

Gender Equality in 21st Century: Fighting the Dangerous Stereotypes

Nazuk Sood¹, Navjot Kaur²

^{1,2}Assistant Professor of Law
GNDU Rc Jalandhar

Abstract

Gender Equality will only be reached if we are able to empower the women

- Michelle Bachelet

Gender Inequality is deep rooted in the notions of the patriarchal society. Women were considered as the weaker section of the society, and they were prone to the abuse by the male dominated society. The makers of the Indian Constitution were keen to address the issue of gender discrimination and made several provisions for the upliftment of the women. Article 14 of the Constitution of India guarantees the right to equality to all its citizens and Article 15 prohibits the State from discrimination on the grounds of sex or gender. Besides this, the Constitution adopts the approach of positive discrimination in favour of the women. Article 15(3) empowers the State to make special provisions for the women. Many laws have been enacted to ensure the safety of the women at the national and international level. In the age of feminism, the judiciary has played an active role in protecting and strengthening the rights of the women, but the gender equality is still a distant dream even after 75 years of Independence. The identity of the women is always merged with the male counterparts on which she is dependant. Before marriage, she is dependent on her brother, or the father and she is seen as the property of her husband after the marriage. It is the need of the hour to debunk these gender stereotypes which have been assigned to her by the society. The present research critically analyses the legal and judicial framework for the protection of the rights of the women in India.

Keywords: Women Empowerment, Gender Equality, Privacy, Dignity, Patriarchy, Constitution, Emancipation etc

GENDER EQUALITY IN 21st CENTURY: FIGHTING THE DANGEROUS STEREOTYPES

INTRODUCTION

Indian society is deep rooted in the patriarchal notions which treated women as the weaker section of the society. Due to the male- dominated society, disparity emerged among the people on the basis of the gender. From the ancient times, women were not given equal status as that to the men. They have faced the discrimination due to the patriarchal nature of the society. Gender Inequality was seen as moral and ethical issue. The makers of the Indian Constitution were keen to address the issue of gender inequality.

Article 14 of the Indian Constitution ensures the equality to all the persons.¹ Article 15 of the Constitution of India provides that the State shall not discriminate on the basis of gender, caste, religion, race and colour.²

The women have been assigned the role of a weaker section of the society by the women. The identity of the women was never seen to be the independent. It was a developed notion in the society that women need to be protected as they are dependent on the male counterparts in the society. Before her marriage, she was dependent on her father or brother for her financial needs and after her marriage, her identity is merged with her husband. This is a vague concept to exist in the age of the feminism and gender-neutral society. It is the need of hour to break the glass ceiling fixed by the society for the women if we truly need to achieve the gender equality.

The Legislature have enacted the various laws for the upliftment of the women and the position of the women is changing in the present times. The Judiciary being the guardian of the rights of the people have taken active role in ensuring the equal rights to the women and maintaining the gender equality in the society. In the present era, the third category of the gender has also prevailed i.e., transgender. Despite that, the women and the transgender have to face discrimination and are often deprived of their fundamental rights. Absence of equality and upliftment of the third gender may disrupt the very notion of gender justice among the individuals in a society.³ Even after the 75 years of independence, India has failed to achieve the notion of gender equality in the society.

CONSTITUTIONAL FRAMEWORK FOR GENDER EQUALITY IN INDIA

The founding fathers of the Constitution of India have incorporated several provisions to ensure the gender equality. The Preamble enshrines the concept of social, economic, and political justice for all the citizens of India. Social justice ensures the abolition of inequalities that may exist on the basis of status, gender, class, caste, race or colour. Economic justice is based on the notion that everyone has the right to economic independence irrespective of caste, religion, gender, race, or status. Political Justice ensures that men and women have the equal representation in the political matters. Preamble secures the fundamental rights and equality for all the individuals irrespective of the gender.

The Fundamental Rights enshrined under Part III of the Constitution of India guarantees to all the citizens equality and prohibits the discrimination of any kind on the basis of the gender. Article 14 of the Constitution of India provides for the Equality before Law. It states that “The State shall not deny to any person equality before law or the equal protection of laws within the territory of India.”⁴ Whereas Article 15 of the Constitution talks about the prohibition of the discrimination on the grounds of the religion, race, caste, sex or place of birth or any of them.

The Constitution of India has embodied the concept of positive discrimination. Positive discrimination is the practice of favouring someone due to the protection characteristics in an attempt to reduce inequality. Article 15(3) provides for the positive discrimination. It states that “State can make special provisions

¹INDIA CONST, art 14.

²INDIA CONST, art, 15.

³Critical analysis of gender justice under Indian Constitution, Available at <https://www.ijlmh.com/paper/a-critical-analysis-of-gender-justice-under-the-indian-constitution/> (Last visited Oct 4, 2022).

⁴Supra Note 1.

for the women and children”⁵. Women were considered as the weaker sections of the society. For the upliftment of the women, Constitution has taken the approach of positive discrimination to reduce the gender disparity that existed from the ancient times in our society.

In addition to this, Article 16 of the Constitution of India provides for the equality of opportunity in the matters of the public employment. It mentions that “There shall be equality of opportunity for all citizens in matters relating to the employment or appointment to any office under the State”.⁶ Further Clause (2) of Article 16 provides that “Citizens on the grounds of religion, Race, caste, sex, descent, place of birth, residence or any of them shall not be ineligible for or discriminated against in respect of any employment or office under the State.” In addition to this, Article 23 expressly prohibits traffic in human beings. Pursuant to this Article, The Legislature has enacted the Immoral Traffic Prevention Act, 1956 which aims to abolish the practice of prostitution and other forms of trafficking against the women.

The Directive Principles of State Policy enshrined under Part IV of the Constitution aims to achieve the gender equality. Article 39(d) which ensures the economic justice for all the citizens provides the direction to the State to secure equal pay for equal work for both men and women. As a result, the State enacted the Equal Remuneration Act, 1976. Moreover, Article 39(e) of the Constitution provides that “State shall direct its policy towards securing the health and strength of the workers both for men and women”. Article 42 requires the State to make provisions for securing just and humane work conditions and for maternity relief. In consonance of this Article, Parliament has enacted Maternity Benefit Act, 1961.⁷

Article 44 of the Constitution of India directs the State to secure the citizens of India with a uniform civil code throughout the territory of India. Uniform Civil Code would ensure that women are not discriminated against the customary practices that are prevalent in the personal laws. Triple Talaq as observed under the Muslim Personal Laws was declared unconstitutional as the said practice goes against the dignity of the women and was violative of Article 14, 15 and 21 of the Constitution. Common Civil Code would help to achieve the gender-neutral society.⁸

The Constitution of India not only imposes the responsibility on the States to protect the women from the discrimination but also casts a duty on the citizens to ensure that dignity of the women is maintained. Article 51 A (e) of the Constitution of India states that it shall be the duty of every citizen of India to promote harmony and a spirit of brotherhood amongst all the people of India transcending religious, linguistic, regional, and sectional diversities, to renounce practice of derogatory to the dignity of women. Besides these Constitutional provisions, various amendments have been inserted to ensure the equality of the women in all spheres⁹. The 73rd and 74th Amendments to the Indian Constitution in the year 1993 have served as a breakthrough towards enhancing the women's participation in the democratic process ensuring the applicability of gender justice in India.

⁵Supra Note 2.

⁶INDIA CONST, art 16.

⁷ Gender Justice in India : A Feminist Jurisprudential Perspective, https://www.researchgate.net/publication/325517740_Gender_Justice_in_India_A_Feminist_Jurisprudential_Perspective (last visited Oct 5, 2022).

⁸ Supra Note 3.

⁹INDIA CONST, art 51 A

JUDICIAL INTERPRETATION TOWARD GENDER EQUALITY

Courts are regarded as the custodian of the Constitution and the preserver of the rights of the citizens. The courts time and again have emphasised the need for maintaining the gender equality in the age of feminism. Gender-neutral society is still a distant dream for women of India as they still have to fight for the basic rights which have been already given to the men. In the recent times, the Courts have played an active role in recognising the right of the women. Not only this, but they have also recognised the rights of the third gender as well.

In '*Nargesh Meerza v. Air India*',¹⁰ the Court observed that a woman shall not be denied employment merely on the ground of her gender. In this case, an air-hostess of Air India challenged the service rules of Air India where air hostesses were barred from getting married within a period of 4 years from the date of their joining. The rule further stated that the airhostesses shall lose their jobs if they become pregnant and that they will retire at the age of 35 years. The Court held that "The rules are arbitrary and unconstitutional in nature as they violate Article 14 and 15 of the Constitution".¹¹

In the case of '*C.B Muthamma v. Union of India*'¹², Rule 8(2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961 were in question as they were violative of Article 15 of the fundamental rights guaranteed in the Constitution of India. This rule states that an unmarried woman member before getting married must take the permission of the Government and even after marriage she might be asked to resign the office any time if it is found that her family life is affecting her work efficiency. The Court held that the rules of the Indian Foreign Service to be unconstitutional and violative of Article-15 of the Indian Constitution as they were an attempt to dominate the weaker section of the society¹³.

In the case of '*C Rajkumari v. Commissioner*'¹⁴, the Court observed that "If the beauty contests degrades women body or a part of a body in such a way that it is indecent and is injurious to public morality then such beauty contest would be violative of the provisions of Indecent Representation of Women (Prohibition) Act, 1986 and also unconstitutional as it violates Article 14, Article 21 and Article 51A of the Constitution."¹⁵

In the case of '*Suchita Srivastava and another v. Chandigarh administration*'¹⁶, the Supreme Court held that right to personal liberty include within its ambit the right to sexual privacy. Wider interpretation was given to the concept of gender equality and justice by observing that women's right to reproductive choice is a part of personal liberty as enshrined under Article 21 of the Constitution of India. Women has the right to decide whether she wants to bear or beget the child. It is her fundamental right on which the society can not impose any limits. Also, she can refuse to have sexual intercourse¹⁷.

¹⁰Nargesh Meerza v. Air India AIR 1981 SC1829.

¹¹ M.P JAIN

¹²C.B Muthamma v. Union of India 1979 SCC (4) 260

¹³J.npandey

¹⁴C Rajkumari v. Commissioner 1998 (1) ALD Cri 298

¹⁵*Ibid.*

¹⁶Suchita Srivastava and another v. Chandigarh administration (2009) 9 SCC 1

¹⁷ Supra Note 13.

The Supreme Court has interpreted the notions of gender justice within the ambit of Article 23 of the Constitution. In *Neeraja Chowdhary v. State of Madhya Pradesh*¹⁸, the Court observed that “Women and children cannot be compelled to work under unhygienic conditions as it connotes the system of bonded labour which is expressly prohibited under Article 21 and Article 23 of the Indian Constitution. In the case of *Randhir Singh vs Union of India*¹⁹, the Supreme Court observed that Equal Pay for Equal Work is applicable to both the genders- men and women. Article 39(d) of the Constitution of India provides that State shall take steps to secure equal pay for equal work for both men and women and this principle although unenforceable is fundamental in the governance of the country. Courts are allowed to enforce this doctrine where the wages of the government employees are based on unreasonable classification which is violative of Article 14 and 16 of the Constitution of India.²⁰

In *Joseph Shine v. Union of India*²¹, the ambit of the gender justice has been widened. Adultery which was a criminal offence under Section 497 of the Indian Penal Code was held to be unconstitutional as it is violative of Article 14 and 15 of the Constitution. The Court observed that the “Husband is not the master or owner if the sexuality of the wife and the wife is not to be treated as the property of her husband. She has a right to make her own sexual choices which is a fundamental part of right to life and personal liberty as enshrined under Article 21 of the Constitution of India.²²

In *K.S Puttaswamy v. Union of India*²³, the Court held that Right to Privacy is a fundamental right of every person which is protected under Article 21. The Apex Court observed that “Right to Privacy includes the right of an individual to make choices regarding his/ her sexual choices.”

With the changing times, the concept of the gender and gender justice has been evolved. The term gender is now not limited to “he or she”. A new category of gender has been emerged known as transgenders or LGBT Community. The term transgender is given to anyone whose physical characteristics and behavioural patterns are not identical with the men and the women. The identity of the transgender falls outside the scope of the stereotypical gender norms assigned to the men and women by the society. In *National Legal Services Authority and Others(NALSA) v. Union of India*,²⁴ the Court has recognised the third gender. The Court has done away with the binary gender structure of the men and women. It was observed that “Protection of the fundamental rights guaranteed under Article 14, 15, 16 and 21 of the Constitution is available to the third gender as well.”²⁵

THE ISSUE OF GENDER JUSTICE– GENDER STEREOTYPING

The patriarchal notions are deep rooted in the Indian society. Women was always considered to be the weaker section of the society. The society has assigned the roles and behaviour according to the gender in the society. In the ancient times, it was believed that women should always remain under the protection. She does not have the separate identity before and after her marriage. Before her marriage, she is dependent on her father. She must always be in the custody of her father. And after her marriage,

¹⁸Neeraja Chowdhary v. State of Madhya Pradesh AIR 1984 SC 1099

¹⁹Randhir Singh v. Union of India 1982 SCR (3) 298.

²⁰Supra Note 11

²¹Joseph Shine v. Union of India (2018) SC 1676

²²Supra Note 3

²³K.S Puttaswamy v. Union of India 2017(1) SCC 1.

²⁴National Legal Services Authority and Others v. Union of India AIR 2014 SC 1863.

²⁵Supra Note 7

her identity is merged with her husband. She must give up her own identity to protect her family. She was not allowed to work because society has ascribed her the role of homemaker. Since time immemorial, the Indian society has witnessed the gender discrimination in all the aspects of the life.

Women have been discriminated from the very inception of her life. Female Infanticide was very common which is still prevalent in the rural areas. Having a girl child was treated as offence by the society. The girls were considered to be a burden on the family. The women were tortured if she gives birth to a girl child. Sex- Determination was more common in all the parts of the society. Women were forced to have the abortion in case it was a girl child. At the present times, these practices have been done away with but still women have to face the discrimination, physical abuse as compared to their male counterparts. Women in India are subjected to criminal atrocities such as Rape, Domestic Violence, Sexual harassment, trafficking and forced prostitution. Domestic Violence in India is a serious issue, and it has only been increased in the recent years. According to the National Crime Records Bureau's report "Crime in India, 2019", about 70% of the women in India are victims of domestic violence.²⁶

Gender Discrimination occurs when a person is treated differently based on his or her gender. In many situations, the public will rely on a stereotype as the basis for the unequal or unjust treatment. Women are often seen negatively due to their sexual orientation or gender identity. Various labels have been used by the society in order to fit the women into these gender stereotypes. Women as compared to her male counterparts has to struggle in order to achieve the equal status in the society.

CONCLUSION

There is no denying in the fact that gender inequality is still prevalent in 21st century and stagnates social growth. There are many factors which contribute to the gender disparity in the society. Inequalities faced by girls can begin right at birth and follow them all their lives. In some parts of the women, they are deprived of access to health care or adequate nutrition which leads to higher mortality rate. Gender Disparity widens in the age of adolescence when they are not given equal opportunities in educational matters or job opportunities. It is a high time that society must believe in ensuring the gender equality as it is a basic human right and must be provided to all its citizens.

Gender Equality means the equality for all people irrespective of their gender. No consideration or preference should be given to the gender while ensuring the equal rights. One way to curb the gender disparity is to fight against the gender stereotyping. The roles have been assigned on the basis of the gender to act or behave in a particular way by the society. When a particular individual does not fit into this binary perception of the gender, they are highly discriminated and have to face the brunt of the social and economic marginalisation. Women and men must be seen as equal and must be provided with the equal opportunities in all spheres of life.

²⁶Crime in India 2019, Available at <https://ncrb.gov.in/en/crime-india-2019-0> (last visited Oct 7, 2022).