

# Gender Justice

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**In the mid-twentieth century, when the French social philosopher Simone de Beauvoir (1908-1986) wrote the magnum opus 'Second Sex', (1949) she elaborated the secondary position of the women, more or less, all over the world because of social-cultural factors: 'one is not born, but rather becomes, a woman.' Thus, due to societal customs, norms, institutional behaviour laws, restrictions etc, the 'sex' (biological difference between male and female in terms of chromosomes, genitals, etc.) in the course of time becomes 'gender' (a socio-cultural construct) due to primary (family peer groups, community) and secondary (school, college, club, public library, offices, sports, etc.) socialisation.**

**I**n India, Mahadevi Varma raised the issue in the 1930s in her articles, and later published in her book 'Shrinkhala ki Kadiyan' (1942). She pointed out the contradictions in Indian traditions where a woman is worshipped on one hand, and lives as a prisoner in the home (subordinate to a man in all respects without rights to education, health, livelihood, hygiene and sanitation, sports, etc.) on the other. She found two types of women in Indian society—first, those who are not aware that they are human beings with independent personalities; second, those who equal to men, see the world from the viewpoint of men. Thus, women somehow reduced their personalities and social existence. Mahatma Gandhi brought women into the mainstream freedom struggle, and held men responsible for their ways of exploitative customs.

### Recent Judicial Orders

- a. The Supreme Court, in *Air India v Nargesh Meerza*, found that Air India imposed three discriminatory restrictions and disabilities on women employees (air hostesses): (i) they were not allowed to marry within four years from the date of entry into service; (ii) their services were terminated on their first pregnancy; and (iii) age of retirement of hostesses was just 35 years, extendable to 45 years at the discretion of their Managing Director as against other govt. servants at 55/58 years. The Supreme Court upheld the first condition (i) in view of both parties' difficulties but struck down others as unreasonable and arbitrary.
- b. In IFS Services Rules, the permission of Govt. was required before the marriage of women officers, and married women were not allowed to join IFS. Hence, the Supreme Court quashed it outright.
- c. In *Joseph Shine v Union of India*, Supreme Court. (Dipak Misra, AM Khanwilkar RF Nariman, DY Chandrachud. & Indu Malhotra), decided in 2018 that 'the essentiality of the rights of women gets the real requisite space in the living room of individual dignity, rather than the space in an annexe to the main building.... Any system treating a woman with indignity, inequity and inequality, or discrimination invites the wrath of the Constitution... and it is time to say that husband is not the master'. The Court directed the State to take a minimalist approach in the criminalisation of offences as individuals have personal choices: 'The right to live with dignity includes the right not to be subjected to public censure and punishment by the state'. Hence Section 497 of IPC (punishment for adultery) was struck down as unconstitutional, being violative of Articles 14, 15, and 21 and Section 497 which was based on gender stereotypes on the role of women.
- d. In *Shayara Bano v Union of India & others*, Muslim women's quest for equality v *Jamiat Ulema-I Hind*, *Aafreen Rehman v Union of India & others*, *Gulshan Parveen v Union of India & Others*, *Ishrat Jahan v Union of India & others*, and

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Atiya Sabri v Union of India & others, Supreme Court (head by J.S. Khehar) by *majority view*, declared Talaq-e-biddat' (triple talaq at the same time) unconstitutional & arbitrary (violative of fundamental right to equality), and injuncted Muslim husbands from pronouncing it and directed the State to legislate on this issue within six months. This was a landmark judgement in favour of Muslim women of India who had been suffering from it for centuries, though many Muslim countries had already abolished triple talaq.

The Fifth National Family Health Survey (2019-20) talks of the following factors for the empowerment of women:

- ownership of physical assets-mobile phones, bank accounts, land & housing;
- access to menstrual hygiene products (sanitary napkins etc);
- participation in household decisions (healthcare for herself, household purchases, visits to family/relatives);
- employment status;
- gender violence;
- marriage under the age of 18 years; and
- educational attainment of more than 10 years.

But Sustainable Development Goals also take into account the time spent on domestic or unpaid work decisions; (ii) decision on reproductive health; and (iii) incidence of female genital mutilation. In the above-mentioned areas, the progress of Indian women is as follows as per NFHS (2019-2020):

- Share of women with more than ten years of schooling increased 5.5 per centage points during 2015-2020, the gender gap in this regard decreased from 11.5% to 8% in 2015-2020.
- Sex ratio at birth in 2020 increased to 942, though SDG is 954 females for every 1000 males by 2030 but only 928 in urban areas (against 947 in rural areas) due to sex determination tests.
- Share of women using hygienic methods increased from 60% to 78% (2015-2020).
- Due to PM Jan Dhan Yojana, women's bank accounts increased by 28 per centage points (2015-2020).

- Women's mobile phone ownership increased by 10 per centage points (2015-2020).
- Share of married women employed and getting paid increased by 2% points to 28% during 2015-2020.
- Participation in household decision making increased marginally to 85%.
- In 11 out of 22 states, covered land or house ownership by women reduced in 2020.
- Share of women marrying before 18 years is about 30% (both in 2015 and 2020).
- Domestic violence stagnating-one in three women experience physical or sexual violence from their husbands, but during the Covid-19 lockdown it surged to 60%.
- There is an increase in the use of family planning methods but its burden is still largely on women-female sterilisation accounting for 60% of total contraception usage. Himachal Pradesh has the highest contraceptives prevalence rate; unmet needs were declined to less than 10% in most states except Meghalaya and Mizoram.
- Worsening trends due to complex interplay of policy, socio-cultural and political factors.
- Share of Union Budget spent on women-related schemes has stagnated at about 5.5% since 2009, and less than 30% of which is being spent on 100% women-focused schemes.
- Spending of budget of Ministry of Women and Child Development on women empowerment decreased from Rs. 640 crores in 2018-2019 to Rs 310 crores in 2019-2020.
- Low conviction rate for early marriage-23.8% in 2018 and 84% cases pending in courts. In Tripura, child marriage increased from 33% to 40% in 2015-2020, in Manipur from 13.7% to 16.3%, and in Assam from 30.8% to 31.8%.
- Stunting of children rose in 11 states; wasting increased in 14 states; neo-natal mortality, IMR, and under 5 mortality rate increased in Tripura, Meghalaya, Manipur and the Andaman and Nicobar Islands; Bihar has the highest prevalence of NMR (34), IMR (47), and under 5 MR (56) across 22 states/UTs surveyed. Kerala has the lowest rates matching many developed countries- due to better allocation of the social sector. SDG 3 calls for an end of preventable deaths of newborn and children up to 5 years by 2030 to

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**Table 1: Dimensions of Holistic Empowerment through Capability Expansion**

Sl. No.	Dimensions\ Capability	Low capability	Medium Capability	High Capability
1.	Silence Vs speaking out	as speaking out individually	speaking out collectively	speaking out collectively and forcefully
2.	Mobility for discussion and action	within village	outside village-up to district level	state/national level
3.	Purpose	awareness-generation	to get benefits of govt. programmes	demanding and realising participation
4.	Idea of change	faint idea of incremental change (through microfinance etc)	fair idea of change due to taking benefits from govt. schemes/ programmes	transformative action by revising schemes/launching new ones as per need
5.	Narrative of change	the receiver of a given narrative of change 'from above'	receiving of and reacting to a given narrative of change-'from above' but suggesting revision	Proactive own narrative of change 'from below' (bottom-up)
6.	Use of public sphere	micro (local) public sphere	meso public sphere	macro public sphere
7.	Development-empowerment synergy	more for development, very little idea of empowerment	more for development, less for empowerment	development and empowerment synergy

reduce NMR to 12 per 1000 live births, and under-5 mortality to 25 per 1000 live births. IMR in India is 32 (36 in rural areas and 23 in urban areas), much higher than that in developed countries.

- q. Spouse violence increased in 5 states-Sikkim, Maharashtra, Himachal Pradesh, Assam and Karnataka-the last has the maximum increase from 20.6% to 44.4% during 2015-2020.
- r. Total Fertility Rate (TFR) declined in most of the states-'replacement level' (2.1) achieved in 19 out of 22 states/UTs surveyed; only states like Manipur (2.2), Meghalaya (2.9), Bihar (3.2), and UP (2.9) have higher TFR than replacement level; still average TFR in India is 2.2 per woman.
- s. More than 2/3rds of children below 5 years are immunised fully in all states, except Meghalaya, Nagaland and Assam.
- t. 80% of pregnant women delivered in institutions in 19 states/UTs, and 90% did in 14 states/UTs. Unfortunately, 2/3rds of deliveries in private hospitals is C-section (caesarian), while only 30% in govt. hospitals. As per the medical norm, it is only 15%. C-section on an average shows the commercialisation in private hospitals, though some women prefer it due to less pain.

Sometimes economic development leads to gender equality but other times, empowerment (especially in decision-making) leads to gender equality, hence both are necessary. However, as the Nobel Laureate Esther Dufflo rightly points out, there should be a continuous policy commitment to equality for its own sake Hence, multi-dimensional efforts are needed. Various dimensions of holistic empowerment through capability expansion may be seen in Table 1.

The level of progress and quality of democracy of any country may be assessed by knowing the contemporary status of women, as redistributive justice and participatory governance must ensure gender justice substantially. The Govt. of India has rightly enhanced the maternity period to 26 weeks to benefit 18 lakh women workers in the organised sector-this will ensure breastfeeding for at least six months initially, as well as pay for this period, will ensure nutritious food. Democracy is a holistic way of life, ensuring diversity and pluralism in all respects including gender. The 'Me Too' movement all over the world portrays sexual offences against women. As post-feminists rightly remark, for women, 'personal is political', hence, let us empower them in both public and personal arenas of life, along with genuine development. □