Women’s equality and Gender Justice in India

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“One of the most enduring clichés about India is that it the country of contradictions. Like all Clichés, this too has a grain truth in It. At the heart of the contradiction stand Indian women: for it is true to say that they are among the most oppressed in the world, and it is equally true to say that they are among the most liberated, the most articulate and perhaps even be most free. Can these two realities be simultaneously true”

Urvashi Butalia
Women In India: An Overview

Today, in India, ”women’s empowerment” is a government slogan; it is a feature of every party manifesto.

There is a ministry for women and child development. There are laws against female feticide, domestic violence and sexual harassment in the workplace.
In recent times women’s participation in public life is on the rise. A number of women are occupying top corporate positions as Kiran Majumdar Shaw Indian, they are also leading sports persons, film stars, civil society activists. It shows that talented, determined women are making it in every corner of this traditional society - a society that was entirely male-dominated in 1947.
Yet, in the first decade of the 21st century, Indian women - seemingly protected by law, celebrated by the media and nursed by activists - remain second-class citizens, most obviously in rural areas, but in some senses everywhere.
According to a poll conducted by Thomson Reuters in 2011, India is the fourth most dangerous country in the world for women.
According to another report, within the span of three generations India has systematically targeted and annihilated nearly 50 million women from its population.
One illustration of this is the skewed sex ratio: The 2011 census found that there are 940 women for every thousand men and this national figure hides significant national discrepancies.
Historically, Punjab and Haryana have had the worst sex ratio in the country. Punjab and Haryana Account for 15 districts in the country with most adverse child sex ration 2001. According to the 2001 Census every 5th girl child in Punjab was missing because of her gender.
A report on the missing females by the International Development Research Centre, for example, indicates that selective abortion of female foetuses is practiced more in families where the mothers are better educated. The study revealed that for women with a Grade 10 education or higher, the sex ratio for second and third births was 683 females per 1000 males, while it was 869 female per 1000 male births among mothers who were illiterate.
There have been a number of attempts to understand the root causes of this problem. Traditional literature has been centered round the cultural and economic factors that underlie this strange phenomenon. It has been pointed out that masculine bias in the population, lower ages at marriage, family structures, etc. have been found to influence gender discrimination and hence proportion of female population in the country. As discussed earlier, academicians have argued that high levels of female infanticide, sex selective abortion and other coercive methods have been a major reason behind the massive imbalance. The general social preference for sons has also been cited as an important reason behind the growing masculinization of Indian societies.
While looking at the female-male ratio in the population is only one way of examine the relative position of women, this approach does give some insight into the acuteness of the problem of gender inequality in matters of life and death.
The planning commission of India (an apex body for planned development chaired by the Prime Minister of Indian has set the target of raising the sex ratio for age group 0-6 to 935 by 2011-12 and 950 by 2016-17 in its XI plan period(underway).
Although it has been said in plan after plan, it needs to be reiterated here that the Eleventh Five Year Plan will give special attention to the health of marginalized groups like adolescent girls, women of all ages, children below the age of three, older persons, disabled, and primitive tribal groups. It will view gender as the cross-cutting theme across all schemes.
A cross country comparison Health Indicators among Selected Countries in 2005 reveal that India’s Infant Mortality rate 58 per 1000 stands four times higher than Sri Lanka which is 15 per 1000 birth. Even Vietnam fares better than India and stands at 27 per thousand births.

Maternal Mortality rate remains as high as 356 per 100,000 live births which is as low as 10 in case of Japan.
Crimes against Women

Crimes against women are broadly classified into two categories: The crimes under the Indian Penal Code. They are
i) Rape
ii) Kidnapping & abduction for specified purposes;
iii) for dowry, dowry deaths or their attempts;
iv) Torture both mental and physical
v) Torture Assault on women with intent to outrage her modesty;
vi) Insult to the modesty of women;
vii) Importation of girl from foreign country (upto 21 years of age)
The crimes under the special & local laws (SLL)

(i) Immoral Traffic (Prevention) Act;
(ii) Dowry Prohibition Act;
(iii) Indecent Representation of Women (Prohibition) Act;
(iv) Commission of Sati Prevention Act
A total of 2,44,270 incidents of crime against women (both under IPC and SLL) were reported in the country during the year 2012 as compared to 2,28,650 in the year 2011 recording an increase of 6.4% during the year 2012. These crimes have continuously increased during 2008 - 2012 with 1,95,856 cases in the year 2008, 2,03,804 cases in 2009 and 2,13,585 cases in 2010 and 2,28,650 cases in 2011 and 2,44,270 cases in the year 2012.

*National Crime Records Bureau
According to National Crimes Record Bureau, registered rape cases in India have increased by 900 percent in the past forty years.
Female literacy rate in Indian from 1951-2011

<table>
<thead>
<tr>
<th>Year</th>
<th>Female Literacy Rate</th>
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<tbody>
<tr>
<td>1951</td>
<td>8.86 %</td>
</tr>
<tr>
<td>1961</td>
<td>15.35 %</td>
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<tr>
<td>1971</td>
<td>21.97 %</td>
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<tr>
<td>1981</td>
<td>29.76 %</td>
</tr>
<tr>
<td>1991</td>
<td>39.29 %</td>
</tr>
<tr>
<td>2001</td>
<td>53.67 %</td>
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<tr>
<td>2011</td>
<td>65.46 %</td>
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</tbody>
</table>

Source: Office of the Registrar General, India.

Note: 1. Literacy rates for 1951, 1961 and 1971 Censuses relates to population aged five years and above. The rates for the 1981, 1991 and 2001 Censuses relate to the population aged seven years and above.
RAPE
Sec. 376 IPC

2011  28878
2012  31116

Percentage variation between 2012 and 2011 on rape related crime is alarmingly high as 8 percent
Dishonour Killings and women in India

Honour is seen as residing in the body of women. Frameworks of honor and its corollary shame operate to control, direct and regulate women's sexuality and freedom of movement by male members of the family. Women who fall in love, engage in extra-marital relationships, seek a divorce, choose their own husbands are seen to transgress the boundaries of ‘appropriate’ behaviour (that is socially sanctioned) sexual behaviour. ‘Regulation’ of such behaviour may in extreme cases involve horrific direct violence-including honour killing …In this context the rights of women(and girls) to control their lives, to liberty of freedom and expression, association, movement and bodily integrity mean very little…
Radhikha Coomaraswamy 2005/ UN special
Prevalence of Dishonour Killings in India

Dishonour killings are being reported mainly from the northern Indian States

i. Haryana
ii. Uttar Pradesh
iii. Madhya Pradesh
iv. Rajasthan
v. Bihar
vi. Punjab
vii. Jharkhand
viii. Chattishgarh
ix. Delhi
x. Andhra Pradesh
xi. Tamil Nadu

This specific nature of crime against women is far more prevalent in Haryana, Punjab and Uttar Pradesh.
Khap Panchayats and Dishonour Killings

Khap Panchayats are village level traditional congregations of people belonging to the same case who undertake judicial functions on issues related to their caste.

They are vehemently opposed to inter-caste marriages and know to have handed down medieval barbaric punishments to such couples. Their barbaric and summary trials and decision is widely reported in Indian and international Press.

Despite the bad press and condemnation by rights and liberal groups in both domestically and internationally, Khap Panchayats act with absolute impunity because they also command significant number of votes of their respective castes therefore the political parties have vested interest in overlooking the extra-constitutinality of the Khaps.

They have been declared illegal by the Supreme court of India.
Dishonour Killings is the violation of India’s International Commitment and International Law

India is a state party to CEDAW (Convention of Elimination of all kinds of Discrimination against women - CEDAW has a legally binding obligation to “eliminate discrimination against women by any person, organisation or enterprise, as enumerated in article 2e
Dishonour Killings and Violation of UDHR

India as a signatory to the Universal Declaration Of Human Rights (UDHR) has an obligation to protect the rights, lives and protect them from such heinous crimes. The UDHR under article 16 guarantees the following:

i. Men and women of full age, without any limitation to race, nationality or religion, have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and its dissolution.

ii. Marriage shall be entered into only with free and full consent of the intending espouses.

iii. The family is natural and fundamental group unit of the society and is entitle to protection by society and the state.
Important constitutional and Legal Provisions for women empowerment and equality in India

The Potential for promoting women’s equality and gender justice is buttressed by the rich legal sources including a powerful constitution and major international treaties that obligate the Indian government to respect and protect women’s right

The Constitution of India, which came into effect in 1950 and has since been "the conscience of the Nation and the cornerstone of the legal and judicial system," contains twenty-two parts. The most relevant sections for purposes of rights based approach to gender justice are Part III's Fundamental Rights, defining the basic human rights of all citizens that are enforceable in court, and Part IV's Directive Principles of State Policy, listing non-justiciable guidelines for the government to apply when framing laws and policies.
The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Within the framework of a democratic polity, our laws, development policies, Plans and programmes have aimed at women’s advancement in different spheres.

Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard.
Fundamental Rights and gender Justice

Fundamental Rights in the Indian Constitution's fall into six categories: Equality, Freedom, protection against exploitation, freedom of religion, cultural and educational rights, constitutional remedies.

The provisions most relevant to securing gender justice are Article 14's equality provisions, Article 15's prohibition of sex discrimination, and Article 21's protection of life and personal liberty, which the Court has broadly interpreted to include, inter alia, the rights to human dignity, health, and privacy.

As experienced litigator Fali Nariman, who has played the roles of petitioners' lawyer, government lawyer, and amicus in PIL cases, noted, "The Indian Constitution is a very fine constitution because it enables courts to lay down parameters for a great enhancement of women's rights in various fields of activity."
Commenting on Article 14's potential for promoting gender justice, Indira Jaising, a Senior Supreme Court Advocate and leading litigator of women's rights in India, has observed: "Its brevity enhances its omnipotence, enabling creative judges to read within it equality of results.... [T]he Constitution left it to the courts to give life to the equality code."

The complementary Article 15 prohibits the state from discriminating against any citizen "on grounds only of religion, race, caste, sex, place of birth or any of them." Article 15(3) includes the following "special clause": "Nothing in this article shall prevent the State from making any special provision for women and children."

Describing this clause as "the fulcrum of the whole approach in the Constitution, which guides the approach of the Court," Nariman asserted: "It is this goal that has inspired the courts to always come out very strongly in PILs[Public interest legislations,] ... to virtually prod the states to do much more than they are doing by way of legislative and executive action for women."

Together, the Constitution's Articles 14 and 15 provide a strong legal basis for cases seeking to enforce women's rights.
Other constitutional Provisions and Women’s equality and Gender Justice

The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood (Article 39(a)); and equal pay for equal work for both men and women (Article 39(d))

To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (Article 39 A)

The State to make provision for securing just and humane conditions of work and for maternity relief (Article 42)

The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (Article 46)

The State to raise the level of nutrition and the standard of living of its people (Article 47)
To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of **women** (Article 51(A) (e))

Not less than one-third (including the number of seats reserved for **women** belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every **Panchayat** to be reserved for women and such seats to be allotted by rotation to different constituencies in a **Panchayat** (Article 243 D(3))

Not less than one-third of the total number of offices of Chairpersons in the **Panchayats** at each level to be reserved for **women** (Article 243 D (4))

Not less than one-third (including the number of seats reserved for **women** belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every **Municipality** to be reserved for **women** and such seats to be allotted by rotation to different constituencies in a **Municipality** (Article 243 T (3))

Reservation of offices of Chairpersons in **Municipalities** for the Scheduled Castes, the Scheduled Tribes and **women** in such manner as the legislature of a State may by law provide (Article 243 T (4))
Courts and Gender Justice

While enforcing the state's constitutional obligations, the Court has been fairly assertive about holding the Indian government to the international commitments it has made when ratifying numerous United Nations (U.N.) treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC).

Although petitions must be premised on constitutional claims, these international treaties, the explanatory comments issued by U.N. monitoring bodies, and comparative sources of law from foreign courts can provide a critical source of legal norms for legal actions seeking to advance gender justice in the Indian context.
Landmark Case

Vishakha vs State of Rajasthan

It a 1997 decision given by the Supreme Court of India on combating sexual harassment in the workplace.
Vishaka has been described by former Supreme Court justice Pal as "one of the more notable successes of judicial action in redressing violence against women" and recognized by the CEDAW Committee as a "landmark judgment [in India's] tradition of public interest litigation." The Vishaka Judgement promoted gender justice by directly applying the provisions of constitutional and international law to enact enforceable guidelines against sexual harassment in the workplace, at a time when the public was mobilized to embrace a judicial solution to a significant void in domestic legislation.
The Vishaka PIL (Public Interest Litigation) case arose out of the gang rape of Bhanwari Devi, a member of a group of women called *sathins* (friendship group), who are trained by the local government to do village-level social work for honorarium compensation. As part of a governmental campaign against child marriage, Bhanwari Devi attempted to stop the marriage of a one-year-old girl in rural Rajasthan. Members of the local community retaliated first by harassing Bhanwari Devi with threats and imposing a socioeconomic boycott on her family.

Then, on September 22, 1992, five men raped Bhanwari Devi in the presence of her husband.
Bhanwari Devi faced numerous obstacles when she attempted to seek justice: the police publicly disclaimed her complaint and were reluctant to record her statement or conduct an investigation, and doctors at two government health facilities refused to conduct a proper medical examination. Upon hearing about the case, the National Commission for Women - a statutory body established by the national government to promote women's rights--initiated a detailed inquiry and issued an independent report finding that "all evidence proved beyond any doubt that the victim..., was gang raped." Nevertheless, the Rajasthan state criminal court acquitted the five defendants of the rape charge because, among other things, the judge did not find it credible that upper caste men would rape a lower caste woman.
Naina Kapur, a lawyer who had attended Bhanwari Devi's criminal trial, addressed the issue of sexual harassment of women at work place by initiating a PIL (Public Interest Litigation) in the Supreme Court. The PIL petition was premised on the argument that Bhanwari Devi situation brought to light the state's "utter disregard [for] and failure to recognize" the sexual harassment experienced by women "while performing functions for the benefit and on behalf of the government, as well as its failure to "administer prompt and efficient medical and legal redress."

The petitioners demonstrated a pattern of such abuse by providing examples of five other women who had experienced sexual assault in the course of employment.
Even though the PIL petition addressed sexual harassment in the workplace, it did not include a definition of "workplace" because women who work in rural areas, like the sathins, cannot tangibly define their workplaces. The Vishaka writ petition was filed in 1992 in the names of five NGOs against the State of Rajasthan, its Women and Child Welfare Department, its Department of Social Welfare, and the Union of India.

After the Court accepted the petition for hearing, the petitioners submitted various international and comparative law documents to support their case, as well as a list of proposed judicial directions.
A three-judge bench of the Supreme Court delivered the Vishaka judgment on August 13, 1997. The decision, written by then-Chief Justice Late Justice J. S. Verma, described Bhanwari Devi's gang rape as an illustration of "the hazards to which [a] working woman may be exposed," "the depravity to which sexual harassment can degenerate," and the urgent need "for safeguards by an alternative mechanism in the absence of legislative measures." The Court embraced the task of tackling these issues through judicial process to fill the gap in the existing legislation.
Incorporating a broad reading of the Constitution, the Vishaka judgment recognised sexual harassment as "a clear violation" of the fundamental constitutional rights to equality, nondiscrimination, life, and liberty, as well as the right to carry out any occupation.

In addition, the Court invoked the Constitution’s directive principle requiring the state to secure just and humane conditions of work and maternity relief and the fundamental duties it imposes on all citizens to renounce practices derogatory to the dignity of women.
To address rights violations highlighted by the Vishaka petition, the Court invoked its constitutional power to issue directives that are binding as law in all Indian courts, specifying mandatory guidelines for combating sexual harassment in the workplace.

These guidelines, directed toward employers, included a definition of sexual harassment, a list of steps for harassment prevention, and a description of complaint procedures to be "strictly observed in all work places for the preservation and enforcement of the right to gender equality."

The Court ensured that the petitioners or other NGOs could remain involved in the implementation of the guidelines by specifying that every workplace complaints committee must include a third party member who is "familiar with the issue of sexual harassment."
The Vishaka case exemplifies the dynamics of judicial activism to achieve gender justice through PIL.

The Vishaka guidelines have been directly enforced in public sector. Various governmental institutions, including the Sports Authority of India, the Central Board of Secondary Education, several ministries have established internal sexual harassment complaints committee.
Vishaka has been described by former Supreme Court justice Pal as "one of the more notable successes of judicial action in redressing violence against women" and recognized by the CEDAW Committee as a "landmark judgment [in India's] tradition of public interest litigation."

(194) The Vishaka Court promoted gender justice by directly applying the provisions of constitutional and international law to enact enforceable guidelines against sexual harassment in the workplace, at a time when the public was mobilized to embrace a judicial solution to a significant void in domestic legislation.
Some discussion on the recent cases of sexual harassment relating to supreme court judges
New Law Regarding Rape and other crimes against women

The new bill has amended India’s Penal code and laws of criminal procedure. It is adopted in response to country wide street protests after the fatal gang-rape of a 23 year old woman in Delhi in December 2012.

Among the significant provisions of the bill, are longer sentences for sex offenders, a broader definition of rape and punishments for other sex crimes.

A gradation of different kinds of sexual offences have been introduced to plug the legal vacuum that existed. It has introduced new form of offences related to acid attacks, sexual harassment, forced stripping of women, voyeurism, stalking, e stalking.
The Bill has expanded the meaning and definition of rape to include not just peno vaginal intercourse but the insertion of an object or any other body part into a woman’s vagina, urethra or anus, and oral sex.
The amendments have strengthened accountability of the police and public servants for acts of omission and commission in respect of sexual offences. Under the amended law, there is a minimum mandatory sentence of 6 months for dereliction of duty by public servants, for neglecting to act as required by the law, or disobeying the law to the detriment of a woman.

The amendment also clarifies that no prior sanction is required from the government for prosecuting public servants for sexual offences. These changes provide a strong deterrent against police dereliction, providing tools to hold the police accountable for its actions and inaction. However, the amendment falls short of dispelling the requirement of prior sanction for prosecuting members of the security forces for similar crimes committed, although the amendment committee recommended this.
It is common knowledge that despite constitutional safeguards, statutory provisions and plethora of pronouncements to support the cause of equality of women, changes in social attitudes and institutions have not significantly occurred.
Caste and Gender relations in India

The caste system of India, having lasted for around 3,500 years, has proved to be one of the most enduring of Indian institutions. However, it is in India alone that the caste system seems to have developed to a point that it still manages to retain importance in the contemporary social organization of India. This peculiar Hindu institution has withstood the influence of Buddhism (which eschewed caste), a religion that spread to the far East but could not take permanent root in its own country of origin. It has withstood the Muslim invasion of India from the 13th Century CE and the subsequent establishment of the Mughal empire. It has survived the colonization of India by the British for two hundred years. And now, despite India’s rapid economic development in recent decades, it still insinuates itself into the social, economic, and political fabric of the country. No researcher with any familiarity with India would claim that caste is a thing of the past.
At a broad level there are four castes called *Varna*. These are the *Brahmins* (Priests) *the Kshatriyas* (the warriors), *Vaishyas* (the merchants), *and the Shudras* (the menial workers). There is one other aggregate (now called *Dalits*) that fell outside the caste system and its people were deemed ‘untouchable’. Nowadays, there are thousands of sub-castes (called *jatis*) within each *varna*, and the caste system essentially operates at the level of the *jati*. 
In anthropology, the dominant theory of caste that prevails is that of Louis Dumont (1970). In his highly influential work *Homo Hierarchicus*, he claims that the twin concepts of ‘purity’ and ‘pollution’ are key to the caste system and he takes this as the premise of his theory. The regulation of the caste system rationalise the various caste norms and attendant punishment for violations.
Since no theory can hope to explain every nuance of the elaborate caste system of India, we focus on the following core features at its inception.

(i) caste was hereditary and largely based on occupation,
(ii) it was strictly endogamous (marriage occurred only within castes),
(iii) there was usually a well-established hierarchy between castes.
Though Indian Constitution provides equality to all citizens irrespective of caste, creed, region and gender and also directs the state to take various measures to remove different forms of domination and equality still the problem persists.

This is true of the large sections of *dalit* women in the country who have not benefitted from the country's social, economic, education and political process.
The marginalization of *dalit* women can clearly be seen in their current low national status in terms of occupation, education, health, political power extent of victimisation through violence and access to forms of justice. *Dalit* women are in worst positions than *dalits* in general in terms of sex ratio, wages, employment, occupation, assets, education, health, social mobility and political participation.
Besides this, a large number of *dalit* women are engages in so called ‘unclean occupations' like scavenging. Because of their association with these occupations, they face discrimination in social and economic sphere.

The high dependence on causal labour, with relatively low earnings coupled with inadequate exposure to education among *dalit* and tribal women induces a high degree of deprivation and poverty among them.

According to the National Sample Survey Organisation data of 2009-10 only 52.1 percent of *dalit* as well as scheduled *tribe* women were literate. The drop-out rate among them is relatively high at every stage of education.
On account of their low social status, sexual exploitation of *dalit* and tribal women is also very high. There are some caste related religious practices and social customs and religious practices in Hindu Society that exploit women only from *dalit* communities. One of these customs is *Devdasi* or *Jogini* involving religious prostitution imposed on *dalit* girls who are married to a village god and then become a subject of sexual exploitation by upper caste men in the village.
Dalit women and Access to Justice

A study carried out in 2006 on violence against dalit women involving 500 cases revealed the following:

i. In 40.4% of cases women did not even attempt to obtain justice.
ii. In 26.6% of cases victims were not even allowed to file cases.
iii. In 1.6% of cases women were able to obtain informal justice.
iv. Only 13.9% of cases was appropriately investigated by the police and judicial action taken.
V. A mere 3.6% of the cases have even reached the courts and only 3 cases out of 500 (less than 1%) have ended in conviction.
Violence therefore forms the core of gender based inequalities caused intensified and facilitated by caste based discrimination.

Caste therefore maintains the crucial social mechanism to maintain *dalit* women’s caste-gender subordinate position to men and particularly dominant caste men.

In a way emancipation from the rigidities of caste for lower caste women who endure a combination of poverty and gender discrimination that keeps them illiterate, low paid, malnourished and unhealthy and powerless.
Caste-based discrimination remains widespread and deeply rooted, its victims face structural discrimination, marginalization and systematic exclusion. This form of discrimination entails gross and wide ranging human rights abuses including brutal forms of sexual violence. Dalit women and girls are particularly vulnerable and are exposed to multiple forms of discrimination and violence on the basis of gender and caste.

Children victims of caste based discrimination are more at risk to be victims of sale and sexual exploitation.