

GENDER DISCRIMINATION AGAINST WOMEN IN INDIA: LAW AND POLICIES

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ABSTRACT

Discrimination against women is a global issue. Women experience biasness on the basis of their gender. In India gender discrimination is more rampant in both rural as well as urban areas. The study aim to find out the causes of low education poor socio economic conditions, societal trends, religious influence, culture and participation in decision making that have led to gender discrimination. Gender is a common term whereas gender discrimination is meant only for women, because females are the only victims of gender discrimination. Females are nearly 50 percent of the total population but their representation in public life is very low. Female of our country have faced the discrimination throughout the ages now and still to be continued till today and still exists in various form. Usually, discrimination is influenced by cultural norms and tradition, religion, region etc. Biologically and sociologically both are assigned different role. Physically a female role is to look after house, children, family, and relatives and on the other hand men are made for bread earner, for hardship and for struggle for earning. All these thinking made our women weaker and deprived from basic things. Both are equal in human right. Women are discriminated in this male dominating society. As a result most of women are unable to understand their own right and freedom. Thus discrimination not only hampers women future but also impedes the country growth. This paper deals with gender discrimination in India, its various forms, its causes and solution for gender discrimination are also discussed in this paper.

Keywords: female, discrimination, equality, inequality, gender.

INTRODUCTION

Gender is a common term generally refers to the socially constructed roles, behavior, activities and attributes that a particular society considers appropriate for men and women. Gender basically refers two sexes' i.e. men and women. Gender discrimination is not biologically determined but it is determined by socially and the discrimination can be changed by the proper and perpetuate efforts. Denial of equality, rights and opportunity and suppressing in any form on the basis of gender is gender discrimination. Women are discriminated in this male dominating society. The distinct roles and behavior may give rise to gender discrimination. Gender discrimination is the prejudicial treatment of an individual or group due to gender. Gender discrimination is not biologically define to anybody rather than it is society, norms, culture, people, etc. who create the atmosphere of gender discrimination. Generally, gender inequality or discrimination word used for "women", because they considered being most inferior and weaker section of our society. From our total population fifty percent are female population. Among them two-thirds are illiterate. It's really very unbelievable. India is a male dominant society and gender discrimination is customized habitually.¹

Violence against woman on the basis of gender is one of the most regular and prevalent human rights violations. It is rooted in gendered social structures rather than individual and random acts; it cuts across age, socio-economic, educational and geographic boundaries; affects all societies; and is a major obstacle to ending gender inequality and discrimination globally. The United Nations defines Crime against women as "*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 life*"²

¹ Bhaswati Das & Vimal Khawas, Gender Issues in Development Concerns for the 21st century 3 (Rawat Publication, New Delhi, 2009).

² General Assembly Resolution 48/104 Declaration on the Elimination of Violence against Women, 1993 (Feb 22, 2019, 3:10 PM), <http://www.un.org.>documents>atrocities-crime>.

GENDER DISCRIMINATION

India has witnessed gender inequality from its early history due to its social, economic and religious practices that resulted a wide gap between the position of men and women in the society. How we can forget that men and women are the two wheels of a cart whose equal participation is needed in nation progress. Without the development of one we cannot imagine the development of other. Men and women are the two halves of humanity who need equal support and cooperation and without the one; another one cannot reach up to the excellence. Women face discrimination right from the childhood. They are discriminated in every field. A primary way that parents discriminates their girl children in everything. Mostly illiterates people practices this evil. Education plays a major role in removing gender discrimination from the society.³ In India we have many people who are happy on the birth of a son and remain unhappy on the birth of a girl child. They did not believe in educating their daughter. Educating women is the prime factor to combat gender discrimination and for the upliftment of women. Our people of Indian society prefer sons over daughters on everything for example if they doesn't have a son then who will look after their family, who will give them food in old age, who will forward their family hierarchy and so on. Birth of a son in a family celebrated with lots of happiness whereas on the same hand birth of a daughter celebrated with lot of sorrow and considered as a burden of a life. Sons are always demandable for these things then consequently, women accorded lower status in the Indian society and then again the process of gender discrimination takes place. Women in India face discrimination in every dimensions, either it is social, economic or political. They had an inferior status over all. Gender inequality prevails in work, education, allocation of food, health care and fertility choices. Many developing countries including India have displayed Gender inequality in education, employment and health. Even everyday through different medium we heard news about the gender discrimination going on in schools, societies everywhere. High levels of gender discrimination are seen against women in the provision of health care, nutrition, education, in Northern and Western India. From health and nutrition point of view girls are more likely to be malnourished than boys both in northern and southern states. This is one of the e.g. of gender discriminated in health. Discrimination of girls in nutrition, preventive and curative health care

³ Neera Desai & Krishnaraj Maithreyi, *Women and Society in India* 5 (Ajanta Publications, Delhi, 2010).

seeking have an impact on morbidity and mortality. So, from the above explanation it is clear that women are discriminated on different grounds.⁴

DISCRIMINATION FACED BY WOMEN THROUGH ANCIENT TIME TILL TODAY

Women's life is full of complication. They are not free in this so called male dominating society, they are in so much of boundation. Their life starts with discrimination and end with discrimination. Hence, there are some different faces of discrimination which they have to live with it:

1. Sati Pratha
2. Widow marriage
3. Early marriage
4. Dowry
5. Domestic violence
6. Female infanticide
7. Female foeticide
8. Denial of education
9. Discrimination in food, clothing, and shelter
10. Less respect in family and society
11. No decision –making power
12. Preference of son
13. Gender biasness
14. Social injustice especially towards women.

Causes of Gender Discrimination

1. The causes of gender discrimination are; ☐
2. Educational backwardness ☐

⁴M.K Gandhi, Women and Social Injustice 3 (Navjivan Publishing House, Ahmedabad 2001).

3. Caste ☐ Religious beliefs ☐
4. Culture ☐
5. On the name of family history ☐
6. Customs and beliefs ☐
7. Races
8. Low income ☐
9. Unemployment ☐
10. Society ☐
11. Family situation TM
12. Attitudes

Like male or even above them female plays important role in the family and national development. But her contribution is not recognized by the male dominant society.

LEGISLATION FOR WOMEN

In India, several laws, legislations, policies and institutional reforms have been enacted to carry out the gender action plan for the development of women. Legislation is an important instrument for bringing about a change in the unequal economic and social status in India. In pre-independent India, few laws were passed in response to social demands and on the basis of humanitarian consideration. They are Bengal Sati Regulation Act of 1829 and similar Anti-Sati laws in Madras and Bombay, Hindu Widow Remarriage Act 1856, the Hindu Women's Right to Property Act in 1937, (The Muslim Personal Law) the Shariat Act 1937 and the Dissolution of Muslim Marriages Act 1939.⁵

After Independence, there have been important changes in legislation and litigation which have facilitated the increased participation of women in political activities as well as in the socio-economic development activities and the increase appear to be more likely at the lower level than at the highest centres of decision making.⁶

⁵ Mamta Mehrotra, *Crimes Against Women In India* 41 (Ocean Books P.Ltd. Delhi, 2014).

⁶ Id. at 42.

Article 14 of Indian Constitution says that the state shall not deny to any person equality before or equal protection of the law,⁷ Article 15 says that no women can be discriminated against on the ground of sex,⁸ Article 15 (3) emphasis that the state shall make special provisions for women and children⁹ and Article 16 provides equality of opportunity in matters relating to employment by the state.¹⁰

In Article 39(a) emphasis that the citizens men and women equally, have the right to an adequate means of livelihood,¹¹ in Article 39(d) it says that the state should secure equal pay for equal work for both men and women¹² and in Article 34 it provides that the state shall make provision for securing just and humor humane for work and for maternity relief.¹³ The 73rd and 74th Amendments of Indian Constitution in 1993 are the milestone in the history of India, which provides lot of powers for the local bodies. It paves the way for decentralization, empowers the poor people as well as women.¹⁴

The following laws are having special provisions to protect women and their safety:¹⁵

- a) Dowry Prohibition Act, 1961
- b) The Medical Termination of Pregnancy Act, 1971
- c) Indecent Representation of Women (Prohibition) Act, 1986
- d) The Immoral Traffic (Prevention) Act 1986
- e) Commission of Sati (Prevention) Act, 1987
- f) Pre-Conception & Pre-Natal Diagnostic Techniques Act, 1994
- g) Information Technology Act 2000
- h) The Protection of Women from Domestic Violence Act, 2005
- i) The Prohibition of Child Marriage Act, 2006
- j) The Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act 2013

⁷ INDIAN CONST. art. 14.

⁸ Id. art. 15.

⁹ Id. art. 15(3).

¹⁰ Id. art. 16.

¹¹ Id. art. 39(a).

¹² Id. art. 39(d).

¹³ Id. art. 34.

¹⁴ INDIAN CONST. amend. 73rd & 74th .

¹⁵ Mehrotra, *supra*, 64.

SPECIAL INITIATIVES FOR WOMEN

Apart from making specific legal provisions for the protection of women the Government of India has taken up special initiatives are briefly described below: -

National Commission for Women In January 1992 the government has set up this statutory body with specific mandate to study and monitor all the matters relating to the constitutional and legal safeguards provided for women. The Commission is to review the existing legislation and suggest amendments wherever necessary. The Commission can create awareness against the discrimination of women.¹⁶

The National Plan of Action for Girl Child (1991-2000) This Plan of Action was to ensure Survival, protection and development of the Girl Child with the Ultimate objective of Building up a bright future for the Girl Child.erever necessary. The Commission can create awareness against the discrimination of women.¹⁷

National Policy for the Empowerment of Women (2001) The Department of Women and child development in the ministry of Human Resource Development as prepared a “National Policy for the Empowerment of Women” in the year 2001.The Goal of this policy is to bring the advancement, development and Empowerment of Women.¹⁸

Beti Bachao, Beti Padhao Yojana, (2015) This initiative to save girls and educate them was launched in September 2015. The main aim was to end the Gender. Selective Abortion of Female fetus, which has skewed the population towards a significant under representation of girls in some Indian states. The “Beti Bachao” Campaign is supported by human rights groups, non-governmental organizations, and state local government in India. The “Beti Bachao” Campaign is supported by numerous medical organizations in India, including The Indian Medical Association. The state government also provides funding for this Campaign. Bet Bachao activities large rallies, poster campaign, wall painting, hoardings, television commercials and short animations and video films.¹⁹

¹⁶ The National Commission For Women Act, 1990, No. 20 (1990).

¹⁷ The National Plan of Action for Girl Child (1991-2000).

¹⁸ National Policy for the Empowerment of Women (2001).

¹⁹ Beti Bachao, Beti Padhao Yojana, (2015).

ROLE OF JUDICIARY FOR WOMEN EMPOWERMENT

All provisions of the Constitution and all laws enacted by the legislature get their real meaning and import through the process of judicial interpretation. The Constitutional mandate and the various laws providing for protective discrimination in favour of women relating to several aspects of their social, economic and political life have come up before the courts. Through various devices like judicial review, judicial activism, social action litigation and the duty of enforcement of fundamental rights the superior Courts in India have evolved a gender jurisprudence which has given substance and life to the constitutional scheme of protective discrimination in favour of women. Below is detailed overview of the judicial approach in various cases, where the Courts have successfully delivered their verdict to strengthen position of women.

In **P. Sagar v. State of Andhra Pradesh**, The Andhra Pradesh High Court observed that Article 15(3) is an exception engrafted to clause (1) of the Article 15. Thus, in view of the Article 15(3) reservation for women cannot be denied. Similarly, the reservation for sports women does not offend the provisions of articles 15(1) and 29(2) of the constitution.²⁰

In **Padmaraj Samarendra v. State of Bihar**, allotment of some seats for girl students in Medical Colleges was challenged on the ground that it is solely based on sex. The Court while justifying the allotment of seats for girl students held as reasonable and it cannot be said to be discrimination on the ground of sex alone.²¹

In **Vijay Lakshmi v. Punjab University**, court held that appointment of lady Principal in Women's college or a lady teacher therein, cannot be held to be violative of Articles 14 and 16 of the Constitution, because classification is reasonable and it has a nexus with the object to be achieved. Moreover it is a precautionary, preventive and protective measure based on public morals and particularly in view of the young age of the girl students to be taught.²²

In **Budhadev Karmaskar v. State of West Bengal**, Court held that generally, our society views prostitutes as women of low character but, refuse to look at their situation from their perspective. The bench in this case must be appreciated not just for recognizing their right

²⁰ AIR 1968, 1379.

²¹ AIR 1979 Pat 226.

²² AIR 2003 SC 3331.

under Article 21 and directing the state and central governments to act for their welfare but also, to understand their perspective and impoverished situation. Not only this, but the bench acted quite actively and gave the directions to Central and State government to prepare schemes for giving technical/vocational training to sex workers and sexually abused women in all cities in India.²³

In **Laxmi v. Union of India** On account of increase in number of acid attacks on women in the past few years, Supreme Court in order to curb these gave directions to Home Secretary, Ministry of Home Affairs associating the Secretary, Ministry of Chemical & Fertilizers to convene a meeting of the Chief Secretaries/concerned Secretaries of the State Governments and the Administrators of the Union Territories to curb and restrict the sale of acid throughout the country. the Supreme Court issued several directions for the protection of acid attack victims such as: minimum 3 Lakh Rupees compensation for victims, adequate publicity of victim compensation schemes, private hospitals must not refuse treatment to victims, and full treatment must include medicines, food, bedding and reconstructive surgeries.²⁴

In **P Geetha v. Kerala Livestock Development Board Ltd**, the petitioner, who became a mother through surrogate procedure, was not granted maternity leave by the Respondents on the ground that birth of the child was not under normal circumstances. The High Court held that while granting maternity leave, women could not be discriminated merely because the baby was obtained through surrogacy.²⁵

Articles 19 to 22 of The Constitution of India provide a detailed scheme of Right to Freedom. Article 19(1) guarantees 6 freedoms for citizens with reasonable restrictions and Article 21 provides for Right to life and personal liberty of each and every person in India which includes Right to live with human Dignity. Virginty test is violative of right to privacy. In **Surjit Singh Thind v. Kanwalji Kaur**, apex court held that allowing the medical examination of a women's virginty violates her right to privacy under Art. 21 of the Indian Constitution dignity, right to livelihood, right to work, right to privacy, right against sexual harassment etc²⁶

²³ JT 2011 (8) SC 289.

²⁴ (2014) 4 SCC 427.

²⁵ W.P.(C). No. 20680 20.14 (H).

²⁶ AIR 2003 P&H 353.

SOLUTION HOW WE CAN LOWER THE GENDER DISCRIMINATION ARE AS FOLLOW

1. Remove gender inequality from home and then from society.
2. Providing equal education to girls and boys.
3. Giving women equal opportunity in social, economic and in political arenas.
4. Create more social awareness in society and in nation.
5. Most important thing is to create awareness among the parents so that they can understand the importance of girls.
6. Women should be aware regarding their right.
7. Changes should be made in mindset of people of lower section as well as higher section.
8. Women should have decision –making power in the family.
9. Women empowerment is more necessary today.
10. There should be a strong focus in women’s human rights, equality, choice, autonomy and reproductive rights. Gender equality and women’s human right must be central be central to all goals.
11. As individuals, women must have access to financial resources, income opportunities and equal participation as informed decisions makers at all levels.
12. Women should be more aware about the government schemes and its benefits so, that they can utilize it properly and timely.
13. Changes are needed in the societal norms and the mind-set of the people about women and understand the emerging roles of girls and women for the development of nation.

CONCLUSION

Only making laws and enforcing them is not enough but there is a need of social awakening and change in the attitude of mindset of masses, so that there should be no discrimination on the basis of gender and gave equal right and to women. They are the self-owner of their life. Now the time came when women should empowered themselves. Removal of gender discrimination can help in the women empowerment. Time came where women should fight

for her own right. If we really want our half population i.e. women should progress and empowered then it is very necessary to remove different kinds of evils that are still prevailing in Indian society.

