

# Human Rights and Constitutional Provisions for Gender Equality and Equity

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**Abstract** - Gender equality is at the heart of human rights law. It is one of the pillars of the United Nations' 2030 Agenda for Development, and it is deemed essential to all areas of development. Gender equality implies that women, men, and transgender individuals have equal access to education, healthcare, economic resources, employment, leadership positions, involvement in political life and decision-making, and a role in the economic, political, and social growth of a nation. Gender equality signifies that the needs and interests of women, men, and transgender people are taken into account, and that everyone is free to make their own decisions without regard to social conventions or biases regarding gender roles. Men and women have equal rights, yet there is still a gap that impacts people in different nations to differing degrees throughout the world. It is women and transgender people who bear the brunt of this discrepancy. As a result of the growing awareness of gender problems, transgender people's gender inequities are now being emphasised. Transgender persons are denied their basic human rights as a result of patriarchal societal standards. This is a big roadblock in the way of the sustainable growth that we all desire. India's gender equality is examined in this research. That said, there's a long way to go even though this is changing in many areas of the world. Despite India's progress and economic growth, gender inequality is still a major problem in the country.... From an early age, teaching youngsters about the need of gender equality may have a good impact. To truly achieve gender equality, it is necessary to have an integrated strategy that includes women, transgender people, and men working side by side.

**Keywords** - Gender equality, Human Rights, Women's rights, Transgender

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## 1. INTRODUCTION

Gender equality means that women and men, as well as young girls and boys, have the same set of rights, responsibilities, and opportunities under the law. Equality does not imply that women and men will be the same, but that their rights, duties, and opportunities will not be contingent on whether they are born male or female. Equal treatment for women and men means that the interests, needs and goals of all genders are taken into consideration, respecting the variety of diverse groups of women and men. Gender equality and human rights can only be achieved if men and women have equal opportunities to achieve their goals on an equal playing field. Ultimately, the objective of achieving gender equality is to ensure that both men and women have equal access to and benefit from society's resources and resources. As a part of this, women must have equal participation in determining what is valued and how this might be achieved. As a tool, equity serves as a way of accomplishing our goals. The end outcome is equal distribution. Gender equity refers to an aspect of social justice that is interpreted in a way that disadvantages women, generally because of custom, religion, or culture. Women's Bill of Rights states that governments should:

- Take action to stop the abuse of women's rights by individuals, groups, and organisations alike.
- Make an effort to alter societal and cultural norms that place women in an inferior position or stereotype either gender.
- Allow women the same educational opportunities as males, as well as the same access to information.
- Make health care more accessible to all people, including women and girls.
- Ensure that women are treated equally in all aspects of marriage and family life.

### 1.1 Constitutional Provisions

Particularly important for ensuring gender equality and equality in general are Articles 14, 15, 3 and 16 of the Constitution, as well as Articles 39(a), 39(b), and 39(c) and Article 42 of the Constitution. A few of the papers that have been published:-

**Article 14:** Article 14 of the Indian Constitution refers about equality of status or equality in front of the law. The State cannot deny that all people are equal before the law.

**Article 15:** Discrimination on the basis of religion, ethnicity, caste, gender, or place of birth is outlawed under Article 15. There is nothing in this article that prevents the government from creating specific arrangements for women and children.

**Article 16:** Article 16 stipulates that all citizens of India have equal access to employment or appointment to any public office, regardless of their status.

**Article 39:** According to Article 39 of the Constitution, the State is required to ensure that men and women have an equal right to an adequate 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 distributed to serve a common goal.

**Article 42:** According to Article 42 of the Constitution, the State is required to ensure that there are humane working conditions as well as maternity assistance.

## 2. WOMEN'S MOVEMENT AND LEGAL REFORMS

To put a formal mark on India's commitment to gender auditing as part of its overall governance structure, the Indian government ratified the UN charter in 1975. (Patel, 2002). The Equal Remuneration Act was enacted in 1976 to provide equal opportunity, equivalent treatment, and equal compensation for work of the same sort. The Maternity Benefit Act, 1961 and specific provisions for women in general labour laws have been subject to public scrutiny by women's groups. The Factories Act, 1948 – Section 34 provides that the State government can lay down rules prescribing weights that may be carried by men and women, the Contract Labour (Abolition and Regulation) Act and Rules that separate provision of utilities for women and fixed working hours.

Despite the fact that these laws have sufficient implementation procedures, there is no provision for monitoring the impact of these laws on female citizens. Women's work possibilities have been negatively impacted by the inclusion of specific provisions for women. Abysmally low is the involvement of working women in industrial and agricultural relations decision-making processes. Despite the Legal Services Act of 1987, women's access to legal services is still severely limited.

### 2.1 The Labour Laws for Empowerment of Women

Gender equity is at the heart of the labour legislation aimed at advancing women's equality. Following is a list of each:

- The Maternity Benefit Act of 1961 grants working women a 90-day paid maternity leave.
- Under Section 34 of the Factory Act, 1948, the State government has the authority to impose regulations on how much weight can be carried by men and women.
- There are separate utilities for women and defined working hours under the Contract Labour Abatement and Regulation Act.
- No benefits are provided to women working in the unorganised sector notwithstanding the Unorganized Workers' Social Security Act, 2008, No. 33 of 2008. N0 33 of 2008.

Laborers' rights are safeguarded by industrial and other labour laws, which are found in the formal, structured economy. Unfortunately, the majority of these legal measures appear to be acting against the interests of employees, are underutilised, and require revision. Government-mandated minimum wages cover only a few needs, but even those are denied to employees in the informal sector. Many factories avoid reporting problems because their owners complain about low profitability and fear closure, and they're bribed to remain quiet by their bosses. Crèches are now available in companies that employ more than 30 women employees, but employers are finding creative methods to avoid providing this benefit. Both men and women in the service industry who work shifts do not have access to crèches.

In India, the Equal Remuneration Act, 1976 was enacted pursuant to Article 39 (d) of the Constitution of India, which provides for equal remuneration for men and women workers, equal opportunities for women and men, and the prevention of discrimination on the basis of sex against women in the workplace.

## 3. VIOLATION OF BASIC HUMAN RIGHTS IN INFORMAL SECTOR

Workers in the informal sector are not recognised as employees and get no social protection, whereas those in the official sector are. In the informal sector, women are compelled to labour without contracts, without social protection, and at a poor salary in squalid surroundings. In the lack of health insurance and financial stability, women in the informal sector are less likely to prioritise their health. Children of women who work in the informal sector typically lack access to quality education because their parents are unable to provide a stable source of income. They are unable to go to school and improve their lives. As adults, many children find themselves working in the informal sector because of a lack of education or because they want to assist their parents make a better living (e.g. home based workers, vendors, self employed) To alleviate the poverty and vulnerability of unorganised labour, the national

budgets include allocations for their aid. Anti-poverty programmes view them as recipients of assistance. Intermittent employment is the primary source of anxiety for informal employees.

#### **i. Rag pickers- poorest of the poor**

More and more people are moving to the cities in search of a better life because of urbanisation and large-scale farming, according to a case study on Mumbai's women rag-pickers. Many people who can't get a regular job turn to street trading and rubbish collection. When it comes to picking up rags, it is caste and gender specific. An estimated 25,000 women and children in Mumbai live in shanties and collect rubbish for recycling from municipal dustbin, landfills, and garbage dumps, making them the lowest of the poor. A daily wage of less than Rs. 60/70 is the norm for their seven-day workweek. People in Mumbai recycle and repurpose garbage on the streets. Roughly 7 to 8 percent of the rubbish generated in Mumbai is removed by rag pickers each day. Because of their low resources and employment options, rag pickers are particularly susceptible. There are more illnesses and injuries among rag pickers as a result of their work conditions than in the general population. Some rag pickers hate moving, while others sleep on the street. Rag pickers and their children are often illiterate, and formal education or employment is not available to them or their families. Many rag pickers are unaware of their rights, such as the entitlement to free public elementary school education.

#### **ii. No skills training**

Because women aren't taught certain talents, many of them are fearful of enrolling in classes that might expose them to such abilities. Women make up a small percentage of pupils in the government's current ITI network.. Better courses and better utilisation of classroom space are both urgently required.

#### **iii. Abuse in Special Economic Zones**

There has been an increase in the number of Special Economic Zones since the adoption of the Export focused strategy and the competition for foreign investment (also Free Trade Zones and Export Processing Zones etc.). It is common in these areas for labour rules to not be enforced. In other words, women are being exploited for their labour. They are forced to labour in inhumane conditions. There have been several reports of workplace sexual harassment as well as violations of workers' and human rights. Capitalists' abuses are often ignored by governments in the sake of keeping foreign investment.

#### **iv. Night Work- the Issue and the debate**

Because of business process outsourcing, hundreds of contact centres hire young, computer-savvy, English-speaking women for night hours. Due to the rising worldwide tourism sector, Asia's pubs and nightclubs have boomed. Bar ladies in Mumbai prefer the night shift since it's more convenient and beneficial for them. It was forbidden in Maharashtra owing to campaigning by local self-government women. "Night" is defined as 10 p.m. to 7 a.m. by the International Labor Organization (ILO). 5 Sexual harassment and molestation affect many night shift workers. Making it prohibited for women to work at night violates the equality principle and is unjustified. Time to address sexual harassment and women's violence. The state and enterprises must provide safe work environments and transportation for female employees.

### **4. NEED FOR A POLICY FOR WOMEN'S EMPLOYMENT**

There must be methods in place to combat the gender divide and the sexual division of labour both within and outside of the workplace as part of a comprehensive strategy for women's employment. Access policies encompass policies for employment, education, training, credit, etc.

- Her status as a household member should be considered as part of a wider effort to improve employment quality.
- Employment policies that protect material and human resources, as well as those of the workforce.

#### **4.1 Proper Implementation of Laws and Schemes for Working Women**

- i. For example, the Industrial Disputes Act, the Factories Act, the Employee Retirement Income Security Act (ERISA), and the Minimum Wage Law should not be abolished but instead reinforced to protect all employees.
- ii. The worth of work under the ERA must be assessed through some sort of process.
- iii. Ward-level committees of employees are needed to strictly administer the minimum wage.
- iv. In order to guarantee employment for employees in labor-intensive industries and vocations, the government must implement macroeconomic policies. For urban employees, the Employment Guarantee Scheme should be expanded and enhanced. It is possible to use these employment programmes to help with infrastructure development, slum improvement, and the construction of

houses. Workers' reskilling should be prioritised under the National Renewal Fund, which should be expanded to include the unorganised sector.

## **5. GENDER EQUALITY: ISSUES AND CHALLENGES FOR WOMEN**

### **5.1 Issues and challenges for women**

The patriarchal structure of Indian society is to blame for the current state of gender inequity. Gender disparity is harmful to our society because many women have accepted that they are not equal to men because of societal and cultural conditioning (Gender Inequality in India, n.d.). There is no question that women are change agents and economic growth contributors. Increasing women's capacities in education, health, economic independence, and access to resources has a favourable effect on the well-being of the entire family, community, and the nation. Children's education, health, and future chances are some of the favourable effects that have been found in numerous research.. There was also a focus on gender equality and women's empowerment in the Millennium Development Goals (Millennium Development Goals, 2000). Gender equality and the empowerment of women are now universally recognised as essential building blocks for achieving major developmental milestones. Discrimination against women in India is widespread and pervasive at every level of society — from the level of social and economic involvement to the level of political engagement. In India, the majority of women are impoverished and illiterate, living in substandard conditions, being oppressed by males who have power over them, and being unable to rise beyond their oppressive and retrograde social circumstances.

#### **i. Education:**

While education is a powerful tool for empowerment, many women in India, especially those from rural or distant areas with poor incomes, cannot afford it. Many women are unable to exercise their fundamental right to education because of a variety of barriers. There is a dearth of adequate restrooms, safety issues for teenage females who have to travel great distances for schools, and early marriages are big deterrents for young girls to receive an education.

#### **ii. Preference for sons:**

Because sons are viewed as social stability in Indian society, the demand for a son also stems from the patriarchal structure. Another important consideration is the presence of religious rituals that are supposed to be performed solely by men, such as sons performing funeral duties for their parents and ensuring their parents' long-term financial security, as well as the economic role of sons and the preservation of the family name.

#### **iii. Domestic Violence:**

Despite the "Protection of Women from Domestic Violence Act 2005," domestic violence is still a major issue in India. The patriarchal rules of the Indian society, as well as the problem of drunkenness, the aggressive personality of the spouse, or the desire for a male kid, all contribute to domestic violence in India. Domestic violence includes physical and psychological abuse of women, such as slapping, beating, public humiliation, etc. Women's safety must be prioritised and all forms of violence, insecurities, and abuses against women must be eliminated.

#### **iv. Female foeticide:**

India's horrible practise of female foeticide persists despite its rapid growth and development. Many families believe that having a female kid is a burden and a source of problems, thus they will do all measures necessary to avoid having a girl child. The traditional patriarchal thinking that a male kid will be the source of revenue for the family and carry the family line, whilst the girl child will be married off to another family, is the reason for such practises (Gender Discrimination, 2016). Sadly, female foeticide persists in a country where many Goddesses are adored and revered. It has a detrimental influence on the country's growth and development, as well as tarnishes the global image of the nation.

#### **v. Healthcare issues:**

Many illnesses are more common in women because of poverty, gender prejudice, and the fact that they are more likely to give birth. Economic, health system, and social hurdles to accessing these services include a lack of human resources for health, a lack of sensitization, and stigma around particular diseases, such as HIV/AIDS and sexual health, which leads in unfavourable health outcomes for females. Addressing and improving healthcare concerns for women may have a positive impact on both women's health and the health of the nation.

## **6. LAWS AGAINST GENDER INEQUALITY IN INDIA**

A number of sections in India's constitution guarantee gender parity and reassure citizens that they would not be subjected to any kind of discrimination on account of their gender. India's Constitution guarantees fundamental rights to transgender people, much like those of women and men.

Just to name a few examples: According to Article 14, "the State shall not deny any individual equality before the law or equal protection of laws within the borders of the State," Article 15 bans discrimination against any citizen on the basis of



their race, caste, religion, sex, place of birth, or any of these, and Article 16 declares that "No citizen shall be disqualified on the only basis of their race, caste, religion, place of birth, or residency, or any of these" (Article 14, 15, 16, 19 and 21 of Constitution of India). Individuals who identify as transgender are held accountable to the same standards as everyone else. The Charter of the United Nations was the first international agreement to recognise gender equality as a basic human right on a global scale. Both the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights, which was ratified in 1966, place a strong emphasis on the idea that men and women should have the same rights. It is stated in the Universal Declaration of Human Rights (UDHR) that the equality of men and women is a fundamental human right that must be protected to all individuals. Others have reaffirmed their dedication to the cause of gender equality and the freedom of women on several occasions in international treaties.

## 7. CONCLUSIONS

The Indian Constitution recognises equality as a basic right, which implies it now applies to all citizens of the country. Society and values have advanced since the Constitution was initially enacted into law, yet the system still has flaws. Many people in the world still assume that having a daughter is a burden on the family. The government, the Supreme Court, and other authorities have developed a range of preventative measures to counteract discrimination on several times; nonetheless, this has not changed the unsophisticated worldview of those who even consider committing female foeticide. Given all of these considerations, achieving total gender equality in a country like India remains a tough and perilous endeavour.

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