

Unexplored “Bill of Rights” :

A Magna Carta for Gender Justice and Budgeting in India

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Abstract

This paper explores the “Bill of Rights” in the Justice Verma Committee Report as an analytical framework for gender budgeting in justice. Gender budgeting in justice, as a public good, needs effective planning and financing strategies more than just a Budget Head on “Nirbhaya Fund” in national budgets. As gender budgeting in justice is more effective at the decentralized levels, a gender-conscious fiscal devolution, rather than “one size fits all” gender budgeting policies, should be designed as the plausible entry point to integrate gender justice in fiscal federalism. If “climate change” is already integrated in the TOR of Finance Commission in India, can “TOR on gender” in the Commission be far behind?

Every time, when I feel helpless and anguish about the dignity, safety and security of women in India, I return to the “Bill of Rights” included in Justice J S Verma Committee Report¹ just to reassure myself that we have a top mission, and it is already stated explicit in a document in India, waiting to be transformed into a public policy. This report is a simple, powerful articulation - an answer - for the accumulated pain in the heart of every Indian for an effective public policy to uphold the right to life of women and girls in our country.

Be it a scholar from Oxford or Harvard who volunteered to provide inputs to the Verma Committee (the names of these scholars are listed in the Report) or a sensitive policy maker, the team has worked round the clock and produced such a brilliant report within short span of 30 days under the able leadership of Justice Verma. This report is waiting for real champions to translate it into public policy commitments as the first priority of our country.

The Context of the Report

We must not forget that this inevitable document is an intense 30 days of work in our country in response to the brutal gang rape of a young student, in the heart of the nation’s capital in a public transport vehicle in the late evening of December 16, 2012, when she was returning home with her friend after watching “Life of Pi”. Her action was absolutely “normal”. None can point fingers at her saying that she deserved it as she was travelling after “sun set”? Just remember, it was “capital city”; it was “public space”.

¹ Justice Verma Committee was constituted to recommend amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. The Committee submitted its report on January 23, 2013. On December 23, 2012 a three member Committee headed by Justice J.S. Verma, (late) former Chief Justice of the Supreme Court, was constituted to recommend amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. The other members on the Committee were Justice Leila Seth, former judge of the High Court and Gopal Subramaniam, former Solicitor General of India. (for details , refer <http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf>)

The power of this report is the acknowledgment (in the very first line of the report) that this brutal event as the “failure of governance to provide a safe and dignified environment for the women of India, who are constantly exposed to sexual violence”. This acknowledgement is apolitical and a clarion for the significance of government policies to ensure dignity, safe mobility and security for women. It is equally relevant to recall that this event has caught fire across globe and led to “One Billion Rising” civil society movement, a global outcry for safety and security of women in private and public spaces.

Though these events have clearly shifted the “self-censorship thresholds” of India in engaging in public debates relate to women, a meaningful long term translation of these concerns into public policy making has not yet happened. As the attitudinal changes take centuries, all what I want to highlight is the role of public policy in responding to these blatantly oppressive prejudices.

“Bill of Rights”

Astonished to see that the report derives its framework from Sen’s capability deprivation and meticulously articulates a “Bill of Rights” for women. This “Bill of Rights” is a charter to set out the rights guaranteed to women under the Constitution of India, against the backdrop of India’s commitment to international conventions. In terms of Sen’s capability approach, these three crucial layers, which need interpretation in the context of “Bill of Rights” are capabilities, functioning and commodities/commodity space.

The first step is to propose a list of basic capabilities, which is narrated in Bill of Rights in the Justice Verma Committee Report (Pages 429-433). These basic capabilities can be a set of capabilities that should have only a few elements and this set is common for all individuals. These capabilities can be capability to stay alive and live long, capability to lead a healthy life, capability to have knowledge, capability to have social interaction etc.

Specific to the “Bill of Rights” in Justice Verma Committee Report, these capabilities are articulated as right to life, security and bodily integrity; right to democratic and civil rights; right to equality and non-discrimination; right to secured spaces; right to special protections (elderly and disabled); and right to special protection of women in distress.

The beauty of this “Bill of Rights” is that unlike the previous public policy treatment of “all women are equal”, a careful analysis of heterogeneity is captured in these five dimensions. Conceptually this forms the analytical framework for gender budgeting to be conducted in justice and in legal fiats. While translating these Bill of Rights into an “ought to be budget”, what element is missing in the existing budgets is what we look for in budgets through a ‘gender lens’ and rectify through new public policies.

The second step in Sen’s framework would be to identify the articulations of capabilities as specific functionings that can be captured in observable data (gender disaggregated to the possible extent) (table 1). The third step is to estimate the optimal commodity space, especially the legal and fiscal policy stance in terms of Bill of Rights, which is necessary to be at individual’s command to match commodity characteristics and capability requirements and then analyze the actual commodity space to identify the gaps. For instance, what could be the legal framework and budgeting policies to ensure safety and security to Indian women?

Table 1: Integrating “Bill of Rights” in Legal Fiat and Finance: An Analytical Framework

Capabilities	Articulation/ Functioning ¹ (Observable “functionings”, in terms of statistics, gender disaggregated)	Commodity Space [Interpreting Commodity Space to match Capability requirements (in terms of Legal and Fiscal Policy Stance)]
1.Right to Life, Security, and Bodily Integrity	<p>1. Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of violence, exploitation, cruel, inhuman or degrading punishment and treatment targeting women are prohibited.</p> <p>2. Every woman as the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.</p> <p>3. Every woman has the right to be respected as an independent person and to the free development of her personality.</p> <p>4. Every woman has the right to express and experience complete sexual autonomy including with respect to her relationships and choice of partners.</p> <p>5. Every woman has the right not to be subjected to medical or scientific experiments without her informed consent; with an exception in the case of an emergency;</p> <p>6. The State shall ensure to every woman protection from all forms of violence whether the violence takes place in private or public, including unwanted or forced sexual intercourse or activity;</p> <p>7. The State shall protect, rescue and rehabilitate every woman who is at the risk of or has been a victim of trafficking and all other forms of such treatment.</p> <p>8. The State shall promptly provide effective mechanisms and accessible services for information, redressal, rehabilitation and reparation of every woman being a victim of violence.</p>	<p>A. Identify the public policies –legal and fiscal commitments- addressing gender justice and corresponding budgetary allocations supporting these programmes.</p> <p>B. Identify the policy gaps and design the commodity space - “ought to be budget” - through costing methodology.</p>
2.Right to Democratic and Civil Rights	<p>9. Every woman should have the right to participative governance through participation without discrimination in all elections; representation at all levels in electoral processes; equal opportunity for partnership in decision making and implementation of development and economic programs.</p> <p>10. Every woman has the right to freedom of thought, conscience, religion, and belief, including the right to adopt, convert, and to hold opinions without interference.</p> <p>11. Every woman has the right to manifest that person’s religion or belief in worship, observance, practice, teaching, ideas, or opinions of her own choosing, either individually or in community with others, both, in public or private.</p> <p>12. Every woman has the right to freedom of expression, including the</p>	<p>A.Ex-ante designing and budgeting to ensure “freedom of expression” needs meticulous calibrations in law and order, culture and education sectors. B.The political economy of rights-based planning and budgeting to ensure democratic and civil rights is closely linked to feminization of governance and in turn it’s potential in</p>

	<p>freedom to seek, receive, and impart information and opinions of any kind in any form.</p> <p>13. Every woman has the right to freedom of peaceful assembly.</p> <p>14. Every woman has the right to freedom of association.</p>	<p>influencing public expenditure decisions. C. Participatory budgeting is neither exclusively gender budgeting. On the other hand, gender budgeting is not exclusively participatory budgetary either.</p>
<p>3. Right to Equality and Non-Discrimination</p>	<p>15. Every woman shall have the right to equality before the law and equal protection of all the laws.</p> <p>16. No woman shall be unfairly discriminated on grounds of gender including-</p> <p>(1) Preventing women from inheriting family property.</p> <p>(2) (b) Any practice including traditional, customary or religious practice that impairs dignity of women and undermines equality between women and men, including the undermining of the dignity and wellbeing of the girl child.</p> <p>(3) Any policy or conduct that unfairly limits access of women to land rights and finance and other resources</p> <p>(4) Discrimination on grounds of pregnancy</p> <p>(5) Limiting access to health care, education and other social welfare.</p> <p>(6) Denying access to opportunities including services or contractual opportunities or failure to accommodate diversity.</p> <p>(7) Systematic inequality in access of labour, contractual opportunities etc.</p> <p>(8) Systemic inequality to opportunities by women as a result of sexual division of labour.</p> <p>(9) Or discrimination by virtue of a woman belonging to another sub-sect of caste, religion, region or race.</p> <p>17. Every woman shall have the freedom to marry any person of her choice and be regarded as an equal partner in the marriage.</p> <p>18. Every woman shall have the same rights in case of separation, divorce and annulment of marriage.</p> <p>19. Every woman shall have the Right to Free Education until undergraduate level.</p> <p>20. Every woman especially the girl-child must be protected from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of such practices;</p> <p>21. Every woman who suffers abuses and sexual harassment must have access to counseling and rehabilitation services to women who suffer abuses and sexual harassment;</p> <p>22. Every woman shall have the Right to Reproductive and Sexual Health.</p> <p>23. Every woman shall have the right to nutritious and adequate food as well as access to clean drinking water.</p>	<p>A. Public policies based on "Equal Opportunities" per se cannot ensure gender equality. B. The legacy of patriarchy and other logical entry barriers have prevented the women from optimal access and utilization of public service provisioning. C. Removing these "unfreedoms" of women is a pre-requisite to ensure optimal participation of women in the economy. D. Analyzing the existing inheritance laws, diversity clauses and the legal codes of women in vulnerability and macroeconomic volatility and framing tax and public spending policies to address these concerns remain significant. E. Given equal care and nutrition, women tend to live more than men. But this biological advantage is getting neutralized by gender discrimination. This discrimination starts "even before birth". F. Framing public policies in a co-operative federalism addressing these blatantly oppressive practice needs prioritization in planning and budgeting.</p>

4. Right to Secured spaces	<p>24. Every woman shall have the right to equal access to housing/shelter and to acceptable living conditions in a healthy environment.</p> <p>25. Every woman, whatever her marital status has access to adequate housing/shelter.</p> <p>26. Every woman should have access to Public Transport facilities without fear of the risk of violation of her dignity in any form by means of teasing, molestation, stalking etc.</p>	<p>A. Framing public finance and policy relate to Housing and Public Transport is significant. B. Infrastructure budget is not gender-neutral budget. Applying “gender lens” in infrastructure budgeting is significant to ensure safety, security and mobility of women. C. Participation of women in economic activity is good for growth. D. Sustaining economic growth requires investment in care economy infrastructure.</p>
5. Right to Special protections	<p>27. Every elderly woman must have specific measures commensurate with her physical, economic and social needs as well as her access to employment and professional training;</p> <p>28. Every elderly woman must have the right to freedom from violence, including sexual abuse, discrimination based on age and the right to be treated with dignity.</p> <p>29. Every woman with disability must have special protection and specific measures commensurate with their physical, economic and social needs to facilitate their access to employment, professional and vocational training as well as their participation in decision-making;</p> <p>30. Every woman with disability must have freedom from violence, including sexual abuse, discrimination; and the right to be treated with dignity.</p>	<p>A. Demographic transitions determine public expenditure decisions. B. “All women are equal” – this assumption of homogeneity in public policies ignored the women in “special circumstances”. Planning and budgeting needs to be initiated to protect the rights of “elderly”. C. Analyzing the budget support through a ‘life cycle approach’ may reveal that in many countries, the budgetary allocations are significant at the initial years of life, for instance child budgeting and c-PFM</p>

		(Public Finance Management incorporating Child Rights) rather than public spending for old age. D. A framework of “gender Plus” framework incorporating differently abled, ethnic and aged women can provide a substantial gender budgeting.
6.Rights to Special Protection of Women in Distress	<p>31. Every woman below poverty line; and women heads of families including women from marginalized population groups must be able to fulfil their special physical, economic and social needs;</p> <p>32. Every pregnant or nursing women or women in detention must be provided with an environment which is suitable to their condition and should be guaranteed the right to be treated with dignity.</p>	<p>A.The unit of analysis of public policies should not be “household”, but “individual, preferably woman”. The household above poverty line does not naturally ensure the women living in those households are above poverty line. This is all the more relevant in Q1 income quintiles B. Maternal mortality rate is high in countries. To reduce maternal mortality, we do not require advanced medical technology, but a sensitive public policy ensuring institutional or assisted delivery. C. Women in detention and conflict zones require special policy requirements and budgeting. D. Ethnicity and ethno-fragmentation determine public expenditure priorities and need policy attention.</p>

Note: The list of commodity space- to design legal and fiscal policies - is open-ended.

Source: Bill of Rights, in Justice Verma Committee Report, Government of India, 2013; and Interpretations.

Though not articulated as Bill of Rights, the pioneering works of gender budgeting by NIPFP carried an analytical framework for gender diagnosis and budgeting in India, which was integrated in the Economic Survey of 2001-02 (a document to be tabled in Parliament a day before national Budget). The NIPFP study of ‘gender diagnosis and budgeting’ was referred to by the Economic Survey 2001-02 in multiple places and a promising phase of “owning gender concerns” by Ministry of Finance, Government of India has thus begun in early 2000s. All what I want to highlight is that, despite the promising framework of gender budgeting, the inevitable budgetary announcement of allocating Rs 1000 crores for Nirbhaya Fund, aimed to design policies for gender justice, safety and security of women in public spaces, (immediately after a brutal gang rape of a young student, in the heart of the nation’s capital in a public transport vehicle in the late evening of December 16, 2012), has not translated into meaningful public policy and budgeting. Despite the increased allocations to this non-lapsable corpus, the fund remained unutilized. The proposals submitted to integrate gender lens in infrastructural policies under Nirbhaya Funds have not yet taken off effectively.

Reviving gender budgeting in justice integrating the “Bill of Rights” is the need of the hour. Though the expert group on “Classification of Budgetary Transactions” under the Chairmanship of then Chief Economic Advisor Ashok Lahiri, within the TOR on gender budgeting, has identified analytical matrices for framing budget through a ‘gender lens’, the Statement 20 on Gender Budgeting produced by Government of India in Expenditure Budgets (Volume 1) has largely remained as the invisible Elephant in the Room, unaware of its potential².

Public Policy Translations

Immediately after any Budget day, the debates on “what’s for women in the budget?” have largely been confined to just the rise and fall in allocations. It is stuck with Budget Estimates

² In early 2000s, the deliberations begun by then NCW by its Member, Nirmala Sitaraman, in altering the classification of budget in integrating a Budget Head on “gender” has so far remained at the very first step. The beginnings on this front can be traced in the Lahiri Committee report on “Classification of Budgetary Transactions”.

(BE), Revised Estimates (RE) and Actuals. In these discussions, unknowingly a subtle narrative triumphs that public goods are gender neutral or public goods cannot be gender-partitioned.

Gender budgeting is not about “gender-partitioning”. It is a fiscal innovation in which we can analyse how gender-blind public policies have been and how to translate it into fiscal space for ensuring gender equity. It is an analytical framework in which gender commitments of a country gets translated into budgetary commitments for framing meaningful public policies. A refreshing question to ask here is about the efficacy of gender budgeting in “Rule of Law” and how to unpack and translate legal fiats into fiscal fiats to ensure gender equality.

The “rule of law” is a public good. The purpose of this post is to highlight this significant policy document in India lying unexplored on “rule of law” for women, with its recommendations mostly untouched. Though it was constituted to recommend “amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women”, it is written in a broader context than just analyzing the legal codes.

Democracy and the Rule of Law determine public expenditure decisions. However there is no automatic guarantee of success by the mere existence of perfect democratic institutions. As noted by Verma Committee report, the most perfect laws also would remain ineffective without the efficiency and ‘individual virtuosity’ of the human agency for implementing the laws. Similarly, the most effective framework of gender budgeting - a silent revolution of integrating gender consciousness into fiscal policy framework when macro policy makers had talked only about inflation, interest rates and deficits – has remained ineffective confined to the analysis of a few Demand of Grants.

Would Future Finance Commissions go “purple”?

In a co-operative federalism, its high time that Finance Commission “own” and integrate gender concerns articulated in the “Bill of Rights” of Justice Verma Committee Report, either in the formula based unconditional grants with gender indicator/index as one of the criteria (just as “climate change” variable appeared in formula of Fourteenth Finance Commission in sharing divisible tax pool with the States) or as specific purpose grants to the states to engage in

meaningful gender budgeting fiscal policy practices at the subnational level. This idea has practical deliberations in my papers published by the IMF and Levy Economics Institute of New York {WP No: 874(2016); WP 797(2014) and WP No: 590(2010)} and IMF (WP 150(2016)}.

To conclude, the “Bill of Rights” framed in the Justice Verma Committee Report can form the foundation for gender budgeting in Law and Order. Gender budgeting in justice is a public good and needs effective planning and financing strategies more than just a Budget Head on “Nirbhaya Fund” in national budgets.

As gender budgeting in justice, law and order is more effective at the decentralized levels, a gender-conscious fiscal devolution, rather than “one size fits all” gender budgeting policies, should be designed as the plausible entry point to integrate gender justice in fiscal federalism. If “climate change” is already integrated in the TOR of Finance Commission in India, can “TOR on gender” in the Commission be far behind?

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