

GENDER EQUALITY: THE LAW AND LUCNAE

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“Fight for gender equality is not a fight against men. It is a fight against traditions that have chained them-a fight against attitudes that are ingrained in society -it is a fight against the system, a fight against the Lakshman Rekha which is different for men and different for women. The society must rise to the occasion. It must recognize and accept the fact that men and women are equal partners in life. They are individuals who have their own identity.”

- Dr. Justice A.S. Anand

Abstract

Gender equality means equality in between men and women, it's aim is to achieve gender justice in favour of women. Gender equality is used interchangeably with the notions of gender justice, gender equity, women empowerment and women's right. It involves a place 'in which women and men can be treated as fully human'. Our grund norm Constitution of India provides equality to women but also empowers the State to adopt measures of positive discrimination in favour of women. Gender inequality is a problem is seen all over the world, it is presumed that women is a creator and constitute half the population of the society. Historically the status of women has been influenced by their past, there is a evidence which show that women in the Vedic period got most honoured position in the society. They had the right to education, were free to remain unmarried and performed all the works and sacrifices with their husbands, and also there were some instances in which women taking part in wars and fight. But gradually , due to several social political changes especially during the middle age the status of women declined and would have been ill-treated in society. The aim of this writing is practicing filling the gaps regarding the gender inequality in our society and promote gender justice in favour of women. This paper includes the scenario regarding gender equality on Indian as well as international level.

Introduction

The reason behind the gender inequality is *patriarchy*, in patriarchal society men are the primary authority, occupying roles of political leadership, control over property and authority over women and children. In India most of the societies have *patrilineal custom* where inheritance passes from father to son. Gender equality promote women`s interest in social as well as economic policy. In India it is believed in Vedic period women enjoyed an equal status as men, but gradually the condition of women declined considerably. There are few historical practices such as *Sati Pratha* and *child marriage* are few traditions reflective of the gender imbalance in Indian society. But with the passage of time many reformers such as **Raja Ram Mohan Roy, Ishwar Chandra Vidya Sagar** and **Jyoti Rao Phule** came with the reforms and abolished these practices and fought for the betterment of women. Raja Ram Mohan Roy`s effort led to the abolition of *Sati Pratha*, Ishwaram Chandra Vidyasagar`s crusade for improvement in the situation of widows led to the ***Widow Remarriage Act Of 1856***¹

The issue of gender inequality is not the issue on Indian level instead it is the issue which has been observe all over the world. There are many international conventions, recognition established for the betterment of women and for eliminating the gender inequality which was growing in the social, political and economic fields. In 1995, Gender Development Index (GDI) and the Gender Empowerment Measure (GEM) were introduced in Human Development Report. The GDI and GEM became the initial indices for measuring global gender inequality for the United Human Development Reports. These indices faced many criticisms for their methodological and conceptual limitations². There is no country with perfect gender equality, all countries suffer some loss of human development due to gender inequality. The World Economic Forum has been using the Gender Gap Index (GGI) in its *Global Gender Gap Reports*, which ranks countries according to their gender gaps, to better record gender disparities³. The gender gap report measure on four parameters: economic participation and opportunity, educational attainment, health and survival, and political empowerment. India has been ranked 140th among

¹Widow remarriage act of 1856.

²Bardhan, K.andKlasen, S.(1999). UNDP`s Gender- Related Indices: A critical Review, world development, 27;6, pp. 985-1010

³Hausman, R., Tyson, L.D., Zahidi, S., (2006). "The Global Gender Gap Report 2006," World Economic Forum, Geneva, Switzerland

156 nations participating in the rankings. It is the third worst performer country among South Asian Countries. The most gender equal country in the world is Iceland, and it has been in the first position for 12 years.

International Realm

Equality based on gender has been the most fundamental guarantees of human rights and a fundamental principle of the United Nations Charter. Its aim is “equal rights of men and women” and protecting the women`s right of all the states and promoting the women`s human right is the responsibility of all states. The **United Nations Charter**(1945) included a provision for equality between men and women⁴ and there are many treaties and conventions adopted by UN General Assembly for protecting the rights of women and promote the equality between men and women.

Convention on Political Rights of Women 1953

It was adopted by the UN General Assembly⁵ and it aims to codify a basic international standard for women`s political rights.

Conventions on Elimination of All Forms of Discrimination on against Women (CEDAW) 1979

It was adopted by the UN General Assembly in 1979. The convention defines the nature and meaning of sex-based discrimination and lays out State obligations to eliminate discrimination and achieve substantive equality. Any distinction , exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition , enjoyment or exercise by women, irrespective of their marital status , on the basis of equality of men and women , of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field⁶.

Declaration on the Elimination of Violence against Women (1993)

⁴Chapter.III, Article 8 of UN Charter 1945

⁵First International Legislation regarding Political Rights of Women

⁶Article-10 of CEDAW

UN General Assembly adopted in 1993 and *Article 1* of this declaration defines the term “*violence against women*” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life⁷

UN General Assembly in 2012 adopted a resolution named **Future We Want** which supports the measures to promote gender equality and women`s empowerment in all spheres of societies and including the barriers to their equal participation in decision making and management at all levels⁸

Universal Declaration of Human Rights 1948

UN General Assembly adopted Universal Declaration of Human Rights on 10 December 1948. Gender equality is a part of this international UDHR. It recognized that “*All human beings are born free and equal in dignity and rights*” and that “*everyone is entitled to all the rights and freedoms set forth in this declaration without distinction of any kind, such as race ,colour, sex, language, religion, ... birth or other status.*”⁹

Gender Equality in respect of Feminism

Feminism means collection of social theories, political movements, moral philosophies opposite all forms of inequalities that may be social political or economic in nature. Feminism means that men and women should have equal social, political, and economic rights and opportunities. True feminism is recognition of the dynamics that each person brings to the table.

There is a theory regarding feminism named feminist theory. This theory act as a torch light that aims to understand the nature of inequality and focus on gender politics, power, relations and sexuality. Feminism are of four types i, e., liberal feminism, radical feminism, social feminism, and post-modern feminism. There are many feminists who fought for the betterment of women such as **Savitribai Phule**, started the first school for girls in the subcontinent, **Tarabai Shinde**

⁷Article-1 of DEVAW

⁸Resolutions Adopted By The General Assembly of UN on 27 July 2012, “The Future We Want”

⁹[https:// www. un.org>global-issues](https://www.un.org/global-issues)

whose work *Stri Purush Tulana* is considered the first modern Indian feminist, **Prem Chowdhry, Mira Datta Gupta, Kamini Roy etc.**

Gender Equality: Indian Scenario

If we talk about Indian scenario so the Government launched several schemes to women and several benefits to women such as scholarship, loan, facilities, hostel facilities etc. the schemes such as –

Beti Bachao, Beti Padhao¹⁰

One Stop Centre Scheme (Sakhi)¹¹

Pradhan Mantri Rozgar Yojna¹²

Annapurna Scheme¹³

Mudra Yojna Scheme¹⁴

Dena Shakti Scheme¹⁵



Constitution and legislation for women`s upliftment

Constitution of India enshrined the principles of gender equality in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution Of India not only grants equality to women but also empowers the State to take measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them.

¹⁰launched by Ministry of Health and Family Welfare and Ministry of Human Resources Development, the 'save the girl child' on 22 Jan, 2015

¹¹1st April 2015 with Nirbhaya Fund

¹²Launched in 1993, offers unemployed loan to 10 lakh youth & women

¹³Launched on 1st April, 2000

¹⁴Launched on 8th April, 2015

¹⁵Started in 2014

Privileges to women under Indian Constitution

Article 14- Equality before law . This article does not include equality before law in respect to women only, it includes equality among men , women and extend to transgender persons also. In *National Legal Service Authority[NALSA]v UOI,2014*¹⁶, the court held that the right to equality (article14 of the Constitution) was framed in gender neutral terms (“all persons”). Consequently, the right to equality would extend to transgender person also.

Article 15- prohibits discrimination on the grounds of religion, race, caste, sex and place of birth.This article cannot prevent State from making any special provisions for women and children.

Article 16- states that there shall be equal opportunity for all citizens of India in matters of employment or appointment to any office.

Article 39- the State shall make sure that men and women have an equal right to an adequate livelihood, there is equal pay for men and women, the economic system does not result in the concentration of wealth and the material resources are distributed to serve a common purpose.

Article 42- The State shall secure humane conditions for work and for maternity relief according to Article42 of the Constitution.

Apart from these provisions there are certain laws that hav emerged more or less from these constitutional provisions, are as follows:

Legal Provisions

The legal provisions are classified into two categories which are:

1. Provisions under Special Laws**Criminal Law Amendment Act, 2013**

¹⁶AIR 2014 SC 1863

The **Criminal Law Amendment Act, 2013**¹⁷ came into force on February 3, 2013 on the recommendation of the **Verma Committee**¹⁸. This Act added few new offences such as acid attack, sexual harassment, voyeurism, stalking all of which have been incorporated in the **Indian Penal Code**¹⁹.

Sexual Harassment of Women at Workplace Act, 2013

Sexual harassment of women at their workplace was first brought up in the **Vishaka Case**²⁰. Harassing women at their workplace violates the women's fundamental rights of women guaranteed under Article 14, 15 and 21 of the Constitution of India²¹.

The Hindu Succession Act, 1956

A certain amendment was made in 2005 under this Act²² for the removal of discriminatory provisions. Females are granted ownership of all property acquired either before or after the signing of the Act, abolishing their "limited owner" status.

The Maternity Benefit Act, 1961

Maternity Benefit Act, 1961 was amended in 2017²³. Under the Act, paid maternity leave for women employees with less than two surviving children, from the original twelve (12) weeks to twenty six (26) weeks was extended.

The Special Marriage Act, 1954

The Act²⁴ provides for a special form of marriage irrespective of religion, or faith that the other party believes in.

¹⁷Act No. 13 of 2013

¹⁸Report of the Committee on Amendments to Criminal Law, 2013

¹⁹Indian Penal Code, 1860

²⁰AIR 1997 SC 3011

²¹ Constitution of India

²² HSA, 1956

²³Maternity Benefit Act, 1961

The Dowry Prohibition Act, 1961

The Dowry Prohibition Act, 1961²⁵ prohibits the payment or acceptance of dowry as a consideration for marriage. Asking or giving dowry can be punished by imprisonment of upto six months, a fine of up to Rs.15000 or the amount of dowry, or imprisonment up to 5 years.

2. Provisions under Indian Penal Code, 1860

- **section 375-** rape
- **section 363-373-** kidnapping and abduction
- **section 354-** molestation
- **section 509-** sexual harassment
- **section 498A-** torture
- **section 304B-** dowry deaths



JUDICIAL INTERVENTION

*Vishaka v, State of Rajasthan*²⁶, in this case a writ petition was filed by an organization named 'Vishaka'. The PIL action sought guidelines for the elimination of sexual abuse at the workplace and it was held that sexual harassment was a clear violation of rights provided under Articles 14, 19 and 21 of the Indian Constitution. The court laid down the historic Vishaka Guidelines. This case is remarkable example of judicial activism where the honorable court took appropriate measures for a healthy work environment.

*Air India v. Nargesh Meerza*²⁷, in this case an inclusive reading of **Article 14** was done it was held by the Supreme Court, employment cannot be denied to any person on the grounds of sex. For inflight services, stress was laid on high youth appearance and glamour quotient of the employees.

²⁴Special Marriage Act, 1954

²⁵Dowry Prohibition Act, 1961

²⁶ ibid

²⁷ AIR 1981 SC 1829

*B. Muthamma v. Union of India*²⁸, in this case Supreme Court was called out to test the validity of the regulations which enumerated the conditions of service of IFS officers, **the Indian Foreign Service (conduct and discipline) Rules, 1961**. Every female employee was bound by it to obtain permission from the public authorities and tender her resignation if her marriage was to be solemnized. It was violative of the equality provisions vide Articles 15 and 16 of the Constitution. It sent out clear message against gender discriminatory conditions of work.

*Leela v. State of Kerala*²⁹, it was held that any statute which makes special provisions for women to endorse social welfare, cannot be violative of rights enshrined in Part III. Court recognized the familial commitments of women by ordering that lady constables and waitresses not be allotted duties for the night shift. The government should work towards the creation of strong public opinion by advocacy, awareness and seminars to give women the spot they deserve.

*Randhir Singh v. Union of India*³⁰, it was held right to 'equal pay for equal work' (Article 39-d) to be applicable to both men and women. The act of fixation of pay scale was declared void because of being based on unreasonable classification. This judgment was a turning point in the history of Indian judiciary.

*State v. Ram Singh and Others (Nirbhaya Rape Case)*³¹, the social outrage was ignited by the sexual violation and genital mutilation of an innocent girl. The court was clear in stating that the crime committed by the accused was not deserving of any sympathy as it shook the conscience of the society. The Supreme court bench of three judges unanimously upheld death penalty of all the accused who exploited the victim's identity and dignity. The crime touched the rarest of rare threshold and is by far the worst our nation has ever seen.

²⁸ AIR 1868, 1980 SCR(1)668

²⁹ 2004 (102) FLR 207

³⁰ 1982 AIR 879

³¹ SC NO. 114/2013

*Laxmi v. Union of India*³², in this case SC issue directives for the prevention of such incidents by imposing restrictions on the sale of acids. The decision paved way for the legislature to introspect and enforce harsher punishments for offenders committing such horrendous crimes.

Measures to Achieve Gender Equality

To achieve gender equality, measures should be implemented targeting gender-based violence and discrimination, also creating awareness especially in rural areas is must.

1. Implementing measures to strengthen women`s economic independence through improving financial and employment services
2. Improving gender violence prevention systems and stringent penalties to those who cause gender-based violence.
3. Creating awareness among vulnerable sections of society about sexual rights and sex education.
4. Help improve life and development skills of low-income women for a better understanding of how to manage lives.

However, the main crux is improving gender equality lies in changing the mindset and the thinking of the people.

Conclusion

The Government, the Supreme Court, and other authorities have time and again implemented various measures to prevent discrimination but, this still does not change the shallow thinking of the people who even consider practicing female feticide. Some people still consider having a girl child as burden to the family. The Indian Constitution has made equality a basic right of all the citizens of this country. Ever since the society and values have evolved, but there are still some flaws. Due to all this achieving absolute gender equality in a country like India continues to be a huge challenge.

³² (2014) 4 SCC 427