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- Family Law, Labour Law, and Social Justice Studies

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Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

HUMAN RIGHTS, GENDER JUSTICE AND SOCIAL WELFARE LAWS: AN EMBRYONIC CONSTITUTIONAL FRAMEWORK IN INDIA

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Introduction

India is a country of immense population with different genders, caste, religion and economic status. Human rights, gender justice and social welfare they form the basic structure of the democratic welfare of the constitution. The constitution aims to ensure individual dignity, freedom, respect and seeks to remove gender injustice from the society. Thereby, eliminating discrimination and inequalities based on gender, sex while on the other hand social welfare would provide procedures and mechanisms for achieving substantive equality. These concepts not merely become political aspirations but they aim at constitutional commitment to that the fundamental rights of people are protected.

These three concepts are deeply interconnected with each other. Rights of humans are referred as the guiding principles for gender-sensitive laws, more practicality is bought through social welfare legislations as it is served as the tool for providing practicality through various ways. As the time has passed by several judicial interventions have focused on promoting gender equality and keeping the people safe who are vulnerable in our society but even though many changes have been done there are still some challenges that have occurred through unavailability of resources, discrimination in employment, biasness, violence on the basis of sex and gender. These all scenarios lead to the hindering of constitutional ideals.

The paper centrally focuses on the question “if the Indian constitution has effectively transformed gender justice, social welfare from the objectives which are made into policies to the rights which are enforceable for human rights or still after making and implementing the laws and acts there still remains the gaps, loopholes that are undermining the substantive equality?”

What Does Human Rights In Constitutional And International Dimensions Say?

Human rights are the basic fundamental rights which are being provided to human. They lie from political, civil, economic, cultural and social rights. This forms the part of necessity and ensure the development of human personality and dignity.

Indian constitution focuses on the articles from article 14, 15,19,21 and 32. These articles collectively create a framework for individual liberties and protection. Specifically, article 21 has been interpreted expansively by the supreme court to include rights such as privacy, health, livelihood, education and clean environment¹.

There are many international instruments such as universal declaration of human rights (UDHR), the international Covenant on economic, social and cultural rights (ICESCR) and the international convent on civil and political rights (ICCPR). Here, India's commitment is reflected in the participation in such instruments. Courts have increasingly relied upon the international right norms to interpret the constitutional guarantees².

The enactment of the protection of human Rights Act 1993 further institutionalized the protection of human rights through the establishment of National Human Rights Commission (NHRC). This commission significantly focuses on the child rights violations, discrimination against marginalized communities, custodial violence and trafficking.

The perspective of critique says that even though the human rights are enforced in India but it still lacks at certain points. Thereby, facing obstacles in procedural delays, socio economic inequalities and inadequate implementation mechanisms which restricts the effectiveness towards justice and public.

Is Gender Justice Beyond Formal Equality?

Gender justice refers to the fair treatment of individuals regardless of gender it seeks to eliminate inequalities that perpetuate discrimination whereas formal inequality refers to provide equal treatment before the law and treating everyone equally under the eyes of law. On the other hand, gender justice is provided by looking at the historical disadvantages and the barriers which were created socially and still continues to exists today.

Through the constitutional basis of gender justice, it is explained in the constitution under the article 14,15 and 16. The article 15(3) empowers the provision for women and children by providing them with special benefits. So, they can also achieve equality through affirmative measures.

The judicial interpretation in *Vishaka v State of Rajasthan*, supreme court recognized sexual harassment as the violation of fundamental rights and formulated guidelines for redressal and prevention³. Through, this the enactment of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

Similarly, in *Shayara Bano v Union of India*, it is also known as triple talaq case where the supreme court declared the practice of instant triple talaq unconstitutional. This case turned the tables in the constitution law of India for women's right and for the freedom of religious debates.

Another landmark case of *Joseph Shine v. Union of India*, the supreme court struck down this case under section 497 of the Indian penal code (IPC), which is decriminalizing adultery. The court further ruled that here women are being treated as property of her husband which is violating their privacy, dignity and sexual autonomy⁵.

There are many key statutes included after the legislative measures have complemented the judicial activism. These include:

- The Protection of Women from Domestic Violence Act 2005;
- The Sexual Harassment of Women at Workplace Act 2013;
- The Maternity Benefit Act 1961 (as amended in 2017);
- The Prohibition of Child Marriage Act 2006;
- The Dowry Prohibition Act 1961.

Even though these statutes are being introduced but gender disparities still remain prevalent in nature. Women face discrimination at offices, workforce participation, political representation, they are being questioned for their potential and what all they can achieve in their life, there privacy is not concerned. They face violence at their home; there are many cases of domestic violence where they are found in dangerous situations. This highlights the gap between legal

protections and social realities.

What Are Social Welfare Laws And The Welfare State?

The social welfare principles were explained in the creation of social and economic justice. This is explained in the directive principles of state policy under the part IV of the Indian constitution.

These social welfare laws were created to protect the vulnerable groups and provide them with justice along with reducing socio-economic inequalities. Such laws become important in the countries like India which are in progress of getting developed and many factors like unemployment, social exclusion and poverty affecting the large segments of the population.

Across India, social welfare legislation works under various categories:

1. Social justice and protection of vulnerable groups

These laws focus on women's rights and safety including the Dowry Prohibition Act, 1961, the Protection of Women from Domestic Violence Act, 2005 and the Sexual Harassment at Workplace Act, 2013.

There are acts for marginalized communities including the Protection of Civil Rights Act, 1955 which was to abolish untouchability and the other acts were made for prevention of atrocities. It addresses the systematic discrimination and violence which historically marginalized communities faced.

2. Food and health security

The National Food Security Act, 2013 recognizes that food should be accessed and it works as a legal entitlement also the food should be provided to the eligible households.

In the similar way, there are many health schemes which aim to provide better facilities to the people in need and vulnerable or who face problems under the Right to Health Act under Article 21.

3. Labor and employment welfare

There are many people in India who are unemployed especially under the unorganized sectors. The Code of Social Security, 2020 seeks to consolidate social security laws related to employees and workers. Taking example of MGNREGA 2005 which is referred to as the Mahatma Gandhi National Rural Employment Guarantee Act, provides employment to rural households and significantly helps women to improve their

economic participation.

4. Child protection

The Juvenile Justice (Care and Protection of children) Act 2015 aims to provide care and protection to and those who are in conflict with law. The other laws also ensure that elementary education works as a fundamental right.

What does intersection of Human Rights, Gender Justice and Social Welfare say?

The intersection of human rights, social welfare and gender justice is mostly visible in addressing women's socio-economic empowerment. The rights at certain point becomes insufficient if it is not supported by the welfare schemes and mechanisms that enable the individual to exercise the rights effectively.

There are many examples like workplace safety regulations, educational schemes and maternity benefits it advances human rights, welfare for gender justice. There are welfare programs from marginalized communities to address multiple forms of discrimination on gender, economic status and caste.

The court has adopted the intersectional approach in the constitutional adjudication. In the case of *Secretary, Ministry of Defence v Babita Puniya*, the court has granted women officers in army with the permanent commission and to put an emphasis on substantive equality and dismantling gender stereotypes⁶. This judgment further interprets the constitutional rights must be interpreted in the reference with social realities.

In the similar way, landmark privacy judgment in *Justice K.S. Puttaswamy v Union of India*, strengthened the bodily integrity also the concept revolves around the women's right and human dignity⁷. The recognition of privacy rights and reproductive autonomy represents the gender justice principles and its convergence with human rights.

What Are The Contemporary Challenges Faced?

Even though significant progress has been made but with the flow there comes the flaw. The flaw here refers to the challenges faced for accessing legal protection.

First is the weak enforcement system where the implementation becomes deficit in nature and continue to undermine the effectiveness of welfare and gender justice laws.

Second comes is the socio-cultural norms that include gender discrimination where workplace discrimination happens, child marriage and honor-based violence, the flow of patriarchy also creates a way of discrimination. It reveals that the legal reform gets limited without corresponding the social transformation.

The third is the technological developments that raise concerns regarding digital surveillance, cyber harassment and online gender-based violence. If we take the example of real life where women are being typified for the way they are, they are being sexualized and treated as an object on the online platform itself. Many fake accounts are made for online bullying and harassing where a person pretend to be someone else. This is referred as online harassment. At this point major concern becomes of right to privacy and dignity which is being altered by these factors.

Fourth one is the economic inequality which affects marginalized communities and women. Women are usually paid less than a man in workforce sector, the feminization of poverty remains as a serious concern, particularly in informal sectors and rural areas.

This shows the access of justice becomes uneven. Many vulnerable groups are encountered with barriers such as financial, geographical and institutional barriers to seek legal remedies.

If we have to address this challenge, we need coordinated efforts from the forms such as judicial vigilance, awareness in public and accountability in institution.

Conclusion

The social transformation comes from gender justice, social welfare and human rights. Human rights seek to establish dignity and equality; gender justice seeks to remove the historical discrimination faced by women since a long period of time and still continues to exists today whereas social welfare are the schemes and practical way of means introduced to achieve substantive equality.

India has made many substantial progress through constitutional guarantees, transformative judicial decisions and progressive legislation. These landmark judgment shows a scope of rights and protections which is available to children, women and vulnerable. Coming through a long way process comes with challenges as said above with flow comes the flaw.

The future of the democracy in constitution comes with the protection of human right protection, gender-sensitive governance and social welfare policies. Through a holistic and inclusive approach comes improvement in justice, dignity, privacy and many more factors including the social, economic and political basis. They are fully realized.

Footnotes

- *Maneka Gandhi v Union of India* (1978) 1 SCC 248.
- *Vishaka v State of Rajasthan* (1997) 6 SCC 241.
- *ibid.*
- *Shayara Bano v Union of India* (2017) 9 SCC 1.
- *Joseph Shine v Union of India* (2019) 3 SCC 39.
- *Secretary, Ministry of Defence v Babita Puniya* (2020) 7 SCC 469.
- *Justice K S Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.

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- *Joseph Shine v Union of India* (2019) 3 SCC 39.
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Legislation

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- National Food Security Act 2013.
- Protection of Human Rights Act 1993.
- Protection of Women from Domestic Violence Act 2005.

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

International Instruments

- International Covenant on Civil and Political Rights 1966.
- International Covenant on Economic, Social and Cultural Rights 1966.
- Universal Declaration of Human Rights 1948.

