

A CRITICAL ANALYSIS ON GENDER JUSTICE IN INDIA

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ABSTRACT

Nowadays, disputes on gender justice are the much discussed topic. While numerous laws have been enacted to advance women's right and protection, even there is a question mark as to whether those laws truly provide protection to women. In many places, crimes against women remain hidden, primarily due to the influence of the patriarchy. It not only deprives women of their basic rights but also makes it difficult for them to seek justice. Crimes against women persist in workplaces, public spaces, political participation, education and homes. While it is crucial to address these crimes, it is also important to acknowledge that women may misuse the laws designed to protect them. This misuse raises concerns about the efficacy of gender-based laws and their ability to serve justice. Women using these laws against men becomes a contentious issue. It is essential to find a balance where laws effectively protect genuine victims while safeguarding the rights of the accused. Striking this balance can prevent false accusations and preserve the credibility of the laws. Fair and impartial investigation mechanisms need to be in place to prevent misuse. Transgender people are also subjected to utter discrimination and deprived of their fundamental rights as a third gender. However, the Constitution of India laid down specific provisions and laws to eradicate the concept of gender inequality between men, women, and the third gender in all aspects of life. The paper seeks to critically elucidate the constitutional provision relating to gender inequality.

Keywords; Gender, Justice, Equality, Discrimination.

INTRODUCTION

Gender Justice, simply refers to equality between the sexes. It is a correlation of social, economic, political, environmental, cultural, and educational factors. Globally, gender justice as a cause has gained in strength over the years, as it has been realised that no state can truly progress if half of its population is held back. The struggle for equal rights, freedom and justice has been made by human rights activists, feminists, NGOs and through the Government support. Even though the

considerable progress has been made in this regard, women are still lagging behind it. With globalisation, there are other complex issues that women face today along with the elementary issues that have always plagued women. Consumerism and cultural heterogeneity has brought in its fold more objectification of women. Apart from these issues, there are still many cultures in the world where the condition of women is still deplorable, they still have no control or right over themselves or their bodies or their children also. Gender Justice refers to harmonising of rights and needs of women into mainstream society. Justice in this sense means more balanced behaviour, an end to violence and equal distribution of social necessities. The Indian Constitution has played a significant role in protecting women and transgender from gender discrimination and ensuring gender justice in the present times. It has made an effort to address the issues related to women and lay down provisions to eradicate the problem of inequality in every aspect. Achieving gender equality will require a combination of change from the below, as the voices of women at the community level are increasingly heard, and change from above, as political leaders respond to changing norms by enacting progressive legislative and policy reforms. In addition to the changes to laws and policies, social changes are also essential to address the unequal gender power relations and to establish gender equality norms.

THEORIES OF GENDER:

- **Gender Identity Theory:** Developed by psychologist Sandra Bem, this theory proposes that individuals develop a sense of their own gender identity by internalizing cultural messages and behaviours associated with masculinity and femininity. Bem's Gender Schema Theory suggests that individuals categorize themselves and others based on gender and use these categories to guide their behaviours and perceptions.
- **Feminist Theory:** Feminist theories address gender inequality and advocate for gender equity. They explore the ways in which power dynamics, social structures, and cultural norms contribute to the marginalization of women and other gender-diverse individuals. Various branches of feminist theory, such as liberal feminism, radical feminism, and intersectional feminism, offer different perspectives on addressing and challenging gender-based oppression.
- **Queer Theory:** Queer theory challenges traditional concepts of gender and sexuality, questioning the binary understanding of both. It explores how societal norms and assumptions about gender and sexuality limit individual expression and identities. Queer

theory encourages a broader understanding of gender diversity and seeks to disrupt heteronormative and consummative ideologies.

- **Biological Theories:** Some theories explore the biological and genetic factors that may influence gender identity and expression. Research in this area seeks to understand the interplay between hormones, brain structures, and genetics in shaping an individual's gender identity.
- **Psychosocial Theories:** These theories examine the psychological and social processes that contribute to the development of gender identity and behaviour. They consider how early childhood experiences, socialization, family dynamics, and peer interactions influence an individual's understanding of their gender.
- **Performativity Theory:** Philosopher Judith Butler's theory of gender performativity argues that gender is not a fixed identity but rather something that is continuously performed through language, actions, and behaviours. Gender identity is not a stable essence but a result of ongoing performances that are influenced by societal norms and expectations.
- **Masculinity and Femininity Theories:** These theories explore the ways in which masculinity and femininity are constructed and maintained in society. They analyse how cultural norms and stereotypes shape behaviours, emotions, and expectations associated with each gender.

BRILLOPEDIA

DEFINITION OF GENDER

- Gender is a social and cultural construct that distinguishes differences in the attributes, norms, behaviour's, roles, and relationships of men and women, girls and boys. Gender is not the same as sex, which is a biological category based on one's reproductive organs. Gender influences how people experience social life, identity, and values.
- Transgender is a term that falls under the gender category, while lesbian, gay, and bisexual (LGB) are terms that fall under the sexuality category.

CONSTITUTIONAL PROVISIONS PROMOTING GENDER EQUALITY

- **Preamble** socialism, equal distribution of opportunities and resources, social justice, assuring the dignity of the individual.
- **Article 14:** equality before law and equal protection of laws.
- **Article 15 (1):** prohibition of discrimination on the grounds of sex.
- **Article 15 (3):** empowering state to make special provisions for women and children.
- **Article 16(2):** equality of opportunity in matters of public employment.
- **Article 38:** state to secure a social order for the promotion of welfare of the people with social justice and equal opportunities.
- **Article 39 (a):** secure, men and women equally, the right to an adequate means of livelihood.
- **Article 39-a:** equal justice and free legal aid.
- **Article 39-d:** Equal pay for equal work
- **Article 42:** just and humane conditions of work and maternity relief.
- **Article 51-A (e):** promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.
- **Articles 243-d & 243-t:** reservation of seats for women candidates in panchayats and municipalities.
- **Transgender Persons (Protection of Rights) Act** – Under Section 18 of this Act, it is illegal for any person to sexually abuse any transgender person. **Indian Penal Code** – All transgender women can seek protection under all the sections of the Indian Penal Code protecting women from sexual abuse.

GENDER JUSTICE IN HISTORICAL BACKGROUNDS IN INDIA

Ancient and Medieval Periods:

- Ancient India had instances of women occupying positions of power and respect, such as the reign of Queen Didda of Kashmir and the prominent role of women scholars and philosophers.
- The concept of "**Ardhanarishvara**," representing the union of masculine and feminine aspects, was celebrated in Hindu mythology, highlighting the idea of gender complementarity.

- In the context of religious practices, Vaishnavism traditionally restricts women from adopting asceticism and changing their lifestyle. On the other hand, **Buddhism** allows women to embrace asceticism and alter their way of life.
- However, the caste system and patriarchal norms often limited women's autonomy and opportunities. The **Manusmriti**, an ancient legal text, contained provisions that subordinated women and restricted their rights.

Colonial Period:

- During British colonial rule, social reforms began to address some gender inequalities. Efforts like the abolition of sati (widow burning) and the promotion of education for women emerged.
- Women actively participated in the Indian independence movement, contributing to the strengthening of their social and political roles.

Post-Independence Period:

- The Indian Constitution, adopted in 1950, guaranteed gender equality and prohibited discrimination on the basis of gender.
- The Women's Reservation Bill, aimed at reserving seats for women in legislative bodies, has been a topic of discussion for decades but has faced challenges in implementation.

GENDER-BASED VIOLENCE

Gender-based violence refers to any harmful action directed toward an individual or a group of people based on their gender, often perpetuating power imbalances and reinforcing social norms. This form of violence is deeply rooted in gender inequalities and discriminatory attitudes, and it disproportionately affects women and marginalized gender identities. Gender-based violence can occur in various forms and contexts, both in private and public spheres. Here are some aspects of gender-based violence,

- **Rape:** Rape is a heinous crime involving non-consensual sexual penetration. It's a grave violation of bodily autonomy and dignity, leaving survivors with physical, emotional, and psychological scars.

- **Harassment:** Sexual harassment involves unwelcome behaviour of a sexual nature, creating an uncomfortable or hostile environment. It can occur in workplaces, public spaces, and online platforms.
- **Abortion Issues:** Gender-based violence extends to restricting women's control over their reproductive health. Forced abortion or denial of safe abortion services can constitute a violation of rights.
- **Sexual Harassment:** This encompasses any unwanted sexual advances, comments, or behaviour that creates an uncomfortable or hostile environment for individuals.
- **Domestic Violence:** This involves physical, emotional, psychological, or economic abuse within intimate relationships or households. It affects people of all genders but disproportionately affects women.
- **Dowry:** Dowry-related violence occurs when a woman is subjected to harassment or violence from her husband or in-laws due to inadequate dowry payments.
- **Adultery:** Adultery-related violence includes situations where individuals, often women, are subjected to harm or violence due to perceived or actual involvement in extramarital affairs.
- **Child Marriage:** Child marriage is a violation of children's rights, disproportionately affecting girls. It robs them of education, health, and personal development.
- **Sex Work and Trafficking:** Many individuals, particularly women and girls, are forced into sex work against their will. Human trafficking for sexual exploitation is a grave violation of human rights.
- **Immoral Trafficking:** This involves trafficking individuals for purposes such as sexual exploitation, forced labour, or involuntary servitude.

FAMILY MATTERS AND PERSONAL LAWS

1) **Women's role in family:**

- Women are the key to sustainable development and quality of the life in the family. Women are considered as a slave in a home. The decision making power still in the hands of the men who is the head of the family (Karta-head of the Hindu undivided family).
- The old Hindu traditions favoured men in matters of inheritance: only sons - not daughters could inherit their parents. After independence, however, these traditions were abolished

by law. But in the North, nothing has really changed and women are still deprived of inheritance.

2) Marriage:

- "In many families, the girl child agrees to the decision taken by the parents. Women who are in a government job or a highly paid job choose their husband by their own and take care of them even if they get married and keep their income with themselves. A man has absolute authority in choosing his wife, and a woman's family plays an important role in choosing her husband. The dynamics of marriage and partner selection can vary greatly based on cultural, societal, and individual factors. The practices and norms you described reflect the diversity of perspectives on marriage and the roles of men and women in different contexts."
- Polygamy is legal for Muslims and it also exists to some extent among Hindus, particularly in cases where the first wife has not given birth to any sons.
- Repudiation is also legal for Muslims. For persons of other religious beliefs, the divorce proceedings have been equal for men and women since 1976. Divorce by mutual consent is legal but in reality, any woman who initiates a divorce is condemned by the public opinion. For that only reason, divorces are very rare.

WORKPLACE INEQUALITIES

- **Gender Pay Gap:** The gender pay gap refers to the difference in average earnings between men and women. It can be influenced by a variety of factors, including occupational segregation, discrimination, caregiving responsibilities, and societal norms.
- **Equal Pay for Equal Work:** The concept of equal pay for equal work emphasizes that individuals performing the same job or role, regardless of gender, should receive equal compensation. This principle is aimed at preventing discrimination based on gender.
- **Merit-Based Compensation:** Compensation based on merit recognizes employees' skills, experience, performance, and contributions. Merit-based systems should be transparent and free from bias to ensure that all individuals are fairly rewarded for their efforts.
- **Wage Jobs and Construction Work:** In sectors like construction, where manual labour is often involved, gender stereotypes and historical norms may lead to wage discrepancies. Women's participation in these fields has traditionally been lower, which can contribute to lower pay and limited opportunities.

LEADERSHIP INEQUALITIES

- **Lack of Representation:** The scarcity of women in leadership roles can foster unfamiliarity and discomfort with their opinions, leading to resistance or dismissal.
- **Organizational Culture:** Pre-existing organizational norms and cultures may align with conventional leadership models, thereby hindering the acknowledgment and respect of opinions from female leaders.
- **Implicit Gender Bias:** Unconscious biases often cast doubt on the credibility and validity of opinions expressed by women in leadership roles, juxtaposed with their male counterparts.

EDUCATION

- Men have the freedom to read and express their thoughts, whereas women might not always have the same opportunity. Women can face challenges when it comes to openly expressing and having their thoughts acknowledged."
- Right after completing their schooling, many girls choose to get married. For most girls, their education concludes upon marriage. Only a select few women pursue work while also being married. There is often a question among parents about the importance of educating their daughters. Once marriage is achieved, the strictness of parental expectations tends to subside.

WOMEN'S ROLE IN POLITICAL PARTICIPATION

- Women's equal participation and leadership in political and public life are essential to achieving the Sustainable Development Goals by 2030. However, data show that women are underrepresented at all levels of decision-making worldwide and that achieving gender parity in political life is far off.
- In rural areas, even in separate constituencies formed for the advancement of women, men appointed their wife as Panchayat chairman, but husbands performed all the work, with wife having only the authority to sign, and husbands assuming control in all other matters.

- women's political participation in urban areas in India has seen positive developments due to legal provisions and increased awareness. However, challenges persist, and ongoing efforts are necessary to create an environment that empowers women to contribute fully to the political landscape of urban India.

TRANSGENDER

- The Supreme Court judgment in the National Legal Services Authority (NALSA) vs. Union of India case recognized transgender individuals as a distinct category apart from the binary classification of male and female. The judgment affirmed the rights of transgender people to self-identify their gender and enjoy the same fundamental rights as any other citizen of India.

CRIMINALIZATION OF SEXUALITY

- After India's Supreme Court re-criminalized homosexual sex on 11 December 2013, there was a sharp increase in physical, psychological and sexual violence against the transgender community by the Indian Police Service, which often does not investigate reports of sexual assault against them. On 6 September 2018, the Supreme Court overturned India's Section 377, which criminalized anal and oral sex.

RECOMMENDATION

- Promoting gender justice for women is a critical aspect of creating a fair and equal society. Gender justice encompasses ensuring equal rights, opportunities, and protections for women in all spheres of their life. Here are some key considerations and strategies for achieving gender justice for women:
 - ❖ **Equal Legal Rights:** Ensure that women have equal legal rights to property, inheritance, marriage, divorce, and other legal matters. Eliminate discriminatory laws and practices that disadvantage women.
 - ❖ **Access to Education:** Provide equal access to quality education for girls and women. Eliminate gender-based stereotypes and barriers that hinder girls' education.
 - ❖ **Economic Empowerment:** Promote women's economic empowerment through equal pay for equal work, access to credit and financial services, and support for women entrepreneurs and workers.

- ❖ **Healthcare and Reproductive Rights:** Ensure access to affordable and comprehensive healthcare, including sexual and reproductive health services. Uphold women's right to make decisions about their bodies and reproductive choices.
- ❖ **Political Participation:** Encourage women's active participation in politics and decision-making processes at all levels. Implement policies that promote women's representation in elected offices and leadership roles.
- ❖ **Workplace Equality:** Eliminate workplace discrimination and harassment. Implement policies that support work-life balance, parental leave, and flexible working arrangements.
- ❖ **Violence Prevention:** Combat gender-based violence by enacting and enforcing laws against domestic violence, sexual harassment, and other forms of violence against women. Provide support services for survivors.
- ❖ **Media Representation:** Promote positive and non-stereotypical portrayals of women in media to challenge harmful gender norms and biases.
- ❖ **Legal Reforms:** Review and update laws to ensure they reflect the principles of gender equality and address emerging challenges.
- ❖ **Awareness and Education:** Raise awareness about gender-based discrimination, violence, and stereotypes through education and advocacy campaigns.
- ❖ **Access to Justice:** Ensure that women have equal access to legal recourse and justice systems without fear of reprisal.
- ❖ **Intersectionality:** Recognize that gender justice intersects with other forms of discrimination, such as race, class, caste, and sexual orientation. Addressing these intersections is essential for comprehensive gender justice.

CONCLUSION

My conclusion, prioritizing the safety and well-being of women is a shared responsibility that transcends gender boundaries. Governments have taken significant steps by enacting laws aimed at addressing various challenges faced by women and ensuring their freedom of movement. While these laws are designed to empower women and provide them with a conducive environment, it's crucial to acknowledge that the impact extends beyond gender. Society is a complex interplay of individuals from diverse backgrounds, and laws should ideally provide equitable protection for all. Misuse of any law, regardless of its intent, can lead to unintended consequences and undermine its true purpose. Thus, the principle of fairness dictates that legal frameworks should be crafted with a

holistic perspective, considering the well-being of all individuals irrespective of their gender or ethnicity. In striving for a just and inclusive society, it's important to engage in constructive dialogues and work collaboratively to ensure that laws reflect the needs and aspirations of the entire populace. By fostering a culture of respect, understanding, and equality, we can collectively create an environment where everyone's rights are safeguarded and where laws truly serve as a means to protect and uplift all segments of society.

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