

THE GENDER JUSTICE SYSTEM IN INDIA AND IT'S LEGAL FRAMEWORK

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ABSTRACT

This Article study lying on the gender equality that hardly exists in any region, social class in the Indian Society which thwart the recuperating the lives of Indian people. The authenticity of gender equality in India is extremely multifaceted and diversified, because it slightly exists in any dimension of the society like education, employment opportunities, income, health, cultural issues, social issues, economic issues etc. An attempt has been made to find out those factors which are responsible for this problem in India and also the legal framework which formulate to undertake this severe issue . As we know that not only the women are struggling for there equality but also the transgender are equally or better to say put more efforts to get there due rights in the Indian society . So, this paper highlights the multi-dimensional context of gender equalities and inequalities prevalent in India. Overall, the study indicates the need of gender equality in economic, social, cultural legal and political field which are of a great challenge for policy-makers and social scientists to establish the rights which are guaranteed by the Indian Constitution . The researcher have tried to propose some pertinent strategies and policies implication for improve this gender equality and to market the dignified position for Indian people that become the subject of gender biasness.

KEYWORDS - Gender equality, women ,rights, protection

I. INTRODUCTION

“Why exclude them? Of the two sexes of which the species consists , how comes all the natural right to political benefits to be confined to one?”- Bentham (1789)”
After the planet War II ,within the post modernisation era, one among the main issue which had fascinated the attention of the policy makers and social scientists was gender issues and concerns. Gender issues mean the argument on mutually, men and ladies , though women who undergo the gender inequality. From all gender issues, gender inequality is usually widespread in India .Contemplation of the difficulty of gender equality is now frequent in Government, Non-Government organisations, and within the politics in India. The policy makers are sturdily believed that a positive commitment to gender equality and equity will strengthen every area of stroke to scale back poverty because women can bring new vigour and new sights.

tons of debates are happening women and their nourishment since previous couple of decades. Thus, several national and international organisations try to enhancement and therefore the advancement of girls & their full participation in developmental process & trying to eradicate all sorts of inequality against women.

India's rank is 95th out of 129 nation during a index which measures globally gender parity seeking at the aspects like poverty, health, education, literacy, political representation etc. Gender inequality is chiefly disastrous not only because it refrain women from the minimal social opportunities, but also because it highly imperils the life scenario of future generations. Indian families often prefer boys to women . the newest index contain 51 checkboxes across 14 of the 17 official Sustainable Development Goals and covers 129 countries across all regions of the planet . India also has been dipped to the 112th position from its 108th position in 2018 within the World Economic Forum's Global Gender Gap Index 2020, which covered 153 countries of the planet . The report conclusively said that it'll take nearly 100 years to beat the gender gap within the areas like politics, economic, health ,education etc. "The country (India) has overcome two-third of its overall gender difference (score of 66.8%). However, things of girls in larger section of India's society remains deprived. it's lost in total of 4 positions since the previous survey" the report said.

II. GENDER EQUALITY AND CONSTITUTIONAL FRAMEWORK

The Constitution of India which is a jewel and pioneer of rights plays inherently a great role in protecting the women from discrimination and enabling gender justice in the present scenario. It can be said that the Constitution being superlative law of the land substantially addresses the questions against to the woman and also responds to the challenges. The whole legal system is to be framed as per of the provisions of the Constitution of India. But law unaidedly by the society cannot change the society in a night, but it will definitely bring positive outcomes and also bring the certainty that the discrimination cannot be exist in any dimension whatsoever.

The principle of basic human rights are confirmed and assured all around the world by way of national Constitution and almost all the Constitution is explicitly refers to non-discrimination with respect to rights between two genders that is men and women. But, none of the Constitution is automatically or as necessity effective enough that there is still prevails certain aspects which are not guarded against and some which have been safeguarded by way of special provisions and some which explicitly guarantees equality in all possible facets of life.

Obstacles that stand out to be systematically transposing a commitment made nationwide to ensure gender justice and gender equality; but, it has been analysed that customary laws as well as procedural laws have continued to an equally safeguard the rights of men and women which further effectively counter made the commitment made at national and international level.

Article 14 of the Constitution talks about the equality. According to the article All persons are equal before the law and every person get the equal protection of law whoever is within the territory of India. Article 14, hence, not only lays down the British conception of the equality before law but it also laid down the principle of equal protection of law which is aptly adapted from the American concept .

Article 15 provided about the Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth .Thus Article 15(1) specifically restrict any form of discrimination against women on the basis of sex, caste etc. and article 15(3) talks about special provision for the women favouring and empowering laws in order to protect and promote the interest of women and which enhance the state to uplift women from any form of discrimination.

Article 16 of the Constitution talks about that the state cannot discriminate against anyone in the matter of employmentArticle 16 of the Constitution provides for equality of opportunity to all, in matters relating to public employment or appointment to any office and specifically restrict discrimination on the basis of sex.

The State is not only bound to protect the women from any kind of discrimination but it is the fundamental duty of each and every individual to ensure that the dignity of women is protected. Article 51 A(e) talks that It shall be the duty of every citizen of India and form personal obligation to protect the dignity of women and not to resort any activities or indulge in any action which are derogatory and degraded to the dignity of the women.

The Equal Remuneration Act, 1976, the Immoral Traffic (Prevention) Act, 1956, the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, the Dowry Prohibition Act, 1961, the Maternity Benefit Act, 1961 and the NREGA,2005 are some of the laws related to empower the gender equality in India.

III. Gender justice in personal laws

The Hindu Succession Act, 1956 is an attempt of the Parliament of India which enacted to codify the law regarding to intestate or unwilled inheritance, amongst Hindus, Buddhists, Jains, and Sikhs. The noteworthy amendment related to exclusion of discrimination was made in the year 2005 by the Hindu Succession (Amendment) Act, 2005.

Under the Hindu Succession Act, 1956, females are approved for ownership of all property inherited either before or after the signing of the Act, abolished their “limited owner” status. Nevertheless, it was not until the 2005 Amendment that daughters of the families were allowed equal receipt of property as with sons .The property of a Hindu female dying intestate, or without a will, shall inherited in the following manner :

1. To the sons and daughters (including the children of any pre-deceased son or daughter) and if there is husband alive than to the husband

2. To the heirs of the husband if there is no husband.
3. To her father and mother
4. To the heirs of the father if the father is deceased, and
5. To the heirs of the mother if mother is deceased.

MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT OF 1937- The inheritance rights of females are governed by Sharia law and the share in the estate of family, the females are less than males as mandated by Quran which shall need to be changed.

IV. GENDER JUSTICE IN CRIMINAL LAWS

CRIMINAL LAW (AMENDMENT) ACT, 2013- The Cabinet Ministers on 1 February 2013 give their approval for bringing an ordinance, which giving effect to the amendment in law as recommended by the Verma Committee Report. According to former Minister of Law and Justice, Ashwani Kumar, 90 percent of the suggestions given by the Verma Committee Report have been included into the Ordinance. The ordinance was subsequently followed by a Bill with considerable changes, which was effectively passed by the Lok Sabha on 19 March 2013.

New offences: This new amendment has expressly consider certain acts as offences which were dealt under related laws. These new heinous offences such as, acid attack, sexual harassment, voyeurism, stalking have been included into the Indian Penal Code. For these kind of offences there are differently severe punishments are included which also incorporate the compensation to the survivor of acid attacks which meets her medical needs. The punishment vary from from 3 years to 10 years and in more heinous offences the punishment is upto life imprisonment

THE INDIAN PENAL CODE ,1860

- Section 228-A
- Section 292,293 and 294 deals with obscenity and related materials
- Section 306
- section 312-318 deals with miscarriage
- section 354
- section 366
- section 375
- section 376 A-376D

- section 496
- section 497
- section 498 A
- section 509

THE CODE OF CRIMINAL PROCEDURE, 1973

- Section 46
- Section 47
- Section 53-A Examination of person accused of rape by medical practitioner.
- Section 125
- Section 164-A Medical examination of the victim of rape.

THE INDIAN EVIDENCE ACT,1872

- Section 111-A
- Section 113-A
- Section 113-B
- Section 114-A

V. GENDER JUSTICE IN CIVIL LAWS

In abolition to the laws formulated under personal or criminal laws there are some enactments to which are as follows:

- The Dowry Prohibition Act, 1961
- The Equal Remuneration Act, 1976
- The National Commission for Women Act,1990
- A National Plan of Action for the Girl Child
- The Protection of Women from violence Act, 2005

Besides these act many other acts and laws exist that are:

- The Hindu Marriage Act,1955
- Protection of Civil Rights Act,1955
- Immoral Traffic prevention Act,1956
- Indecent Representation of women Prohibition Act in,1986
- Medical Termination of Pregnancy Act,1971 and many more

Through consistent efforts have been made from time to time but still there remains major loopholes and still it is evident that women continues to face acts of violation and deprive

continuously of the freedom in the field of social, political, economic statuses to be equally enjoyed by them.

The need is not to just uplift the female section of our society but also to educate and prepare meant to share the platform with women to and not to effect by the same and be concerned and take decisions solely based on gender of a person. This could be of great help as women work at the grassroot level and are very specific and clear with the intricacies is involved and how things differ when it comes to ground reality.

Therefore, women rights principle of equality and gender-based justice are an important concern in particular as well as in general, "It is important to bear firmly in mind - even when it considers the indirect effect of gender equality - that inequality between women and men is itself a denial of social decency and justice".

Vina Mazumdar have rightly asserted that, "equality for women is a basic condition for ensuring that women contribute fully to the social economic and political development of the nation. But substantively equality still-eludes mass of Indian women even after five decades of engagement with political democracy and democratic development planning".

VI. GENDER JUSTICE AND THE ROLE OF INDIAN JUDICIARY

Although these principles are strictly not justiciable, the Supreme Court of India, through its judicial activism, has infused dynamism into these non-justiciable provisions and issued directions to the state to implement them. The 73rd and 74th Amendments (1993) to the Indian Constitution have served as a major breakthrough towards enhancing the women's participation in democratic process.

The Supreme Court in *Muthamma v. Union of India 1979 AIR 1868*. and *Air India v. Nargesh Mirza (1997) 6 SCC 241* struck down prejudiced service terms mandating female employees to attain government permission before marriage and denying married and pregnant women the right to be employed.

In *Vishaka v. State of Rajasthan*, the Apex Court observed that the Equality in the course employment can be gravely impaired when women are subjected to gender-particular violence, such as sexual harassment in the workplace. Therefore the Court issued directions to ensure women have equal working conditions and are protected from the sexual harassment. A definition of sexual harassment which was observed by the Supreme Court of India in *Vishaka v. State of Rajasthan*. Article 19 (1) g of the Indian Constitution grant the right to all citizens to be employed in any profession of their choosing or to practice their own trade or business. *Vishaka v. State of Rajasthan* established that its actions are consequential in a breach of one's rights to 'Gender Equality' and 'Life and Liberty' are in fact an infringement of the victim's fundamental right under Article 19 (1) g. The case verdict establishes that sexual harassment violates a woman's rights in the workplace and is thus not just a matter of personal injury.

In the cases of *Mackinnon Mackenzie & Co. Ltd v. Audrey D'Costa* the Court observed that there was prejudice in payment of wages to lady stenographers and such discrimination was being perpetuated under the attire of a settlement between the employees and the employer. The Court ultimately not only made it obligatory to pay equal remuneration to lady stenographers as their male counterparts but also observed that the ground of financial inability of the management cannot be a ground to seek immunity from the Equal Remuneration Act, 1976. Hindu Succession Amendment Act 2005 is a part of central legislation that was brought into force in all our states. The Act grant equal rights of inheritance to Hindu women along with men, thus achieving the constitutional mandate of equality.

Interpretation of the Guardianship law under the light ray of Article 15 by the Supreme Court in the case of *Githa Hariharan v. Reserve Bank of India* which held that the position of mother is equivalent to the father in the matter of guardianship.

VII. CONCLUSION

Ancient texts of all religions prescribe what should be the qualities of women . Any women who do not posses those qualities are not worthy enough to live in the society with equivalent dignity of other members. This is modern India which need to deactivate the gender Inequality. The needs of the day are that the trends where girls are able not only to break out the culturally depicted patterns of employment but also to offer there valuable advice about there career possibilities that look beyond the traditional list of jobs. It is shocking that in spite of so many laws, women still continue to live under the immense stress and strain which causes suicide . To ensure the fundamentals of the constitution such as equality of status for our women and overall gender equality we still have miles to go. Man and Woman are like two wheels of a carriage and the life of one without the other is incomplete. According to the one report only 29% of Indian women who are above the age of 15 in 2011 were a element of the country's labor force, compared to 80.7% men which is still a very small number. In the Parliament of India, only 10.9% of lawmakers are women, while in the our neighbouring state the Pakistan have surprisingly 21.1% are women. Pakistan scored lower, with 18.3% of women in having received secondary education compared to 43.1% of men although this just a comparison and there is nothing to be inspire off . In the U.S., 94.7% women received a secondary education in a magical way – a figure minutely still higher than for men (94.3%). In the China, this figure was 54.8% for females and 70.4% for males. In India, 200 women died for every 100,000 childbirths, says the report. In China, the number was considerably lower (37 deaths) and in the U.S. even lower than that (21.)

Hence this data shows that how the gender disparity is still a severe issue not at regional level but also at the national level .Thus the need of an hour is to ensure that the above discussed problems should be discussed in well manner at all the levels of the Indian democracy and the legislators should show some real interest to overcome this never

ending discrimination by making an act for representation of women in the parliament which definitely help to make an India as the enhanced and gender disparity free society.

VIII. SUGGESTIONS

According to Nobel Laureate Prof. Amartya Sen (2001), there are seven types of gender equalities. Here is a brief explanation of all the types of gender equality.

1) Mortality Equality:- In this, The Equality between men and women unswervingly involves matters of life and death, and it takes the brutal form of unusually high mortality rates for women and a consequent predominance of men in the total population, as opposed to the preponderance of women found in societies with little or no gender prejudice in health care and nutrition.

2) Natalty Equality: - This kind of Equality a preference is given to young boys over girls. It is usual in many of the male dominated societies and these manifests in the form of parents wanting there newborn to be a boy rather than a girl. With the accessibility of contemporary techniques to verify the gender of foetus, sex selective abortions has become frequent in India.

3) Employment Equality: - In the terms of employment as well as in the promotion at work women regularly face severe biasness than men. This is evidently exemplified as men getting priorities in getting better work opportunities and pay hike than their female counterparts.

4) Ownership Equality: - In many of the societies ownership of property can also be very unequal. Since ages the customary property rights have been favoured men in the most parts of India. The nonexistence of claims to property can not only reduce the voice of women, but also make it difficult for women to enter and flourish in commercial, economic and even some social activities.

5) Special Opportunity Equality: - Even when there is little difference in basic facilities including schooling, the opportunities of higher education may be far fewer for young women than young men.

6) Basic-Facility Equality: - Even when demographic characteristics do not show much or any anti- female bias, there are other ways in which women can have less than a square deal.

7) Household Equality: - There are often enough, basic inequalities in gender relations within the family , which can take many diverse forms. Even in cases in which there are no explicit signs of anti- female prejudice in, say, survival or son-preference or education, or even in promotion to higher executive positions, the arrangements of family can be relatively unequal in terms of sharing the burden of housework and child care.

There is a elucidation of every problem. For minimising gender inequality in India, we should offer high level of education to girls and amplify women empowerment by giving

them some free education or make stringent laws to Protect there interest or make them financially independent . We should also give them an opportunity in active politics at every level of our democracy and not make use of them in the name of election & we shall make such social activities so that it fascinates the women and enhance the social integration in Indian society can be made. Government should make policies & strategies concerning the sex identification or indecent representation in any form & also regarding the illegal abortions. In context of above NGOs can also play a major role too eradicate Gender Inequality. Politicians should frame out policies for increasing social welfare development regarding this issue and we should srad the more and more awareness among the women regarding there rights as most of them are unaware from there rights. The visionary Campaign of our Hon'ble Prime Minister Mr. Narendra Modi "Beti Bachao Beti Padhao" can be successful only , when the mindset of Indian society will be changed towards the women .

REFERENCES

1. Available at : <https://www.coursehero.com/file/47452668/There-is-great-disparity-in-the-definition-of-gender-and-sex6-pagesdocx/> (visited on 2 April 2020).
2. Available at : <https://www.slideshare.net/abubashars/gender-inequality-77793286> (Visited on 2 April 2020).
3. Available at : <https://iosrjournals.org/iosr-jef/papers/vol2-issue5/H0255565.pdf> (Visited on 2 April 2020).
4. Available at : <https://www.rightsofequality.com/you-too/>(Visited on 3 April 2020).
5. Available at : <https://yourstory.com/socialstory/2019/06/india-ranks-95-global-gender-equality-index>(Visited on 3 April 2020).
6. Available at : <https://www.livemint.com/news/india/india-slips-four-ranks-on-world-economic-forum-s-global-gender-gap-index-2020-11576574974188.html> (Visited on 6 April 2020).
7. The Constitution Of India
8. *Available at* : <https://www.linkedin.com/pulse/role-education-sector-removing-gender-inequality-manikandan-annadurai> (Visited on 6 April 2020).
9. Available at: https://infogalactic.com/info/Pre-Conception_and_Pre-Natal_Diagnostic_Techniques_Act,_1994(Visited on 7 April 2020)
10. Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994 (Visited on 7 April 2020).

11. Available at: <http://www.legalservicesindia.com/article/1833/Right-To-Be-Born-And-Indian-Legislative-And-Judicial-Framework.html> (Visited on 7 April 2020).
12. Available at :<https://www.scribd.com/document/357601247/SHWW-ACT> (Visited on 8 April 2020).
13. Available at :https://www.worldwidejournals.com/paripex/recent_issues_pdf/2015/September/September_2015_1492176817__30.pdf (Visited on 8 April 2020).
14. Available at :<https://pib.gov.in/newsite/erecontent.aspx?relid=92690> (Visited on 8 April 2020).
15. Available at :https://wn.com/Hindu_Succession_Act,_1956(Visited on 8 April 2020).
16. The Hindu Marriage Act,1955
17. Available at :https://www.academia.edu/23439385/GENDER_INEQUALITY_IN_INDIA_CAUSES_AND_REMEDIES(Visited on 9 April 2020).
18. Available at :<https://www.scribd.com/document/96361058/Equal-Remuneration-Act-1976>(Visited on 9 April 2020).
19. v:<https://prsindia.org/theprsblog/update-women%E2%80%99s-reservation-bill>(visited on 9 April 2020).
20. Available at :[http://www.legalservicesindia.com/article/1448/The-Role-of-Education-Sector-\(visited on 9 April 2020\)](http://www.legalservicesindia.com/article/1448/The-Role-of-Education-Sector-(visited%20on%209%20April%202020)).
21. Available at :https://www.worldwidejournals.com/paripex/recent_issues_pdf/2015/September/September_2015_1492176817__30.pdf(visited on 11April 2020).
22. Dr.Nirmal kanti Chakrabati and Dr.Shachi Chakarbaty , GENDER JUSTICE, p.no.20, R.CAMBRAY & CO. PRIVATE LTD,2006,Calcutta University.