

Feminism, Budgeting and Gender Justice

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Abstract

The Fourth Conference on Women at Beijing (1995) underlined the importance of gender mainstreaming; spurring India to provide for separate Gender Budgeting in 2005-06. The Constitution tries to make fine balance between right to equality and positive discrimination for promoting gender justice in India. Yet high levels of Gender Inequality Index (GII), coexist with high Gross Domestic Product (GDP) growth, after India opted for economic liberalization in the 1990s. This paper brings out these trends and how the Supreme Court, as the watchdog of fundamental rights, has played a stellar role in ensuring gender justice. The paper does a trend analysis of gender budgeting and the inept implementation of flagship programmes like Beti Bachao Beti Padhao and Nirbhaya, due to the lack of coordinated approach. Making comparison with developed and Emerging Market Economies (EME), the paper underscores the importance of earmarking handsome allocation to education and health care. The issue of gender justice is not merely an issue of adequate allocation or effective judicial redressal, but embraces a larger concern viz. the “culture of silence” that pervades our patriarchal society. The Oslo summit underscored the importance of value based education to achieve Sustainable Development Goals (SDG).

Keywords: GII, GDP, EME, OSLO SUMMIT, SDG

INTRODUCTION:

While proscribing gender discrimination, the Indian constitution, nevertheless, provides positive discrimination to infavour of women; with a view to ushering inclusive social justice. Article 15(3) mandates that the state can make special provision for women in the matter of educational opportunity. The non-justiceable Directive Principles of State Policy also calls upon the state to provide equal pay for equal work for men and women (Article 39(d)), ensure humane conditions of maternity relief (Article 42). Reservation of 1/3rd of seats in Panchayats and Municipality for women were added to our Constitution vide the 73rd and 74th Amendment (1993). Despite such for reaching provisions, there have been inadequate allocations for women specific schemes and inept utilization thereof. Besides, denial of minimum wage to anganwadi workers, wanton misbehavior of police of under-trial women prisoners bedevils the system. The Supreme Court, as the sentinel against human rights abuses, has been playing a pioneering role in promoting gender justice; often donning the mantle of an “Interim Parliament”. While some judges view such activist avatar of the Supreme Court with cynicism, there are myriad cheer leaders who consider judicial overreach as a bulwark against executive, legislative apathy.

This paper makes an attempt to take stock of (a) Evolution of feminism, gender budgeting and the concerns (b) Judicial activism and gender justice and (c) The way forward.

EVOLUTION OF FEMINISM, GENDER BUDGETING AND THE CONCERNS

This movement encapsulates a series of campaigns on issues like women’s suffrage, equal pay, reproductive rights, domestic violence, maternity leave et. al. The first wave veered around middle and upper class white woman who demanded suffrage and political equality. The subsequent waves attempted to mitigate social and cultural inequalities and rights to abortion. Simone de Beauvoir’s magnum opus “The Second Sex” (1949) underlined how it was difficult for talented women to become successful. She made the iconic quote “One is not born a woman but becomes one”. The Beijing Declaration (1995), for the first time, underlined the importance of gender mainstreaming as the central focus for gender equality for women in developing confirms. This was a strategic choice for achieving gender equality and empowerment. In India, gender budgeting was introduced in 2005-06 as a testament of our commitment in gender empowerment. As the table below would however, indicate that the magnitude of allocations for women as a proportion of the total government budget shows a secular declining trend to 4.5%, from 5.5% in 2012-13. Distressingly Part-A of the allocation involving 100% central funding, shows sharp decline last year compared to 2015-16.

Table 1: Gender Budget Over The Years

Year	Total Allocations under Part A (in Rs Crore)	Total Allocations under Part B (in Rs Crore)	Total Magnitude of the Gender Budget (%)
2007-08	8,428.66	13,919.43	3.3
2008-09	14,875.15	34,748.20	5.5
2009-10	15,480.85	40,813.27	5.5
2010-11	18,473.30	48,601.38	5.5
2011-12	20,496.57	56,449.52	5.8
2012-13	18,878.48	59,232.96	5.5
2013-14	24,285.11	61,210.31	5.4
2014-15	17,426.32	64,557.41	4.9
2015-16	16,657.11	62,600.66	4.5
2016-17	17389	69860	4.5
2017-18	17412	73212	4.5

Source: Ministry of Finance, Government of India

The allocation for women specific schemes reveals the following.

Table 2: Select Women Specific Schemes (Figures in Rs.CR.)

Scheme	2015-16	2016-17	2017-18
Beti Bachao, Beti Padhao	59.3	43	200
Nribhaya Fund (Transfer)	-	685	500
Women's Helpline	15	25	10
National Mission for Empowerment of Women	20.68	42	70

Source: Ministry of Finance, Government of India

Apart from the palling allocation to these important schemes, one of the biggest concerns is recurrent underutilization of funds. A case in point is Nirbhaya fund, where the Parliamentary Standing committee clearly underlined that “there is not clear strategy to ensure proper utilization of fund allocated”, as there was no utilization of Rs.300 crore allocations to this fund in 2015-16; post the horrific rape crime committed in Delhi.

Its decade long history of gender budget shows a mixed picture with certain positive developments alongside some deeply worrying trends. The concerns can be summed as lacking a strong coordination mechanism, absence of proper monitoring, lack of political will and absence of a comprehensive road map to take gender justice forward. One of the distressing trends in India after globalization has been the wide chasm between GDP growth and rear stagnant HDI and GII indices; reflecting scant public attention to allocation, & quality aspect in education, health care and sanitation. The table below beings out the global picture of both developed, emerging market economies and countries like India.

Table 3: Global Picture of GII and Underlying Factors

Country	HDI	GI	MMR	Representation percentage in Parliament	Female Workforce	Allocation to Education	Allocation to Health
Norway	0.944	0.067	4	39.6	61.2	6.6	9.6
USA	0.915	0.28	28	19.4	56.3	5.2	17.1
Germany	0.916	0.041	7	36.9	53.6	5	11.3
South Korea	0.898	0.125	27	16.3	50.1	4.9	7.2
China	0.727	0.191	32	23.6	63.9	-	5.6
India	0.609	0.563	190	12.2	27	3.8	4

Source: Human Development Report, 2015

JUDICIAL ACTIVISM AND GENDER JUSTICE

The Supreme Court in SP Gupta vs. UOI (1982) took a view that the doctrine of locus standi need not be strictly followed if the court is approached by appellants who are concerned about public issues like environmental degradation, human rights abuses etc, even if they are not directly affected by them. The court amplified the meaning of right to life to include “right to live with dignity”. A spate of second generation rights have been added to the lexicon of our jurisprudence due to the intrepid efforts of a large number of public spirited individuals like M.C. Mehta, Vineet Jain, Sheela Barse, and NGOs like PUCL & ADR.

One of the real watershed judgement in judicial activism has been Olga Tellis Vs. BMC (1985) where the court recognized that right to livelihood and shelter as part of “right to life” (Article 21), of slum dwellers, who were asked to be evicted by the BMC without notice. While the court noted that the right to squat in public places is not a fundamental right, it, nevertheless, directed the state to give alternative accommodations to these

dwellers.

Earlier the Supreme Court in *Air India vs Nergesh Meerza & Ors*, (1981) had held that the provision of retiring the airhostesses in the event of marriage taking place within four years of service was a clear case of “official arbitrariness” and violative of Article 14. Similarly in *C.B. Muthamma vs UOI & Ors*. (1979) Case, the court considered the provision in IFS rules which stipulated that a woman would have to resign if she gets married after joining the foreign service as clearly against ‘gender justice’ and in defiance of Article 16 of the Constitution.

The Supreme Court was also seized with a writ petition in *Vijay Lakshmi vs. Punjab University and Others* (2003) Case, on the issue as to whether the state could establish separate colleges and schools for girls and appoint only lady principals and lady teachers to these schools. The court upheld this decision in time with provisions at Article 15(3). Further, in *Rajesh Kumar Gupta And Ors vs. State of U.P.* Case (2005), the court found no infirmity in the decision of the state government to have seats reserved for female candidates for basic teacher certificate course, as a large number of young girls below 10 years were to be taught in such schools.

Earlier, the court was seized with the problem of resolving an apparent conflict between Article 16(4), which provides for reservation for backward classes in the matter of employment with Article 15(3) which provides for special provision for women. In the *Government of Andhra Pradesh vs. P.B. Vijayakumar & Anr* (1995) Case, the court found no contradiction between these two articles when the Andhra Pradesh government provided 30% reservation of jobs to the women. The court considered women to be part of “backward” sections of the society; seriously hamstrung by centuries of societal injustice.

Some of the iconic judgements for gender justice are enumerated below:

(i) Sexual Harassment in Workplace

Vishakha & Ors vs State of Rajasthan & Ors (1997) Case is a watershed judgement by Justice J.S. Verma. The case veered around Bhanwari Devi, a grassroots worker in the Women’s Development Project of Government of Rajasthan who dared to campaign against child marriage and tried to prevent a one year old girl child from marriage. As a backlash, she was raped by five villagers in the presence of his husband. The lower court acquitted the accused by observing that “a Brahmin could not have raped a low caste woman”.

The Supreme Court, for the first time, thought global while acting local, by relying on CEDAW (1980) (Convention on Elimination of All Form of Discrimination Against Women) to read into Articles 14,15,19 & 21 of our Constitution. The Court, acting like a legislative body, issued a series of guidelines to protect women from sexual harassment at workplace. In a subsequent case; *Apparel Export Promotion Council vs A.K. Chopra* (1999), the court further clarified that “physical contract is not a prerequisite of sexual harassment”.

This judgement prompted Justice M. Katju to observe in the *University of Kerala Case* (2010) that the “judiciary should not function as an interim Parliament”. Similarly Justice R.S. Pathak in *Bandhua Mukti Morcha vs UOI & Others* (1983) Case, had observed that “An excessively political role, identifiable with political governance betrays the court into functions alien to its fundamental character; and tends to destroy the delicate balance between the three basic institutions”.

All the same, the *Vishakha* case remains a watershed and trail blazer; in so much as celebrities like Shri Tarun Tejpal, Editor *Tehelka* could undergo trial on a sexual assault case against a colleague. However, in a study made by the Centre for Transparency India (2010), it has come out how 88% of workforces in IT & BPO are harassed in the workplace, 91% did not report for fear of being victimized. Besides, that paramilitary force does not seem to adhere to the guidelines to be followed in workplace vis-à-vis lady employees.

(ii) Under Trial Women Prisoners

“Prisons have been such a garbage can of society that they can be garbage can of the law as well”, wrote Prof. Herman Schwartz. While the number of women prisoners have been much smaller than their male counterparts, close to 60% of them are under trial. Smt. Sheela Barse, a lawyer and social activist, brought up before the Supreme Court of India in *Sheela Barse vs State of Maharashtra* (1983), how out of fifteen women prisoners interviewed by her in the Bombay Central Jail, five had been assaulted in the police lockup and two of them tortured. The court, after conducting independent investigations, gave a few far reaching directives like (a) legal assistance to the poor or indigent accused, (b) identifying four/five police lockups where only female suspects could be kept and guarded by female constables, and (c) investigation to be carried out only in the presence of female police officers. The court also made a pertinent observation that “a lawyer owes a duty to the society to help people in distress; more so when they are women in jail”.

(iii) Rule of Law Vs. Personal Law

In *Shah Bano Case* (1986) the court was called upon to adjudicate whether Section 125 of CrPC which gives a magistrate the power to order maintenance to neglected wives and discarded divorces would apply to Muslim women, beyond payment of maher during the iddat period. The court also had to grapple with a conflict between Muslim Personal Law and CrPC. The court ruled in favour of the later. This laid to protest by the conservative Muslim groups and the Government came up with Muslim Protection Act 1987 which overturned the Supreme Court ruling. Subsequently in *Danial Latifi & Anr. vs. UOI* (2001) Case, the court decreed that maintenance

should be a fair provision for the future. Six years later in *Iqbal Bano vs. State of U.P. & Anr (2007)* case the court decreed that appeal under Section 125 of CrPC is maintainable. Muslim women thus are free to seek maintenance under Section 125 or claim a reasonable amount of lump sum amount during the iddat period. The case reflects a conflict between emancipation of women and their belonging to a minority community, safeguarding religious tradition and applying uniform set of civil laws. The case gave primacy to public law over personal law of Muslim.

(iv) The Plight of Anganwadi Female Workers

The anganwadi workers constitute 22lakh and work in 14lakh centres to provide coverage to nearly 7crore children and 1.5crore pregnant and lactating mothers. This is one of the flagship programmes of inclusive development with a view to providing integrated package of health, supplementary nutrition and education services to children upto 6 years and pregnant women and nursing mothers. The following table would give an overview of various facets of this flagship programme; over the years.

Table 4: Anganwadi Program: Allocation, Wage and Resource Sharing

Parameter	2008-2009	2011-2012	2014-2015	2015-2016	2016-2017	2017-18
Centres (in Lakhs)	9.32	14	14	14	14	14
Workers (in Lakhs)	18	22	22	22	22	22
Allocation (in Rs. Cr.)	6300	10000	16253	15433	14560	15245
Wage of Workers (in Rs.)	1500	3000	3000	3000	3000	3000
Number of Children Covered (in Lakh)	629	700	700	700	700	700
Number of Pregnant & Lactating Mothers (in Lakh)	132	150	150	150	150	150
Central Plan Responsibility (in Rs. Cr.)	5670	9000	14627	7716	7280	7622
State Plan Responsibility (in Rs. Cr.)	630	1000	1625.3	7716	7280	7622

Source-Budget Document, 2017-18, Government of India

It would be seen that after the peak year of 2014-15, the programme has been receiving less allocation in the subsequent years; with very little increase (5%) in this year's budget. But the most distressing trend is the increasing burden on the states with a change in fund sharing from 80:20 between centre and state to 50:50. This has put many states like Orissa into severe hardship.

POSITION IN ODISHA

Orissa has around 80,000 anganwadi centres which provide coverage to nearly 56lakh children below the age group of 6 and 12lakh pregnant women with an expenditure of around Rs.1350 crore. As per the new formula of 50% funding has to be made by the state i.e. 675crores as against the earlier requirement of only Rs.135 crores i.e. an additionality of 540crores. It is quite unlikely that a State's priority would be to pay poor people whom Prof. Sen calls are the "real pillars on which the edifice of social sector reforms rest". This dichotomy is at the heart of the perception that the present government is "pro business and not pro poor". Prof. Abhijit Sen who was a member of the 14th Finance Commission had given a 'note to dissent' where he had forewarned that "the recommendations are bound to disrupt existing plan transfers, with likely very serious effects in the first year of the award period" Prof. Abhijit could not have been more prescient.

In the *Akhil Bhartiya Anganwadi Kamgar vs UOI & Ors. (2011) Case*, the anganwadi workers sought their status at par with nurses and parity in the pay scales. The court sadly took a technical view by stating that as their posts are not created through recruitment rules, they cannot be given constitutional protection. It gave a bland suggestion that the matter may be given sympathetic consideration.

This ruling is clearly against the spirit of Article 15(3) of the Constitution, which enjoins upon the state to make special provision for women. This is also in sharp contrast to the judgement of the court in *Municipal Corporation of Delhi vs Female Workers (2000)* where maternity benefit has been extended to those on the daily wage basis, as for those in permanent employment. In a recent judgement Justice J.S. Khehar and Justice S.A. Bobde have asserted that daily wage workers performing similar work as regular workers should be given minimum wage and allowances at par with regular workers. The anganwadi workers, who are a critical cog in the wheel of social inclusive justice system, remain so poorly paid that it's much less than the minimum wage statutorily payable to unskilled workers (Rs.100/- per day as against Rs.250/-) in Odisha.

THE WAY FORWARD

The foregoing would reveal that many new schemes have been taken up by the government, post Beijing Declaration (1995), for gender mainstreaming and to promote gender justice. However, the allocation remains paltry and their implementation in effective in the absence of coordinated planning and clear long term strategy to gender justice forward. While the Constitution mandates special provision for women, reservation of seats for

women in the legislative assemblies and the parliament remain clogged in the slugfest for OBC reservation. The overall Gender Inequality Index for India, shows a distressing and stagnant trend (0.563) with no discernible political will to reverse the trend. Therefore, women as potential equal partners in our journey for both economic and human development remain perched on a bumpy path. The Supreme Court, through its judicial activism, has been playing a significant role; by mandating guidelines to make workplace safe from sexual harassment of women, ensuring humane treatment of undertrial women prisoners, and by removing manifest discrimination of working women in IFS and the Air India. The anganwadi female workers, in contrast have not witnessed similar empathetic treatment from the Supreme Court in the matter of receiving a minimum living wage. The issue of gender justice is beyond adequate legislative allocation and effective judicial intervention. As we move from a predominantly joint family system to nucleated one, the patriarchal mindset does not seem to be undergoing change. The “culture of silence” and women suffering indignities in the interest of family tradition are widely prevalent. Value based education, as strongly proposed by the Oslo summit (2016), and quality primary education through handsome public investment would be the critical scaffolding on which sustainable development and gender justice would critically perch, in the days to come.

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