

Gender Justice: A Feminist and Intersectional Approach

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Abstract

Gender justice is a concept that aims to ensure equal rights and opportunities for people of all genders, especially women, who have historically faced discrimination and oppression in various spheres of life. Gender justice encompasses legal, social, economic, and political aspects of gender equality, as well as the recognition and respect of diverse gender identities and expressions. The social stigma and discrimination that women face from their families, communities, and institutions, especially if they deviate from the dominant norms of gender and sexuality. The limited access and participation of women in education, health, employment, and decision-making, as well as the lack of representation and leadership of women in various fields and sectors. The intersectionality of gender with other factors such as caste, class, religion, ethnicity, disability, and age create multiple and overlapping forms of oppression and exclusion for women.

Keywords: Gender justice, women, gender equality, decision-making, oppression, and exclusion for women.

Introduction

The word gender, generally, refers to one male or female having social and cultural status in society. The word gender is similar to the word sex, but there is a difference between the term 'sex' and 'gender.' Sex is a biological interpretation while Gender is a social construction. The fact of being male or female especially is the outcome of social and cultural differences, not differences in biology.¹ Biologically, a child enters into the world with some sexual specifications and we treat them as a male or a female and sometimes a transgender. That's why various dictionary meanings show that the word gender is related to sex. But when a new baby enters into the world as a baby girl, the reactions of parents matter. Thus, Gender shows not only the physical condition of a human being but also the social and cultural aspects of human beings. Sex does mean only a male or female whereas gender may be classified into male, female and transgender, further, may be treated as a child, young, adolescent or adult. In a legal sense, the term 'Gender' is used for males or females.² Legally the word gender afterwards concerned with a "person" which includes all types of persons whether they are citizen or non-citizen, natural or artificial.³ When a state enacts laws for the people, gender-based legal provisions take place for better governance.

WHAT IS GENDER JUSTICE

Justice cannot be limited to a specific class of persons. It is a right available to every person. Mahatma Gandhi has said that men and women, under the concept of equality have been honoured with the same dignity.⁴

Article 1 of 'The Universal Declaration of Human Rights, 1948' declares that every person on the earth is born free with equal rights or without any prejudiced discrimination. Thus, to live with dignity is the prime characteristic of every human being.⁵ The Preamble of the Indian Constitution declares social justice to all, the word 'all' here refers to all types of genders. Equality of opportunity is the essence of social justice and there shall not be any discrimination against any citizen on the ground of sex. In its specific meaning, social justice is equal to gender justice.

Thus, gender justice refers to a legal system where both males and females are treated equally. It is a part of human rights available to all citizens. Every woman is entitled to live with dignity without any fear. Gender Justice is essential for human progress and the

¹ Oxford Advanced Learner's Dictionary.

² Section 08, Indian Penal Code, 1860.

³ Section 11, Indian Penal Code, 1860.

⁴ Kishwar, Madhu, (1985), *Gandhi on Women*, Economic and Political Weekly, Vol. 20, No. 40, p-1691.

⁵ The Universal Declaration of Human 1948,

Art :1, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

development of society. The notion of gender justice requires the protection of women not only at the national but also at the international level. Any avoidance or rejection causes gender discrimination which is not beneficial for society. It is a global phenomenon. Goetz writes that gender justice may be defined as the absence of inequalities between women and men that makes a woman subject to the authority of men.⁶

In the views of Prof Amartya Sen,⁷ it is now clear through the empirical research in recent years that gender inequality exists in most parts of the world, the research does show that India is the only State but most of the countries are facing the problem of gender inequality. This inequality is found in different forms. It is not alike, but a collection of uneven and interlinked problems. There may be different inequalities as mentioned under:

- **Mortality Inequality:** When due to carelessness regarding health care and nutrition, the death rate of women is found higher than men.
- **Nativity Inequality:** When society gives priority to the male child over a female child subject to the illogical notion of Vansh-Varidhi.
- **Basic Facility Inequality:** when girls are excluded from schooling and education is considered a right of boys.
- **Special Opportunity Inequality:** when higher and technical education is considered worthless for females and they are made nothing but merely a housemaid. On the other hand, young men are preferred to complete their education with this foolish notion that the man is only to run the family.
- **Professional Inequality:** This happens when the female employees are underestimated while deciding on an important post or promotion.
- **Ownership Inequality:** When females are not considered a successor of a deceased dying intestate. Their property rights are curtailed.
- **Household Inequality:** This is the worst inequality when women are not permitted to deal with the outer world. They are treated as a prisoner type member of the family. They are not allowed to leave the door without the permission of the male member in the house.

The above-mentioned gender inequalities are not the last ones, the most of the heinous crimes are committed against women. They are robbed, confined, kidnapped, raped, and murdered. The ratio of crimes against women is growing day by day. They are dishonoured not only in domestic homes but also in their workplaces. They are not paid equally; they are forced into unwanted labour. Their property rights, their right to maintenance, right to restitution of conjugal rights, right to divorce, etc. are not equal to men. They are not allowed to participate in politics freely. They seem unfit for holding the post of priests in temples. Their position in literature writings is not too good. Despite various legislations regarding gender justice, it is hard to achieve.

ISSUES OF GENDER JUSTICE

Based on the above study, there are the following issues relating to gender justice:

- Women's Struggle i.e., fighting for human and fundamental rights.
- Feminism i.e., fighting for social and political status in the society,
- Employment i.e., fighting for workplace protection, issue of unequal payment.
- Organizations i.e., the role of various NGO's, Commissions at national and international levels.
- Education i.e., inequality in educational standards, lack of adequate opportunities in education.
- Government policies i.e., the role of the central government and state governments to protect the interests of women.

⁶ Goetz Anne Marie, (2007), *Gender Justice, Citizenship and Entitlements*, International Development Research Centre & Zubaan, New Delhi, pp 29-30.

⁷ Sen A, (2001) *Many Faces of Gender Inequality*, Frontline, Vol-18, Issue -22.

- Legislations i.e., various laws enacted by Parliament and State Legislatures and implications thereof.
- Domesticity and the Family i.e., issues of domestic violence, unethical behaviour of husband and relatives, matrimonial disputes.

It is hard to discuss that all women and men are equally entitled to appropriate treatment and, when someone suffers injustice because of their sex, they are a victim of gender injustice. The exact definition of gender injustice and therefore the scope of gender injustice are contentious matters. From the time of presence in the womb, girls are subject to the mercy of man-made society.

Everybody knows that without women social engineering cannot be possible. She is avoided in each field of social development. She fights for the education, maintenance, custody of children, for a job and her existence on earth. No doubt the State is doing well in the name of the legislation, but results depend on the execution of these legislations. Gender equality directs the State to treat men and women equally and on the same footing, gender justice empowers the State to treat women especially. Like, should be treated alike.

The scope of gender inequality is much wider than other socio-legal issues but the researcher has decided to raise the issue of gender inequality and unethical conduct of society, especially in divorce matters.

GENDER EQUALITY AND GENDER JUSTICE

Equality is always justified. Equal treatment to both men and women is the very foundation of a civilized society. Neither men nor women can be denied justice in any situation. Gender equality is the essence of democracy. Justice and equality are two basic elements of the principles of natural justice. Article 15(1) of the Indian Constitution provides a guarantee of equality against any discrimination based on sex. As a general rule, as prescribed under Article 14, everyone is equal before law and law will provide equal protection of laws to everyone. This is based on the concept of **the Rule of Law** given by Dicey, an English jurist.

Gender equality requires that every person should be provided with equal constitutional rights without any discrimination. There should not be any discrimination in their political, economic, and social rights. No doubt physically men and women cannot be treated equally. But spiritually and mentally the both are competent to prefer a suitable life standard. Thus, it is just and essential to treat both equally while providing social, economic, and political justice. Gender equality means that each has equal human worth and value. It is also a matter of consideration that such equal treatment does not prohibit the State to make special provisions for women empowerment.

There is also another aspect of equality, all cannot be treated equally. We need a classification based on reasonable and rational grounds. The need for classification is justified because different people cannot be treated in the same manner and equal people must not be treated differently. Like should be treated alike. This is what we say against arbitrariness. An arbitrary act by the State in an infringement of the right to equality, it was directed by the Supreme Court of India in hundreds of cases. In simple words, the Indian constitution provides safeguards to the weaker section of the society. This weaker section includes women, children, other backwards classes, scheduled casts and scheduled tribes. Thus, a special and constitutional provision for women is not a violation of the right to equality. When there is special treatment is found in favour of a woman, it is always justified. The objectives behind Article 15(3) support the idea of special treatment for women. This special treatment is no mercy on women, rather it is a fundamental duty and a part of the directive principles. The object is to ensure gender justice.

Gender Justice is the Women's Movement against women exploitations whereas Gender Equality is the standard of legal attitude exercising by the state to protect the fundamental rights of women. In simple words, gender equality is an obligation of the State and gender justice is a special attitude towards the weaker section like women.

When we talk about gender justice it is always a concerning and burning issue that why women remain oppressed, why they found in a miserable position, why their status remains always low in spite of a hundred laws in existence. The problem is not due to a lack of proper and sufficient law but it is due to poor implementation. We have no sufficient sources, methods and channels to execute the enactments properly and sufficiently. The problem of poor implementation is found across the world. In the name of fundamental rights and subject to democratic principles, the male-oriented society has created a protective atmosphere for itself. This does not mean that they are not concerned about gender issues, they do think about women but the problem relates to priority. This does not mean we should give up on democracy; it means we should continue to work, even harder, on improving democracy as much as we can.

Here is an issue we have always in our mind that why should we need to follow the tendency of women empowerment or gender equality, the reason found is that women have been dependent in many ways on men-made society and that's why their position has been becoming weakened day by day. Their patience, their submission, and their devotion towards family have not been valued properly.

Kjersti Ericsson has written a poem describing the need for gender equality, the following words show the loving, kind and caring nature of women.

“I have been talking
Patiently and wisely,
And beautifully
With an abundance
Of metaphors,
I have been reasoning
Presenting evidence,
I have been screaming
In rage and bitterness,
I have started at the beginning
I have started
At the end
And each time
I have told you:
I do not want
To harm or hurt
But you must find
The courage
To see me.
I feel so tired
Of talking patiently and wisely
Tired
Of talking beautifully
With an abundance of metaphors,
Tired
Of reasoning
Presenting evidence,
Tired
Of screaming
In rage and bitterness
Tired
Of starting at the beginning
Tired



Of starting at the end
Tired
Of telling you:
I do not want
To harm or hurt.
When will you
Find the courage
To see me?"

Kjersti Ericsson, Norwegian psychologist, criminologist, writer, poet, is a Professor of Criminology at the Faculty of Law of the University of Oslo.⁸ She presents anything prudently. She never wants to harm anyone. She asks others when will they feel her presence, when will they have the courage to consider her equal in all spheres?

The history of women's equal legal rights has been a critical part of civilization. Law, no doubt always helped women to protect their rights but still the position of women is contrary to the existing standards of equality. Due to a lack of awareness, the law is not implemented properly. Law does not want to change the scenario and to make the males subject to females, if it happens the issue of gender justice and gender inequality will remain the same. The object of gender equality is to treat women equally to men. Such equality will produce gender justice. Gender equality as a part of human rights develops with the growth of society, thus society is the source of gender justice.⁹

The feminists on procedural equality between and among men and women insist that pure equality is unreasonable and untenable, it cannot be justified in every circumstance. and hence, like should be treated alike. Different cases should be considered differently to the extent of the proportion of the differences. They expect that women should be given better facilities in certain circumstances because only women can become pregnant and give birth. Different cases should be considered differently to the extent of the proportion of the differences.¹⁰

Feminists in the socio-legal debate have reached considerable conclusions. According to their discussion, the law in the primary phase was sexist, in the second phase as male-dominated and the third phase as gendered. In the beginning, it was sexist because it differentiated between men and women and actively discriminated against women to reach equal opportunities. For example, in 1873 the United States Supreme Court upheld that women's right to practice law may be restricted or even denied.¹¹

In *Muller v. Oregon*,¹² it was ruled that the governments could prevent the employers to allow women workers from performing their working in a factory for more than 10 hours per day because healthy mothers are essential for healthy and sound issues and thus the physical well-being of a woman must be an object of public interest and care. In the case of *General Electric v. Gilbert*,¹³ the American Supreme Court allowed and empowered to exclude pregnancy from their disability programs for employees, ruling that the employer's refusal, in this case, did not amount to discrimination under the Civil Rights Act of 1964, a law passed by Congress to Combat racial and sexual discriminations. When we talk about women's rights, one of her prime concerns is the custody of children. And it should be covered in the category of Gender Justice.

⁸ Kjersti Ericsson, (1998), *Woman speaks to man, Gender, Technology and Development*, January-April issue.

⁹ W.Einstadter and S. Henry, (1995), *Criminological Theory: An analysis of its Underlying Assumptions*, Texas Harcourt, Brace, pp. 6-7.

¹⁰ Francis, Leslie and Patricia Smith, (2017), *Feminist Philosophy of Law*, The Stanford Encyclopaedia of Philosophy.

¹¹ T. Bakken, (2000), *Constitutional and Social Equality: Legacies and Limits of Law. Politics and Culture*, Indian Journal of Gender Studies, p-71.

¹² (1908) 208 U.S. 412.

¹³ (1976)429 U.S. 125.