

WOMEN'S RIGHTS AND GENDER EQUALITY IN INDIAN LAW

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ABSTRACT

*India's journey towards gender equality and women's rights has made significant strides, yet profound challenges persist. Despite the constitutional provisions and legal reforms aimed at promoting gender equality, deeply rooted cultural norms continue to affect women's status. Discrimination and gender-based disparities persist, hindering the nation's progress and leaving a troubling mindset gap within society. India's legal framework, encompassing constitutional provisions such as Articles 14, 15, 16, and others, as well as specialized laws like the Equal Remuneration Act, Sexual Harassment of Women at Workplace Act, and the Hindu Succession Act, offers critical protections and opportunities for women. Landmark cases, including *Vishaka v. State of Rajasthan* and *Vineeta Sharma v. Rakesh Sharma*, have further advanced women's rights, addressing issues like sexual harassment and inheritance. However, these legal reforms alone cannot eradicate deeply entrenched cultural biases and traditions, such as son preference and practices like child marriage and dowry. Achieving genuine gender equality in India necessitates a multi-faceted approach. This includes empowering women economically, intensifying efforts to combat gender-based violence, raising awareness about sexual rights and education, and assisting disadvantaged women in developing life and development skills. Even though the Indian Constitution upholds the principles of equality and empowerment for all, there are lingering challenges. The nation's society and values have evolved, but certain deeply rooted biases persist. Achieving complete gender equality in a diverse and culturally rich nation like India remains a complex task, one that requires ongoing legal reforms, cultural transformation, and dedicated efforts at all levels to ensure that every individual, regardless of their gender, can fully enjoy their rights and opportunities.*

Keywords: Equality, Legislation, Women's Rights, Women's Safety.

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INTRODUCTION

Since the beginning of time, Indian women have received different treatment. Women were still seen as caregivers for the home and were discouraged from undertaking many tasks, even after independence. Discrimination is "the practice of unfairly treating a person or group of people differently from other people or groups of people," according to the Merriam-Webster Dictionary. It is depressing, particularly in light of the vast number of goddesses venerated in our nation. Even if there has been a significant gain in gender equality since independence, there is still a mentality gap in society about it.

EQUALITY DESIRE OF SOCIETY

Discrimination and inequality are products of people's attitudes and methods of dealing with situations. Everyone is impacted by gender inequality, including men, women, transgender people, and children. Ensuring women receive an equal share of rights and equitable opportunities contributes to the achievement of various development goals in addition to gender equality. Swami Vivekanand was right when he said, "A nation cannot advance if the women are left behind, just as a bird cannot fly with one wing alone." In a perfect whole, men and women are the two holes. Their togetherness gives them strength; their separation leaves them feeble.¹

Journal of Legal Research and Juridical Sciences

LEGAL PROVISIONS ON GENDER EQUALITY IN INDIA

The Indian Constitution somewhat eased the situation for women in terms of gender equality. The Constitution's Preamble, Fundamental Rights, Fundamental Duties, and Directive Principles of State Policy all refer to gender equality. In addition to encouraging the State to enact different measures of equality and empowerment in favour of women, the Constitution guarantees the empowerment of women. In order to guarantee equal protection for women, the Central Government has also ratified a large number of international treaties and agreements on human rights.

¹'Women Laws in India and Domestic Violence' (Legal Service India) <https://www.legalserviceindia.com/laws/women_issues.htm> accessed on 23rd October 2023

CONSTITUTIONAL PROVISIONS

Particularly significant in terms of gender equality and equality in general are Articles 14, 15, Article 15(3), Article 16, Article 39(a), Article 39(b), Article 39(c), and Article 42² of the Constitution of India.

Article 14: The Indian Constitution's Article 14 discusses equality before the law or equal standing. Before the law, everyone was treated equally, and the state cannot contest this. This law is crucial because it shields women against discrimination on the part of the government. This act makes it very apparent that everyone has an equal standing before the state.

Article 15: Discrimination on the basis of religion, ethnicity, caste, sex, and place of birth is forbidden by Article 15. It lays forth exactly the conditions under which discrimination is prohibited against an individual. The State may make any further arrangements for women and children without violating this Article. The state is authorized to create specific provisions for women under Article 15(3).

Article 16: In matters pertaining to public employment or appointment to any office, Article 16 of the Constitution guarantees equality of opportunity to everyone and expressly prohibits discrimination, among other things, on the basis of sex. These are the cornerstones of our legal-constitutional framework, all of which are subject to justiciability. Women must not only be safeguarded from discrimination by the State; it is also everyone's fundamental responsibility to ensure that women's dignity is upheld.

Article 39: Article 39 of the Constitution states that the State shall ensure that men and women have equal rights to a sufficient standard of living, that men and women are paid equally, that the economic system does not lead to the concentration of wealth, and that material resources are allocated for the common good.

Article 42: In accordance with Article 42 of the Constitution, the State is required to provide humane working and maternity relief circumstances.

² Constitution Of India 1950

LEGAL PROVISIONS

The legal provisions are broadly classified into two categories which are:

- **Crimes identified under Special Laws**

The Equal Remuneration Act, 1976³: According to the Act, employers must compensate men and women equally for work that is either the same or of a similar character. No employer may discriminate against women when hiring them for the same job or work of a similar nature, or in any condition of service that arises after hiring them, like promotions, training, or transfers. The exception to this rule is if the employment of women in such work is currently illegal or restricted by law.

The Criminal Law Amendment Act, 2013: On February 1, 2013, the Cabinet Ministers approved the introduction of an ordinance to implement the legal amendments recommended by the Verma Committee Report. Ninety percent of the recommendations made in the Verma Committee Report, according to former Law and Justice Minister Ashwani Kumar, have been included in the Ordinance. The Bill, which had several modifications, eventually took the place of the ordinance and was approved by the Lok Sabha on March 19, 2013. The Indian Penal Code now includes the new offenses that this Act introduced, including acid attacks (Section 326A, 326B), sexual harassment (Section 354A), voyeurism (Section 354C), and stalking (Section 354D).

Sexual Harassment of Women at Workplace Act, 2013⁴: The matter was initially raised in the 1992 Vishaka case when legislation prohibiting sexual harassment of women at work was discussed and passed. Harassing women at their place of employment is against Articles 14, 15, and 21 of the Indian Constitution, which safeguard women's fundamental rights. On September 3, 2012, the Lok Sabha, the lower house of the Indian Parliament, passed it. On February 26, 2013, the Rajya Sabha, the Indian Parliament's upper house, approved it. On April 23, 2013, the President signed the Bill. The Act becomes operative on December 9, 2013. Despite the law's mandate that every firm with more than ten employees must apply it, the majority of Indian employers have not done so. When employers break this legislation, the government has vowed to take harsh measures.

³ The Equal Remuneration Act, 1976

⁴ Sexual Harassment of Women at Workplace Act, 2013

OBJECT OF THE ACT

To safeguard women from sexual harassment at work, to prevent and address allegations of sexual harassment, and to handle issues related to or resulting from such behaviour.

The Act would guarantee that women are shielded from sexual harassment in all workplaces, whether they are private or public. This will help them realize their rights to equality in terms of gender, life, and liberty, as well as equality in the workplace globally. Women will be more likely to participate in the workforce if they feel safe doing so, which will lead to their economic empowerment and inclusive growth.⁵

The Women's Reservation Bill: Recently, the Lok Sabha and Rajya Sabha, both passed the Women's Reservation Bill 2023 (128th Constitutional Amendment Bill) or Nari Shakti Vandan Adhiniyam. One-third of the seats in the Delhi assembly, State legislatures, and the Lok Sabha are reserved by the bill. This will also hold true for the seats in the Lok Sabha and State Legislatures set aside for Scheduled Castes (SCs) and Scheduled Tribes (STs). The Bill called for the insertion of Article 330A, which takes its cues from Article 330's provisions on the Lok Sabha's seat reservations for SCs and STs. According to the Bill, seats earmarked for women may be distributed to various state or union territory constituencies in a rotating manner. The Bill proposed designating one-third of the SC/ST seats as designated for women, with a rotational system⁶.

The Hindu Succession Act, 1956⁷: The Indian Parliament passed the Hindu Succession Act, 1956 in order to codify and reform the laws pertaining to intestate, or unwilled, succession among Sikhs, Buddhists, Jains, and Hindus. The Hindu Succession (Amendment) Act, 2005 brought about a substantial change in the area of discriminatory removal. The Hindu Succession Act, 1956 eliminates the category of "limited owner" and grants women ownership of all property acquired before or after the Act's signature. However, daughters were not permitted to receive property equally with sons until the 2005 Amendment. This always confers property rights on women.

⁵ SREE KRISHNA BHARADWAJ H, 'LAWS PROTECTING WOMEN FROM GENDER DISCRIMINATION IN INDIA- A CRITICAL ANALYSIS' (2015) 4(9) PIJR <https://www.worldwidejournals.com/paripex/recent_issues_pdf/2015/September/September_2015_1492176817_30.pdf> accessed on 23 October 2023

⁶ 'Women Reservation Bill 2023 (Drishti IAS, 23 September 2023) < <https://www.drishtias.com/daily-updates/daily-news-analysis/women-s-reservation-bill-2023>> accessed on 25 October 2023

⁷ The Hindu Succession Act, 1956

The Maternity Benefit Act, 1961⁸: 2017 saw a modification to the Maternity Benefit Act of 1961. The Act increased paid maternity leave from twelve (12) weeks to twenty-six (26) weeks for female employees who had fewer than two living children. The modification additionally permitted working moms to take 12 weeks of maternity leave from the day of the child's birth, provided that their employer and mode of employment permit it, and to work from home after 26 weeks. This is applicable to mothers who have adopted a child under three months of age.

The Dowry Prohibition Act, 1961⁹: The payment or acceptance of dowries as a condition of marriage is forbidden by this Act. Offering or requesting a dowry carries a maximum sentence of five years in prison, a fine of up to Rs. fifteen thousand, or the sum of the dowry.

CRIMES DEFINED BY THE INDIAN PENAL CODE



- Rape (Section 375);
- Kidnapping and abduction (Section 363-373);
- Molestation (Section 354);
- Sexual Harassment (Section 509);
- Importation of a girl (up to 21 years of age);
- Torture (Section 498A);
- Dowry Deaths (Section 304B).



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SOME LANDMARK CASES

Vishaka v. State of Rajasthan (1997)¹⁰: "The Vishaka Guidelines," which the court established in this case, were eventually transformed into the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. This case concerns Bhanwari Devi, a woman who was subjected to gang rape by five men in retaliation for her efforts to break up an infant's marriage and challenge the male ego in Rajasthan, both of which were duties assigned to her. The court determined that sexual harassment clearly violated the Indian Constitution's Articles 14, 15, 19, and 21.

Air India v. Nargesh Meerza¹¹(1981): The Supreme Court interpreted Article 14 inclusively in this case and held that no one can be denied employment due to their sexual orientation.

⁸ The Maternity Benefit Act, 1961

⁹ The Dowry Prohibition Act, 1961

¹⁰ Vishaka v. State of Rajasthan (1997) 6 SCC 241

¹¹ Air India v. Nargesh Meerza 1982 SCR (1) 438

Stress was placed on the personnel' youthful appearance, glamour factor, and height when it came to in-flight services. Air India, an aviation corporation, mandated that air hostesses retire upon reaching 35 years of age, having a kid, or getting married, whichever comes first. Due to their offensive and disparaging nature, these terms were contested in court and ultimately overturned.

Laxmi v. Union of India (2015)¹²: The Supreme Court was called upon to issue orders and make recommendations about preventive measures in response to an increase in acid attacks. The court directed the national governments at all levels to outlaw the unlicensed sale of acids. This ruling made it possible to apply stiffer penalties to those who commit these kinds of offenses.

Vineeta Sharma v. Rakesh Sharma (2020)¹³: In this judgment, the Supreme Court ruled that daughters, regardless of whether they were born before the 2005 amendment to the Hindu Succession Act, 1956, shall enjoy equal coparcenary rights in the Hindu Undivided Family by virtue of their birth and cannot be excluded from inheritance.

EXISTING LOOPHOLES AND POSSIBLE SOLUTIONS

Given India's low ranking in the WEF's Global Gender Gap Index report, more needs to be done at the local level. Traditions and culture play a big part in starting the gender inequality epidemic. Poor outcomes for daughters are an inherent result of cultural parental preference for sons. Customs such as child marriage and sati are still practiced in many parts of the country, and very few people are even aware of them. In order to achieve gender equality, policies that address gender-based violence and discrimination must be put into place. Raising awareness, particularly in rural and isolated villages, is also essential. Women have consistently demonstrated their equality with men in all fields. What steps may be taken then to improve gender equality?¹⁴

- Putting policies into place to enhance financial and job services in order to increase women's economic independence.

¹² Laxmi v. Union of India (2014) 4 SCC 427

¹³ Vineeta Sharma v. Rakesh Sharma (2020) 9 SCC 1

¹⁴ Ishan Arun Mudbidri, 'Legal provisions on gender equality: an analysis' (Blogip Readers, 17 July 2021) <<https://blog.ipleaders.in/legal-provisions-gender-equality-analysis/>> accessed on 26 October 2023

- Strengthening the mechanisms in place to prevent gender-based violence and punishing offenders severely.
- Raising awareness of sex education and sexual rights among disadvantaged groups in society.
- Assist low-income women in developing stronger life and development skills so they may manage their lives more effectively.

CONCLUSION

According to the Indian Constitution, every person in this nation is entitled to equality. Although there are still certain shortcomings, society, and ideals have changed since the Constitution was passed. Having a girl child is still viewed by some as a hardship for the family. The Supreme Court, the Government, and other authorities have repeatedly put in place different procedures to stop discrimination, but this hasn't changed the narrow-mindedness of those who would even consider engaging in female foeticide. Because of all of this, it is still very difficult to achieve complete gender equality in a nation like India.

