR), World Conferences on Women like Beijing Conference 1995 etc. The issue of gender justice is so vital that Fifth Goal of UN Sustainable Development Goals focus upon 'achieving gender equality and empowerment of girls'.

The Indian society also being patriarchal in nature traditionally treats women as a second sex. During Vedic era though women enjoyed some form of social status by participating in Sabhas and Samiti's, their position degraded in the Later Vedic period. During British rule also the position of common women was no less than a servant, though few took active part in freedom movement of the nation. Hence the founding fathers of the Indian Constitution and the democratically elected government had taken time to time initiatives to establish gender parity in the Indian society. Besides the Judiciary being the guardian of the Constitution and the preserver of the rights of the people has taken a pro active role in ensuring gender justice. Based upon the changing nature and structure of the Indian society, the Legislature and the judiciary have become more vivid in policy making so to best address this diversity. Though at many instances ineffective implementation of the policies and delay in justice delivery unable to provide justice in

a time bound manner. This paper thus will provide an analysis of this process of justice delivery by the government and judiciary in India.

### **Objectives**

The primary objective of this paper is to:

1. To examine and analyze the role of Indian State and Judiciary in delivering Gender Justice.
2. Focus upon Constitutional safeguards, and legislative acts, government schemes, in relation to gender justice.
3. Find out the changing nature of policy making by Govt. and judgements by the Judiciary.

### **Methodology:**

The methodology adopted for preparing this paper is based on qualitative explanation. There is the use of Secondary resources like, books, magazine, newspaper, research papers, digital resources, archives etc. for the purpose of data and information collection.

### **The role of Indian state in ensuring gender Justice:**

The principle of gender justice is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties as well as Directive principles of State Policy (DPSP). The constitution guided the State to adopt measures like positive discrimination in favor of women so to confirm gender justice. Though women comprised of approx 48% of the total population of India, but their representation in the workforce, be it formal or informal sector, political representation, property inheritance, rate of enrollment into education are not at all satisfactory till date. The laws, developmental policies, plans and programs of the Five Year Plans, especially Fifth Five year plan onwards, commissions, civil society groups and self-help groups all contributes towards the achievement of gender justice. The policies, acts and initiatives taken by the Indian Legislature are analyzed as follows:

- **Constitutions safeguards for gender justice:**

A number of constitutions measures are there that talks about gender justice like,

- Article 14 of the Indian constitution provides for equality before law and equal protection of law. The concept of equal protection of laws

enables the State to undertake positive discrimination in order to bring all citizens on an equal footing.

- Article 15(1) of the Constitution explicitly prohibits any discrimination on the basis of sex, among others. However under Article 15(3), the State is provided with the power to make special provision for women and children.
- Article 16 provides for equality of opportunity to all in matters relating to public employment and appointment to any office. It specially forbids discrimination on the ground of sex.
- Article 39 under DPSP provides for securing the right to an equal means of livelihood for both men and women and that both men and women have the right to equal pay for equal work.
- Article 42 also provides for securing just and humane conditions of work and for maternity relief.
- Article 51(A) (e) of the Constitution provides that it will be the duty of every citizen to renounce practices derogatory to the dignity of women.

- **Legislative Acts and Policies:**

The Legislature brought forth a number of Acts and policies so to ensure gender parity and preserving the rights of the vulnerable sections of the society. Few of them are discuss as alike,

- Abolition of Sati Act, 1829 which was implemented during British rule in India so to stop the inhuman practice of self demolition. In relation to it, 1987 Commission of Sati (Prohibition) Act was passed.
- Widow Remarriage Act, 1856 which made marriage of the widows Legal. This act was a welcoming step to ensure dignity of women.
- 1937 women get special rights to property.
- Dowry Prohibition Act, 1961 was passed. It extends to the whole of India except J&K. Taking of dowry shall be punishable with imprisonment for a term not less than five years.
- For ensuring economic justice, some provisions have also been taken like, The Workmen Compensation Act,1921; Payment of Wages Act,1936; Factories Act, 1948, Minimum Wages Act,1948, Equal Remuneration Act(1973) etc.
- The Protection of Women from Domestic Violence Act, 2005 passed by the Indian Parliament enacted to protect women from domestic violence.
- The Maternity Benefit Act, 1961 and amendment to this act in 2017 provided maternity relief to women. It increased maternity leave

from 12 weeks to 26 weeks for two surviving children and 12 weeks for more than two children.

- The Surrogacy (Regulation) Act, 2019 which made commercial surrogacy punishable under law and thus securing dignity of women.
- The 33% reservation of seats for women in Panchayat bodies as per the 73th Constitutional Amendment Act, 1992.

- **Government Schemes for ensuring Gender Justice:**

A number of schemes are implemented by the Government so to achieve gender equality and emancipation of women. These schemes focus mostly upon the vulnerable sections of women. These schemes focus upon their overall socio-economic upliftment of conditions. Few among these schemes are,

- Beti Bachao Beti Padhao: to address the declining Child sex ratio and related issues of empowerment of women over a life-cycle continuum like uplifting women in the sphere of education.
- Pradhan Mantri Matru Vandana Yojana (erstwhile Maternity Benefit program): to contribute towards better enabling environment by proving cash incentives for improved health and nutrition to pregnant and nursing mothers.
- National Nutrition Mission: it aims to attain "Suposhit Bharat" and has the objective of improving the nutritional status of pregnant women and lactating mothers and reducing anemia among women and children.
- Mahila E-Haats: a unique direct online digital marketing platform for women entrepreneurs/ SHGs/NGOs.
- Ujjawala : a comprehensive scheme to prevent trafficking of women and children for commercial sexual exploitation, to facilitate rescue victims and placing them in safe custody etc,
- Besides, establishing Mahila Shakti Kendra to empower rural women in community participation, conducting training of the Trainers of Elected women Representatives of Panchayati Raj; Rastriya Mahila Kosh for extending micro-finance services to bring socio-economic upliftment of poor women etc.
- The establishment of "One Stop Centers" for facilitating access to an integrated range of services including police, medical, legal, psychological support and temporary shelter to women affected by violence; proving "Women Helpline-1091" services; Mahila Police

Volunteers etc all are welcoming steps towards ensuring protection of the rights of women and thus ensuring gender justice.

- In Assam too, health related schemes like Moromi, Majoni schemes, along with others like Arundhati Scheme which provides for giving gold to the bride etc, Swavalamban scheme all play a pivotal role in delivering gender justice.

- **Other Initiatives by the Government:**

The Government along with various schemes and acts also took some other incentives so to ensure gender justice in the nation like,

- The incorporation of the idea of Gender Budgeting in India which is concerned with gender sensitive formulation of legislation, programmes, and schemes and follow-up corrective action to address gender disparities.
- Following and implementing the guidelines of UNMDGs and UNSDGs.
- Establishment of commissions like National Commission for Women.
- Ranking states on gender index, depositing of government benefits in the name of the female head of the family instead of the male head etc.

These are some of the initiatives taken by the Indian Legislature so to ensure a gender justice in India. These positive measures results in the reduction of the number of cases of female oppression like sati, dowry etc. Now women are also become conscious of their rights and protection under the law of the nation.

**The role of Indian Judiciary in ensuring Gender Justice:**

Like the Indian State the judiciary of the nation also played a vital role in delivering gender based justice. The judiciary being the protector of the constitutional rights of the people and ensuring justice to the downtrodden has given some indispensable judgments over the years. The judiciary through the policy of judicial review reviews the constitutionality of the acts and laws of the government. It also protects the basic guidelines and provisions mentioned in the Constitution so that they are not violated. Some important instances where decisions were taken by the judiciary to ensure gender justice are analyzed as follows;

- **C. B. Muthamma v. Union of India:**

Here the validity of the Indian Foreign Service( Conduct and discipline) Rules of 1961 was challenged which provided that a female employee to obtain a written permission of the Government in writing before her marriage is solemnized and at any time after a marriage a women member of the service may required to resin from service. The Supreme Court held such position as discriminatory against women and called it unconstitutional.

- **Pratibha Ranu v. Suraj Kumar:**

In this case the Supreme Court held that the **Stridhan** property of married women has to be placed in her custody, and she enjoys complete control over it. The mere fact that she is living with her husband and using the dowry items jointly does not make any difference and affect her right of absolute ownership over them.

- **Gita Hariharan v. Reserve Bank of India:**

In this case the Supreme Court interpreted Section 6 of the Hindu Minority and Guardianship Act 1956 and held that the mother could act as the natural guardian of the minor during father's lifetime if the father was not in charge of the affairs of the minor.

- **Vishaka and Others v. State of Rajasthan:**

In this case the Supreme Court held that sexual harassment of working women at her workplace amounts to violation of rights of gender equality and right to life and liberty mentioned in Articles 14, 1 and 21 in the Indian Constitution. The Vishaka Judgment was followed by some other related judgments like the case of Apparel Export Promotion Council v. Chopra, which emphasized that sexual harassment, is gender based discrimination and quoted the international Labour Organization (ILO) for the same. The Sexual Harassment at Workplace Bill was tabled in the Parliament in 2007 and it was only in 2013 the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act was passed.

- **Suchita Srivastava & Anr. v. Chandigarh Administration(2009):**

Here the Supreme Court gave its judgment against the decision of the high Court of Punjab and Haryana. SC held that the Pregnancy cannot be terminated without the consent of the victim. The reproductive choice of the victim should be respected.

- **Danamma @ Suman Surpur v. Amar (2018):**

The Supreme Court here held that the right of a daughter to be entitled to an equal share as a son in ancestral property, including

daughters who were born before the Hindu Succession Act, 1956("HSA") came into force.

- **Joseph Shine v. Union of India(2018):**

Here the five-judge bench unanimously struck down Section 497 of Indian Penal Code(IPC) that deals with Adultery saying that it was unconstitutional since the very basis for criminalizing adultery was the assumption that a women is considered as the property of the husband. The said Section violated the rights to privacy as well as the liberty of women by discriminating against married women and perpetuating gender stereotypes.

- **The Secretary, Ministry of Defense v. Babita Puniya & Ors (2020):**

A Supreme Court bench recently upheld the Delhi high Court order on permanent commission to women in the Army. SC held that absolute bar on granting command post to women citing their physiological features and domestic obligations is irrational. The Court also said that absolute exclusion of women is violating under Article 14 of the Constitution and hence unjustified.

These are some of the important judgments and decisions given by the Judiciary in India that upholds the dignity of women and thus ensure gender equity in the society. The recent judgment of the Supreme Court regarding allowing women of a certain age group to enter into the Sabarimala Temple in Kerala was an attempt to break gender stereotypes and preserving the basic fundamental right to worship of the females.

**The change in the nature of Policy Making by the Legislature:**

From the above analysis it become visible that the democratic government as well as the judiciary had undertaken a number of initiatives so to maintain a balance in the society and to sustain the idea of gender justice in India. But we can perceive substantial changes in the nature and structure of policy making by the government when we observe the diverse acts and schemes of the legislature. Earlier the acts and policies were mostly concerned about the upliftment of the societal condition and position of the women as traditionally women are the most vulnerable section in the society. The massive exploitation and oppression of women during the time of British government led them to implement acts



like Abolition of Sati (1829), made widow remarriage legal in the year 1856, and banned female infanticide in 1870, raised the age of consent to 12 years for girls in 1891 etc. These initiatives had much impact upon the condition of women even after India got its independence 1947. Hence the aspects of policy making can be understood under following heads,

- **In the arena of social justice:**

Along with the previous attempts made by the government for the upliftment of the societal conditions of women and vulnerable sections, new acts like passing of Hindu Marriage Act (1955), Prohibition of Dowry Act (1961), Indecent Representation of Women (Prohibition) Act 1986, Domestic violence Act (2005), Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Beti Bachao Beti Padhao etc. shows the new areas social justice. The recent #Me too Movement is an example of women's concern for gender based violence.

- **In the arena of political rights:**

In India women got their political right to vote immediately at the time of independence, but their representation is not adequate. Hence, the reservation of 33% seats in Panchayat bodies for women (1992), along with the provision of training of the Trainers of Elected Women Representatives of Panchayats, establishment of Mahila Shakti Kendras to empower women for community participation etc. are there for making women aware about their political rights.

- **Gender and the economic aspect:**

With the growing time now the government is paying much attention to the concepts like Equal pay for equal work, Property rights for women, Compensation at the time of divorce, paid maternity leave etc. Besides the introduction of Gender Budgeting in India in 2006 along with the schemes like Sukanya Samridhi Abhiyan, STEP Scheme whereby skilling women to become entrepreneurs, establishment of Mahila E-Haats, Rastriya Mahila Kosh for extending micro-credit services to women etc. worked hard to ensure economic justice to all.

- **In the area of health sector:**

The Legislature now come up with a number of health related initiatives amendment to Maternity Act in 2018, Surrogacy act, consent of the female about abortion, Suposhit Bharat, PM Matru

Vandana Yojana etc. covers diverse areas of women health by the government.

- **In industry and service sector:**

The gender based equity is not at all progressive in the industry and service sector. Women occupy a very little portion here. Hence paid maternity leave, crèche facilities for working women, appointing women at the supreme decision making authorities' acts as positive steps.

- **In the field of education;**

Initiatives like Universalisation of Primary education, scholarships for girls in higher education, technical education as well, distance education, night schools has increased women's enrollment ratio in education.

- **Institutional and organizational set-up:**

The Government has also take commendable steps like forming the Ministry of women and Child Development, forming National and State Commission of Human Rights, National Commission for Women, Central Social Welfare Board, appointing Mahila Police Volunteers, Nirbhaya fund etc. build the organizational set up that to ensure gender justice.

Thus it can be said that over the years the areas of concern and their insights are changing. The rise of movements like Me-too, One Billion Rise etc. puts a pressure upon the government so to look at the diverse issues coming out the traditional base of gender justice.

### **Pro Active role of the Judiciary or Judicial Activism:**

The Indian judiciary being an independent and integrated body played a pivotal role in ensuring gender justice through judicial review and judicial activism. The recent judgments of the Supreme Court shows the new issues that come out in the arena of gender justice delivery. Supreme Court's direction to states and union territories to make appropriate rules for the sale of acid, the Sabarimala judgment, where the Court dismiss the age old restriction on women entry to Lord Ayyapa Temple, Kerala shows ensuring the fundamental right to equality. Besides, decriminalization of Section 377 of IPC concerning the LGBTQ community after years preserve their basic gender right and the very recent review grant command post to women in the army breaks the stereotype that women cannot hold high post due to their

physiological and domestic obligations. Hence the judiciary too taking into consideration the wide areas for justice delivery.

**Areas That Needs Further Attention:**

The Indian State and judiciary has come up with tremendous efforts so to establish ender justice in the society. But few areas are still there that needs further attention like,

- Absence of stringent laws for the rapists. The establishment of Fast Track Courts and speedy trial is needed to deal with such crimes.
- Despite Supreme Court's direction to states to make laws regarding sale of acid, but till date no stringent law for banning acid in India.
- A number of private sector organizations are still not adequately following the guidelines and reforms made by the amended Maternity Act.
- The Indian Parliament passed the Protection of Children from Sexual Offences (Amendment) Act in 2019 that to curb child sexual oppression, curb child pornography etc. but oppression is still there, for e.g. the recent Muzaffarpur Shelter House case in Bihar.
- Besides a lot to do for the protection of dignity and rights of women under areas of Armed Conflict also need further attention.
- The issues of honor killing, property rights, adequate representation of women in the workforce still needs much attention.
- The preservation of the fundamental human rights and dignity of work for the Sex workers, LGBTQ community, and manual scavengers also needs attention by the concern authorities.
- Attention is to be paid regarding the issue of religion and gender justice as religion used as a tool for gender oppression. Not allowing a particular gender to a religious place, genetic mutilations etc. are to be looked upon by the government.
- The Prohibition of Inadequate Representation of Women Act was passed, but in this era of globalization women is visualized as a commodity which needs to stop.

These are few among many of the areas that need further attention of the judiciary and the legislature for justice delivery irrespective of one's gender identity

### **Conclusion:**

According to the World Economic Forum's Global Gender Gap Report 2020, gender equality in India ranked 112th out of 153 nations, as it underperformed in parameters like women's economic participation, education, health and political empowerment. The spending in gender specific schemes has also diminished over the time. Hence there in need to spend more in the better performance of these parameters along with effective and timely implementation of the policies, schemes of the government and proper justice delivery by the courts in an sustainable way. Then only the true faith on gender justice will be established in the society.

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