

Judicial Protection of Gender Justice in India: A Transformative Constitutional Perspective

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ABSTRACT:

Differentiation is the process by which status are allotted in social hierarchy. Societies of the world are differentiated on different basis but gender is very common ground of social differentiation throughout the world. Indian society is also based on social inequality and gender based discrimination. The history of Indian society is the history of women sufferings and retardness of women throughout the ages. The social reforms movements do needful to secure justice for women. After independence the constitution of India was framed with the chapter on fundamental rights to ensure equal treatment by law to every citizen of India. The right to equality in the Indian constitution strictly prohibits discrimination on social grounds. The Indian judiciary as a custodian of Indian constitution protecting it in letter and spirit. The Indian Judiciary by her landmark judgments from time to time ensured the social justice to every section of Indian society and abolished the gender based discrimination in India. The landmark judgments delivered by the Indian judiciary in Shayra Bano v/s Union of India (Triple Talaq Case) 2017, Nalsa v/s Union of India (2014) and young lawyers association v/s Union of India (2018) abolished the gender based discrimination in India.

Keywords: Differentiation, Stratification, Transgender, Feminism, Gender.

1. Introduction

Societies of the world are differentiated on different basis but age, sex, occupation and personal characteristics are very common. Differences are inherent characteristics of every society and societies are rests on the principles of difference. Sex is fundamental feature of every society on the basis of which rests the process of differentiation. A biological differentiation recognise the existence of two sex male and female and what is also one of the most important kind of differentiation. But

these differences are not biological only these are cultural also. Male is not the dominant sex in the universe. There are some societies in the world also exists where the female is the dominant sex also. The concept of differentiation denotes the process by which ranks or statuses are allotted. "The term stratification denotes the process or condition in which layers (strata) of persons or groups are ranked differently"¹. According to C.N. Shankar Rao "some societies are exhibit some system of hierarchy whereby its members are placed in

positions that are higher or lower, superior or inferior in relation to each other. The concept of social stratification is made use of refer to such classification or graduation and placement of people in society. Through this process of stratification peoples are fixed in social structure of the society....."2.

The women throughout the world are placed in lower rank in the social structure in the past and still striving to place themselves in upper rank. Different ideologies are placing in women in different ranks of social structure. M.P. Sharma writes, "There were times in China when girl's feet were fitted with wooden hard shoe (foot-binding) so that these may remain small (beautiful) during their adulthood. These or similar to these thoughtless and harsh atrocities were committed on tender aged girl child in more or less all parts of the world to enhance the beauty of girls at the cost of physical torture. Harshesht and the most vulgar practice is the rite of torture in the form of female genital mutilation called female circumcision. Girl child has always been regarded inferior to male child in most of the societies. Son-preference has been and still is a general ethos in all the traditional and modern societies in general and in India in particular. Girl child is regarded a liability and the male child an asset by parents. There are celebrations at the time of the birth of a male child and birth of girl child is regarded as a painful event....."3.

The nature of society also determines the status of women in its social structure. "The liberals therefore committed to the principle of universal citizenship, striving to ensure that all members of society enjoy the same status and entitlements. In this sense liberalism can be said to be difference blind: It views difference as the problem (because it leads to discriminatory or unfair treatment) and proposes that difference be banished or transcend in the name of equality....."4. The feminist give emphasis on the need to secure equal treatment for men and women in every field of life. "In what may broadly be called equality feminism, difference implies oppression or subordination; it highlights legal, political, social and other

advantage that men enjoy but which are denied to women"5.

In India the position of women is also not good since the ancient times. The Manusamriti a religious Hindu Granth and Kautaliya's Arthashastra allotted the subordinated status to women in their writings and denied the equal rights to the women. In Medieval India the position of women was also not good and Shri Guru Nanak Dev Ji and Bhakti movement propagated the respectable position for women in Indian society. Raja Ram Mohan Roy, Ishwar Chander Vidyasagar and Jyoti Rao Phule played an important role in the upliftment of women in Indian society. Raja Ram Mohan's restless efforts succeeds in securing a legislation to abolish the evil practice of "Sati".

After independence constitutional safeguards are provided and gender based discriminations are abolished by making provisions in the constitution. Government has implemented a range of policies to improve the status of women and to address the gender based disparities. The constitution of India also establishes the gender equality and prohibits the discriminations on the ground of sex and propagates equal opportunities for men and women. In spite of constitutional and legislative arrangements gender based violence remains a pervasive issue and continues to impact women's lives. The domestic violence, sexual harassment, trafficking and dowry related violence and honour killings are major forms of gender based violence. The victims of violence often face stigmatisation, social exclusion and psychological trauma.

2. Objectives of Study

- To study the landmark judgments delivered by the judiciary to abolish gender based discriminations in India.
- To study the impacts of these landmark judgments on the Indian society.

3. Research Methodology

The present study adopted a doctrinal and qualitative research approach to investigate the role of judiciary in enhancing gender justice in

India. The study is primarily based on secondary sources including constitutional provisions, landmark judgements by the Supreme Court such as *NALSA v. Union of India* (2014), *Shayara Bano v. Union of India* (2017), and *Indian Young Lawyers Association v. State of Kerala* (2018). The study also includes books, journal articles, and reports published in reputed academic databases. The case law analysis method has been employed to understand the judicial reasoning and its societal impact. The study further incorporated thematic approach to analyze gender justice in the context of equality, dignity and constitutional morality, ensuring a comprehensive evaluation of judicial interventions in addressing gender-based discrimination.

4. The Landmark Judgments of the Supreme Court on Gender Justice

The Supreme Court of India delivered landmark judgments advancing the gender justice in India from time to time. The study of the three landmark judgments which are belong to different classes or sections of society and their impacts on Indian society are as under:

4.1 Nalsa V/s Union of India (2014)

National legal service authority as a stationary body and several other petitioners including social activists like Laxmi Narayan Tripathi and Poojya Mata Nasib Kaur Ji women welfare society filled a petition to seek Supreme Court's intervention to obtain legal recognition for transgender people and safeguard their constitutional rights. The petitioners argued that transgender individuals who do not fit into the male or female category experience discrimination in their educational pursuits together with employment opportunities, health care access and social connections. The petitioners advocated legal recognition for the people who resist traditional male- female classification. The recognition of third gender identity category is demanded which includes transgender people as well as higher and other non-binary gender groups. Petitioners argued that transgender community faced constitutional violations through several constitutional

provisions like right to equality under article 14, the right to be free from discrimination under article 15 and 16 and right to life and dignity under article 21 which includes right to live with dignity and express one's gender identity. The petitioners also demanded the affirmative action for the upliftment of transgender community through quotas and reservation in education and employment systems like other marginalised groups in India.

The Supreme Court delivers its judgment through Justice K.S. Radha Krishnan and A.K. Sikri. By this judgment Supreme Court established that transgender people as the "third gender" under the provisions of the constitution. The court established the right of the people to choose their gender identity this choice relates to personal autonomy and dignity. Court ruled that gender identity represents the core of personal identity and society should not impose gender expectations on any individuals. The court categorised the transgender as the "third gender" which shifted away from traditional male and female gender models. Court ruled that discrimination against transgender individuals violates the right to equality guaranteed under article 14 of the Indian Constitution. Court directed that all individuals regardless of gender identity must be trusted equally by state and society. Judgment recognised that right to life and personal liberty under article 21 includes the right to live to dignity which encompasses the right to express one's gender identity. Court also directed the union and state government to take affirmative action's measures for transgender individuals including reservation in educational institutions, government jobs and public services and they should have access to health care, education and employment on equal basis with other citizens. Court also presented guidelines to help eliminate the social discriminations that transgender people facing throughout the society. Court ruled that spreading knowledge about transgender rights will help to decrease social discrimination against community.

Impacts of the Judgment

1. Recognition as a third gender: By this judgment Supreme court recognised the transgender people as a third gender. The court ruled that recognition of transgender people as third gender not a social or medical issue but a human right issue.

2. Rights of transgender people: In 2014 the rights of the transgender persons bill was introduced as a private member bill and passed by Rajya Sabha in April 2015.

3. Protection of the rights of the transgender people: In 2019 an act was enacted regarding the protection of the rights of the transgender people.

4. Provisions regarding the empowerment of the transgender community: In 2020 ministry of social Justice made several provisions regarding the empowerment of the transgender community as under:

- (i) A national portal for transgender people was launched to digitally applied for a certificate and identity card from anywhere in the country.
- (ii) A stationary body the national council for transgender persons (NCTP) was established.
- (iii) Garima Grah a shelter home for transgender people was established.
- (iv) In 2022 the ministry of home affairs sent an advisory to the heads of the prisons in the State/ UT's to ensure privacy and dignity of the third gender inmates.

4.2 Shayara Bano V/S Union of India (2017)

This case is also known as a "Triple Talaq Case". Shayara Bano a muslim women married to Mr. Rizwan Ahmad a resident of Uttar Pradesh in 2002. In 2015 Mr. Ahmad divorced the Shyara Bano through the practice of "talaq-e-biddat". Talaq-e-biddat is a practice that allows a muslim man to divorce the wife by instantly pronouncing "Talaq" three times in one sitting Mrs. Shayara Bano filed a writ petition in the Supreme Court in February 2016 Challenging constitutionality of "talaq—e-biddat" and argued that it violated her fundamental rights under article 14 (equality) 15 (non-discrimination) 21 (right to life and dignity) and 25 (freedom of

religion). On 30th March 2017 a five judges Constitutional bench comprising Chief Justice J.S. Khehar, Justice Kurien Joseph, Justice R.F. Nariman, Justice U.U. Lalit and Justice Abdul Nazeer, created to hear the matter. The bench heard the case between may 11th and may 19th, 2017. Judgment in this case was delivered on 22nd August 2017. By a 3:2 majority decision the Supreme Court declared instant triple talaq i.e. talaq-e-biddat unconstitutional. The majority of judges held that talaq-e-biddat is not essential to islamic practice and therefore not protected under article 25 (freedom of religion). The court found it to be arbitrary, discriminatory and in violation of the right to equality and dignity guaranteed by the Indian Constitution. Chief Justice Khehar and Justice Abdul Nazeer give a dissented Judgment stating that talaq-e-biddat is protected by the right to religion in our constitution and declared that it is the duty of Parliament to frame a law to given the practice.

Impact of the Judgment

1. Milestone for gender justice: This judgment has a powerful impact on gender Justice and secular laws in India that empowered the millions of Muslim women.

2.Invalidated the oppressive religious practice: This judgment does not invalidate an oppressive religious practice but also reaffirmed the supremacy of Constitutional values over the personal law when it hinders the way of fundamental rights.

3. Made applicable to social life: On the direction of the Supreme Court this the Indian parliament passed the Muslim women (protection f rights on marriage) Act criminalising the practice of instant triple talaq in India.

4. Uphold the supremacy of constitutional laws: This judgment established the supremacy of constitutional law over the personal law and set a precedent for reforming personal laws and showed how a judicial activism played a role in upholding the gender Justice in India.

5.Milestone in a social revolution: This judgment is more than a legal milestone; it is a

social revolution. It redefined the boundaries between religion and the law, protecting women from age- old discriminatory practices and strengthened the core values of the constitution.

4.3 Young Lawyers Association v/s State of Kerala (2018)

This case is also known as a Sabrimala Case in which Supreme Court of India delivered a landmark judgment to provide justice to women of particular age group i.e. 10 to 50 years. Sabrimala temple is one of South India's most famous temples located within the periyar Tiger Reserve in the Western Ghats of Kerala. It is dedicated to lord Ayappa who is said to be the son of lord Shiva and Mohini, the female avatar of Vishnu. This temple is known for its unique religious practices where devotees undertake 41-day penance, renouncing worldly pleasures before visiting temple. Devotees considered Lord Ayappa to be a celibate deity. The women in their menstruating years (between ages 10 to 50 years) were customarily prohibited from entering the temple to protect Ayyappa's celibacy. The exclusion of women was first challenged in Kerala high Court, in 1991. In *S. Mahendran v/s The Secretary Travancore Case*, the High Court ruled that the exclusion was constitutional and justified, as it was long standing custom. The practice did not violate women devotees Right to equality and Freedom of worship. In 2006, Indian Young Lawyer's Association filed a public interest litigation petition before the Supreme Court challenging the Sabrimala temple's prohibition of women from temple premises. It was argued that the custom violates the Right of Equality under article 14, as the practice is derogatory to the dignity of women, freedom of religion under article 25 which states that "all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. The exclusion of women devotees violates that right.

In 2008 matter was referred to a 3 Judges bench and it was heard by three Judges in 2016. In 2017 it was referred to 5 Judges constitution bench. Over seven days of hearing the

constitution bench heard arguments on five key issues:

- i. Is the prohibition of women violated the right to equality?
- ii. Is the prohibition of women being essential religious practice?
- iii. Whether the Sabrimala temple is a religious denomination or a sub group within a larger religious organisation?
- iv. Is public worship rule allowing a ban on women?
- v. Whether public worship rules allowing the custom went against the parent legislation where disallowed the discriminatory practices?

On 28th September 2018 bench decided with 4:1 majority that the prohibition of women at the Sabrimala Temple is unconstitutional. (Justice Indu Malhotra in her dissented opinion raised the question how do we re-concise the constitution's commitment to pluralism with Judicial intervention in internal religious affairs?)

In Sabrimala Case the majority of the Judges ruled that the exclusion of women violated the Fundamental Rights of women between the age of 10 to 50 years and it was declared that lord Ayyappa were not a separate religious denomination. Majority ruled that the custom was not an essential religious practice. It is held that "the exclusion of women from Sabrimala on the grounds of celibacy and menstruation is one among the countless ways in which patriarchy- as a social institution works to keep women in a position of subordination.....". It was not explicitly expressed in the Judgment that this practice is against the right to equality under article -14 but it is stated that the practice was discriminatory as per article 15. Justice Chandrachud stated that right against untouchability is vast and it includes any kind of social exclusion based on notions of purity.

Impacts of Sabarimala Judgment

(1) Established Gender Equality: The Judgment established gender equality which is the inherent part of Right to Equality under Article 14,15 of the Indian Constitution. It is argued in this case that denying access to temple based on gender and age discriminates against women and is the violation of the Fundamental Right to Equality.

(2) Preservation of Right to Religion: The provisions of the constitution say that all persons are equally entitled to freedom of conscience and right to profess, practice and propagate religion freely.

(3) Breaking Stereotypes: Indian societies like other societies is also based on discrimination which are based on social order. This judgment broken the stereotype social order by allowing women access to Sabarimala temple and empowered the women.

(4) Challenged the patriarchal order: Court ruled in this case that the traditions evolved with time should align with modern principles of gender equality and challenged the patriarchal nature of Indian society.

5. Conclusion

The study demonstrated that the Indian judiciary has played a transformative and progressive role in promoting gender justice by interpreting constitutional provisions in the light of changing social realities. Through various landmark judgements like *NALSA*, *Shayara Bano*, and *Sabarimala*, the courts have expanded the scope of equality, dignity and individual freedom, thereby challenging the deeply entrenched patriarchal norms. These decisions indicate the judiciary's commitment to constitutional morality and social reform, reinforcing the idea that the Constitution is a living document that can address the contemporary challenges. Meanwhile, the judicial activism that has been invoked by the judiciary has raised questions on the extent of judicial activism and the balance between religion, tradition, and fundamental rights. Despite these challenges, the judiciary continues to be an important institution for safeguarding the marginalized population and promoting substantive equality. At large, the role of judiciary in promoting gender justice has significantly reinforced the constitutional democracy and fostering a more inclusive and equitable society in India.

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