

LAWS RELATED TO GENDER EQUALITY IN INDIA

Dr. Savita B. Chiwande
College of Social Work,
Kamptee

Abstract : *India has a long history of gender inequality. Our many social issues like dowry, domestic violence, taboo of menstrual etc indicate the gender inequality. Gender inequality in India refers to educational, economic, health and political inequalities between Indian men and women. Discrimination with women, on the basis of gender, kept the women backward from thousands of years. Before independence, some social activists tried to render some human rights to women but could not do sufficient. After independence, the Indian government made some laws to establish equality between men and women in India. This paper tries to notice these laws and their actual advantages for the Indian women.*

Key words: *Gender Equality, Laws, Women empowerment*

Introduction :

The women in India have been discriminated from ancient time. They have been treated in a very badly in every field of life. A prejudiced behavior of men towards them suppressed their rights of human being. Though there are many goddess and worshipping practices in the Indian religious culture but the actual treatment to the woman is of oppression. Indian government has been trying ever since independence to uplift the status of women by making and implementing various laws for them.

Gender equality refers to the *equal rights, responsibilities and opportunities of women and men* and girls and boys. Gender equality implies that the interests, needs and priorities of both, women and men are taken into consideration, recognizing the *diversity of different groups women and men* (for example: women belonging to ethnic minorities, lesbian women or women with disabilities). Gender equality is both, a human rights principle and a precondition for sustainable, people-centered development (adapted from UN Women).

(Sources: Medical Women's International Association (MWIA), Training Manual for Gender Mainstreaming in Health, 2002)

Gender inequalities, and its social causes, impact India's sex ratio, women's health over their lifetimes, their educational attainment, and economic conditions. Gender inequality in India is a multifaceted issue that concerns men and women alike. Some argue that some gender equality measures, place men at a disadvantage. However, when India's population is examined as a whole, women are at a disadvantage in several important ways. In India, discriminatory attitudes towards either sex have existed for generations and affect the lives of both sexes. Although the constitution of India has granted men and women equal rights, gender disparity still remains.

Constitutional Provisions for Gender equality :

The rights and safeguards enshrined in the constitution for women in India are listed below:

1. The state shall not discriminate against any citizen of India on the ground of sex [Article 15(1)].
2. The state is empowered to make any special provision for women. In other words, this provision enables the state to make affirmative discrimination in favour of women [Article 15(3)].
3. No citizen shall be discriminated against or be ineligible for any employment or office under the state on the ground of sex [Article 16(2)].
4. Traffic in human beings and forced labour are prohibited [Article 23(1)].
5. The state to secure for men and women equally the right to an adequate means of livelihood [Article 39(a)].
6. The state to secure equal pay for equal work for both Indian men and women [Article 39(d)].
7. The state is required to ensure that the health and strength of women workers are not abused and that they are not forced by economic necessity to enter avocations unsuited to their strength [Article 39(e)].
8. The state shall make provision for securing just and humane conditions of work and maternity relief [Article 42].
9. It shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women [Article 51-A(e)].
10. One-third of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women [Article 243-D(3)].
11. One-third of the total number of offices of chairpersons in the Panchayats at each level shall be reserved for women [Article 243-D(4)].
12. One-third of the total number of seats to be filled by direct election in every Municipality shall be reserved for women [Article 243-T(3)].
13. The offices of chairpersons in the Municipalities shall be reserved for women in such manner as the State Legislature may provide [Article 243-T(4)].

Government Laws for Gender Equality :

1. Bengal Sati Regulation, 1829 and Sati (Prevention) Act, 1987

The Bengal Sati Regulation or Regulation XVII, in British India under East India Company rule, by the then Governor-General Lord William Bentinck, which made the practice of sati or suttee—or the immolation of a Hindu widow on the funeral pyre of her deceased husband—illegal in all jurisdictions of British India and subject to prosecution. The practice of suttee, or of burning or burying alive the widows of Hindus, is hereby declared illegal, and punishable by the criminal courts.

In recent past one notable incidence came into light when in September 1987, in Rajasthan village of Deorala, 17-year-old Roop Kanwar, a bride of eight months immolated herself on her husband's funeral pyre. Thousands were present at the venue. This shocking

incident once again brought into light the fact that still in the sub-conscious memory of traditional Hindu society people consider the practice of *Sati* as some kind of virtuous act.

After the countrywide discussion of this brutal killing, the government of India made a law to eradicate the 'Sati Pratha' throughout the country. Sati (Prevention) Act, 1987 is a law enacted by Government of Rajasthan in 1987. It became an Act of the Parliament of India with the enactment of The Commission of Sati (Prevention) Act, 1987 in 1988. The Act seeks to prevent Sati practice or the voluntary or forced burning or burying alive of widows, and to prohibit glorification of this action through the observance of any ceremony, the participation in any procession, the creation of a financial trust, the construction of a temple, or any actions to commemorate or honor the memory of a widow who committed sati.

Since enactment of this law, no other such event came into light anywhere in the country. Therefore, it can be said that the inhuman practice now has no place in the modern outlook of Twenty-first-century society of India.

2. Special Marriage Act, 1954 :

In 1872 Act III, 1872 was enacted but later it was found inadequate for certain desired reforms, and Parliament enacted a new legislation. Henry Sumner Maine first introduced Act III of 1872, which would permit any dissenters to marry whomever they chose under a new civil marriage law. In the final wording, the law sought to legitimize marriages for those willing to renounce their profession of faith altogether ("I do not profess the Hindu, Christian, Jewish, etc. religion"). It can apply in inter-caste and inter-religion marriages. Overall, the response from local governments and administrators was that they were unanimously opposed to Maine's Bill and believed the legislation encouraged marriages based on lust, which would inevitably lead to immorality.

The Special Marriage Act, 1954 replaced the old Act III, 1872. The new enactment has 3 major objectives:

1. To provide a special form of marriage in certain cases,
2. to provide for registration of certain marriages and,
3. to provide for divorce.

A law is applies to Any person, irrespective of religion. Hindus, Muslims, Buddhists, Jains, Sikhs, Christians, Parsis, or Jews can also perform marriage under the Special Marriage Act, 1954. Inter-caste marriages are performed under this Act.

This law renders the rights to women and men of getting intercaste, interreligious marriage and right to divorce.

3. Hindu Marriage Act-1955 :

As part of the Hindu Code Bill, the Hindu Marriage Act was enacted by Parliament in 1955 to amend and to codify marriage law between Hindus. As well as regulating the institution of marriage (including validity of marriage and conditions for invalidity), it also

regulates other aspects of personal life among Hindus and the applicability of such lives in wider Indian society.

Divorce :

Although marriage is held to be divine, the Hindu Marriage Act does permit either party to divorce on the grounds of unhappiness, or if he or she can prove that the marriage is no longer tenable.

4. The Hindu Succession Act, 1956 :**This law applies to Hindu, Buddhist, Jain and Sikh persons :**

Under the Hindu Succession Act, 1956, females are granted ownership of all property acquired either before or after the signing of the Act, abolishing their "limited owner" status. However, it was not until the 2005 Amendment that daughters were allowed equal receipt of property as with sons.

Women have equal rights under the law to own property and receive equal inheritance rights, but in practice, women are at a disadvantage. This is evidenced in the fact that 70% of rural land is owned by men. Laws, such as the Married Women Property Rights Act of 1974 protect women, but few seek legal redress. Although the Hindu Succession Act of 2005 provides equal inheritance rights to ancestral and jointly owned property, the law is weakly enforced, especially in Northern India.

5. Equal remuneration Act-1976 :

The Act aims at providing equal remuneration to men and women workers and prevention of discrimination, particularly against women on the ground of gender.

Equal Pay :

The Act applies to an extensive range of employment including the informal sector. It provides that no discrimination should be made in remuneration for the same work or work of a similar nature only on the ground of gender. (Section 4)

Recruitment :

Further the Act also provides that no gender based discrimination be made while recruiting for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer. (Section 5)

Exceptions :

Under this law, no discrimination is permissible in recruitment and service conditions except where employment of women is prohibited or restricted by the law. (Section 15)

6. Panchayat Raj Act :

Panchayats have been the backbone of grassroot democracy in the Indian villages since its beginning. Gandhi had aptly favoured the panchayati raj and his dream got translated with the passage of the Constitution (73rd Amendment) Act, 1992 (or simply the Panchayati Raj Act), which introduced the three-tier Panchayati Raj system to ensure people's participation in rural reconstruction in general and that of women in particular. It came into force with effect from April 24, 1993.

Provisions for women in the Act :

The Act provides for the reservation of not less than one-third of the total number of seats for women (including the number of seats reserved for the SCs and STs). Further not less than one-third of the total number of offices of chairpersons in the Panchayats at each level shall be reserved for women. This would be rotated among different Panchayats at each level.

Role of Women in Panchayats :

Participation in election: The Act provides for the reservation of not less than one-third of the total number of seats for women. It is an attempt to ensure greater participation of women in election process directly and indirectly. It would be the nursery of creating women politicians for national politics. Even the participation of common women citizens in various activities such as attending Gram Sabha meeting, etc. has reportedly increased (68-78 percent).

Participation in rural development: Women are actively participating in rural development as per their capacity right from labourers to policy-makers. **Participation in decision-making:** The participation of women as elected as well as non-elected members are rising due to reservation for women. It acts as pull factor for women to participate in meeting. They give their suggestions for various works and problems faced by them.

Agent of social revolution: Women are acting as an agent of change in the society and raising voice against injustice and atrocities. **Reducing corruption and violence:** Due to women representatives nexus of officers and male elected representatives are breaking, which has a direct impact on reducing corruption. The role of local muscle power has substantially reduced due to active participation and awareness of women about their rights and power.

Reduction in violence against women: Domestic violence has substantially declined due to women pradhan or surpanch. These women representatives take pro-actively take up such violence. The victims also feel free to share their grievances to women representatives. **Reduction in violence against Dalits:** The dominance of upper caste patriarchy are substantially declined, hence the shackles of caste is subsiding.

Practising participatory democracy: Growing participation of marginalised section in general and women in particular, is transforming our democratic setup from representative democracy to participatory democracy.

7. Dowry Prevention Act 1961 :

The dowry system is thought to put great financial burden on the bride's family. In some cases, the dowry system leads to crime against women, ranging from emotional abuse and injury to even deaths. The payment of dowry has long been prohibited under specific Indian laws including the Dowry Prohibition Act, 1961 and subsequently by Sections 304B and 498A of the Indian Penal Code.

A court judgment clarifies the legal definition of dowry as “Dowry” in the sense of the expression contemplated by Dowry Prohibition Act is a demand for property of valuable security having an inextricable nexus with the marriage, i.e., it is a consideration from the side of the bride's parents or relatives to the groom or his parents and/or guardian for the agreement to wed the bride-to-be.”

The Dowry Prohibition Act, 1961 article 3 specifies that the penalty for giving or taking dowry does not apply to presents which are given at the time of a marriage to the bride or bridegroom, when no demand for them have been made. Although Indian laws against dowries have been in effect for decades, they have been largely criticized as being ineffective. The practice of dowry deaths and murders continues to take place unchecked in many parts of India and this has further added to the concerns of enforcement.

Section 498A of the Indian Penal Code required the bridegroom and his family to be automatically arrested if a wife complains of dowry harassment. The law was widely abused and in 2014, the Supreme Court ruled that arrests can only be made with a magistrate's approval.

8. Maternity Benefit Act, 1961 :

This act regulates the employment of women and maternity benefits mandated by law. It states that a woman employee who has worked in an organisation for a period of at least 80 days during the 12 months preceding the date of her expected delivery is entitled to receive maternity benefits, which includes maternity leave, nursing breaks, medical allowance, etc.

9. Medical Termination of Pregnancy Act, 1971 :

The Act came into effect in 1972, was amended in 1975 and 2002. The aim of the Act is to reduce the occurrence of illegal abortion and consequent maternal mortality and morbidity. It clearly states the conditions under which a pregnancy can be ended or aborted and specifies the persons qualified to conduct the same.

10. Sexual Harassment Act-2013 :

Sexual harassment is an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated, where a reasonable person would anticipate that reaction in the circumstances.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a legislative act in India that seeks to protect women from sexual

harassment at their place of work. A workplace can be any office, whether government or private.

11. Triple Talaq :

Triple Talaq, also known as *talaq-e-biddat*, instant divorce and *talaq-e-mughallazah* (irrevocable divorce), is a form of Islamic divorce which has been used by Muslims in India, especially adherents of Hanafi Sunni Islamic schools of jurisprudence. It allows any Muslim man to legally divorce his wife by stating the word *talaq* (the Arabic word for "divorce") three times in oral, written, or more recently, electronic form. The Triple Talaq Bill or the Muslim Women (Protection of Rights on Marriage) Bill 2017 that was passed in the Lok Sabha. The proposed bill aims to outlaw the practice of Talaq-e-biddat or instant triple talaq and criminalises the practice, making it a non-bailable and cognizable offence and inviting a jail term of three years for erring husbands.

12. Right to Live in Relation :

A live-in relationship is not recognized by Hindu Marriage Act, 1955 or any other statute. In the absence of any law to define the status of live-in relationships the Courts have taken the view that where a man and a woman live together as husband and wife for a long term, the law will presume that they were legally married unless proved contrary. The Protection of Women from Domestic Violence Act 2005 provides for the protection, maintenance and right of palimony to a live-in partner, if she complains. The earliest case in which the Supreme Court of India recognized the live-in relationship as a valid marriage was that of *Badri Prasad vs. Deputy Director of Consolidation*, in which the Court gave legal validity to the a 50 year live-in relationship of a couple. In *Payal Katara v. Superintendent Nari Niketan Kandri Vihar Agra and Others* the Allahabad High Court ruled out that "a lady of about 21 years of age being a major, has right to go anywhere and that anyone – man and woman even without getting married can live together if they wish".

13. Reservation for women student :

Under Non-Formal Education programme, about 40% of the centres in states and 10% of the centres in UTs are exclusively reserved for females. As of 2000, about 0.3 million NFE centres were catering to about 7.42 million children, out of which about 0.12 million were exclusively for girls. Certain state level engineering, medical and other colleges like in Orissa have reserved 30% of their seats for females. The Prime Minister of India and the Planning Commission also vetoed a proposal to set up an Indian Institute of Technology exclusively for females. Although India had witnessed substantial improvements in female literacy and enrolment rate since the 1990s, the quality of education for female remains to be heavily compromised.

14. Marital rape (or spousal rape) :

Marital rape is the act of sexual intercourse with one's spouse without the spouse's consent. It is a form of domestic violence and abuse. There is punishment to the guilty under this law.

15. Ban On Prenatal Diagnostic Testing :

Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994 is an Act of the Parliament of India enacted to stop female feticides and arrest the declining sex ratio in India. The act banned prenatal sex determination. The main purpose of enacting the act is to ban the use of sex selection techniques before or after conception and prevent the misuse of prenatal diagnostic technique for sex selective abortion.

Conclusion :

There are adequate legislations in India which not only removes the discrimination against women but also empowers the women. The Constitution itself makes room for the discriminatory laws in favour of the women who are considered the weaker sex, disadvantaged and discriminated in the male dominated society. The action wise plan of the Government in preventing the discrimination has proved the legislations as a failure. The existence of these laws only in the books is the major problem in India. The Supreme Court, however, has taken initiatives too and in some cases issued directions to the Government as well. But the implementation of these legislations in actual sense is very much necessary to remove the discrimination in the society.

References

- Shree Krishna Bharadwaj, Laws Protecting Women From Gender Discrimination In India - A Critical Analysis.
- Drsahanwaz, Right To Be Born And Indian Legislative And Judicial Framework, Available At: [Http://Www.Legalservicesindia.Com/Article/Article/Right-To-Be-Born-And-Indian-Legislative-And-Judicial-Framework-1833-1.Htm](http://www.legalservicesindia.com/article/article/right-to-be-born-and-indian-legislative-and-judicial-framework-1833-1.htm)
- Workplace Harassment! Know The Laws!, Available At: [Http://Www.Respectwomen.Co.In/Workplace-Harassment-Know-The-Laws/](http://www.respectwomen.co.in/workplace-harassment-know-the-laws/)
- Siddharth Sharma, A Critical Analysis Of The 174th Report Of The Law Commission Of India, Available At: [Http://Www.Academia.Edu/7575974/A_Critical_Analysis_Of_The_174th_Report_Of_The_Law_Commission_Of_India_Subject_Family_Law](http://www.academia.edu/7575974/A_Critical_Analysis_Of_The_174th_Report_Of_The_Law_Commission_Of_India_Subject_Family_Law)