

GENDER SENSITIVENESS IN DISASTER LAW REGIME OF INDIA

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Abstract

Gender inequalities are a fact of our life. So is the fact that they result in discrimination. This discrimination obstructs the disaster management process in every stage. Every disaster manifests them in its own manner. Gender sensitive disaster risk reduction is the call of the day which visualizes and operates on all the stages of disaster management in a gender sensitive manner wherein a woman is also regarded as a great resource in the disaster management process and women are also empowered to handle their vulnerabilities.

In so far as the law and policy are concerned, it has to focus on the fact that the equals should be treated equally *i.e.*, there should be no discrimination in providing relief and rehabilitation and also that unequal's should never be treated equally *i.e.*, special needs of women should be taken care of.

- I. Introduction**
- II. Gender based discrimination – implications**
- III. Understanding the different facets of gender sensitive disaster risk reduction- A need of the times**
- IV. Law and policy in India**
- V. Conclusion**

I. Introduction

VULNERABLE GROUPS have their own delicate position in the process of disaster management. We need to maintain the balance between equality; which must place them in the same position like others *i.e.*, to overcome biases and their special needs; which call for special care and protection in certain cases. Discrimination is a fact of life, but reflects itself more in case of disasters. Contrary to the popular belief, disasters divide people and vulnerable groups like women suffer more. Although the status of women does differ from country to country, the 'devalued' women's needs are often considered unimportant than her male counterpart in case of disasters.

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In the facade of study of vulnerable groups, the author has focused only on women as vulnerable groups. It is however equally important to understand that though women have always been considered as a burden in a disaster situation and generally subjected to abuse both by the family and the outsiders; they are both at risk and a great resource in disaster management. In fact, the contributions made by them are overlooked as a part of their duties and an essential 'resource and strength provider' is branded as the weakest link. In order to throw a light on presence of gender sensitiveness in the disaster management jurisprudence in India this article is divided into three parts: Part I-Gender based discrimination- implications, Part II-Understanding the different facets of gender sensitive disaster risk reduction- A need of the times, Part III- Law and policy in India and conclusion.

Part II focuses on an enquiry into the existence of gender discrimination and its implications at various levels in a disaster. Part III focuses on various facets of gender sensitive disaster risk reduction wherein we must recognize the contributions of women in a disaster event and different possible modalities for bringing gender justice. Part IV focuses on constitutional and legislative provisions in India and looks forward to a greater sense of equality.

II . Gender based discrimination – implications

This part of the article puts forward an enquiry into the presence of gender discrimination and its implications at various levels in a disaster. This part seeks to acknowledge the difference in circumstances of women at various levels of disaster and also in different disasters. Thus, this part is divided into - during disasters, post disaster, disaster relief work and specific concerns.

To begin with, there is a difference between sex and gender. In general, 'sex' as a term is more popular in legislative drafting than 'gender'. Thus, it is essential to understand the difference in order to understand the spirit of law. There are certain biological characteristics which define whether a person is male or female. These biological characteristics define 'sex'. When we refer to these characteristics, we must also be careful about natural persons possessing both male and female characteristics. Gender relates to the social construct based on these biological characteristics, it results in different attributes and opportunities. They may differ depending

upon the society we are referring to, since they are subjective in nature.¹ Which means; it is a social construct of biological difference.

In case of disaster law regime, the enquiry begins with the discrimination which exists in the society because of the biological differences. It is also important to understand that there is dissimilarity between biological and social reproductive work. Biological reproductive functions remain undeviating. For *e.g.*, childbirth. In contrast, socially reproductive functions can witness deviations. Both women and men can perform them. Taking care of children, cooking, washing utensils and other household chores can be handled by both. The substantial question remains – do we have any substantial biological basis for creation of this distinction in socially reproductive work.²

The impact of these two is on the relationships between male and female in a society. These relationships relate to the first unit in any culture. The culture which defines these relationships also creates differences in the roles of men and women and also their consequent responsibilities. The cultural pattern also results in inequalities in control over or access to resources and means of production, for example the succession to property. It would also determine decision-making powers depending upon the patriarchal or matriarchal setup of the society. A synthesis of these differences and inequalities means that male and female counterparts of the same society face different kinds and levels of exposure and ensuing vulnerability to natural disasters and disaster impacts. Moral norms due to gender stereotyping lead to notions; what men and women are expected to do or not do. They can augment gender differences, many a times with pernicious consequences. Dolefully, research relating to gender is routinely one of the least covered areas of humanitarian response.³ One needs to understand the problems associated with this kind of response. They are:

¹ IFRC, *A Practical Guide to Gender-sensitive Approaches for Disaster Management* (IFRC 2010), available at: <https://www.ifrc.org/PageFiles/96532/A%20Guide%20for%20Gendersensitive%20approach%20to%20DM.pdf> (last visited on Jan. 29, 2020).

² Chaman Pincha, *Gender Sensitive Disaster Management- A Toolkit for Practitioners* (Oxfam America 2008), available at: <http://www.eldis.org/vfile/upload/1/document/0812/Gnder%20sensitive%20disaster%20management%20Toolkit.pdf> (last visited on Feb. 20, 2020).

³ Sneha Gangwar, “Integrating Gender Issues in Mitigation and Management of Disaster in India” 4(6) *IJEEM* 613 (2013).

During disasters: Women in general face discrimination and violence across globe. In South Pacific region the cultural/social constraints add to their discrimination. Here inaccessibility due to social constraints plays a very important role, wherein, the differential responsibilities generally result in unequal outcomes even in case of equal opportunities. Thus, they face the following constraints also-

- i. Cultural patterns put limitations on female mobility. They impede self-rescue, for example, to leave home or go out of home a women may need permission of male member of family;
- ii. They also put restrictions on level of interaction with male members of family or males who are strangers. Consequently, they may be unwilling to seek shelter in shared communal facilities in case of immediate rescue also, only because they need separate, private spaces. Damage to clothing adds to hesitation in front of stranger males in a shared space.
- iii. Certain skills are taught to males only. Lack of these lifesaving skills such as swimming or tree climbing can have fatal consequences.
- iv. In some families male members are provided food first. This ‘eat the spare’ approach for females results in prolonged nutritional deficiencies.
- v. Poor women may have double vulnerability in disaster events that occur during the nighttime, as many live in unsafe areas and houses. They spend more time in or around their house than their male relations.
- vi. There are reports that sometimes women end up facing demands for sexual favors, rape or any other form of sexual and physical abuse in camps. This also happens in temporary shelter arrangements.⁴

Cultural inhibitions might reflect in a particular disaster situation in a certain manner.⁵

⁴ *Supra* note 1.

⁵ *Supra* note 2.

Post disaster: In this stage also the existing inequalities in the society reflect in many ways. For example:

- i. Disasters result in loss of income. Thus, men are not able to cater to the needs of their family. This inability is accepted by the society. Besides, men leave home to get relief supplies without needing permission from family members. In the case of women, they do not get any dispensation from their daily responsibility of taking care of children, cooking, cleaning *etc.* Though the women are equally distressed, they are expected to perform their role. An option for leaving home to get relief supply might not be available to some women.
- ii. People have their own coping mechanisms. In general, certain assets of economic value are created by women to manage a situation of distress. Most of the women invest their time and effort throughout the year to secure some assets for bad times. In case they are put to use, the effort is feebly appreciated and generally not compensated. These assets include utensils, firewood *etc.*
- iii. Women tend to save money out of the money given for household expenditure without the permission of husband. This is a well-known and accepted truth. This deviation is accepted because it benefits the men as well as society. Going out of home without permission is an unacceptable deviation. It may also be equally unacceptable to go to relief camps alone. Circumstances could be arduous for women who have little children and no male member to support. This is one of the causes of women's high death rate during disasters.
- iv. Women are always the first to respond to any disaster. They have a natural instinct to look for their children and food for their children first. They might not be consulted in any institutional disaster response or disaster management planning.
- v. Loss of assets created by women is generally not considered in disaster need assessment.
- vi. Women are considered as beneficiaries in disaster response. Since they are at home primarily due to the role as caregiver, they receive the relief supply distributed at home. These relief items are for the use of the entire family, this relief pack generally does not address the needs of any particular woman.

- vii. The general attitude holds women responsible for any gender based violence, not the perpetrators. This increases the vulnerability of women several times higher⁶

Disaster relief work: Strangely, women end up facing discrimination even during disaster relief work as relief workers. In 2015 Chennai floods the women volunteers have reported facing indecent behavior.⁷ Such reports come in almost every disaster.

Thus, in the entire process of disaster management, the women face their share of discrimination. Here, it is very necessary to discuss that there might be specific concerns in certain disasters.

Specific concerns: In this subpart, the author has only discussed concerns reported in case of Tsunami, Earthquake and marine disaster for better understanding of the typical concerns in different disasters.

Tsunami: Two of the reported concerns during tsunami are:

- a. Tsunami taught us important lessons about the internal values of nudity and shame as a constraint in rescue work. In Tamil Nadu, these strong values prevented women from seeking help because they loose *saree* due to the force of the waves. Due to their internalized values of shame, the women favor getting drowned rather than coming out of waters without wearing clothes properly.
- b. One more challenge is the unavailability of female doctors immediately after disaster. One of the consequences of the Tsunami for women was gynecological issues, heavy vaginal bleeding or uterus infections. Many women choose not to “shame themselves” in front of a male doctor in general medical camps.⁸

⁶ Oxfam and NIRAPAD, *Handbook- Women Leadership in Disaster Risk Management* (Oxfam 2011), available at: <http://www.preventionweb.net/files/submissions/19919makeup2englishfinal.pdf> (last visited on May 31, 2020).

⁷ Bobins Abraham, “Shocking! Women Volunteers Involved In Chennai Flood Relief Face Harassment”, *India times* (2015), available at: <http://www.indiatimes.com/news/india/shocking-women-volunteers-involved-in-chennai-flood-relief-face-harassment-248312.html> (last visited on May 5, 2020).

⁸ *Supra* note 2.

Earthquake: Similarly, in the 2005 Kashmir earthquake, the highly patriarchal social structure and *pardah* made it extremely difficult for women to evacuate from mountain villages and to access aid materials, healthcare, and compensation for their losses.⁹

Marine disasters: The equations seem to be changing even in disaster situations like marine disasters where there is an active presence of a leader who can take disciplinary actions. Recent researchers show that even in the marine disaster where the unwritten norm of sea is WCF (Women and Children First) norm, which is the highest level of chivalry in men, typical to no other disaster, the lowest survival rates are observed for women and children.¹⁰

In the opinion of the author the above mentioned concerns are very essential to understand the letter and spirit of the existing law in India, which in turns requires an approach of understanding the fact that women can be an asset both in policy planning and implementation. Thus, the need for gender sensitive disaster risks reduction.

III. Understanding the different facets of gender sensitive disaster risk reduction- A need of the times

This part focuses on gender sensitive disaster risk reduction, recognizing the contributions of women in a disaster event and different possible modalities for bringing gender justice. In this part, the author has discussed research of OzdenIsik of Turkey wherein the greater role played by women in disasters was recognized. The researcher has also discussed the concepts of gender mainstreaming and gender budgeting. This part ends with the suggestions given by Sneh Gangwar.

Origin of gender consciousness: As per OzdenIsik, who has written extensively on gender relations and gender equality during disasters, until recently, these issues were completely overlooked in disaster studies, and there were very limited research in disaster management which was gender inclusive. These discussions began with a research of Fothergill. According to

⁹ Parker Hamilton and Sarah J. Halvorson, *The 2005 Kashmir Earthquake: A Perspectives on Women's Experiences* MRD27(4), 296-301, (2007), available at: https://scholarworks.umt.edu/cgi/viewcontent.cgi?article=1001&context=geography_pubs (last visited on Feb. 28, 2020).

¹⁰ Mikael Elinder and Oscar Erixson, *Gender, social norms, and survival in maritime disasters*, Proceedings of the National Academy of Sciences of the United States of America 109 (33) 13220 (2012).

Fothergill, there is “...a pattern of gender differentiation throughout the disaster process. The differences are largely attributed to childcare responsibilities, poverty, social networks, traditional roles, discrimination, and other issues of gender stratification”. This research was amongst pioneer works to associate gender with disaster management. According to another research of Enarson the gendered dimensions of disasters persist as underreported and poorly managed. This issue was addressed in 1995 in “The Platform for Action Fourth World Conference on Women” at Beijing. It recognized the effects of natural disasters on women.¹¹

Gender-sensitive disaster risk reduction refers to developing a recognition of the fact that the roles and relationships of women and men are a consequence of gender stereotyping within a culture. It requires attention to women’s rights and gender equality as part of a proactive and people-centered approach to reducing risks and vulnerabilities.

The research suggests that this can be done through gender-sensitive policymaking, monitoring and evaluation. It also requires integrating gender in vulnerability, risk and capacity assessments. It also requires encouraging women’s participation and also women leadership in disaster management. Promoting the collection and use of sex- and age-disaggregated information and data is also one of the strategies.¹² More often than not, we tend to assume things through the curtain of gender stereotypes. This can consequently make us to take decisions that do not serve the needs of gender equality and gender justice. We need a gender lens to understand the needs of women. The old approaches have resulted in percolation of conventional roles and responsibility. A new gender lenses approach will lead to achieving gender equality. When policies and programmes either exclusively address women’s Strategic Gender Needs (Share a consequence of their subordinate position as compared with men in any society) or address them through programmes which meet their Practical Gender Needs (PGN’s relate to socially accepted roles of women and men within the existing power structures.) This will also culminate into an understanding in objectives of disaster management. Gender mainstreaming is a process to achieve two things – firstly a balanced relationship between men and women and secondly a

¹¹ ÖzdenIşık, NaşideÖzer, NurdanSayın, Afet Mishal, OğuzGündoğdu, and Ferhat Özçep, Mary J. Thornbush, “Are Women in Turkey Both Risks and Resources in Disaster Management?” *IJERPH* 12(6) 5758–5774 (2015).

¹² UN Women, *Disaster Risk Reduction*, available at: <http://www.unwomen.org/en/what-we-do/humanitarian-action/disaster-risk-reduction> (last visited Mar. 25, 2020).

balanced relationship between women. This will also take into consideration the relationship with the socially and culturally unrecognized groups, *i.e.*, the transgender.¹³

A person who is looking at the above mentioned problems from the gender insensitive lenses will fail to understand the agony of not being able to save oneself or help oneself. A person doing the same with a gender sensitive lens will find it fit to rise beyond the cry for rigid interpretation of equal treatment and focus on special needs as a part of the equality discourse.

Moreover, a person bestowed with a gender sensitive lens will also feel the need to ensure that women also become resources in disaster situations.

Research by OzdenIsik, ‘Recognizing the capacities’: OzsenIsik, a Turkish scholar, has studied the contribution of women’s physiological and genetic differences/features during disaster relief.¹⁴ He has summarized his research into the following heads:

- i. Resilience of women and their ability to adapt to rehabilitation process of disaster management
- ii. The perception of women about risk
- iii. The inherent capacity of women to observe details and evaluate them
- iv. The capacity of women to withstand psychological trauma
- v. The inherent capacity of women to provide group therapy
- vi. The resourcefulness of women which aids search and rescue
- vii. The performance of women as members in NGOs

The study has field observation done post-disaster. According to the study, there are certain duties to do childcare, to cook food and to clean; which are expected from women according to their traditional gender roles. They are expected from women because they have become their reflexes. Women’s capability of multi-tasking provides them with the essential swift problem-

¹³ *Supra* note 2.

¹⁴ *Supra* note 11.

solving skills in disaster scenarios. This ability provides women with better coping mechanisms during the disaster event and also during relief and rehabilitation.

Men are in the general run of things, atypical to expression of emotions. They face challenges while recovering from post disaster trauma. Some cultures impose crystal clear restrictions on crying and talking. The gender assigned behavior requires them to be serious, in such a scenario they may feign indifference in case of small challenges. Women easily cry their heart out and may perform better because they generally end up developing a psychological immunity to the issues and challenges being faced by them in their day to day life. This strength of women gave them an edge over males at the time of and after disasters. Women withstand the pressures because they end up developing reflexes for multitasking in their routine life. Thus they adapt a mile a minute in the long disaster recovery process.

This research has been conducted in Turkey. We need such studies in India wherein we access the strengths of Indian women as a resource in disaster situations. In so far as the observations relating to the reasons for resilience of women are concerned, the author believes that the reasons have global presence. In fact, the strong inclination for a few gender based responsibilities is so strong in women that it makes a woman aid in bringing things to normal, without any recognition also. For example a natural emotion to feed the family at a certain time as a priority task; irrespective of circumstances or a natural emotion to save food for children.

Recent approaches: The new concept for disaster planning which includes the voices of women in planning is gender budgeting. As late as 2005, the finance minister referred to gender budgeting as a relatively new concept. Thus, the debates, policies and the programs moved from ‘women in development’ to ‘gender and development’. Firstly, women were believed to be mere recipients of development programs which were designed by others. In the next phase women are seen as equal participants in decision-making, being an essential part of the development process. As this phase developed further, women and men were together considered for the

development process. This approach also needs to be carried out in the disaster area;¹⁵ especially during emergencies.¹⁶

Some scholars also prefer ‘Women and Children First’ the old norm of marine disasters as a norm for disaster preparedness. In such a case the issue might not remain as low profile as earlier.¹⁷ In the opinion of the author this should be done only in the case of special needs of women.

In addition to this, empowering women to handle the emergencies is a viable solution. The focus of the approach should be achieving gender – equitable outcomes. This can be done only if the issues and challenges of both men and women are understood properly. The fact remains that women in general start with a comparatively less privileged circumstances. To arrive at a position of equality for women, we need to understand the reasons behind their circumstances and the fallouts of these circumstances. This would require a new approach for allocation of resources also. Probably, after this exercise succeeds to some extent, we will achieve gender equality to some extent.

In fact, Sneha Gangwar has suggested following Guiding Principles for Gender-Sensitive Planning in Disaster Management and Mitigation.¹⁸ All these principles are important due to the results which can be achieved with their help. A combined use of all these approaches in the disaster management process if required to get effective results.

1. *A Gender Mainstreaming approach:* The policies of the socioeconomic and political institutions affect the development process. This approach looks forward to reexamining them from a gender perspective.

¹⁵ Deborah Clifton and Fiona Gell, “Saving and Protecting Lives by Empowering Women” Gender and Development, 9(3) *Humanitarian Work* 8-18 (2001).

¹⁶ Meenakshi Thorat, “Gender Budgeting in Disaster Relief: Need for a New Methodology” (43) 17 *EPW* 73-76 (2008); See also, The United Nations Development Programme’s Manual for Trainers on ‘Gender Responsive Budgeting’.

¹⁷ Mary Myers, *Women and Children First’: Introducing a Gender Strategy into Disaster Preparedness* FG, 2(1), Women and Emergencies 14-16 (1994); See also, UNDP/UNDRO (1992) An Overview of Disaster Management training module for use in the United Nations Disaster Management Training Programme.

¹⁸ *Supra* note 3.

2. *A Rights-Based Approach (RBA)*: Human rights of both men and women are important in the post disaster development process. Thus, this can be an umbrella approach to understand the gender perspective.

3. *A Participatory approach*: In so far as the analysis of risk is concerned, we need equal participation of women to make it gender sensitive. This can lead to better policy making and programme design. We must involve both men and women whenever we look forward to addressing gender-related issues in disaster management. This needs to be done at all levels - institutional, community and individual.

4. *A Disaster Risk Reduction (DRR) approach*: There are multiple stakeholders who work in a disaster scenario. In order to do gender mainstreaming, we need to bring together all of them in the socio-political developmental and humanitarian processes. It is pertinent to note that in the disaster management process, we need to shift focus of the interventions from short-term relief and emergency response to building resilience of communities and promote long-term sustainable responses. In this dynamic process the opinion of all the stakeholders are important.

5. *An Affirmative Action approach*: There exist huge gender disparities in processes of disaster management. This approach aims at correcting gender imbalances which exist in the different phases of disaster management. This can be done by various modes for example, enhancing the participation of girls and women in emergency preparedness initiatives or early warning systems.

Thus, when we talk about gender sensitiveness, we must remember the most common quote of Aristotle ``Equals must be treated equally, and unequals unequally''. The basic reason behind it is - if we treat equals unequally or unequally equally it would result in even more inequality.

IV. Law and policy in India

This part focuses on constitutional and legislative provisions in India and looks forward to greater understanding of equality in disaster law of India. We also need to consider the disaster management policies. We also have national and state plans.

In India, the States of Madhya Pradesh, Gujarat, Kerala have formulated State Disaster Management Policies. Tamil Nadu, Chhattisgarh, Uttaranchal, Meghalaya, Bihar, Rajasthan, Delhi, Orissa and West Bengal have prepared draft policies. Some States have manuals and

codes for management of drought, floods *etc.* Some states are changing their state relief codes into disaster management manuals. NDMA has also issued guidelines.¹⁹ Before we look into an analysis of the different kinds of provisions in the statutes, policies, rules *etc.* we must look into the concept of equality enshrined in the constitution of India. An insight of article 14, article 15(1), article 15(2) and article 15 (3) are required.

Constitutional norms: The mention of non-discrimination on the grounds of ‘sex’ in the Indian constitution is based on the fact that the highest law of the land is not oblivious to the existence of inequalities in India. It is however essential to understand where women need equal treatment like men and where they need special treatment due to a specific special condition.

The Constitution of India guarantees the right to equality enshrined in articles 14, 15, 16, 17 and 18. Equality is one of the fundamental principles of Indian democracy. Article 14 proscribes discrimination in a general manner and guarantees equality before law to all. Specific discriminatory situations are covered by separate provisions by subsequent articles. Consequently, article 15 prohibits discrimination against citizens on specific grounds as religion, race, caste or place of birth.

Article 14 is the most significant constitutional provision for the purpose of disaster management and women. Article 14 and 15 read together form the code of constitutional guarantees. The right to equality has been declared by the Supreme Court as a basic feature of the Constitution. The Constitution is entwined to the concept of equality. The preamble to the constitution also mentions the principle of equality. Neither Parliament nor any state legislature can transgress the principal of equality. This principle has been reintegrated by the Supreme Court in *Badappanavar v. State of Karnataka*²⁰ in the following words:

Equality is a basic feature of the Constitution of India and any treatment of unequals unequally or unequals as equals will be violation of the basic structure of the Constitution of India.

¹⁹ India Disaster Knowledge Network, *available at*: <http://www.saarcsadkn.org/countries/india/act.aspx> (last visited Mar. 31, 2020).

²⁰ 2001 (1) Kar LJ 236.

Article 14 states as under: “*the State shall not deny, to any person equality before the law or the equal protection of the laws within the territory of India*”.

As per M.P. Jain, there are two concepts in article 14 viz., 'equality before law' and 'equal protection of laws'.

‘Equality before law’ is a negative concept. It ensures that there should be no special privilege in favour of any one. This means that all are equally subject to the ordinary law of the land and that no person, whatever be his rank or condition, is above the law.

The second concept, 'equal protection of laws', is positive in content and ensures that there is application of the same laws alike and without discrimination to all persons similarly situated. It indicates equality of treatment in equal circumstances. It forbids any distinctions for anyone made on the grounds of race, religion, wealth, social status or political influence.

Here, a reading of article 15(1) and article 15 (3) are also required. Article 15(1) is an extension of article 14. It reads as follows, “of discrimination on grounds of religion, race, caste, sex or place of birth” and states as under-

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Article 15(3) and 15(4) constitute exceptions to article 15(1) and 15(2). Article 15(3) acknowledges the fact that in India, women have faced social and economic handicap for centuries. They generally do not participate in the socio-economic activities of the nation. Article 15(3) seeks to eliminate this socio-economic backwardness of women. Article 15(1) enables the state to make special provisions to accord socio-economic equality to women ²¹

Thus, based on the above mentioned analysis of constitutional position by M.P. Jain, in case of position of women in disaster management jurisprudence, the following propositions arise:

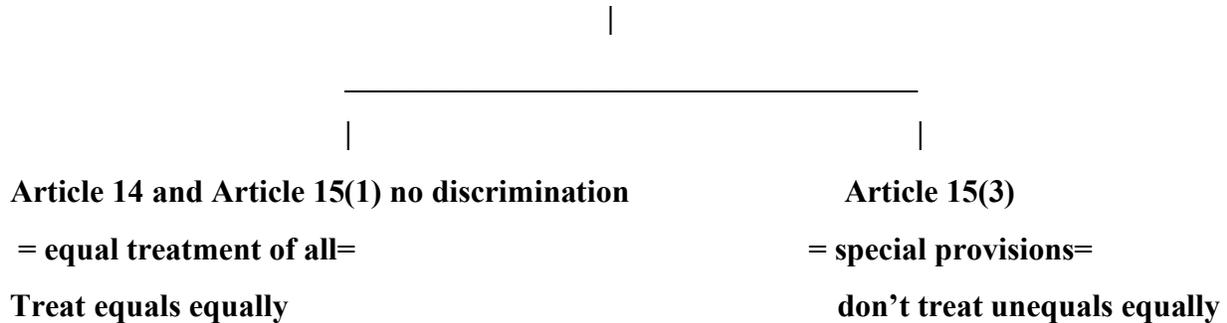
1) Article 14 and 15(1) bars the state from discriminating against any citizen of India on grounds only of religion, race, caste, sex, place of birth or any of them.

²¹ M.P. Jain, *Indian Constitutional Law* (Lexis Nexis, Nagpur, 8th edn. 2018).

2) Article 15(3) provides for special provisions for women and children in case of disaster management.

In order to develop a better understanding of different approaches of law, a scale needs to be considered. All the norms lie between the equality to gender sensitive disaster management zone.

Constitutional provisions



It is essential to note that when we say ‘treat equals equally’ we have gender sensitiveness towards the fact that women might not get equal treatment like men in a particular set of circumstances. Thus, we call for equal treatment. In case of special treatment, gender sensitivity requires a law to be drafted in a manner in which special needs arising due to special circumstances are taken care of, till the existence of special circumstances.

Aristotle played a decisive role in evolving this theory of equality and justice. According to Aristotle, there is a crystal clear correlation between justice and equality, which means ‘justice is held to be equality, but for equals and not for all; and inequality is held to be just and is indeed, but for unequal and not for all’. Thus evolved the first statement of formal equality which forms the basis of the dominant concept of legal equality wherein we treat the like cases alike and the unlike cases unlike.²² This reflects itself in the Constitution of India and is also understanding of what Aristotle explained as ‘treat equals equally, treating unequals equally results into more inequality’

Moreover, as per John Rawls, justice in a society is to be measured in terms of how the worst off fare, and therefore an unequal society can be just so long as inequalities are to the benefit of the

²²Ashok Acharya ‘Equality’ in Rajeev Bhargava and Ashok Acharya (eds) *Political Theory- An introduction* 61 (Pearson Publishers, Delhi, 2009).

worst off. This *Rawlsian* view is called ‘prioritarianism’. It gives absolute priority to the worst off.²³

We must not be oblivious to these principles while we formulate policies for disaster management and also when we go ahead with the implementation of the same in the disaster scene.

It may also be noted that when we approach a law to understand its philosophy, the situation must be assessed as a whole in a disaster scenario. Therefore, a woman might have double or multiple vulnerabilities. For example a *dalit*, differently able, old women. Here, each vulnerability can add to her troubles in case of disaster multifold number of times. Each vulnerability will subject her to a typical form of discrimination in case of post disaster relief and rehabilitation. In such a case we need to read the entire legislation. There might be different provisions addressing each or all her vulnerabilities. Therefore, law is and should be drafted taking into consideration all the existing forms of discrimination.

Legislative and policy norms

In this sub part the author has focused on provisions of a few state Acts and policies to establish the existence of the above mentioned equation in both law and policy.

The Disaster Management Act, 2005²⁴

The Disaster Management Act, 2005 is the core central legislation on disaster management in India. Section 12 of the Act provides for guidelines for minimum standards of relief. According to section 12 NDMA shall recommend guidelines for the minimum standards of relief which would be provided to persons affected by disaster. It should include food, drinking water, medical facilities and sanitation in relief camps, necessities for widows and orphans, ex gratia assistance for loss of life, damage to house property and to restore means of livelihood. It also provides for a provision for ‘such other relief’ as may be necessary.

This section has special provision for widows and orphans and other general provisions.

²³ Catriona McKinnon, *Issues in Political Theory* 513 (OUP 2012).

²⁴ Available at: www.ndma.gov.in/en/disaster.html (last visited on May 2, 2020).

Section 61 of the Act has provision for prohibition against discrimination. It is a general provision which calls for equal treatment that a person will not get a lesser treatment only because of the grounds mentioned in the section. It states as under : *'While providing compensation and relief to the victims of disaster, there shall be no discrimination on the ground of sex, caste, community, descent or religion.'*

National Policy on Disaster Management (NPDM):²⁵

It is clearly mentioned in para 1.2.2 that there are certain cases of people exposed to higher risks within the vulnerable groups. The vulnerable groups are elderly persons, women, children. It recognizes women who have been rendered destitute due to disasters, children orphaned due to disasters and the differently abled persons under the high risk group.

Thus, the national policy takes into account the fact that people have different vulnerabilities and end up facing more risk. This recognition of different vulnerabilities is the foundation of 'don't treat unequally equally'

Jammu and Kashmir State Disaster Management Policy 2012:²⁶

Jammu and Kashmir State has the following provisions in its policy;

7.1.2.3: Preparation of Disaster Management Plans

The SDMA will prepare the disaster management plan. The DDMP will have a strategy for mitigation of the impact of disasters on women and children. The DDMP will also have provision for specific plans for disbursement of speedy relief to women and children.

7.1.2.8: Community-Based Disaster Management

It provides that while developing CBDM, it should recognize women, children, elders and differently-abled persons. It mentions them as the most vulnerable group.

These two provisions are meant to recognize vulnerability and take appropriate action

²⁵ Available at: <http://www.ndma.gov.in/images/guidelines/national-dm-policy2009.pdf> (last visited on Apr. 12, 2020).

²⁶ Available at: http://www.kashmirdivision.nic.in/Disaster_Management_Policy-2012.doc (last visited on Apr. 12, 2020).

7.2.1.1: State Disaster Management Authority:

The relief is to be provided in an equitable and consistent manner. It provides for two more provisions. Firstly, the distribution of relief should be done without regard to economic or social status of the beneficiaries and secondly, it forbids any discrimination on the grounds of caste, creed, religion, community or sex.

This provision caters to equals treatment.

7.2.2.3: Essential Services

It provides that affected families should be housed individually in the centers. Also, sufficient provisions should be made for sanitation and privacy of women and adolescent girls.

This is also a specific special provision.

7.2.2.6: Immediate Relief

It provides that the Divisional and District Disaster Management Authorities and Divisional and District Administration, shall provide immediate relief to all the affected families. It also provides for non-discrimination on the grounds of caste, creed, domicile, religion or gender.

It provides for close interaction with the affected communities while planning the relief process. During these interactions, gender sensitiveness shall be ensured. Women should be involved in relief planning, distribution of assistance and in other emergency management activities.

It also provides to ensure that relief reaches sub-categories such as widows / single women, older women, female-headed households and the differently-abled.

This provision has a general non-discriminatory provision followed by specific provisions for vulnerable people.

Maharashtra:

In Maharashtra²⁷ the state plan aims to reduce women's death, maternal and newborn morbidity, sexual violence during disasters. Maharashtra has become the second state in the country, after

²⁷ Srivastava Kanchan, *Maharashtra revises disaster management plan, separate strategy for more vulnerable women population* DNA, 2015, available at: <http://www.dnaindia.com/mumbai/report-maharashtra->

Odisha, to make its disaster management plan sensitive towards women who are more adversely affected than men during such crises due to various reasons. A special chapter on relief measures for women will be added in the state disaster management protocol. Reproductive and sexual healthcare needs of girls and women during disaster are a special focus area of the manual. One chapter on disabled-population is also added in the plan. It also provides a provision for medical and psychological care for victims of domestic, physical or sexual violence. Thus, it addresses gender based violence also,

All these provisions cater to specific needs.

Arunachal Pradesh Disaster Management Policy (APDMP)²⁸

The Arunachal Pradesh policy has both kinds of provisions. It has provisions for nondiscrimination and empowerment of women in objectives itself.

Relief/ assistance are to be provided the affected community following the principle of nondiscrimination on the basis of caste, creed, community or sex;

Gender issues are to be addressed in disaster management with special thrust on empowerment of women;

Other provisions provide for dissemination of information about making the vulnerable groups like women, children, aged persons, the sick, the infirm, landless labourers, below poverty line populations etc. aware of their vulnerability to disaster in order to reduce the impact of disasters on them.

Disaster Management institutions have been given sufficient autonomy for the following

- i. Neutral and non-discriminatory efforts for disaster management.
- ii. Nondiscrimination on the basis of caste, creed, religion, community or sex while providing relief/assistance.

The policy also has a non-discrimination provision for working of NGO'S. It states as under-

revises-disaster-management-plan-separate-strategy-for-more-vulnerable-women-population-2102690 (last visited on Apr. 25, 2020).

²⁸Available at: http://arunachalplan.gov.in/html/docs/AP_DisasterManagementPolicy.pdf (last visited on Apr. 29, 2020).

Ensure that non-governmental organizations carry out their activities in an equitable and non-discriminatory manner;

Orissa State Disaster Management Policy 2005:²⁹

The Orissa state policy has provided that in all stages of disaster management, women should participate. While assessing vulnerability, minimizing vulnerability, immediate relief to vulnerable groups and provision for rehabilitation of widows aged etc. the provisions for special protection are very systematic and clear. It also provides for recognizing the problems of women in any disaster situation

Para 3.2.2 of the policy relates to Capacity Building: It requires that the government should promote programmes and projects to augment the capacity of the state. It also provides that the people should be better prepared to face disasters. In furtherance of the purpose, Community Based Disaster Management Plans and mock drills will be undertaken which will ensure better preparedness. It also requires efforts to be undertaken to minimize vulnerability of disadvantaged groups like women, children, elders, physically and mentally challenged, and other marginalized groups.

Para 3.2.7 of the policy relates to risk assessment and vulnerability reduction: It looks forward to identification and focusing attention on the vulnerable groups and those, which become vulnerable post disaster. The OSDMA is expected to undertake and coordinate a systematic risk assessment for different types of disasters. It envisages due attention to the special needs of the vulnerable sections, which includes the old, the infirm, the physically and mentally challenged, women, children, and other disadvantaged groups. It also encourages community involvement and response to disasters and looks forward to promoting and giving special attention to women self-help groups. Similarly, special attention will be given to highly vulnerable and remote areas.

Para 3.3.2 of the policy relates to the objective of relief. It envisages that immediate needs of victims will be given utmost importance in designing the relief activities.

Also special emphasis will be there on the vulnerable.

²⁹Available at: <http://www.osdma.org/Download/DM%20Policy.pdf> (last visited on May 7, 2020).

Para 3.4.3 of the policy relates to rehabilitation of orphans and widows: It provides for adaptation of community based approach for the rehabilitation of orphans and widows.

An alternate option will be Institutional rehabilitation. It provides the Women and Child Development Department to be the Nodal Department for the rehabilitation of the children who become orphans, and persons who become widows and physically or mentally challenged due to disasters

Assam State Disaster Management Policy 2010:³⁰

Assam's policy is against discrimination between equals. It provides that while providing compensation and relief to the victims of disaster a policy non-discrimination on the ground of sex, caste, community, descent or religion should be followed.

Gujarat State Disaster Management Policy (GSDMP) 2002:³¹

Non-discrimination has been stated one of the objectives in the policy the Gujarat's policy. It states as under- To ensure relief/assistance to the affected without any discrimination of caste, creed, community or sex.

It also has provision for autonomy (2.1.7) for the DM institutions to fulfill the above mentioned objective. It states that:

Disasters are catastrophic events whose impact is felt across socio-economic boundaries. Thus it provides for the principles of neutrality and non-discrimination. It also provides that the disaster management institutions should possess the autonomy to make decisions in a fair, scientific and systematic manner. It provides for disaster assistance and relief must also be provided in an equitable and consistent manner without regard to the economic or social status of beneficiaries. Also, relief/assistance must be provided without any discrimination of caste, creed, religion, community or sex.

V. Conclusion

³⁰Available at: <http://www.sdmassam.nic.in/pdf/publication/Assam%20DM%20Policy.pdf> (last visited on May 6, 2020).

³¹Available at: <http://www.gsdma.org/policies-acts/gsdm-policy.aspx> (last visited on May 9, 2020).

Law is a product of the society and is therefore conditioned by the social realities of a society in which it has to operate. Disaster law regime in India is not oblivious to the existence of discrimination against women. Therefore, non-discrimination is the policy of the highest law of the land- the Constitution. Most of the legislative provisions are also gender sensitive. Though nondiscrimination in cases of disaster has been a policy of the governance before the Disaster Management Act, 2005 also, one still faces considerable challenges at the level of implementation due to the execution gap. Exclusions from the post disaster interventions or in simple words; discrimination deeply imbibed in the psyche of our people, is one of the greatest challenge to the right to equality.

Though the law and policy look forward to a better approach of equality and gender sensitivity, much depends upon sensibilities about equality and vulnerability of the people who implement the provisions. For better implementation of these provisions we need to sensitize our disaster task force in particular and society in general so that benefits of legal provisions reach at the grass root level.

We must also not ignore that womanhood as vulnerability gets even more complicated when factors such as disability, caste, religion, age *etc.* interact in Indian social construct making the execution even more difficult. We need to address these issues carefully to reduce the execution gap because even though law is gender sensitive, the implementation might be gender insensitive.